



27 March 2023

Matthew Silletto
National Secretary
Association of Professional Engineers, Scientists and Managers, Australia
Sent via email: legal@professionalsaustralia.org.au

Dear Matthew Silletto



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2022/209

An election has recently been completed by the Australian Electoral Commission (AEC) for the Association of Professional Engineers, Scientists and Managers, Australia.

This letter explains the next steps you must take and what information you need to lodge with the Fair Work Commission (the Commission).

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@fwc.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 (regulation 141). The notice must be on your website for at least three 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 three months. You can always do more than the regulatory minimum.

The Commission will also publish your declaration of results on our [website](#).

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 (section 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 Commission website](#).

You must act on this now, as affected officers **MUST** complete approved financial training OR been granted an [exemption by the Commission](#) **within six 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 Commission within **35 days** of the change occurring.

We have a [template](#) to help you with this, which you can send to regorgs@fwc.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](#).



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@fwc.gov.au.

Yours sincerely

Fair Work Commission



The Commission 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.

20 March 2023

Post-election report

The Association of Professional
Engineers, Scientists and Managers,
Australia.

Casual Vacancy election
E2022/209

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Election(s) Covered in this Report

Organisation: The Association of Professional Engineers, Scientists and Managers, Australia.
Election: Casual Vacancy
Election Decision No/s: E2022/209

Rules

Rules used for the election: 215V: Incorporates alterations of 17 September 2021 [R2021/124]
(replaces rulebook dated 17 July 2019 [R2019/64])

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/

Other Matters

Returning Officer actions required (Section 193): Yes

Details: The rules of the organisation in relation to casual vacancy which states that casual vacancies are to be filled within two months when the vacancy arises is set aside. The provision is set aside as the two-month time period cannot be achieved without causing an irregularity. I have exercised my powers of delegation under section 193 of the Act to extend the time period beyond the two months.

Signed

Ben Murray
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 03 9285 7111
20 March 2023

Attachments

A. Declaration of results for Uncontested Offices

**The Association of Professional Engineers, Scientists
and Managers, Australia**
DECLARATION OF RESULTS - E2022/209
Uncontested Offices

Casual Vacancy 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:

Architects Division Committee

Treasurer (1)

Candidates

CHOW Patricia

Managers and Professionals Division Executive

Vice President (1)

Candidates

KELLY Melody

Secretary/Treasurer (1)

Candidates

COLWILL Tim

National Assembly

Professional Scientists Division Member (1)

Candidates

PATRICK Kathleen

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

Ben Murray
Returning Officer
Telephone: 03 9285 7111
Email: IEEvents@aec.gov.au
15/03/2023





DECISION

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

Association of Professional Engineers, Scientists and Managers, Australia (E2022/209)

MR STEENSON

SYDNEY, 21 DECEMBER 2022

Arrangement for conduct of election.

[1] On 24 November 2022 the Association of Professional Engineers, Scientists and Managers, Australia (**organisation**) lodged with the Registered Organisations Commission (**Commission**) prescribed information for an election to fill the following offices for the remainder of term, as a result of a casual vacancy and insufficient nominations from previous election (**E2021/177**):

Architects Division Committee

Treasurer (1)

Managers and Professionals Division Executive

Vice President (1)

Secretary/Treasurer (1)

National Assembly

Professional Scientists Division Member (1)

[2] While the prescribed information states the reason for election being sought as ‘scheduled’,¹ the information accompanying the prescribed information, i.e. the cover letter and the election results for a previous election (**E2021/177**), indicate that the reason for this election (**E2022/209**) is to fill a casual vacancy and some of the offices that received insufficient nominations in **E2021/177**.

[3] The Commission notes that there are several other offices that remain vacant due to insufficient nominations received in **E2021/177** but which are not the subject of this election request (**E2022/209**). Given that the term of these offices does not expire until January 2024 at the earliest, consistent with the principle of democratic control and as expressed in the decision of the Federal Court in *Geneff v Peterson and Ors*,² the organisation should make a further attempt to fill those other vacant offices by lodging prescribed information as soon as possible.

¹ a word normally used in the election context to denote a periodic election for a new term.

² [1986] FCA 432, at 129: “If insufficient nominations are received, then further elections must be held and further nominations called for. This process must continue, for as long as vacancies exist on the Executive Committee. In the meantime, however, a branch is not to be paralysed by the inability of its decision-making body to function.”

[4] If the organisation lodges that prescribed information (for the additional vacant offices) promptly, the Commission will endeavour to issue an election decision as a matter of priority such that the Australian Electoral Commission (AEC) may be able to conduct the two elections concurrently.

[5] 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 AEC.



