



28 February 2024

Gregory McElroy
President
The Master Plumbers & Mechanical Contractors Association of New South Wales
Sent via email: info@masterplumbers.com.au

Dear Gregory McElroy



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2023/172

An election has recently been completed by the Australian Electoral Commission (AEC) for the Master Plumbers & Mechanical Contractors 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

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.

28 February 2024

Post-election report

The Master Plumbers & Mechanical
Contractors Association of New South
Wales
Scheduled Election
E2023/172

Contents

Election(s) Covered in Post-Election Report (PER).....	3
Relevant legal provisions.....	3
Declaration of result of election	6
The Master Plumbers and Mechanical Contractors Association of New South Wales - Rules.....	6
Roll of Voters	6
Written allegations of any irregularities.....	6
Other irregularities.....	6
Signed	6
Attachments	7
A. Declaration of Results for Uncontested Offices	7

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

Organisation:	The Master Plumbers & Mechanical Contractors Association of New South Wales
Election Decision No:	E2023/172
Election:	Scheduled
Date the nominations closed:	19/02/2024
Date results declared:	22/02/2024
Date PER due:	25/03/2024

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 E2023/172 on 22 February 2024. For a copy, see **Attachment A**.

The Master Plumbers and Mechanical Contractors Association of New South Wales - Rules

The Master Plumbers and Mechanical Contractors Association of New South Wales

Rules used for the election:

- 262V: Incorporates alterations of 19 December 2017 [R2017/227]
(Replaces version 30 December 2015 corrected on 22 January 2016 [R2015/81])

Roll of Voters

There were no matters in relation to the roll of voters.

Written allegations of any irregularities

There were no written allegations of irregularities during the election.

Other irregularities

There were no other irregularities.

Signed

Benjamin Murray
Returning Officer
Australian Electoral Commission
E: IEBEvents@aec.gov.au
P: 03 9285 7111
28 February 2024

Attachments

A. Declaration of Results for Uncontested Offices

**The Master Plumbers & Mechanical Contractors
Association of New South Wales**
DECLARATION OF RESULTS - E2023/172
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:

Master Plumbers and Mechanical Contractors Association of New South Wales

President (1)

Candidates

MCELROY Gregory

Vice President (1)

Candidates

BROUGHTON Nathan

Treasurer (1)

Candidates

DIGHTON David

Guardian (1)

Candidates

LOWTHER Ashley

Executive Committee Member (3)

Candidates

AQUILINA Ryan

BRAID Matthew

YAU Kevin

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
22/02/2024



DECISION

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

The Master Plumbers & Mechanical Contractors Association of New South Wales
(E2023/172)

MR STEENSON

SYDNEY, 3 JANUARY 2024

Arrangement for conduct of election.

[1] On 21 December 2023 the Master Plumbers & Mechanical Contractors Association of New South Wales (**the Association**) lodged with the Fair Work Commission (**the Commission**) prescribed information for an election to fill the following offices for a new term:

President	(1)
Vice President	(1)
Treasurer	(1)
Guardian	(1)
Executive Committee Member	(3)

Election of Guardian (re-alignment of election cycle)

[2] In accordance with the Association's rules, the prescribed information for this election seeks the conduct of the Association's annual election for offices for a new term of office, which also includes one of three Guardians, elected on an annual rotational basis for a three-year term.¹

[3] According to the scheme of rotation, the previous scheduled election for this particular Guardian office, **E2020/192**, would ordinarily have resulted in the filling of that office in early 2021 with the incumbent's term then due to expire in or around March 2024, and would then next be the subject of this election (**E2023/172**). However, as a consequence of the interruption in the Australian Electoral Commission's (AEC) conduct of elections in 2020 by reason of restrictions arising from the Covid-19 pandemic, and associated delays flowing from this, election **E2020/192** did not commence.

¹ See Association rule 29, rulebook R2023/124 certified 29 December 2023.

[4] In response to the prescribed information lodged by the Association in October 2021, an annual election for offices for a new term was arranged in **E2021/83**.² That prescribed information requested the election of two Guardians. The first office arose out of the natural expiration of the three-year term provided for in the Association's rules. The second office arose from the Guardian office which was to have been the subject of election **E2020/192**, which had not been conducted (and still had not been at the time that **E2021/83** arose). This Guardian had remained in office due to the application of the principle of 'holding over' i.e., remaining in office until a successor is elected.

