



21 November 2023

Mark Davis
Executive Officer
The Australian Maritime Officers' Union
Sent via email: mark@amou.com.au

Dear Mark Davis



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2023/1

An election has recently been completed by the Australian Electoral Commission (AEC) for the Australian Maritime Officers' Union and a post-election report has been issued by the AEC.

This letter explains the next steps you must take, including what information you need to give to members 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 the Commission at 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 we 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 approved 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 receive 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 *Fair Work (Registered Organisations) Act 2009* (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.

Real-life example of penalties in Court An 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 an interim [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 November 2023

Post-election report

The Australian Maritime Officers' Union
Scheduled Election
E2023/1

Contents

Election(s) Covered in Post-Election Report (PER).....	3
Relevant legal provisions.....	3
Declaration of result of election	6
The Australian Maritime Officers' Union Rules.....	6
Roll of Voters	6
Signed	6
Attachments	7
A. Declaration of Results for Uncontested Offices	7
B. Declaration of Results for Contested Offices.....	7

Election(s) Covered in Post-Election Report (PER)

Organisation: The Australian Maritime Officers' Union

Election Decision No: E2023/1

Election: Scheduled

Date ballot closed: 15/11/2023

Date the nominations closed: 18/09/2023

Date results declared: 15/11/2023

Date PER due: 14/12/2023

Relevant legal provisions

Fair Work (Registered Organisations) Act 2009 ('the Act')

197 Post-election report by AEC

Requirement for AEC to make report

- (1) After the completion of an election conducted under this Part by the AEC, the AEC must give a written report on the conduct of the election to:
 - (a) the General Manager; and
 - (b) the organisation or branch for whom the election was conducted.

Note: The AEC may be able, in the same report, to report on more than one election it has conducted for an organisation. However, regulations made under paragraph 359(2)(c) may impose requirements about the manner and timing of reports.

- (2) The report must include details of the prescribed matters.

Contents of report—register of members

- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the election contained, at the time of the election:
 - (a) an unusually large proportion of members' addresses that were not current; or
 - (b) in the case of a register kept by an organisation of employees—an unusually large proportion of members' addresses that were workplace addresses;

this fact must be included in the report, together with a reference to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: Model rules are relevant only to the conduct of elections for office, not for elections for other positions (see section 147).

Contents of report—difficult rules

- (4) If the report identifies a rule of the organisation or branch that, in the AEC's opinion, was difficult to interpret or apply in relation to the conduct of the election, the report must also refer to any relevant model rules, which in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: For model rules, see section 147.

Subsection (3) relevant only for postal ballots

- (5) Subsection (3) applies only in relation to elections conducted by postal ballot.

Note: An organisation can obtain an exemption from the requirement to hold elections for office by postal ballot (see section 144).

190 Organisation or branch must not assist one candidate over another

An organisation or branch commits an offence if it uses, or allows to be used, its property or resources to help a candidate against another candidate in an election under this Part for an office or other position.

Penalty: 100 penalty units.

193 Provisions applicable to elections conducted by AEC

- (1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office or other position in an organisation, or branch of an organisation, the electoral official:
 - (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and
 - (b) may, in spite of anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary:
 - (i) to ensure that no irregularities occur in or in relation to the election; or
 - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules; or
 - (iii) to ensure the security of ballot papers and envelopes that are for use, or used, in the election.
- (2) A person commits an offence if the person does not comply with a direction under subsection (1).

Penalty: 30 penalty units.
- (3) Subsection (2) does not apply so far as the person is not capable of complying.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.
- (5) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) An election for an office or other position conducted by an electoral official, or step taken in relation to such an election, is not invalid merely because of a breach of the rules of the organisation or branch because of:
 - (a) action taken under subsection (1); or
 - (b) an act done in compliance with a direction under subsection (1).
- (7) If an electoral official conducting, or taking a step in connection with, an election for an office or other position:
 - (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
 - (b) ceases to be qualified to conduct the election or to take the step;the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

6 Definitions

irregularity, in relation to an election or ballot, includes:

- (a) a breach of the rules of an organisation or branch of an organisation; and
- (b) an act or omission by means of which:
 - (i) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
 - (ii) a correct ascertainment or declaration of the results of the voting;

- is, or is attempted to be, prevented or hindered; and
- (c) a contravention of section 190.

