



27 May 2024

Stavros Yallouridis  
CEO  
Motor Traders' Association of New South Wales  
Sent via email: stavros.yallouridis@mtansw.com.au

Dear Stavros Yallouridis



**IMMEDIATE ACTION REQUIRED:**

**You must take steps after your recent election E2023/207**

An election has recently been completed by the Australian Electoral Commission (AEC) for the Motor Traders' Association of New South Wales 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](mailto: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](mailto: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](mailto: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 May 2024

# Post-election report

**Motor Traders' Association of New  
South Wales**  
Scheduled  
E2023/207

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

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Organisation:	Motor Traders' Association of New South Wales
Election Decision No:	E2023/207
Election:	Scheduled
Date ballot closed: Stage 1:	2/04/2024 (contested)
Date Nominations Close: stage 2:	17/05/2024 (uncontested)
Date results declared:	Stage 1: 2/04/2024 Stage 2: 17/05/2024
Date PER due:	15/06/2024

## Relevant legal provisions

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### *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;
- (c) a contravention of section 190.



**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

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In accordance with reg 140 of the Regulations, the AEC issued a declaration of the result of election E2023/207 as follows:

Stage 1: 2/04/2024

Stage 2: 17/05/2024

For a copy, see **Attachment A and B**.

## Motor Traders' Association of New South Wales Rules

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Motor Traders' Association of New South Wales Rules used for the election:

- 066N: Incorporates alterations of 28 September 2023 in matter number R2023/55]

There were no rules that were difficult to interpret or apply.

## 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.

## Written allegations of any irregularities

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

## Other irregularities

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The AEC did not identify any other irregularities in the election.

## Signed

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Benjamin Murray  
Returning Officer  
Australian Electoral Commission  
E: [IEBevents@aec.gov.au](mailto:IEBevents@aec.gov.au)  
P: 03 9285 7111  
23 May 2024

## Attachments

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- A. Declaration of Results for Contested Office - stage 1
- B. Declaration of Results for Uncontested Offices - stage 2

# Motor Traders' Association of New South Wales

## DECLARATION OF RESULTS - E2023/207 - Stage 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:

#### MTANSW members

<b>VOTING MATERIAL ISSUED</b>	
Total number of people on the roll of voters (a)	2,899
Number of voters issued with voting material	2,899
Total number of voters issued with replacement voting material	1
<b>Total number of voting material packs issued</b>	<b>2,900</b>
<b>VOTING MATERIAL RETURNED</b>	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	293
Number of declaration envelopes rejected at preliminary scrutiny (minus)	7
Number of ballot papers returned outside declaration envelopes (minus)	0
<b>COUNT</b>	
Total ballot papers admitted to the count	286
<b>LATE OR UNRETURNED VOTING MATERIAL</b>	
Voting material returned as unclaimed mail by closing date of ballot	18
Voting material packs not returned by voters by closing date of the ballot	2,589
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	10 %

#### Executive Board Members (10)

<u>Candidates</u>	<u>Final Votes</u>
BUTT, Gordon	66
AXIAK, Donna	198
SPINKS, Darren	170
LOWE, Geoffrey	174
VIDLER, Lindsay	164
VAN RYSWYK, Mark	165
O'DONNELL, Glenn	92
HESELTINE, Rodney	73
FORT, Daniel J	72
MARSTON, David	181
MASSINA, Alexander (Sandy)	171
LENEHAN, Patrick	183
YOUNG, John	188
GARLAND, Robert	86
BEARD, Mark	184
COWAN, Brian	98

<b>Total ballot papers admitted for this office</b>	<b>286</b>
Formal Ballot papers	285
Informal Ballot papers	1

I declare the following elected:	Order Elected
• AXIAK, Donna	1
• YOUNG, John	2
• BEARD, Mark	3
• LENEHAN, Patrick	4
• MARSTON, David	5
• LOWE, Geoffrey	6
• MASSINA, Alexander (Sandy)	7
• SPINKS, Darren	8
• VAN RYSWYK, Mark	9
• VIDLER, Lindsay	10

Benjamin Murray  
Returning Officer  
Telephone: 03 9285 7111  
Email: IEBevents@aec.gov.au  
02/04/2024

# Motor Traders' Association of New South Wales

## DECLARATION OF RESULTS - E2023/207 - Stage 2

### Uncontested Offices

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#### 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:

