

**Fair Work (Registered Organisations) Act 2009**

**Section 183 – Application for organisation or branch-conducted elections for office**

**Fair Work (Registered Organisations) Regulations 2009**

**Regulation 133 – Application for organisation or branch to conduct its elections for office**

**FINANCE SECTOR UNION OF AUSTRALIA**

1. The Finance Sector Union of Australia (**FSU**) makes application under section 183 of the Fair Work Registered Organisations Act (**FWROA**) to be exempted from subsection 182(1) FWROA for elections of the following offices:
  - (a) Executive Offices:
    - (i) National President;
    - (ii) National Secretary; and
    - (iii) National Assistant Secretaries; and
  - (b) National Executive Members.  
(together the **National Officers**)
2. On 24 October 2022, the General Manager of the Fair Work Commission approved alterations to rules providing for the restructure of the FSU (**2022 Rules**).
3. The 2022 Rules provide for the elections of the officers of the FSU by means of a:
  - (a) quadrennial election of the Congress Delegates by, and from, the financial members of the FSU attached to Relevant Electorates and Special Electorates; and
  - (b) quadrennial collegiate election of the National Officers by, and from, the Congress Delegates.
4. Schedule 6 of the 2022 Rules provides for the transition of the democratic structures of the FSU and schedule 6 rules 21 to 27 provide for the Inaugural Congress Election and Inaugural National Officer's Election.
5. On 10 November 2022 the FSU lodged prescribed information inclusive of the elections for the National Officers.
6. By decision dated 24 November 2022 and 13 January 2023 the Registered Organisations Commission, as it then was, (**ROC**) determined that the elections for the offices, the subject of the prescribed information, were required to be held and that arrangements for the conducting of the election for those offices would be made with the Australian Electrical Commission (**AEC**).
7. Schedule 6 rule 24 (b) of the 2022 Rules required the Inaugural Congress Election to be completed by 27 January 2023.
8. The delegate of the ROC Commissioner, Mr Steenson, stated:

The relevant rule alterations were ultimately certified by the General Manager of the FWC on 24 October 2022. Schedule 6 rule 24(b) (the transitional rules) provides that the date of completion of the FSU Inaugural (first-tier) election is set as 27 January 2023. The FSU has submitted that it is now not possible (and was not possible at the date of certification of the rules) for it to comply with the timetable set out in its amended rules. The organization also requested that the Commissioner grant a later date for the lodgement of prescribed information.

9. The Electoral Official appointed by the AEC to conduct the elections of the FSU is Mr Lachlan Symonds (**AECEO**).

10. By correspondence dated 6 January 2023 the AEC, under the hand of the AECEO, advised the FSU that the date for the completion of the Inaugural Congress Election is 3 May 2023.

11. Schedule 6 rule 26 of the 2022 Rules provides:

6. *As soon as is practicable following Inaugural Declaration Day, the FSU National Secretary will:*

- (a) *call a meeting of National Congress under the Restructured Rules; and*
- (b) *take the steps necessary to conduct the Inaugural National Officers Election:*
  - (i) *under the Restructured Rules; and*
  - (ii) *by team nominations.*

12. Schedule 6 rule 1 of the 2022 Rules provides for the definition of 'Inaugural Declaration Day':

1. *In this Schedule the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
...	...
<b><i>Inaugural Declaration Day</i></b>	<i>the date on which the Inaugural Congress Election is declared under the Restructured Rules</i>
...	...

13. Rule 74 (b) (i) of the 2022 Rules provides:

- (b) *The term of office for:*
  - (i) *a Congress Delegate is, subject to sub-rule (c), four (4) years and commences on 1 July in the year of the Quadrennial Election;*

14. Rule 74 (b) (i) of the 2022 Rules is modified by schedule 6 rule 25 of the 2022 Rules:

*A person elected at the Inaugural Congress Election will:*

- (a) *when declared elected take office, either immediately or on 27 January 2023, whichever is the later; and*
- (b) *will hold that office, under these rules, until replaced at a Quadrennial Election.*

15. Rule 37 (c) of the 2022 Rules provides:

*The Ordinary Meeting of the National Congress will be held in the 12 months following the Quadrennial Election at the time that the National Executive determines.*

16. Rule 37 (c) of the 2022 Rules is modified by schedule 6 rule 26 of the 2022 Rules (set out above), and the FSU National Secretary must, under schedule 6 rule 26 call a meeting of the National Congress as soon as is practicable following the declaration of the Congress Delegates.

17. The FSU National Secretary is defined by schedule 6 rule 1 of the 2022 Rules:

1. *In this Schedule the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
...	...
<b><i>FSU National Secretary</i></b>	<i>the person who held the office of National Secretary under the Pre-restructured Rules on the day immediately preceding the Commencement Date</i>
...	...

