

6 April 2022

Post-election report

VANA Limited
Scheduled election
E2021/81

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Election(s) Covered in this Report

Organisation: VANA Limited
Election: Scheduled
Election Decision No/s: E2021/81

Rules

Rules used for the election: 235V: Incorporates alterations of 9 June 2021 [R2020/229]
Replaces rulebook of 14 May 2021 [D2020/21]

Rules difficult to apply/interpret: No

Other Matters

Returning Officer actions required (Section 193): Yes
Details:

- As there is no rule pertaining to the method in which nominations must be lodged, the Returning Officer will apply subparagraph 193(1) (b)(ii) of the Fair Work (Registered Organisation) Act 2009 to only accept nominations via email or portal and not by hand or post, due to the ongoing COVID-19 risk.
- 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

Darren Wade
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 03 9285 7111

6 April 2022

Attachments

A. Declaration of results for Uncontested Offices – Stage 1

B. Declaration of Results for Uncontested Offices – Stage 2

VANA Limited
DECLARATION OF RESULTS - E2021/81 - 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

Chairperson (1)

Candidates

PECORA Chris

Vice Chairperson (1)

Candidates

MCDONALD Kate

Treasurer (1)

Candidates

SPENCER Nicole

Other Executive Director (1)

Candidates

LIU Luke

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

Darren Wade
Returning Officer
Telephone: 03 9285 7111
Email: IEBevents@aec.gov.au

29/03/2022

VANA Limited
DECLARATION OF RESULTS - E2021/81 - 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:

Non-Member Director (2)

Candidates

PECORA Chris
SPENCER Nicole

Member Director (3)

Candidates

ATTWOOD Gerard
LIU Luke
MCDONALD Kate

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

Martha Gray
Returning Officer
21/12/2021





DECISION

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

VANA Limited
(E2021/81)

MS GUINA

MELBOURNE, 23 SEPTEMBER 2021

Arrangement for conduct of election.

[1] On 30 August and 15 September 2021 VANA Limited (the **organisation**) lodged with the Registered Organisations Commission (the **Commission**) prescribed information for an election to fill the following offices:

Board

Non-Member Directors	(2)
Member Director	(3)

Executive

Chairperson	(1)
Treasurer	(1)
Vice Chairperson	(1)
Other Executive Director	(1)

[2] The organisation did not lodge the prescribed information before the prescribed day as required by regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009* (the **Regulations**). Sub rule 15.1 of the rules of the organisation (the **rules**) provides that nominations for the election of Board members be sent by the Returning Officer to members of the organisation at least three months before the Annual General Meeting. The organisation has advised that it has scheduled its Annual General Meeting for 8 December 2021. Consequently, nominations should have opened on 8 September 2021 and the prescribed information lodged no later than 8 July 2021 (two months earlier).

[3] In its correspondence dated 15 September 2021, the organisation advised the delay was due to the following:

- staff working remotely from home due to the ongoing Victorian lockdowns;
- head of management changeover – resignation of the previous Treasurer (authorised officer) and appointment of the current Treasurer;
- lack of communication from the Commission reminding of the lodgement of the prescribed information;

- uncertainty as to whether the Australian Electoral Commission (the AEC) could deliver any industrial elections in 2021 due to the ongoing impact of Covid-19; and
- substantial changes in staff throughout the Covid-19 period with all current staff working extensive hours and taking extra responsibilities to keep members open via providing general assistance with grants, information on constantly changing Covid-19 restrictions and assisting with landlord issues being an absolute priority.

[4] For the reasons that I set out below, I am not satisfied that the reasons provided by the organisation are sufficient grounds to justify the failure to comply with a statutory obligation. 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 Act but also in rules formulated by the organisations themselves, I decline on this occasion to allow, under section 189(2) of the Act, a later day for lodgement.

[5] In reaching this conclusion I have taken into account the delay in lodgement (almost 2 months) and the fact that it was open to the organisation to consult with either the Commission or the AEC about the ability of the latter to deliver an election in 2021. This is notwithstanding that the AEC directly advised organisations in 2020 that if an election for a critical office was required, the organisation should discuss this matter with the Commission and with the AEC. Further, the Commission has previously issued guidance material for registered organisations, including advice to continue to lodge prescribed information wherever possible.¹

[6] In relation to the adverse impacts on the organisation as a consequence of the Victorian Covid-19 lockdowns, I acknowledge the challenges raised by the organisation in relation to their staff working arrangements during lockdown, changes of office-bearers and increased workload due to the adverse effects of the lockdown on the organisation's members. However, I note that the majority of registered organisations have continued to meet their regulatory obligations during both the 2020 and 2021 lockdowns, including engaging with the Commission and the AEC in relation to the conduct of their elections and the lodging of prescribed information.