#### President (1)

##### Candidates

YOUNG John

#### Vice President (1)

##### Candidates

LOWE Geoffrey

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

Cath Budrodeen  
Returning Officer  
Telephone: 03 9285 7111  
Email: IEBevents@aec.gov.au  
17/05/2024





## DECISION

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

**Motor Traders' Association of New South Wales**  
(E2023/207)

MR STEENSON

SYDNEY, 22 DECEMBER 2023

*Arrangement for conduct of election.*

[1] On 6 and 20 December 2023 the Motor Traders' Association of New South Wales (**MTANSW**) lodged with the Fair Work Commission (**Commission**) prescribed information for an election to fill the following offices for a new term of office:

Executive Board Members	(10)
President	(1)
Vice President	(1)

[2] The current rulebook for MTANSW (R2023/55) was certified by the Commission on 28 September 2023. As part of these rule changes, the organisation restructured its governing body. Previously, it had an Executive Board and a Governing Council, with elections in alternate years. The September 2023 rule alterations made the Executive Board the sole governing body responsible for the management and control of the organisation.<sup>1</sup> The MTANSW Executive Board comprises 10 members, elected by all members regardless of which Division they belong to.<sup>2</sup> The term of office is 4 years.<sup>3</sup>

[3] The rule changes also have the effect of removing the offices of four Metropolitan Vice Presidents, four Country Vice Presidents, one Secretary and one Honorary Treasurer. However, there will be one President and one Vice President, elected by and from the Executive Board.<sup>4</sup> Their term of office is also 4 years.<sup>5</sup>

[4] The new rules have replaced the Governing Council with an 'Advisory and Nominations Council' (Advisory Council). It should be noted that the new Advisory Council positions do not have a governance role and are therefore not considered offices, as outlined in the rules.<sup>6</sup> This is an important distinction because section 182 of the *Fair Work (Registered Organisations) Act 2009* (**RO Act**) requires that elections for offices must be conducted by the

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<sup>1</sup> Rule 32, R2023/55.

<sup>2</sup> Election schedule rule 2.1.1 and 2.1.2.

<sup>3</sup> Rule 32(3)(a), R2023/55.

<sup>4</sup> Election schedule rule 2.1.3 and 2.1.4.

<sup>5</sup> Rule 34(1) and (2), R2023/55.

<sup>6</sup> Rule 30 particularly sub-rule 30(4), R2023/55.

Australian Electoral Commission (AEC) unless an organisation is granted an exemption from that requirement.<sup>7</sup> By contrast, an organisation is able to request that the AEC conduct elections for non-office positions<sup>8</sup> – such as those of the Advisory Council – but is not obliged to. I note that on this occasion the MTANSW conducted the election of the Advisory Council internally, with its General Counsel as the returning officer.

[5] The prescribed information, at paragraph 3(e) describes each of the elections (including the Advisory Council election) as a stage of 'a collegiate election system'. That description is not correct. A collegiate election is where officers are elected by other officers. Advisory Council members (non-office positions) are elected directly by MTANSW members. The Executive Board is also directly elected by MTANSW members, though rule 7 of the Election Schedule in the MTANSW rules provides eligibility criteria to be a candidate – namely that for a person to be eligible to nominate for the Executive Board they must have been elected to the Advisory Council.<sup>9</sup> The only collegiate election in the MTANSW election process is the election of the President and Vice President, by and from the Executive Board.

[6] In the absence of an exemption from AEC-conducted elections, MTANSW is required to have its elections for the Executive Board, and for President and Vice President, conducted by the AEC. (As indicated above, it can also request that the AEC conduct the Advisory Council election).

[7] Section 189 of the RO Act requires that an organisation must lodge prescribed information with the Commission if an election is required under the organisation's rules. It also requires that information to be lodged at least two months before the date that nominations are due to open under the rules: this is known as 'the prescribed day'.<sup>10</sup> It allows the election request to be considered, a decision issued and arrangements made for the AEC to conduct the election in accordance with the timeframes set out in the organisation's rules. Failure to lodge by the prescribed day is a civil penalty provision, i.e. it leaves an organisation open to litigation and the imposition of a penalty.