[5] The effect of the holding over principle is that, in most cases (i.e. unless there is a specific contrary intention in the rules), a person remains in the office until their removal or resignation, or until an election is held for that office (even if their term nominally expired).³ Because organisations operate through the actions of natural persons, 'continuity of the government [of the organisation] is essential ... to be capable of operating effectively'.⁴ Consequently, the incumbent officers of the Association remained in office until an election could be conducted (i.e. **E2021/83**).⁵

[6] Section 189 of the *Fair Work (Registered Organisations) Act 2009* (RO Act) requires me, as the Delegate of the General Manager, to determine whether an election is required to be held for the offices set out in the prescribed information lodged by the Association.

[7] In assessing the prescribed information for this current election matter (**E2023/172**) it is apparent that the interruption to the scheduled three-year election cycle for the office of Guardian, due to **E2020/192** not being conducted, led to two Guardians being elected in **E2021/83**. The third Guardian, elected in **E2022/186**,⁶ has a term of office not due to expire until April 2026.

[8] Fortunately, the Association's rules are worded in such a way as to allow this issue to be readily resolved and the rotational cycle of three Guardians, one elected each year, to be restored. Specifically, rule 29.4 (previously numbered 30.4) provides that:

'The term of office of Guardians shall be three years subject to the following arrangements to facilitate a rotational system of Guardians holding office:

.....

(b) in the event of there not being a Guardian who will have so held office for three years up to an election, the Guardian who has held the office of Guardian continuously for the longest period of time up to that election shall retire prior to such election; or

(c) in the event of there being more than one Guardian who is required to retire, the Guardian who is required to cease to hold office will be decided by lot.'

[Emphasis added]

[9] It is well established that the ordinary and reasonable expectation is that a person elected to an office will hold office for the full term of office (or in the case of a casual vacancy, for the balance of term to which they are elected). It is also the case that an organisation has the right to structure itself as it sees fit.⁷ There are, however, particular requirements when an

² [2021] ROCD 171

³ *McLure v Mitchell & ors* (1974) 24 FLR 115 at 126

⁴ *Re United Firefighters' Union* (1968) 14 FLR 467 at 478

⁵ Further guidance in relation to delayed elections and the application of the holding over principle can be found in the Commission's *Guidance for organisations and their branches where elections have been delayed* (GN054), <https://regorgs.fwc.gov.au/sites/default/files/2023-08/gn054-guidance-elections-holding-over.pdf>

⁶ Election E2022/186, declared by AEC on 12 April 2023

⁷ *Williams v Hursey* (1959) HCA 51

organisation or branch seeks to abolish an office or to truncate a term of office. In particular, it must not have an oppressive, unreasonable, or unjust effect having regard to the objects of the legislation.⁸

[10] However, in this matter, it is not the case that the Association or its officials are embarking on a course of action to abolish or truncate a term of office. It is, in fact, the operation of an existing rule (rule 29.4) that is doing so. That rule specifically contemplates enshrining the rotating election of Guardians and does so by providing that the term of office (while nominally for three years) is subject to the process, set out in rule 29.4, for ensuring that the rotating system of election is maintained. I note that rule 29.4 was left unchanged (other than being renumbered) in the rule alterations which were recently certified.

[11] Because of the operation of rule 29.4 (previously 30.4), in the normal course of events, the circumstance of having two Guardians elected at the same election would not arise and it only did so in election **E2021/83** because the previous scheduled election **E2020/192** was not conducted.

[12] I note that the Commission also received confirmation, via email, from the Association that one Guardian's term of office is reduced. (This reduction is by operation of the Association rules). The email includes an attachment from that incumbent Guardian acknowledging that their current term of office will cease with the conduct of the currently requested election **E2023/172**.

Request to allow later date for lodgement due to rule alteration

[13] I note that on 23 November 2023, the Association lodged an application with the Commission (matter **R2023/124**) to alter its rules under section 159 of the *Fair Work (Registered Organisations) Act 2009* (RO Act). The alteration was certified by the Delegate of the General Manager on 29 December 2023 in decision [2023] FWCD 37.⁹ Among the alterations was a reduction of the maximum number of Executive Committee members from no more than thirteen (13) to 'no more than nine (9)' Executive Committee members.¹⁰ As indicated above, the prescribed information lodged on 21 December 2023 (in anticipation of the rule alteration being certified shortly thereafter) requested the election of three (3) Executive Committee members.

