

18 November 2022

Post-election report

Waste Contractors & Recyclers

Association of NSW

Scheduled election

E2022/130

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Election(s) Covered in this Report

Organisation: Waste Contractors and Recyclers Association of NSW
Election: Scheduled
Election Decision No/s: E2022/130

Rules

Rules used for the election: 149N: Incorporates alterations certified on 31 December 2020 in matter R2020/199] (replaces 1 June 2015 [D2014/71] version)

Rules difficult to apply/interpret: N/A

Model Rule reference (if any): N/A

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

Other Matters

Returning Officer actions required (Section 193):
Details: N/A

Signed

Lachlan Symonds
Returning Officer
Australian Electoral Commission
E: iebevents@aec.gov.au
P: 02 9375 6366
18 November 2022

Attachments

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

Waste Contractors & Recyclers Association of NSW

DECLARATION OF RESULTS - E2022/130 - 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

President (1)

Candidates

WILSON Harry

Vice President (1)

Candidates

GATER David

Secretary (1)

Candidates

FORD Michelle

Treasurer (1)

Candidates

DIXIT Bijal

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

Lachlan Symonds
Returning Officer
Telephone: 02 9375 6366
email: iebevents@aec.gov.au
18 November 2022





17 November 2022

Tony Khoury
Executive Director
Waste Contractors & Recyclers Association of NSW
Sent via email: tony@wcra.com.au



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2022/130

Dear Tony Khoury,

An election has recently been completed by the Australian Electoral Commission (**AEC**) for the Waste Contractors & Recyclers Association of NSW.

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

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](#).

Questions?



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.

Waste Contractors & Recyclers Association of NSW

DECLARATION OF RESULTS - E2022/130 - 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:

Category A members

Executive Member (6)

Candidates

BAIRD Stuart

DENT Ros

DIXIT Bijal

GATER David

JOHNSTON David

RICHARDS Joe

Category B Members

Executive Member (4)

Candidates

WILSON, Harry

KNOWLES, Graham

FALANGA, Mark

FORD, Michelle

VELLA, Damien

Category C Members

Executive Member (1)

Candidates

HARRISON David

As per rule 21.2 (a) the intention was to ensure a balanced representation of each category of member within the Executive. As per rule 21.2(aa) there were insufficient nominated candidates from Category C members and therefore the remaining member is elected from the additional duly nominated candidates from Category B.

I declare the above candidates elected.

Lachlan Symonds
Returning Officer
Telephone: 02 9375 6366
Email: iebevents@aec.gov.au
02/11/2022



DECISION

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

Waste Contractors & Recyclers Association of NSW (E2022/130)

MR STEENSON

SYDNEY, 14 SEPTEMBER 2022

Arrangement for conduct of election.

[1] On 29 August 2022 the Waste Contractors & Recyclers Association of NSW (**the Association**) lodged with the Registered Organisations Commission (**the Commission**) prescribed information for an election to fill the following offices for a new term of office:

Executive Category A	(6)
Executive Category B	(4)
Executive Category C	(2)
President	(1)
Vice-President	(1)
Treasurer	(1)
Secretary	(1)

[2] Section 189(2) of the *Fair Work (Registered Organisations) Act 2009* (**the RO Act**) requires that the prescribed information be lodged before the ‘prescribed day’. The *Fair Work (Registered Organisations) Regulations 2009* (the Regulations), in particular Regulation 138(3) define ‘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, at least two months before the date on which nominations open. The section also provides that late lodgement of prescribed information may amount to a contravention of the RO Act and give rise to civil penalties, unless the Commission grants a later day for lodgement.¹

[3] The Association’s rules do not prescribe a date on which nominations for a scheduled election must open. On this occasion, the prescribed information proposes that nominations open on 3 October 2022 and close on 31 October 2022. By way of contrast, in the Association’s most recent preceding scheduled election (E2018/146)², the prescribed information was lodged on 27 June 2018, with the results of election declared by the Australian Electoral Commission

¹ See for example, *Registered Organisations Commission v Australian Hotels Association* [2019] FCA 1516

² [2018] ROCD 134

for the direct election of Executive members on 11 October 2018, and declared for the collegiate election of the President, Vice President, Treasurer and Secretary, on 13 October 2018 – both stages of which were apparently uncontested elections.³

[4] In assessing the Association’s election related rules, it is noted that subrule 24(f) specifies that:

*the timing of the ballot must be such that the counting of votes occurs not earlier than 14 days and not later than 7 days prior to the Annual General Meeting of the Association.*⁴ and

and that subrule 24(l) provides that:

*the ballot shall open no less than one week after the close of nominations and shall close three weeks after the ballot is opened.*⁵

[5] The Association’s rules, in particular subrule 24(c), also provide that if a ballot is required then it must be conducted by secret postal ballot.⁶ This is consistent with the default provision in the RO Act.

[6] On 2 September 2022, the Association advised Commission staff by email that its Annual General Meeting (**AGM**) is scheduled to occur on 8 November 2022.⁷

[7] In view of the scheduled date of the AGM, and noting the time-frames set out in rule 24 for the steps in the election process, it is apparent that it is unlikely that the process could be completed prior to the proposed date of the AGM.

[8] Commission staff raised this matter with the Association, following which the Association indicated that it is amenable to a shortened nomination period (such as two weeks commencing 3 October 2022). The Association’s flexibility in this regard is acknowledged. However, even if a shortened nomination period (for example 3 October to 17 October) were to apply, if a ballot was required, the duration of the required secret postal ballot is such that it could still not be completed before the AGM on the counting of dates prescribed in subrule 24(f).