Fair Work (Registered Organisations) Regulations 2009 ('the Regulations')

140 Declaration of result of election (s 193)

- (1) Within 14 days after the closing day of an election, the AEC must issue a declaration stating the following:
 - (a) the total number of persons on the roll of voters;
 - (b) the total number of ballot papers issued (if applicable);
 - (c) the total number of envelopes that were returned undelivered by the closing day of the ballot to the AEC (if applicable);
 - (d) the total number of ballot papers received by the electoral official by the closing day of the ballot (if applicable);
 - (e) the result of the election;
 - (f) the total number of informal ballot papers (if applicable).
- (2) In subregulation (1), ***closing day***, for an election, means:
 - (a) if a ballot is not required—the day on which nominations for the election close; or
 - (b) if a ballot is required—the closing day of the ballot.
- (3) Immediately after issuing a declaration under subregulation (1), the AEC must give a copy of the declaration to:
 - (a) the General Manager; and
 - (b) the organisation or branch for whom the election was conducted.

141 Post-election report by AEC (s 197(2))

- (1) For subsection 197(2) of the Act, the following matters are prescribed for inclusion in the report (the ***post-election report***) given under subsection 197(1) of the Act:
 - (a) the declaration mentioned in regulation 140;
 - (b) any rules of the organisation or branch which because of ambiguity or other reason, were difficult to interpret or apply;
 - (c) any matters in relation to the roll of voters including those matters contained in subsection 197(3) of the Act;
 - (d) the number of written allegations (if any) of irregularities made to the AEC during the election;
 - (e) action taken by the AEC in relation to those allegations;
 - (f) any other irregularities identified by the AEC and action taken by the AEC in relation to those other irregularities.
- (2) The AEC must:
 - (a) give the post-election report within 30 days after the closing day of the election; and
 - (b) publish a notice on its web site advising that a copy of the post-election report can be obtained from the AEC on the request of a member who was eligible to vote in the election.
- (3) The AEC must supply a copy of the post-election report to the member as soon as practicable, but no later than 7 days, after receiving a request under paragraph (2)(b).

145 Elections conducted by AEC—no unauthorised action

- (1) For any election conducted by the AEC under Part 2 of Chapter 7 of the Act, a person other than the person conducting the election must not do, or purport to do, any act in the conduct of the election other than as directed or authorised by the person conducting the election.

Note: This subregulation is a civil penalty provision (see regulation 168).

- (2) The AEC must advise the General Manager of a possible contravention of subregulation (1) not later than 21 days after the AEC has become aware of the possible contravention.

Declaration of result of election

In accordance with reg 140 of the Regulations, the AEC issued a declaration of the result of election E2023/1 as follows:

- 25/09/2023 – Uncontested – Attachment A
- 15/11/2023 – Contested – Attachment B

The Australian Maritime Officers' Union Rules

The Australian Maritime Officers' Union rules used for the election:

- [001N: Incorporates alterations of 25 May 2023 [R2023/7 & R2023/44]

Roll of Voters

There were no matters in relation to the roll of voters including those matters contained in subsection 197(3) of the Act.

Signed

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

Attachments

- A. Declaration of Results for Uncontested Offices
- B. Declaration of Results for Contested Offices

The Australian Maritime Officers' Union

DECLARATION OF RESULTS - E2023/1

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:

Australian Maritime Officers Union

President (1)

Candidates

JEPSON Matthew

Vice President (1)

Candidates

WARHURST Brent

National Councillor (4)

Candidates

BLACKBAND Ken

HILLS Brent

MCDONALD John

MIDDLETON Brent

Offshore Energy

Industry Delegate (1)

Candidates

ANDERSON Stewart

Pilotage

Industry Delegate (1)

Candidates

MIERS Ben

Port Authority

Industry Delegate (1)

Candidates

DORRON Darryl

Private Port Services

Industry Delegate (1)

Candidates

No Nominations Received

Seagoing

Industry Delegate (1)

Candidates

No Nominations Received

Towage

Industry Delegate (1)

Candidates

No Nominations Received

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

Benjamin Murray
Returning Officer
Telephone: 03 9285 7111
Email: IEBevents@aec.gov.au
25/09/2023



The Australian Maritime Officers' Union
DECLARATION OF RESULTS - E2023/1
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:

Ferries and Tourism

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	201
Number of voters issued with voting material	201
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	201
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	70
Number of declaration envelopes rejected at preliminary scrutiny (minus)	0
Number of ballot papers returned outside declaration envelopes (minus)	0
COUNT	
Total ballot papers admitted to the count	70
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	5
Voting material packs not returned by voters by closing date of the ballot	126
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	35 %

Industry Delegate (1)

<u>Candidates</u>	<u>Final Votes</u>
BARKER, Michael	23
HUGHES, Ian	47

Total ballot papers admitted for this office	70
Formal Ballot papers	70
Informal Ballot papers	0

I declare the following elected:

- HUGHES, Ian

Benjamin Murray
Returning Officer
Telephone: 03 9285 7111
Email: IEEvents@aec.gov.au
15/11/2023



DECISION

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

The Australian Maritime Officers' Union
(E2023/1)

MR STEENSON

SYDNEY, 31 MAY 2023

Arrangement for conduct of election.