18. Rule 72 (b) of the 2022 Rules provides:

- (b) *The Executive Officers and the National Executive Members will, subject to these rules, be elected by, and from, the National Congress as the electoral college in an election conducted under this rule.*

19. Rules 72 (j) of the 2022 Rules provides:

- (j) *If there are more than the required number of candidates, the Electoral Official will conduct a ballot at the Election Meeting.*

20. Rules 72 (a) of the 2022 Rules provides for the definition of 'Election Meeting':

- (a) *In this rule the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<b><i>Election Meeting</i></b>	<i>the National Congress meeting</i>
...	...

21. Rules 72 (h) of the 2022 Rules provides:

- (h) *The Electoral Official will notify each Congress Delegate of the opening and closing times of the ballots, provided that, despite rule 41, the conduct of the ballots are to commence during the first day of the National Congress.*

22. On 5 January 2023 the AEC advised the representative of the FSU, Mel Brown, that the AEC cannot conduct the collegiate ballot at the meeting of the Inaugural Congress and would instead look to do so by alternative means such as a postal ballot, using the following words or words to similar effect:

AEC official: We are still not attending in-person ballots.

Ms Brown: We've already raised with ROC that, if that was the case, we intend to seek an exemption for another returning officer to attend an in-person meeting.

AEC official: yes, I'd encourage you to get that application in as soon as you can.

23. 'FSU National Officer' is defined by schedule 6 rule 1 of the 2022 Rules as:

1. *In this Schedule the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<b><i>FSU National Officer</i></b>	<i>a person who held an office on the National Executive under the Pre-restructured Rules on the day immediately preceding the Commencement Date</i>
<b><i>FSU Officer</i></b>	<i>a person who held an office under the Pre-restructured Rules on the day immediately preceding the Commencement Date, other than an FSU National Officer</i>

24. Schedule 6 rule 29 of the 2022 Rules provides:

*The FSU Officers will, promptly after the Commencement Date, appoint the Returning Officer.*

25. The FSU Officers are the officers of the FSU who were elected prior to the commencement day of the 2022 Rules but do not include the officers of the National Executive.

26. FSU Officers do not, as a group form a governance body of the FSU and the restructured rules do not provide a mechanism for the FSU Officers to meet and the FSU Officers cannot, consequently, make such a determination.

27. The transitional rules, schedule 6 of the 2022 Rules, do not provide for the transition of the person who was the FSU Returning Officer on the date immediately prior to the commencement of the 2022 Rules.

28. Rule 67 (a) of the 2022 Rules requires the appointment of a returning officer:

*The National Executive will appoint a Returning Officer when required.*

29. By decision dated the 12 December 2022 the National Executive, under rule 33(c)(ii) of the 2022 Rules, resolved to appoint a returning officer and the respective determination is annexed as 'JA1' to the declaration accompanying this application.
30. The returning officer appointed by the National Executive of the FSU is Mr John Payne, who is neither the holder of an office or an employee of the FSU (**Returning Officer**).
31. Mr Payne has substantial experience as a returning officer, having been appointed, and acted, as a returning officer for a significant number of unions and community sector groups, including the following state-registered associations:
- United Services Union (which is the subject of exemptions under schedule 3 cl 6 of the Industrial Relations (General) Regulation 2020 and s 249 of the Industrial Relations Act NSW);
- Queensland Services, Industrial Union of Employees;
- United Firefighters Union of Australia, Union of Employees Queensland; and
- Queensland Nurses and Midwives' Union of Employees (QNMU),
- as well as the following organisations:
- Queensland Council of Unions, the peak body for unions in Queensland;
- Queensland Justices of the Peace Association;
- Retired Firefighters Association;
- Synapse (Australia's Brain Injury Organisation);
- Energy Super (as it then was, prior to merger to form Brighter Super); and
- Local Government Super (as it was then known; now Active Super).
32. Mr Payne regularly provides advice on electoral matters to a range of federally-registered organisations and state-registered associations.
33. Rule 68 of the 2022 Rules provides that an election may be conducted under the 2022 Rules, by the person responsible for the conduct of the election, utilising an electronic balloting system as an alternative to a paper balloting system.
34. The FSU has requested that the Returning Officer, in the event that this application is granted, conduct the Collegiate Election, the subject of this application, by means of a paper ballot only.
35. By email dated 9 March 2023, the Returning Officer has confirmed that the request of the FSU in respect of utilising a paper balloting system will be adopted.
36. The quadrennial elections of the FSU have been, because of the restructure, delayed and the FSU wishes to ensure that no further delay of its quadrennial election occurs.
37. The National Secretary wishes to ensure following the declaration of the Congress Delegates that no further delay in relation to the collegiate elections occur.
38. Rules 72 of the 2022 Rules provides:

