



22 July 2021

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Lawyer and Senior Adviser
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Dear Ms Lo-Booth

RE: E2021/121 NTEU – Withdrawal of Application to conduct own elections under Section 183

I am writing on behalf of the National Tertiary Education Industry Union about the Application(s) made by the Union under Section 183 of the *Fair Work (Registered Organisations) Act 2009* which was lodged with the Commission on 2 June 2021.

The circumstances giving rise to the Application were set out in the Application itself and included that we were advised to consider this course of action by officers of the Australian Electoral Commission (AEC). One of the central purposes of the Application was to allow attendance ballots to take place in 2021 for collegiate elections in coming weeks.

However, the continuing and unpredictable lockdowns in most States and Territories, together with the AEC's willingness to run a postal ballot for these elections most expeditiously, have caused the NTEU National Executive to resolve unanimously today to direct that the Union write to the Commission advising that it withdraws the Application. Please take this letter as that withdrawal.

While we understand that an exemption granted under Section 183 does not necessarily have to be used, the Application itself was time-bound and therefore there is no real prospect that any exemption would be used. The Union therefore believes it would be a waste of the Commission's resources and ours to proceed with the hearing scheduled for this matter and its determination.

Please contact me on 0418357499 or in writing if you require further information.

KEN MCALPINE
National Industrial Office (Strategy and Policy)
National Tertiary Education Industry Union

Fair Work (Registered Organisations) Act 2009 (“the Act”)

Fair Work (Registered Organisations) Regulations 2009 (“the Regulations”)

National Tertiary Education Industry Union (“NTEU”)

To: The Registered Organisations Commission

These are applications made under Section 183(1) of the Act, and in accordance with the Regulations, for the NTEU to conduct its own elections for certain specified offices, as listed in **Attachment A** to this Application, being elections for all positions elected by collegiate election at meetings, until 1 April 2022.

Applications are made by the following:

NTEU National Executive, on behalf of the Union,
NSW Division
Queensland Division
South Australian Division
Australian Capital Territory Division
Western Australian Division
Victorian Division
Victorian TAFE Branch

Declarations by a member of each of the relevant committees of management of relevant facts are **Attachment B** to these Applications.

Grounds of Applications

The Grounds on which these applications are made in each case are in substance the same, and are as follows:

1. The Australian Electoral Commission (“AEC”) advised the NTEU in 2020 of a significant delay in the conduct of the NTEU’s biennial elections which would in the normal course of events, have been conducted in 2020, such that the elections for positions by direct method due to be conducted in 2020 are still being conducted, and election by the collegiate method, which in the normal course of events need to be conducted after the declaration of the direct elections.
2. Moreover, and of greater significance, the AEC has advised the NTEU that until further notice it will not attend meetings of NTEU bodies to conduct in-person elections.
3. Under the NTEU Rules, certain collegiate elections are specified as occurring at meetings. So much is apparent, for example, from the following provisions of the NTEU Rules:

- 69.3 (a) *The positions of Ordinary Executive Members on the National Executive shall be elected by and from the members of the National Council at the Annual General Meeting of the National Council, in accordance with the provisions of Rule 70.A.*
- 69.4 (a) *The positions of Division President, and ordinary Division Executive Members in each Division shall be elected by and from the members of the Division Council at a meeting of the Division Council*
- 69.6 (a) *The Division Vice-Presidents shall be elected by the Division Council from among the Members of the Section to which each of those offices relates. The Division Executive members shall be elected by and from the members of the Division Council. These elections shall be conducted during the Division Council meeting convened under sub-rule 69.4.*
- 18.3 D *After the membership of the Aboriginal and Torres Strait Islander Policy Committee is known, the General Secretary or the outgoing Chairperson of the Committee shall convene a meeting of the Committee, to be held during the 4 weeks prior to the Annual General Meeting of the National Council, to elect the Chairperson of the Aboriginal and Torres Strait Islander Policy Committee and the Deputy Chairperson of the Aboriginal and Torres Strait Islander Policy Committee.*

36.3 [The Victorian TAFE Branch]

Whenever the arrangements under this sub-rule are in effect in respect of a Branch, the Branch Officers and National Councillors from such a Branch shall have a term of office from the end of the meeting at which they are elected, until the election of their successors in the second year following

4. Therefore, it follows that the collegiate elections which, under the Rules of the NTEU, should have been conducted in 2020, cannot even be conducted in 2021 unless either:
- a. They are conducted by post by the AEC, which is not provided for in the Rules; or
 - b. The NTEU is permitted to conduct these elections itself.

The intention underlying the rules is that these elections be conducted in a collegiate and deliberative environment, with the electors having the opportunity to discuss among themselves who would be the better candidates. This would be lost if these elections were conducted by post. Of even greater importance, the delay in elections which would in the normal course of events be conducted before the National Council and would provide some of the voting members of the annual meeting of

the National Council (held in early October), would be seriously delayed or would be such that this year's National Council would include members elected in 2018.