DELEGATE OF THE COMMISSIONER

Printed by authority of the Commonwealth Government Printer

PR352388

23 November 2022



Mr Mark Bielecki Commissioner
Registered Organisations Commission
GPO Box 2983
MELBOURNE VIC 3001
Via email: regorgs@roc.gov.au

The Association of Professional
Engineers, Scientists &
Managers, Australia
GPO Box 1272
Melbourne, Vic 3001
Phone: (03) 9695 8800
152 Miller Street West
Melbourne, Vic 3003
info@apesma.com.au
www.apesma.com.au

Dear Mr Bielecki

RE: APESMA RECALL ELECTION REQUEST

In accordance with s.138 (2) of Part 7 of the Fair Work (Registered Organisations) Regulations 2009 concerning prescribed information, I am writing to apply for an election to fill the following vacancies:

1. Casual vacancies

Division Executive Officer

Architects Division

- Division Treasurer (1)

This request is made in accordance with Federal Rule 26.1.6 and 26.4 of the APESMA Rule Book which State:

Federal Rule 26 – Casual Vacancies cannot be utilised for the filling of unfilled vacancies as this Rule defines casual vacancies as occurring when;

“a person holding such office:

26.1.1 dies; or

26.1.2 tenders their resignation from office and such resignation is accepted by the National Assembly or in the case of a member of a Division Committee, Sub-Division Committee is accepted by the Committee; or

26.1.3 is expelled from the Organisation; or

26.1.4 during a period of office, transfers to another Division or Sub-Division occurs under Rule 11.2; or

26.1.5 *is removed from office in accordance with these Rules or in case of a member of a Division or Sub-Division, in accordance with the rules of the Division or Sub-Division concerned; or*

26.1.6 *ceases to be a member of the Organisation in consequence of their resignation from membership.”*

and

26.4 *Notwithstanding anything contained in this Rule, where a casual vacancy occurs, the filling of which would require an appointment for a period exceeding:*

26.4.1 *twelve months; or*

26.4.2 *three quarters of the term of the office;*

whichever is the greater such vacancy shall be filled by an election conducted in the same manner as is required by these Rules for election to the office concerned and the person so elected shall hold office for the unexpired portion of the term of office of the person whom they replaced.

As this vacancy occurred within the first six months following the declaration of the Stage 2 elections, the Association requests that a de-novo election be conducted in respect of this casual vacancy.

2. Unfilled vacancies

Division Executive Officers

Managers and Professionals Division

- Division Vice President (1)
- Division Secretary/Treasurer (1)

National Assembly

Professional Scientists Division

- Representative (1)

This request is made in accordance with Division Rule 14.2 of the APESMA Rule Book which requires that in the event that there are no more nominations than there are vacancies for an office that each vacancy be filled by the conduct of a de novo election to the extent possible in accordance with Division Rule 14.

The voting system for elections will be by direct election in that the positions would be elected by and from members of the respective electorates for the Managers and Professionals Division, Architects Division and Pharmacists Division or by and from all members of the Division as the case may be.

In addition, as the request is for a de novo election the closure of membership rolls and the date and time of the beginning and end of the period in which nominations of candidates will be called/made will need to be determined by the Returning Officer.

I have attached a **Prescribed Information for elections** in accordance with Section 189 Fair Work (Registered Organisations) Act 2009 and Regulation 138 Fair Work (Registered Organisations) Regulations

2009.

Please find enclosed the following evidentiary documents in support of my request:

1. The Returning Officer's Declaration of Results for Uncontested Offices - **Division Executive - Stage 2**
2. The Returning Officer's Declaration of Results for Uncontested Offices - **Division Executive – RECALL of Vacancies from Stage 2**
3. **Notification of Changes to Records** dated 24 February 2022
4. **Notification of Changes to Records** dated 4 April 2022

Accordingly, I await your advice in relation to arrangements for the conduct of a ballot to fill the vacant offices.

Yours sincerely



Stuart Small
NATIONALSECRETARY

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, STUART SMALL, being the NATIONAL SECRETARY of the ASSOCIATION OF PROFESSIONAL ENGINEERS, SCIENTISTS AND MANAGERS, AUSTRALIA (APESMA) make the following statement:

1. I am authorised to sign this statement on behalf of THE ASSOCIATION OF PROFESSIONAL ENGINEERS, SCIENTISTS AND MANAGERS, AUSTRALIA (APESMA).
2. The prescribed information for APESMA elections attached to this Notice 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.

Signed:



Stuart Small
National Secretary
18 November 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
Architects Division	Treasurer	1	Direct Voting System	Scheduled	<i>Federal Rule 6.1.4 All eligible members as defined in Federal Rule 3.5</i>
Managers & Professionals Division	Secretary/Treasurer	1	Collegiate electoral system	Scheduled	<i>Elected by and from members of the Division Committee Rule 7 of Appendix "1" – Supplementary Rules – Managers and Professionals Division & Division Rule 14.2</i>
Managers & Professionals Division	Vice President	1	Collegiate electoral system	Scheduled	<i>Elected by and from members of the Division Committee Rule 7 of Appendix "1" – Supplementary Rules – Managers and Professionals Division & Division Rule 14.2</i>
National Assembly	Professional Scientists Division	1	Direct Voting System	Scheduled	<i>By and from members of the Division Federal Rule 6.1.2 (See Note 4)</i>

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	To be determined by returning officer (Division Rule 14)	To be determined by returning officer (Fed Rule 18.3)
Nominations CLOSE	To be determined by returning officer (Division Rule 14)	To be determined by returning officer (Fed Rule 18.3)
Roll of Voters cut off date	To be determined by returning officer (Division Rule 14A)	To be determined by returning officer (Fed Rule 18.3)