Request for extension of time

[9] The particular wording of the Association’s rules is such that the prescribed day for lodging prescribed information may not be immediately apparent and must be calculated working back from the date of the AGM. For the reasons indicated above, by reference to the Association’s own rules, it is apparent that the Association was late in its lodgement of the prescribed information. The Association acknowledged the late lodgement when it lodged the information.

³ 149n-e2018-146

⁴ Waste Contractors & Recyclers Association of NSW Rules (rules)- rule 24(f)

⁵ subrule 24(l)

⁶ subrule 24(c)

⁷ subrule 11.1 – AGM to be held in every calendar year between 31 August and 24 December ..

[10] Given the scheduled date of the Association's AGM (at which, under the rules, the successful candidates are due to take office after the Secretary's report to that meeting),⁸ and allowing for the opening and closing of nominations and for a ballot to be conducted if required, the prescribed information should have been lodged considerably earlier than it was. The requested timetable for opening of nominations should also have considered that a ballot may be required. The fact that a previous election did not require a ballot is no guarantee that one would not occur in this election.

[11] By letter dated 2 September 2022, the Association Secretary, Mr Jeff Brandstater, stated that the delay in lodging prescribed information was due to the impact of the Covid-19 pandemic resulting in staff member absences and that, consequently, the Association's capacity to attend to its usual administrative oversight of matters, including the preparation and lodgement of the prescribed information for this election, was affected.

[12] Section 189(2) of the RO Act permits the Commissioner or his Delegate to allow a later date for lodgement of prescribed information, and the Association has requested that this be granted.

[13] In considering the Association's request, I note the Association's usual practice of lodging prescribed information for its elections in accordance with the time-frames required in the RO Act, the Regulations, and the Association's own rules. I also appreciate the disruption and inconvenience that the Covid-19 pandemic has generally caused to the operations of many businesses and organisations. However, it is apparent that since the initial impact of the Covid-19 pandemic in 2020, and its continued effect since that time, organisations have had opportunity to establish systems and processes to ensure that essential matters are attended to, including statutory obligations.

[14] While I do not doubt that the Covid-19 pandemic has had a significant effect on the Association, its operations and its members, in considering the broader circumstances, I am not satisfied that the reasons provided for the late lodgement of prescribed information are sufficient ground to justify the failure to comply with a statutory obligation related to the running of the organisation. I also emphasise that the normal and reasonable expectation is that registered organisations and their branches take steps to ensure that they comply with the timeframe requirements set out in the RO Act and in their own rules. Therefore, I decline on this occasion to allow, under section 189(2) of the RO Act, a later day for lodgement. I draw attention to the fact that the failure to lodge before the prescribed day exposes an organisation to liability under a civil penalty provision, pursuant to section 189(2) of the RO Act, and that the organisation's future compliance with this requirement will be monitored.

[15] The refusal of an extension of time under section 189(2) of the RO Act does not, however, affect the requirement for me to determine, in accordance with section 189(3) of the

⁸ subrule 24(f)

RO Act whether an election is required and for such an election to then be arranged and conducted.

[16] 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.



DELEGATE OF THE COMMISSIONER

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PR352329

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, Jeff Brandstater, being the Secretary of the Waste Contractors & Recyclers Association of NSW make the following statement:

1. I am authorised to sign this statement containing prescribed information for our Association.
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 6 weeks before nominations open for the election(s) in Annexure A (we have experienced some delays due to Covid-19).
6. Rule numbers 23 & 24 specify the eligibility of Officers to the Executive.
7. Rule number 26 specifies the criteria for the election of the President, Vice President, Secretary and Treasurer.
8. In accordance with rule 24 (i) the Returning Officer must notify the secretary of the Association that he is required to deliver a list of members entitled to vote in the election. The roll of voters is to be closed seven (7) days prior to the date for the opening of nominations, and subsequently delivered to the Returning Officer
9. The relevant date for this information is 26th September 2022

Signed:



SECRETARY

Dated: 29th August 2022

NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. Two weeks delay due to Covid.

To be submitted to regorgs@roc.gov.au.

Annexure A

Branch	Name of Office	Number required	Voting System	Reason for Election	Electorate
The Association does not have any branches					

Elections that are required:

Branch	Name of Office	Number required	Voting System	Reason for Election	Electorate
NSW / ACT plus Federal	Executive	6	Direct voting system via secret ballot	Scheduled	21.2 (a)
NSW / ACT plus Federal	Executive	4	Direct voting system via secret ballot	Scheduled	21.2 (a)
NSW / ACT plus Federal	Executive	2	Direct voting system via secret ballot	Scheduled	21.2 (a)
NSW / ACT plus Federal	President	1	Direct voting system via secret ballot	Scheduled	26
NSW / ACT plus Federal	Vice President	1	Direct voting system via secret ballot	Scheduled	26
NSW / ACT plus Federal	Secretary	1	Direct voting system via secret ballot	Scheduled	26
NSW / ACT plus Federal	Treasurer	1	Direct voting system via secret ballot	Scheduled	26

Important dates:

	Direct Voting System
Nominations OPEN	<i>3rd October 2022</i>
Nominations CLOSE	<i>31st October 2022</i>
Roll of Voters cut off date	<i>26th September 2022</i>

SAMPLE