



27 October 2022

Frank Agostino
Chair
The Motor Trade Association of South Australia Incorporated
Sent via email: mta@mtaofsa.com.au



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2022/28

Dear Frank Agostino,

An election has recently been completed by the Australian Electoral Commission (**AEC**) for the Motor Trade Association of South Australia Incorporated.

This letter explains the next steps you must take and what information you need to lodge with the Registered Organisations Commission (**ROC**).

What you must do right now

- Let your members know about the election report issued by the AEC
- Arrange financial training for officers newly elected to an office with financial management duties. (This includes all members of the committee of management).
- Complete the notification of change and email it to regorgs@roc.gov.au
- Respond to the AEC

This letter explains these steps and the tools available to help you.

STEP 1: Notify members

You must put a notice on your website once you receive your post-election report. It must tell your members they can request a copy of the post-election report from you or the AEC (r. 141). The notice must be on your website for at least 3 months.



Can I put more information on our website?

Yes! Being transparent is part of good governance. You can publish the whole report or the declaration of results, as well as your notice and leave them up longer than 3 months. You can always do more than the regulatory minimum.

The ROC will also publish your declaration of results on our [website](https://www.roc.gov.au).

STEP 2: Financial training

You may have to arrange financial training for people elected to new roles.

All officers with financial management duties must complete financial training (s 293K). For information on when officers must redo training and hints on when to book training for officers taking up multiple offices [please see our fact sheet](#).

There are face to face and online [financial training packages on the ROC website](#).

You must act on this now, as affected officers **MUST** complete approved financial training OR been granted an [exemption by the ROC within 6 months](#) of beginning to hold office.



Good governance tip:

Organisations should instruct officer holders about their other obligations. This is especially important for committee of management members.

Our podcast covers the [benefits of officer induction](#). Officers have responsibilities under the rules, the RO Act, and disclosure requirements around conflicts of interest, remuneration and material personal interests. Officers will benefit from our [officer induction kit](#) and our [podcast, such as episode 17 - conflicts of interest](#).

STEP 3: Notifications of change

A notification of change must be lodged with the ROC within **35 days** of the change occurring.



We have a [template](#) to help you with this, which you can send to regorgs@roc.gov.au. An officer must sign the completed notification template.

You must lodge a notification of change if:

- any of your officers have not been re-elected;
- officers have changed offices; or
- you have new officers.

Only notify us of changes that have **already occurred**. If people take up office in the future, you must wait until the change happens before lodging the notification within 35 days of the change.

Note: One election may result in many notifications of change.



Penalties apply

Failing to lodge your notifications of change on time can expose your organisation and its officers to significant penalties.

ROC v CEPU

The organisation failed to make a series of notifications of change on time.

The Full Court said 'The record-keeping obligations imposed under the Registered Organisations Act are treated by the legislature as important and serious, and contravention of those obligations are correspondingly serious.'

The organisation was ordered to pay a penalty. More information is available in our [case summary](#).

STEP 4: Reply to the AEC

The AEC's post election report says the AEC had trouble applying some of your election rules. You **MUST** respond to the AEC about the issues in the report (s 198).

Your response to the AEC must be in writing. It must include:

- whether the organisation intends to take action
- (if yes) what action the organisation intends to take

You must send your response to the AEC within **30 days** of receiving the report and also provide a copy to the ROC (s 198).



Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

Make the report and your response available to your members

You must make the post-election report about difficult rules available to your members.

You must also make your written response to the AEC available to your members.



Timing is very important

You must make the report about difficult rules available to your members **before or at the same time** as you make your response available.

Your response must be available to members:

- in the next edition of your journal or
- within 30 days of giving it to the AEC
(if using a method other than your journal to make it available, e.g. your website)



Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

How do I make these documents available to my members?

The RO Act says you will have made the document available if you do all the following things:

- Publish a copy of the relevant section and your response in your next journal, AND
- Send the ROC a copy of the relevant section and your response with a declaration that you'll provide copies to any member who asks for one, AND
- Tell members in your next journal (or an appropriate newspaper) that you'll give the relevant section of the report and your response to any member free of charge if requested, AND
- Put on your website:
 - the relevant section of the report within 14 days of receiving it and
 - your response within 14 days of sending it to the AEC

But you can also make the documents available to your members in other ways as well.



What if we decide to change our rules?

You can! If you think changing your rules will fix or improve the issues raised by the AEC you can change your rules.

Your rules have a rule altering procedure that you must follow in order to do this.

For help changing your rules and advice on rule requirements, please contact the [Fair Work Commission](#). The ROC can provide advice and assistance on election-related issues but it does not change rules.

Questions?



What if I don't understand the post election report?

You should contact the AEC immediately to discuss what the report means.

What if we decide not to take action?

You must tell the AEC in writing you do not intend to act.

What if I have already responded to the AEC?

If you have already done the things set out in step 4, please disregard this step. Remember to make the relevant section of the report and your response available to your members as well.

Why do I need to tell you the results of the election when you've already received them?

The RO Act requires that **you** tell us this information about your officers – it is a legal obligation. The notification of change also contains information that is not in the declaration of results.