[7] Another circumstance raised by the organisation was the lack of the communication from the Commission directly as a reminder regarding the lodgement of the prescribed information. As indicated in the previous election decision E2020/96, the ultimate statutory responsibility to lodge prescribed information for elections rests with each registered organisation. Consequently, it is expected that registered organisations will themselves take steps to ensure compliance with the time-frame requirements set out in the Act and also in instruments or references pertaining to their own governance (such as their rules).

[8] I note that the organisation was late in lodging prescribed information for its previous scheduled election E2020/96. The reasons provided by the organisation for that late lodgement were: 'Covid-19 impact and no staff in the office' and 'lack of communication from ROC regarding lodgement of this prescribed information for elections.' In this instance, a Delegate of the Commission allowed a later day for lodgement under s 189(2) of the *Fair Work (Registered Organisations) Act 2009* (the Act). In his decision, the Delegate emphasised that the statutory requirement to comply with the Act rests with organisations and not the Commission. It could reasonably be expected that, following this decision, the organisation

¹ See *Guidance Note on the conduct of elections in organisations and their branches during coronavirus (COVID-19) restrictions*, 9 April 2020.

would take steps to remedy any operational deficiencies that resulted in the late lodgement. Unfortunately, this does not appear to have been the case. I reiterate that the statutory obligation to comply with the Act rests with organisations. Section 189(2) of the RO Act requires that prescribed information be lodged before the ‘prescribed day’. The *Fair Work (Registered Organisations) Regulations 2009 (Regulations)*, in particular regulation 138(3) of the Regulations defines the ‘prescribed day’ as the day occurring ‘2 months before the first day when a person may, under the rules of the organisation or branch, become a candidate in an election’. In other words, it must be lodged at least two months before the date on which nominations open. Section 189(2) of the RO Act is a civil penalty provision and late lodgement can therefore leave an organisation open to litigation and potentially liable to a penalty.

[9] As indicated above, I decline to allow a later date for lodgement of the prescribed information for this election. However, the refusal of an extension of time under section 189(2) of the Act does not affect a determination of an election notification matter for the purposes of section 189(3) of the Act.

[10] 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.

[11] I also note that the timing of the lodgement is such that the preferred timetable of specific dates for the election (nominations opening, the date of the Annual General Meeting, etc.) are unlikely to be met. In particular, it is possible that the Annual General Meeting would be deferred until 2022. However, I also note that section 193 of the Act empowers an AEC official responsible for conducting an election to, in spirit of the rules of an organisation, take such steps as are required to prevent irregularities in the conduct of that election.



DELEGATE OF THE COMMISSIONER

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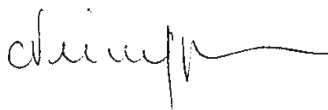
PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 Fair Work (Registered Organisations) Act 2009 and Regulation 138 Fair Work (Registered Organisations) Regulations 2009

I, Nicki Spencer, being the Treasurer of the VANA, make the following statement:

1. I am authorised to sign this statement containing prescribed information for VANA LTD.
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.
4. Ron Thorpe, the previous VANA Treasurer resigned on 7th June 2021 and I have been appointed as new Treasurer for VANA LTD since 17th June 2021, the annual return notification of changes was lodged with ROC on 18 June 2021.
5. No rule alterations are pending that will impact the election.
6. This statement IS lodged at least 2 months before nominations open for the election(s) in Annexure A.

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.

7. The Board of VANA will consist of a maximum of 10 Directors, and there may be a maximum of three directors who are Non-Members of VANA as per VANA's constitution 13.1 (a), (c).
8. The AGM is unsure at this stage due to Victoria Covid-19 lockdown and impact



Signed: NICOLE SPENCER

[SECRETARY OR OTHER AUTHORISED OFFICER]

Dated: 30th August 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

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
VIC	Non-Member Director (Board)	2	Direct Voting System	Scheduled	the total Membership of VANA Ltd
VIC	Member Director	3	Direct Voting System	Scheduled	the total Membership of VANA Ltd
VIC	Chairperson (Executive)	1	Collegiate electoral system	Scheduled	The Board
VIC	Treasurer (Executive)	1	Collegiate electoral system	Scheduled	The Board
VIC	Vice Chairperson (Executive)	1	Collegiate electoral system	Scheduled	The Board
VIC	Executive Director (Executive)	1	Collegiate electoral system	Scheduled	The Board

- Important dates:

	Direct Voting System	Collegiate Electoral System
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Nominations OPEN	To be determined by Returning Officer	No more than 7 days after the completion of election of Directors (Rule 21.1(d))
Nominations CLOSE	To be determined by Returning Officer	Not later than 3pm on the Friday nominated by the Returning Officer which is not more than the 3rd Friday after the Notice in clause 21.1(d) was sent by the Returning Officer (Rule 21.1(f))
Roll of Voters cut off date	To be determined by Returning Officer	To be determined by Returning Officer

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](#).