5. NTEU now turns to the requirements of Section 186 of the Act. Elections conducted at meetings with scrutineers are highly transparent and relatively simple to conduct. The voters in such elections are far more sophisticated and conscious of the requirements of the rules than the average voter in a direct postal election. It is almost inconceivable that any irregularity could occur. The NTEU has staff and officers highly experienced in the conduct of elections and will appoint appropriate independent returning officers – retired members and former members.
6. The NTEU has no history of voter intimidation, nor even of allegations of voter intimidation, and in its history of thousands of elections conducted since amalgamation in 1993 and in respect of its federally registered predecessors prior to that, the NTEU has never been the subject of any adverse judicial or administrative finding of any election irregularity. There is no risk, or a vanishingly small risk of any intimidation of voters.
7. Collegiate elections are held at offices of the Union – either the National Office, the relevant Division office or, in the case of the National Council and the Aboriginal & Torres Strait Islander Policy Committee, at the time and place of the meeting. All these elections are held at meetings of the relevant bodies. Therefore, the relevant members will have an adequate opportunity to vote.
8. The technical requirements for these applications have been met. A Notice to members in the required form has been placed on the website of the Union and of each relevant Branch and Division.

National Tertiary Education Industry Union
2 June 2021

Attachment B - 2020

	Position	No. Required	Elected by	Reason for Election	Voting System
<u>National</u>					
	Ordinary Executive Member	10	NC	1	C
	National Vice-President (Academic Staff)	1	NC	1	C
	National Vice-President (General Staff)	1	NC	1	C
	A&TSIC Chairperson	1	IC	1	C
	A&TSIC Deputy Chairperson	1	IC	1	C
Branch	Position	Number Required	Elected by	Reason for Election	Voting System
<u>ACT Division</u>					
	Division President	1	DC	1	C
	Division Vice-President (Academic Staff)	1	DC	1	C
	Division Vice-President (General Staff)	1	DC	1	C
<u>NSW Division</u>					
	Division President	1	DC	1	C
	Division Vice-President (Academic Staff)	1	DC	1	C
	Division Vice-President (General Staff)	1	DC	1	C
	Division Executive Member	10	DC	1	C
<u>Queensland Division</u>					
	Division President	1	DC	1	C
	Division Vice-President (Academic Staff)	1	DC	1	C
	Division Vice President (General Staff)	1	DC	1	C
	Division Executive Member	8	DC	1	C
<u>South Australian Division</u>					
	Division President	1	DC	1	C
	Division Vice-President (Academic Staff)	1	DC	1	C
	Division Vice President (General Staff)	1	DC	1	C
<u>Victorian Division</u>					
	Division President	1	DC	1	C
	Division Vice-President (Academic Staff)	1	DC	1	C
	Division Vice President (General Staff)	1	DC	1	C
	Division Executive Member	15	DC	1	C
<u>Western Australian Division</u>					
	Division President	1	DC	1	C
	Division Vice-President	1	DC	1	C
	Division Executive Member	5	DC	1	C
BRANCH OFFICES					
Branch	Position	Number Required	Elected by	Reason for Election	Voting System
Victorian TAFE Branch (352)	Branch President	1	BC	1	C
	Branch Secretary	1	BC	1	C
	Branch Vice-President	1	BC	1	C
	National Councillor	2	AM	1	C

KEY TO THE TABLE ABOVE

Column: "Elected By"

- DC Elected by and from the Division Council in the relevant Division.
- NC Elected by and from the National Council.
- BC Elected by and from the Branch Committee
- IM Elected by and from the Indigenous Members of the Branch/Sub-Branch/Division/National Electoral Roll
- IC Elected by and from the Aboriginal & Torres Strait Islander Branch Committee Member
- CM Elected by and from members employed on a casual basis

Column: "Reason for Election"

1. That the term of office has expired.
2. That there is a casual vacancy in the office.
3. That a new office has been created.
4. That the position has changed from an honorary part time position to a full time salaried position.

Column: "Voting System"

- D A direct voting system is to be used.
- C A collegiate voting system is to be used.

Attachment B – Declarations by Officers

Fair Work (Registered Organisations) Act 2009 (“the Act”)

Fair Work (Registered Organisations) Regulations 2009 (“the Regulations”)

National Tertiary Education Industry Union (“NTEU”)

To: The Registered Organisations Commission

Declaration by Matthew McGowan – General Secretary

I, Matthew McGowan, of 120 Clarendon Street South Melbourne, Victoria, General Secretary of the National Tertiary Education Industry Union (NTEU), declare as follows:

1. On 22 May 2021, the National Executive of the NTEU adopted the following resolution:

That the Union apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections by the National Council or the Aboriginal and Torres Strait Islander Policy Committee until 1 April 2022, such that the Union can conduct these elections itself. That the General Secretary is authorised to do anything necessary for lodging the application and having it approved.