What if the officer has already done training?

Check out our [fact sheet](#) for when officers need to redo training, when they can get an exemption and when further training isn't required.

If you have any queries we can be contacted on 1300 341 665 or by email at regorgs@roc.gov.au.

Yours sincerely

Registered Organisations Commission



The ROC has a [Compliance Policy](#) which explains how we respond to issues of non-compliance. The policy is available on our website if you would like further information on the steps the compliance team may take in response to non-lodgement of a financial report.

26 October 2022

Post-Election Report

The Motor Trade Association of South
Australia Incorporated
Scheduled Election
E2022/28 – Stage 1 and 2

Contents

| | |
|---|---|
| Election Covered in this Report | 3 |
| Rules | 3 |
| Roll of Voters | 5 |
| Other Matters..... | 6 |
| Signed..... | 6 |
| Attachments..... | 7 |
| A. Declaration of results for Contested Offices – Stage One..... | 7 |
| B. Declaration of results for Uncontested Offices – Stage Two | 7 |

Election Covered in this Report

Organisation: The Motor Trade Association of South Australia Incorporated

Election: Scheduled

Election Decision No: E2022/28 Stage One and Two

Rules

Rules used for the election: [234V: Incorporates alterations of 06/04/20 [R2019/148 & D2019/22]

(replaces rulebook dated 18/07/2014 [R2013/376])

Rules difficult to apply/interpret: Yes

Nominations

13.1 (a) Each Division and Zone is entitled to one nomination for the seven positions on the Board.

In 2020, MTASA changed its Rules, which altered the structure of its Board.

It is understood that MTASA's intention by this rule was to assure representational diversity, as each Board member represented a different Division or Zone. However, in E2022/28 as only three positions are vacant, Divisions or Zones that already have Board member representation are able to nominate candidates. This could very easily result in three sets of two Board members from the same Zone or Division. It is very difficult to give content to rule 13.1(a) when the elections are being conducted on a rotating basis set out in r 12.2:

...Three members of the Board shall retire after the first year after election. The remaining four members of the Board shall retire after the second year after election, after which the members of the Board elected to the vacancies after the first year shall retire and so on...

Model Rule reference (if any): NA

Counting the votes

15.10 Preferential counting for Zone Representative

- (a) *If the positions on the Board not up for election do not include a Board member who is a Zone Representative, if after the votes have been counted there is no Zone Representative with enough votes to be elected, the Zone Representative with the most votes will be deemed to have one vote more than the nominee who would have the lowest number of votes needed to be elected were it not for this clause 15.10.*
- (b) *For the avoidance of doubt, if clause 15.10(a) is triggered, the Zone Representative with the highest number of votes will be elected and the nominee who would have the lowest number of votes needed to be elected were it not for this clause 15.10 will not be elected.*

The rules do not make provision for counting votes in a way that ignores votes received by certain candidates. Additionally, the rules do not specifically prescribe a voting method or method for counting votes.

Due to the requirement in r15.12(a) to complete ballots papers by:

...placing a cross in the square opposite the name of each candidate for whom the Member desires to vote...

It is understood MTASA's intention is for counting of the votes to be conducted by a first past the post basis with the candidates having the most votes elected. However, this is not made express by the rules

Model Rule reference (if any):

First past the post system

Election of one candidate only

In this system, a candidate is elected with a simple majority of votes, that is, the highest number of votes in the count.

Voters are required to mark ballot papers by one of the following methods:

- a)** using ticks
- b)** crosses
- c)** numbers
- d)** striking out the names of candidates for whom they DO NOT wish to vote.

The result of a ballot is ascertained by counting the number of votes shown against the name of each candidate. The candidate with the highest number of votes is elected.

Election of more than one candidate

Voters mark their ballot papers in a manner similar to that outlined above, in which case they may, or may not, be required to vote for the exact number of candidates to be elected. Votes are counted in the same way as for the election of only one candidate. Successful candidates are those who receive the highest number of votes.

29.1.1 The voting system shall be the first-past-the post system as detailed in this Rule.

29.1.2 The method of voting shall be by placing a (insert “tick”, “cross” or “numbers”) in the square next to the name/s of the candidate/s for whom the elector wishes to vote.

29.1.3 The voter must vote for the number of candidates to be elected. (insert if required)

29.1.4 The candidate/s with the highest number of votes shall be elected.

29.1.5 If two or more candidates each receive the same number of votes the Returning Officer shall decide by lot which candidate is to be elected.

29.1.6 A ballot paper shall be informal if marked other than in accordance with this Rule.

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:

- A proportion of the members personal details (such as name of nominated representative) that were not current
 - 8 members’ nominated representatives had not been updated by close of roll

Total number of voters on the Roll: 1260

Other Matters

Returning Officer actions required (Section 193):

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.
- Rules requiring an in-person ballot were set aside as the AEC held concerns that the coronavirus pandemic would impact on the ability for all stakeholders to attend. Instead, the ballot was conducted via post.
- Rules specifying the method of lodgement of nominations were set aside as the AEC held concerns that the coronavirus pandemic would impact on the ability for potential candidates to nominate. Instead, nominations were received electronically, via email/the AEC's portal.
- As there is no rule pertaining to the withdrawal of nominations, I am fixing a closing time for the withdrawal of nominations to coincide with the closing date.

