



26 February 2024

Allen Hicks

National Secretary

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia - Electrical, Energy and Services Division - New South Wales Divisional Branch

Sent via email: admin@etuaustralia.org.au

cc: Allen Hicks allen@etunsw.com.au

Dear Allen Hicks



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2023/189

An election has recently been completed by the Australian Electoral Commission (AEC) for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia - Electrical, Energy and Services Division - New South Wales Divisional Branch 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.

23 February 2024

Post-election Report

Communications, Electrical, Electronic,
Energy, Information, Postal, Plumbing
and Allied Services Union of Australia
Casual Vacancy
E2023/189

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

Organisation:	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU)
Election Decision No:	E2023/189
Election:	Casual Vacancy
Date nominations closed:	12/02/2024
Date results declared:	16/02/2024
Date PER due:	13/03/2024

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 E2023/189 on 16/02/2024. For a copy, see **Attachment A**.

CEPU Electrical, Energy and Services Division (ESS) NSW Rules

CEPU EES NSW Rules used for the election: [128V-NSW: Incorporates alterations of 9 March 2023 in R2022/150]

The following rule was difficult to apply, and for this reason I issued a direction under s.193 of the *Fair Work (Registered Organisations) Act 2009*:

- Rule 22.7.12 states that the ballot shall conclude no later than three (3) weeks after commencement. This rule was set aside as the AEC held concerns that the timeframe for the lodgement and return of postal vote packs is unnecessarily restrictive. For this reason, had the election been contested and proceeded to a ballot, I had allowed four weeks for the ballot period.

For future elections under these rules, I suggest the Organisation review the timeframes allowed for the ballot period to ensure there is sufficient time for members to receive and return their postal vote packs.

Roll of Voters

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

Written Allegations of Any Irregularities

- The AEC did not receive any written allegations of irregularities during the election.

Other Irregularities

- The AEC did not identify any other irregularities during the election.

Signed

Chris King
Returning Officer
Australian Electoral Commission
E: IEBevents@aec.gov.au
P: 03 9285 7111
23 February 2024

Attachments

A. Declaration of Results for Uncontested Offices

**Communications, Electrical, Electronic, Energy, Information,
Postal, Plumbing and Allied Services Union of Australia**
DECLARATION OF RESULTS - E2023/189
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:

New South Wales Divisional Branch - Electrical Contracting Industry Section

Divisional State Councillor (1)

Candidates

MILLS Andrew Kevin

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

Chris King
Returning Officer
16/02/2024





Fair Work
Commission

DECISION

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

**Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and
Allied Services Union of Australia**
(E2023/189)

MR STEENSON

SYDNEY, 27 NOVEMBER 2023

Arrangement for conduct of election.

[1] On 21 November 2023 the New South Wales Divisional Branch of the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia lodged with the Fair Work Commission prescribed information for an election to fill a casual vacancy in the following office for the remainder of the term:

Divisional State Councillor – Electrical Contracting Industry Section (1)

[2] I am satisfied that an election for the abovenamed office 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 GENERAL MANAGER

Printed by authority of the Commonwealth Government Printer

PR755176

PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 of the *Fair Work (Registered Organisations) Act 2009* and Regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009*

I, Allen Hicks, being the Divisional Branch Secretary of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Electrical, Energy and Services Division, New South Wales-Australian Capital Territory Branch (**the Branch**), make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Branch.
2. The following information is lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009* (**the RO Act**);
3. The election that is required is set out in the table in Annexure A.
4. There are no rule alterations pending that may impact the election.
5. On 20 July 2023, an office holder, Mr Kevin Booth, was elected as a Divisional State Councillor representing the Electrical Contracting Industry¹ in E2023/72. On 15 November 2023 (**the date of resignation**) the office holder resigned from this office. An election is required because rule 22.8.3² of the rules governing the Branch (**the Branch rules**) provides that where a delegate to the NSW-ACT Divisional State Council resigns, the State Council may appoint a member of the relevant section to fill the vacancy created by the resignation. However, this is subject to the proviso that where the unexpired portion of the term of the office exceeds three quarters of the term of the office an election shall be held to fill the office within 6 months of the vacancy occurring.
6. In addition, section 146(2) of the RO Act requires that where the rules of an organisation provide for the filling of a casual vacancy by ordinary election, the vacancy must be filled by an ordinary election where the unexpired part of the term exceeds 12 months; or three-quarters of the term of office, whichever is the greater.

¹ A copy of the AEC election declaration of results is attached.

² 22.8.3 If a delegate to NSW Divisional Branch Conference, Affirmative Action (Women) Councillor, or a delegate to NSW Divisional State Council resigns, dies or is removed from office, NSW Divisional State Council may appoint a member of the NSW Divisional Sub-Branch as a NSW Divisional Branch Conference Delegate or a member of the Section as a NSW Divisional State Council Delegate, or a female member as the Affirmative Action (Women) Councillor, who is eligible to nominate for the office in accordance with the rules to the office. *Provided that if the unexpired portion of the term exceeds three-quarters of the term of the office or if it is less but the NSW Divisional State Council so decides an election shall be held to fill the office* [emphasis added].

7. Rule 22.1.1 of the Branch rules requires an election every four (4) years, in effect prescribing a term of office of four (4) years. Mr Booth's term of office was due to expire on 20 July 2027. Three quarters of the unexpired term of office is 20 July 2024. On the date of Mr Booth's resignation the unexpired part of the term of office therefore exceeded three quarters of the term of office triggering an election to fill the vacancy caused by the resignation.



Signed:

ALLEN HICKS

Dated: 21 November 2023

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	Electorate
NSW-ACT	Divisional Branch State Councillor - Electrical Contracting Industry Section	1	DVS	Casual Vacancy	Financial Members of the NSW-ACT Branch - Electrical Contracting Industry Section (Branch rule 22.1.4)

- IMPORTANT DATES:**

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	To be determined by the Returning Officer in consultation with the Branch	N/A
Nominations CLOSE	To be determined by the Returning Officer in consultation with the Branch	N/A
Roll of Voters cut-off date	To be determined by the Returning Officer in consultation with the Branch (7 days prior to the opening date for nominations – <i>Branch rule 22.5</i>)	N/A