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief, based on extensive experience of the operation of the NTEU, and of its Divisions.
3. I am a member of the committee of management of the Union.



Mathew McGowan
GENERAL SECRETARY
2 June 2021

Declaration by Damien Cahill – Secretary of the NSW Division of the NTEU

I, Damien Cahill, of 50 Holt Street, Surrey Hills, NSW, Secretary of the NSW Division of the NTEU, declare as follows:

1. On 14 May 2021 the NSW Division Council of the NTEU resolved as follows:

‘That the NTEU NSW Division apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Division (by Division Council) until 1 April 2022, such that the Division can conduct these elections itself. That the Division Secretary and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.’

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Division.



Damien Cahill
DIVISION SECRETARY
2 June 2021

Declaration by Ron Slee – Secretary of the SA Division of the NTEU

I, Ron Slee, of 15 Paxtons Walk 281 North Terrace, Adelaide , South Australia, Secretary of the South Australian Division of the NTEU, declare as follows:

1. On 19 May 2021 the South Australian Division Council of the NTEU resolved as follows:

‘That the South Australian Division apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Division (by Division Council) until 1 April 2022, such that the Division can conduct these elections itself. That the Division Secretary and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.’

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Division.



Ron Slee
DIVISION SECRETARY
2 June 2021

Declaration by Michael McNally – Secretary of the Queensland Division of the NTEU

I, Michael McNally, of 4 Briggs St, Taringa, Qld, Secretary of the Queensland Division of the NTEU, declare as follows:

1. On 28 May 2021 the Queensland Division Council of the NTEU resolved as follows:

‘That the Queensland Division apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Division (by Division Council) until 1 April 2022, such that the Division can conduct these elections itself. That the Division Secretary and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.’

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Division.



Michael McNally
DIVISION SECRETARY
2 June 2021

Declaration by Cathy Day – Secretary of the ACT Division of the NTEU

I, Cathy Day, of Room 2.07, Anthony Low Building, 124 Eggleston Rd, ACTON, Australian Capital Territory, Secretary of the Australian Capital Territory Division of the NTEU, declare as follows:

1. On 12 May 2021 the Australian Capital Territory Division Council of the NTEU resolved as follows:

‘That the Australian Capital Territory Division apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Division (by Division Council) until 1 April 2022, such that the Division can conduct these elections itself. That the Division Secretary and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.’

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Division.



Cathy Day
DIVISION SECRETARY
2 June 2021

Declaration by Catherine Moore – Secretary of the Western Australian Division of the NTEU

I, Catherine Moore, of Level 3, 27 Railway Road Subiaco, WA, Western Australian Secretary of the Western Australian Division of the NTEU, declare as follows:

1. On 12 May 2021 the Western Australian Division Council of the NTEU resolved as follows:

‘That the Western Australian Division apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Division (by Division Council) until 1 April 2022, such that the Division can conduct these elections itself. That the Division Secretary and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.’

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Division.



Catherine Moore
DIVISION SECRETARY
2 June 2021

Declaration by Sarah Roberts – Assistant Secretary of the Victorian Division of the NTEU

I, Sarah Roberts, of 120 Clarendon Street, South Melbourne, Assistant Secretary of the Victorian Division of the NTEU, declare as follows:

1. On 19 May 2021 the Victorian Division Executive of the NTEU resolved as follows:

‘That the Victorian Division apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Division (by Division Council) until 1 April 2022, such that the Division can conduct these elections itself. That the Division Secretary and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.’

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Division.



Sarah Roberts
DIVISION ASSISTANT SECRETARY
2 June 2021

Declaration by Rudi Pavani – President of the Victorian TAFE Branch of the NTEU

I, Rudi Pavani, of 120 Clarendon Street, South Melbourne, President of the Victorian TAFE Branch of the NTEU, declare as follows:

1. On 1 June 2021 the Branch Committee of the Victorian TAFE Branch of the NTEU resolved as follows:

That the Victorian TAFE Branch apply under Section 183 of the Fair Work Registered Organisations Act for exemption from the requirement that the AEC conduct any collegiate elections in the Branch Committee until 1 April 2022, such that the Branch can conduct these elections itself. That the Branch Officers and the General Secretary are authorised to do anything necessary for lodging the application and having it approved.

2. That to the extent that the Grounds set out in the Application dated 2 June 2021, set out questions of fact, they are true and correct in every particular to the best of my knowledge and belief.
3. I am a member of the committee of management of the Branch .



Rudi Pavani
BRANCH PRESIDENT
2 June 2021