[8] MTANSW did not lodge before the prescribed day as required by regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009 (RO Regulations)*. The current term of office for the Executive Board is due to expire at the Annual General Meeting scheduled for 17 May 2024. The Election Schedule in the MTANSW rules provides that nominations for this election for a new term of office shall open on 7 January 2024.<sup>11</sup> Accordingly, the prescribed information needed to be lodged by 7 November 2023. In the prescribed information dated 20 December 2023, the President of the organisation advised that the reason for the delay in lodging prescribed information was due to an oversight, with the organisation being preoccupied running the first election for the Advisory Council.

[9] The General Manager or his Delegate may allow a later day for lodgement. The normal and reasonable expectation is that registered organisations take steps to ensure they comply with the timeframe requirements related to governance processes in their organisation, which are set out not only in the RO Act but also in instruments formulated by the organisations themselves, such as their own rules. Given those underpinning principles and absent circumstances such as the rules governing this election having only very recently been certified, I would not have allowed a later day for lodgement. However, with rule alterations (which made

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<sup>7</sup> Sections 183 to 186, RO Act

<sup>8</sup> Section 187, RO Act

<sup>9</sup> Election schedule rule 7.1.1 and 7.1.2.

<sup>10</sup> Section 189(2) of the RO Act; Regulation 138 (3) of the RO Regulations

<sup>11</sup> Election schedule rule 6.1.1.



substantial changes to the organisation's governance structure) only being in place for just over a month before the prescribed information was due to be lodged for the election of the Executive Board, on this occasion I allow a later day for lodgement under section 189(2) of the RO Act.

**[10]** 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

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PR755188



MOTOR TRADERS'  
ASSOCIATION OF NSW

**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, John Young being a President of the **Motor Traders' Association of New South Wales** make the following statement:

1. I am a President of the **Motor Traders' Association of New South Wales (MTA NSW)**. I am authorised to sign this statement containing prescribed information concerning the forthcoming elections of the Motor Traders' Association of New South Wales.
2. I confirm that the following information is being lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. The terms of the below mentioned offices of the organisation are scheduled to expire in the normal course of event under the Rules of the organisation.

The following information for the election is provided:

- a) The officers to be elected are:
  - (i) Office Bearers: Ten (10) offices in total. **Rule 32 and the Part 2 of Schedule “Rules for the Conduct of Elections of Statutory Officers”;**
  - (ii) President – **Rule 34 and Part 3 of Schedule “Rules for the Conduct of Elections of Statutory Officers”**
  - (iii) Vice President – **Rule 34 and Part 3 of Schedule “Rules for the Conduct of Elections of Statutory Officers”**
- b) The election is necessary as the existing term of office of the Executive Board, inclusive of the President and Vice Presidents is due to expire at the next Annual General Meeting of the Association due to be held within six (6) months of the end of the Association's financial year being 31<sup>st</sup> December, 2023. It is anticipated at this time that the Annual General Meeting of the Association will be held on **17<sup>th</sup> May 2024**.

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PO Box 715, Burwood NSW 1805 ABN 63 000 008 088

**mtansw.com.au**

c) The Association's Rules and Schedule set out the election process for the positions as follows:

Executive Board members are elected from the Advisory Councillors of the Association who are elected as set out in **Rule 30**.

When nomination opening time is declared MTA will be able to provide details of the numbers of members of the Association eligible to vote.

d) Rule 12.1 of the "Rules for the Conduct of Elections of Statutory Officers" provides that the roll of voters is to close seven (7) days before the date of commencement of the period for lodging nominations. Rule 6.1 of the "Rules for the Conduct of Elections of Statutory Officers" provide a timetable for the date for commencement of nominations. In addition, Rule 4 of the "Rules for the Conduct of Elections of Statutory Officers" require the MTA NSW to publish an elections Notice by no later than the opening of Nominations.

e) The voting system:


(i) The Advisory Councillors is the first stage of a collegiate voting system; and

(ii) The Executive Board is the second stage of a collegiate voting system; and

(iii) The President and Vice President is the third stage of the collegiate voting system

4. This statement is not lodged at least 2 months before nominations open for the election, as per the timetable under the Rules for the Conduct of Elections of Statutory Officers. The reason it is lodged after the prescribed time is that the General Counsel of MTA NSW was at the relevant time acting as the Returning Officer in the conduct of the elections of the Advisory Council and due to an administrative oversight the due date of lodgment being the **7<sup>th</sup> November, 2023** was not diaries and consequently overlooked.

Signed: \_\_\_\_\_



John Young

**President**

Dated: 20 December, 2023