(a) *In this rule the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<i>Election Meeting</i>	<i>the National Congress meeting</i>
<i>Electoral Official</i>	<i>the person responsible for the conduct of the election under this rule</i>

- (b) *The Executive Officers and the National Executive Members will, subject to these rules, be elected by, and from, the National Congress as the electoral college in an election conducted under this rule.*
- (c) *The Electoral Official will, 21 days prior to the commencement of the Election Meeting, seek nominations from the Congress Delegates in the manner provided under the Election Procedure Rules.*
- (d) *Nominations close 14 days prior to the commencement of the Election Meeting.*
- (e) *A candidate must be nominated in writing by at least two (2) Congress Delegates, and the nomination signed by the person nominating.*
- (f) *If the Electoral Official finds that a nomination is defective, the Electoral Official will, before rejecting the nomination, notify the person concerned of the defect and, where able to do so, give the person the opportunity to remedy the defect.*
- (g) *A candidate for office may, by written request to the Electoral Official, withdraw the candidate's nomination prior to voting in the ballot commencing.*
- (h) *The Electoral Official will notify each Congress Delegate of the opening and closing times of the ballots, provided that, despite rule 41, the conduct of the ballots are to commence during the first day of the National Congress.*
- (i) *If at the close of nominations, and subject to the provision of affirmative action under these rules, only the required number of nominations have been received, the Electoral Official will declare to the National Congress those candidates elected.*
- (j) *If there are more than the required number of candidates, the Electoral Official will conduct a ballot at the Election Meeting.*
- (k) *The ballot will be:*
  - (i) *conducted as a secret ballot; and*
  - (ii) *subject to the provision of affirmative action under these rules.*
- (l) *The ballot will, subject to paragraph (k)(ii), be determined by means of a first past the post system of voting.*
- (m) *A candidate may, in the manner provided under the Election Procedure Rules, appoint a scrutineer.*
- (n) *A person appointed as a scrutineer under sub-rule (m) has the same rights and obligations as a scrutineer appointed under the Election Procedure Rules.*
- (o) *The Electoral Official will, in the manner required under the Election Procedure Rules:*
  - (i) *prepare ballot papers; and*
  - (ii) *provide a ballot box.*
- (p) *The Electoral Official will initial and provide to each Congress Delegate a ballot paper.*
- (q) *In a ballot for multiple vacancies in an office, a Congress Delegate must cast that number of votes for candidates as the number of the offices to be filled.*
- (r) *A Congress Delegate will cast a vote by:*
  - (i) *placing a cross, or other mark, against the name of the candidate they wish to vote for; and*
  - (ii) *placing their completed ballot paper in the ballot box under the control of the Electoral Official.*
- (s) *A Congress Delegate who will not be present at the Election Meeting may lodge a request with the Electoral Official for an absentee vote, together with an address where the Congress Delegate can receive communications, and, if a member has done so, the Electoral Official will not declare the result of the ballot until the Congress Delegate concerned has been given a reasonable opportunity to vote.*
- (t) *The Electoral Official will, in the manner required under Election Procedure Rules:*
  - (i) *count the votes; and*
  - (ii) *subject to sub-rule (k)(ii), declare the candidate securing the highest number of votes elected; and*
  - (iii) *as soon as practicable, declare the result to the National Congress.*

- (u) A candidate declared elected under sub-rule (t)(iii) by the Returning Officer takes office under rule 74.
  - (v) Where the National Executive has made a determination under sub rule 33(k), candidates for an office of:
    - (i) Executive Officer; or
    - (ii) National Executive Member,
 may nominate as a team in the manner provided under the Election Procedure Rules.
  - (w) Where a team has nominated under sub-rule (v):
    - (i) a Congress Delegate may vote in the manner provided under the Election Procedure Rules where a team has nominated; and
    - (ii) the Returning Officer will count the ballot in the manner required under the Election Procedure Rules where a team has nominated.
39. Rule 72 of the 2022 Rules requires the collegiate election be conducted at the National Congress meeting which, given the position of the AEC (to not attend in-person industrial elections), will not be possible. Consequently the FSU, to ensure compliance with its rules and the conduct of the election at the Congress, seeks the granting of this application.
  40. It is proposed by the FSU that the meeting of the Inaugural Congress occur as soon as practicable following the declaration of the election of the Congress delegates.
  41. Rule 37 (d) of the 2022 Rules provides that the minimum period of notice that the National Secretary must give to Congress Delegates of a meeting of the Congress is 28 days.
  42. The schedule provided for the conduct of a collegiate election under rule 72 of the 2022 Rules is able to be completed within the period of 28 days if it is completed by balloting at the meeting of the Congress.