[14] As part of the prescribed information lodged on 21 December 2023, the Association requested that the Commission grant a later date for lodgement of prescribed information. Section 189 of the RO Act, in particular subsection 189(2), requires that prescribed information must be lodged by a particular deadline (known as the 'prescribed day') but that the General Manager may grant a later day for lodgement.

[15] I note that the Association had earlier lodged prescribed information, also on 23 November 2023, when the previous version of its rules still operated. After consulting with the Commission and being advised that a decision on the rule alteration appeared imminent, on 21 December 2023 the Association withdrew that earlier prescribed information. (As indicated above, it then lodged prescribed information reflecting the content of the rules certified in **R2023/124**).

[16] In light of the circumstances outlined above, including that the rule alteration had the effect of changing the number of Executive Committee members to be elected in this current

⁸ *Roughan v Australasian Meat Industry Employees Union* [1992] FCA 327

⁹ Decision available at <https://www.fwc.gov.au/documents/organisations/registered-orgs/139n-r2023-124.pdf>

¹⁰ Rule 29, rulebook R2023/124

election matter, to the extent that it is necessary, I grant a later date for lodgement of prescribed information on this occasion.

[17] I am satisfied that an election for the abovenamed offices is required to be held under the rules of the organisation and, under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER

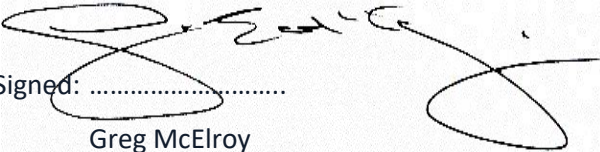
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PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 *Fair Work (Registered Organisations) Act 2009* and Regulation 138 *Fair Work (Registered Organisations) Regulations 2009*

I, **Greg McElroy**, being the **President** of the **Master Plumbers and Mechanical Contractors Association of New South Wales** make the following statement:

1. I am authorised to sign this statement containing prescribed information the **Master Plumbers and Mechanical Contractors Association of New South Wales**.
2. The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. The elections that are required are set out in the table in Annexure A.
4. A brief outline of the proposed rule alterations affecting this election is attached. These rule alterations **HAVE** been lodged with the Fair Work Commission.
The proposed alterations were lodged on 23 November 2023.
5. This statement **IS** lodged at least 2 months before nominations open for the election(s) in Annexure A.

Signed:

Greg McElroy
President

Dated: 21st December 2023

NOTE: This statement should be lodged with the Fair Work Commission at least 2 months prior to nominations opening. It can be submitted to regorgs@fwc.gov.au.

Annexure A

Branch	Name of Office	Number required	Voting System Direct voting system; Collegiate electoral system	Reason for Election Scheduled; Casual vacancy; New office created; Insufficient nominations	Electorate
NSW	President	1	Direct Voting System	Scheduled – EE2023/172	All Ordinary Members of the Master Plumbers and Mechanical Contractors Association of NSW (Rule 38).
NSW	Vice President	1	Direct Voting System	Scheduled – EE2023/172	
NSW	Treasurer	1	Direct Voting System	Scheduled – EE2023/172	
NSW	Guardian	1	Direct Voting System	Scheduled – EE2023/172	
NSW	Executive Committee Member	3	Direct Voting System	Scheduled – EE2023/172	

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	To be determined by returning officer.	
Nominations CLOSE	To be determined by returning officer.	
Roll of Voters cutoff date	To be determined by returning officer.	

NOTES: For insufficient nominations and casual vacancies, the date nominations open and close, unless specified in the rules, should be listed as ‘To be determined by the returning officer’. This also applies where rules are silent as to the nominated dates.

If the nomination dates are ‘To be Determined by the Returning Officer’, but your organisation has a preference, please state ‘To be Determined by Returning Officer’ and clearly indicate that your nominated date is a preference.

If the P.I. includes a position that is not an office, please refer to our template [*Prescribed information for the election of officer and non-officer positions.*](#)