Signed

Jenna Hales

Returning Officer

Australian Electoral Commission

E: IEBevents@aec.gov.au

P: 03 9285 7111

26 October 2022

Attachments

- A. Declaration of results for Contested Offices – Stage One
- B. Declaration of results for Uncontested Offices – Stage Two

The Motor Trade Association of South Australia Incorporated
DECLARATION OF RESULTS - E2022/28 - 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:

Chair (1)

Candidates

AGOSTINO Frank

Deputy Chair (1)

Candidates

MCGUIRE Mark

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

Jenna Hales
Returning Officer
Telephone: 03 9285 7111
Email: IEBevents@aec.gov.au
19/10/2022



The Motor Trade Association of South Australia Incorporated

DECLARATION OF RESULTS - E2022/28 - Stage 1

Contested 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:

Motor Trade Association of South Australia

| VOTING MATERIAL ISSUED | |
|--|-------------|
| Total number of people on the roll of voters (a) | 1260 |
| Number of voters issued with voting material | 1260 |
| Total number of voters issued with replacement voting material | 0 |
| Total number of voting material packs issued | 1260 |
| VOTING MATERIAL RETURNED | |
| Total number of envelopes returned for scrutiny by closing date of ballot (b) | 168 |
| Number of declaration envelopes rejected at preliminary scrutiny (minus) | 2 |
| Number of ballot papers returned outside declaration envelopes (minus) | 3 |
| COUNT | |
| Total ballot papers admitted to the count | 163 |
| LATE OR UNRETURNED VOTING MATERIAL | |
| Voting material returned as unclaimed mail by closing date of ballot | 77 |
| Voting material packs not returned by voters by closing date of the ballot | 1015 |
| Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a) | 13.33 % |

Board Member (3)

| <u>Candidates</u> | <u>Final Votes</u> |
|-------------------|--------------------|
| POLLEY, Clive | 102 |
| ROBERTS, Peter | 105 |
| FLYNN, Mark | 91 |
| PAPILLO, Mark | 75 |

| | |
|---|------------|
| Total ballot papers admitted for this office | 163 |
| Formal Ballot papers | 160 |
| Informal Ballot papers | 3 |

I declare the following elected:

- POLLEY, Clive
- ROBERTS, Peter
- FLYNN, Mark

Jenna Hales
 Returning Officer
 Telephone: 03 9285 7111
 Email: IEEvents@aec.gov.au



28/09/2022



DECISION

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

The Motor Trade Association of South Australia Incorporated (E2022/28)

MR STEENSON

SYDNEY, 8 MARCH 2022

Arrangement for conduct of election.

[1] On 15 February and 2 March 2022, the Motor Trade Association of South Australia Incorporated (**the Association**) lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

| | |
|---------------|-----|
| Board Members | (3) |
| Chair | (1) |
| Deputy Chair | (1) |

[2] Under the Association’s rules, Board members hold office for a two-year term, with part of the Board being elected each year.¹ The Chair and Deputy Chair are elected annually by and from the Board. The prescribed information omitted the dates on which nominations open and close for the election of Chair and Deputy Chair. However, I am satisfied that these dates are to be determined by the Returning Officer, with the rules providing that the election occurs at the first Board meeting following the Annual General Meeting each year.²

[3] 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

Printed by authority of the Commonwealth Government Printer
PR352170

¹ Rule 12.2(a) and (c) of MTASA rulebook R2019/148 certified on 6 April 2020.

² Rule 4.1(a).



MOTOR TRADE ASSOCIATION OF SA PRESCRIBED INFORMATION FOR ELECTIONS

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, FRANK AGOSTINO, being the CHAIR of the MOTOR TRADE ASSOCIATION OF SOUTH AUSTRALIA INC. make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Motor Trade Association of South Australia Inc.
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. No rule alterations are pending that will impact the election.
5. This statement **IS** lodged at least 2 months before nominations open for the election(s) in Annexure A.

Signed:  _____ Frank Agostino

Dated: 28 February 2022

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 |
|---|---|-----------------|---|---|----------------------|
| Motor Trade Association of South Australia Inc. Retiring Board Members: | Board Members Tom Skothos Peter Roberts Clive Polley | Three | Direct Voting System | Scheduled | Membership – Rule 13 |
| Board | Chair | One | Collegiate electoral system | Scheduled | Board – Rule 14 |
| Board | Deputy Chair | One | Collegiate electoral system | Scheduled | Board – Rule 14 |

- Important dates:

| | Direct Voting System | Collegiate Electoral System |
|------------------------------------|---|-----------------------------|
| Nominations OPEN | To be determined by returning officer. | N/A |
| Nominations CLOSE | To be determined by returning officer – at least five weeks before AGM scheduled for 29 September 2022 | N/A |
| Roll of Voters cut off date | On date of issue of ballot papers – Rule 15.4 | N/A |

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](#).