#### **Requirements of the RO Act**

43. Under rule 33 (a) of the 2022 Rules the National Executive is the committee of management of the FSU.
44. The National Executive determined via ballot on 28 February 2023 (**Resolution**) as follows:
 

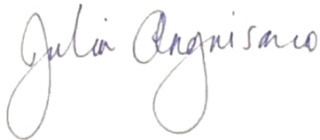
*The National Executive directs and authorises the National Secretary to file with the Registered Organisations Commission an application for exemption, under s183 Fair Work Registered Organisations Act 2009, from the requirement to utilise the AEC as the returning officer in the collegiate quadrennial elections,*

and the respective determination is annexed as 'JA2' to the declaration accompanying this application.
45. Members of the FSU have been advised of the Resolution by a copy of the Resolution being posted on the FSU Website on 28 February 2023 - <https://www.fsunion.org.au/notice-to-members-application-for-exemption/> .
46. **Attached** to this application is a declaration of the National Secretary made in accordance with section 183(3) of the FWROA.
47. Should the application be granted the FSU undertakes to comply with directions or actions made under 183(4) of the FWROA.
48. The rules of FSU comply with the requirements of the FWROA and should the application be approved the FSU undertakes that the election will be conducted under the FSU rules, under section 186(b)(ii) of the FWROA and otherwise in accordance with the law.

#### **Other Matters or Grounds – Conduct of Hearing**

49. Such other matters or grounds the FSU may submit:

- (a) during the course of the Fair Work Commission hearing the application under Regulation 136(1) FWROA;
- (b) in reply to objections (if any) to the application; or
- (c) in response to the Fair Work Commission in order to assist the Commission's consideration of this matter.

A handwritten signature in blue ink, reading "Julia Angrisano". The signature is fluid and cursive, with the first name "Julia" and last name "Angrisano" clearly distinguishable.

**JULIA ANGRISANO**

**NATIONAL SECRETARY**

**FINANCE SECTOR UNION OF AUSTRALIA**

**Dated:** 14 March 2023

**Fair Work (Registered Organisations) Act 2009**

**Section 183 – Application for organisation or branch-conducted elections for office**

**Fair Work (Registered Organisations) Regulations 2009**

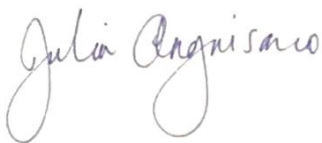
**Regulation 133 – Application for organisation or branch to conduct its elections for office**

**DECLARATION OF JULIA ANGRISANO**

I, Julia Angrisano of Level 1, 341 Queen Street, Melbourne declare as follows:

1. I am the National Secretary of the Finance Sector Union of Australia (FSU).
2. I am a member of the National Executive of the FSU, and I am authorised to act in this matter.
3. I verify the facts set out in the Application accompanying this declaration as true and correct in every particular.
4. Attached and marked JA1 is a copy of a determination of the National Executive determined on 12 December 2022, and which is referred to in the Application.
5. Attached and marked JA2 is a copy of a determination of the National Executive determined on 28 February 2023, and which is referred to in the Application.
6. That the FSU has complied with subsection 2 of section 183 of the Fair Work (Registered Organisations) Act 2009.

Declared by Julia Angrisano, National Secretary FSU at Sydney on 14 March 2023.



**JULIA ANGRISANO**

**NATIONAL SECRETARY**

**FINANCE SECTOR UNION OF AUSTRALIA**

**Dated: 14 March 2023**

**Resolution of FSU National Executive – 12 December 2022**

*The National Executive notes ongoing delays in Industrial Elections being administered by the Australian Electoral Commission and continued directions for in-person ballots to be converted to postal ballots.*

*The National Executive notes that the timely outcome of Executive Officer and National Executive Member elections is crucial to the operation of the Inaugural National Congress Meeting, and as such it is crucial that a Returning Officer is present to declare the outcome of elections.*

*Given the circumstances, the National Executive authorises the National Secretary to make application to the Registered Organisations Commission and/or Fair Work Commission for the Union to appoint its own Returning Officer to conduct the collegiate elections that are to take place at the Inaugural National Congress Meeting.*

*In accordance with Rule 67, the National Executive appoints John Warren Payne of Hall Payne Lawyers as Returning Officer for the Inaugural Executive Officer and National Executive Member collegiate elections to be held in 2023.*

Carried

JA2

**Resolution of FSU National Executive – 28 February 2023**

*The National Executive directs and authorises the National Secretary to file with the Registered Organisations Commission an application for exemption, under s183 Fair Work Registered Organisations Act 2009, from the requirement to utilise the AEC as the returning officer in the collegiate quadrennial elections.*

Carried