[1] On 29 May 2023 the Australian Maritime Officers' Union (the AMOU) lodged with the Fair Work Commission (the Commission) prescribed information for an election to fill the following offices for a new term of office:

President	(1)
Vice President	(1)
National Councillor	(4)

Industry Delegates, elected by members from the following named industries:

Port Authority	(1)
Private Port Services	(1)
Ferries and Tourism	(1)
Offshore Energy	(1)
Seagoing	(1)
Towage	(1)
Pilotage	(1)

[2] On 25 May 2023, the Commission certified alterations to the rules of the AMOU, which altered rules directly relevant to the electorates from which certain officers were elected and abolished certain offices.¹ The prescribed information, signed by the President the following day, was then lodged on 29 May 2023 (the days in between being a weekend). This demonstrates the organisation's commitment to lodging as soon as it was possible to do so under the newly certified rules.

[3] Section 189(2) of the *Fair Work (Registered Organisations) Act 2009* (RO Act) requires that prescribed information be lodged by a particular deadline, known as 'the prescribed day'. Regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009* (the

¹ [2023] FWCG 17 in matter R2023/7 and R2023/44

Regulations) defines the prescribed day as the day two months before nominations are due to open under the rules of the organisation.

[4] When it became apparent to the AMOU, earlier in 2023, that the election-related rule alterations may cause difficulty associated with the lodgement of prescribed information, it contacted the then-regulator, the Registered Organisations Commission (ROC) about the proposed rule alterations and the issues that may arise. This was because the circumstances were such that the AMOU either had lodge to prescribed information for an election under the ‘old’ rules (and the structure of offices, some of which were being abolished under the rule alterations) in order to meet the timeframe requirements in the RO Act, or to wait until the ‘new’ rules were certified and potentially lodge prescribed information late, risking contravention of a civil penalty provision.

[5] The organisation indicated, initially to the ROC in an exchange of correspondence dated 123 February 2023 and subsequently to this Commission, that it was keen to prevent a recurrence of the situation which arose in the *ASMOF* matter,² in which prescribed information was lodged under the rules as they then stood and an election was commenced by the Australian Electoral Commission (the AEC), only for new rules to be certified which abolished numerous offices and displaced election-related rules. In that matter, ultimately the Federal Court ordered that the original election be ceased and a new one, under the newly-certified rules be conducted – though considerable time and resources were expended by both the AEC and the organisation to reach that outcome. Concerns about utility and potential waste of resources were echoed in the prescribed information lodged by the AMOU in the present matter.³

[6] I acknowledge that the change in structure and offices of the AMOU, occurring as it did around the time that an election for a new term of office was due, had some parallels with the *ASMOF* matter. The reluctance of an organisation to have a recurrence of the circumstances in that matter is understandable. The AMOU’s proactive engagement with the relevant regulators to discuss appropriate courses of action and, arising from this, its willingness to give undertakings about lodging prescribed information as soon as the new rules were certified – and then to do so – is evidence of the seriousness with which the organisation has approached the issue.

[7] As indicated in many previous election decisions issued under the auspices of the ROC and this Commission, the normal and reasonable expectation is that registered organisations take steps to ensure they comply with the requirements (including timeframe requirements) set out not only in the RO Act but also in instruments or references concerning their own governance, which organisations themselves formulate, such as their own rules.

[8] On this occasion, the lodgement of rule alterations was unfortunately close to the period in which prescribed information was required to be lodged for the upcoming election, giving rise to the issues set out above.

[9] The late lodgement of prescribed information on this occasion was directly linked to the rule alterations which included significant changes to the structure and offices of the organisation. I have considered the relevant facts and circumstances, including the specific circumstances surrounding the lodgement of prescribed information, in this matter and the significance of the rule changes to the offices that are to be the subject of election in the

² *Sara, in the matter of an inquiry into the election for offices in the Australian Salaried Medical Officers Federation* [2018] FCA 844

³ In particular, at paragraph 7b of the AMOU’s prescribed information dated 26 May 2023.

organisation. I have also considered the efforts, such as those outlined above, which the organisation made by engaging with the regulators about the matter and its preparedness to seek guidance and take prompt steps as soon as certification occurred.

[10] Section 189 of the RO Act enables me, as Delegate of the General Manager to grant a later date for lodgement. On this occasion I allow, under section 189(2) of the RO Act, a later day for lodgement.

[11] 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 AEC.



DELEGATE OF THE GENERAL MANAGER

Printed by authority of the Commonwealth Government Printer

PR755079

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, Ken Blackband being the President of the Australian Maritime Officers Union (**AMOU**) make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Australian Maritime Officers Union.
2. The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (**FWROA**).
3. The rules of the AMOU require, by operation of rules 46, 49 and 51, that nominations for Quadrennial Elections were to open on 10 May 2023.
4. An application was made to the General Manager Fair Work Commission (**General Manager**) to amend the rules of the AMOU (**Proposed Rules**) on 1 February 2023 – matter number R2023/7.
5. On 25 May 2023 the General Manager approved the Proposed Rules and they were certified on that date.
6. The elections that are required under the rules approved by the General Manager are set out in the table in Annexure **A**.
7. This statement has not been lodged at least 2 months before nominations open for the election(s) as:
 - a. the Proposed Rules have the effect of altering the offices of the AMOU by:
 - i. altering the electorates from which officers are to be elected; and
 - ii. removing certain offices;
 - b. given the significant differences in the electorates and offices arising from the Proposed Rules, there was:
 - i. no utility in commencing an election under the AMOU rules prior to their certification; and
 - ii. a real concern that to have commenced an election under the AMOU rules prior to their certification would have resulted in the potential truncation of offices (as elected) or have placed the AMOU in the same position as ASMOF was placed (see ASMOF election inquiry)¹ and result in a waste of resource by the AMOU and the AEC.
 - c. the Proposed Rules of the AMOU provide, as they also did on the day immediately preceding certification of the Proposed Rules, for the holding over of office by officers; and

¹ Sara, in the matter of an inquiry into the election for offices in the Australian Salaried Medical Officers Federation [2018] FCA 844.

- d. the Proposed Rules make provision for the current officers and terms of office to continue until the declaration of elections conducted under the Proposed Rules.
8. On 13 February 2023 the AMOU corresponded with the (then) Registered Organisations Commission (**ROC**) in relation to the requirement to lodge prescribed information in circumstances where significant changes to the (electoral) rules were proposed – see **Annexure B**.
9. On 13 February 2023 the ROC corresponded with the AMOU – see **Annexure C**.
10. The AMOU requests the General Manager allow a later day for lodgement of the prescribed information, being the day that this statement is filed.

Signed:



Ken Blackband
President

Dated: 26 May 2023

ANNEXURE A

Elections that are required:

Branch	Name of Office	Number Required	Voting System	Reason for Election	Electorate based on AMOU Rules
National	President	1	DVS	Scheduled	<i>Elected by financial members R.46(c)</i>
National	Vice President	1	DVS	Scheduled	
National	National Councillor	4	DVS	Scheduled	
National	Port Authority Industry Delegate	1	DVS	Scheduled	<i>Elected under R.46(f) only by financial members attached to the named industry on the day seven (7) days prior to the opening of nominations²</i>
National	Private Port Services Industry Delegate	1	DVS	Scheduled	
National	Ferries and Tourism Industry Delegate	1	DVS	Scheduled	
National	Offshore Energy Industry Delegate	1	DVS	Scheduled	
National	Seagoing Industry Delegate	1	DVS	Scheduled	
National	Towage Industry Delegate	1	DVS	Scheduled	
National	Pilotage Industry Delegate	1	DVS	Scheduled	

² AMOU rule 46(f)(i) provides that only financial members on the day preceding nominations may nominate, however, s 143(3) of the FWROA requires 7 days. An application has been made to rectify the inconsistency.

	Direct Voting System³
Roll of Voters cut-off date	28 days before the date on which nominations open (r 56(b))
Nominations open	the Manager of the election must fix the opening day (r 49(a))
Nominations close	nominations close (no earlier) than 28 days after they open (r 49 (b))
Ballot papers distributed	if a ballot becomes necessary under rule 54, the Manager of the election must fix the date of the ballot commencing (r 50 (a))
Ballot closes	if a ballot becomes necessary under rule 54, the Manager of the election must fix the date of the ballot closing (r 50 (a))

³ Dates calculated in accordance with s 143(3) of the FWROA, as AMOU rule 46(f)(i) is inconsistent with the law. An application has been made to rectify this inconsistency.