

## Mining & Energy Union

### Victorian District Branch

P.O. Box 918, Morwell, Victoria 3840  
Wing 5, Lignite Court, Morwell, Victoria 3840  
Telephone: (03) 5134 3311, [info@meuvic.org.au](mailto:info@meuvic.org.au)  
ABN: 38 442 492 093



25 March 2024

Ishtiaq Ahmed  
Returning Officer  
Australian Electoral Commission

Email: [IEBevents@aec.gov.au](mailto:IEBevents@aec.gov.au)

Dear Mr Ahmed,

E2023/174 – Mining and Energy Union – Victorian District Branch – Casual Vacancy Election

I refer to the post-election report issued by the Australian Electoral Commission in relation to the Mining and Energy Union – Victorian District Branch – Casual Vacancy Election (E2023/174). This correspondence constitutes the Union's response to the AEC following the report and is made in accordance with s.198 of the *Fair Work (Registered Organisations) Act 2009*.

The post-election report raised a number of issues with the Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Victorian District Branch Rules – more specifically – with Victorian District Branch rules 14(G)(2) and 14(G)(3).

The Mining and Energy Union withdrew from the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) and was registered as the Mining and Energy Union (MEU) on 1 December 2023. The rules referred to above ceased to exist on 1 December 2023 and all ballots of the MEU are now conducted under Rule 17 of the MEU rules. Further to this, on 29 February 2024 the Fair Work Commission issued an exemption decision allowing the MEU to conduct our own elections for all of our District branches, including the Victorian District, going forward, under Rule 17.

We will assess the concerns you have raised with our previous rules against the newly registered MEU rules to determine that there are no ongoing issues. Thank you for bringing these issues to our attention.

I would also like to bring to your attention that your correspondence still refers to me incorrectly as Mark Richardson.

Yours sincerely

A black rectangular redaction box covering the signature of Mark Richards.

Mark Richards  
District Secretary



20 March 2024

Mark Richards  
District Secretary  
Construction, Forestry, Maritime, Mining and Energy Union - Mining and Energy Division - Victorian District Branch  
Sent via email: [mrichards@meuvic.org.au](mailto:mrichards@meuvic.org.au)

cc: Chris Cain [ccain@cfmeu.org](mailto:ccain@cfmeu.org)

Dear Mark Richards



**IMMEDIATE ACTION REQUIRED:**

**You must take steps after your recent election E2023/174**

An election has recently been completed by the Australian Electoral Commission (AEC) for the Construction, Forestry, Maritime, Mining and Energy Union - Mining and Energy Division - Victorian District 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](mailto:regorgs@fwc.gov.au)
- Respond to the AEC

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](#).

## STEP 4: Reply to the AEC

The AEC’s post-election report says the AEC had trouble applying some of your election rules. You **MUST** respond to the AEC about the issues in the report (section 198).

Your response to the AEC must be in writing. It must include:

- whether the organisation intends to take action
- (if yes) what action the organisation intends to take

You must send your response to the AEC within **30 days** of receiving the report and provide a copy to the Commission (section 198).



### Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

Make the report and your response available to your members

You must make the post-election report about difficult rules available to your members.

You must also make your written response to the AEC available to your members.



### Timing is very important

You must make the report about difficult rules available to your members **before or at the same time** as you make your response available.

Your response must be available to members:

- in the next edition of your journal or
- within 30 days of giving it to the AEC (if using a method other than your journal to make it available, e.g. your website)



### Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

### How do I make these documents available to my members?

The RO Act says you will have made the document available if you do all the following things:

- Publish a copy of the relevant section and your response in your next journal, AND
- Send the Commission a copy of the relevant section and your response with a declaration that you'll provide copies to any member who asks for one, AND

- Tell members in your next journal (or an appropriate newspaper) that you'll give the relevant section of the report and your response to any member free of charge if requested, AND
- Put on your website:
  - the relevant section of the report within 14 days of receiving it and
  - your response within 14 days of sending it to the AEC

But you can also make the documents available to your members in other ways as well.



### **What if we decide to change our rules?**

You can! If you think changing your rules will fix or improve the issues raised by the AEC you can change your rules.

Your rules will include a rule altering procedure that you must follow in order to do this.

We provide help changing your rules and advice on rule requirements. Please contact us at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au), or ring 1300 341 665. Alternatively you could book an online [Governance to You visit](#) with a Commission staff member to discuss the changes.

## **Questions?**



**What if I don't understand the post-election report?**

You should contact the AEC immediately to discuss what the report means.

**What if we decide not to take action?**

You must tell the AEC in writing you do not intend to act.

### **What if I have already responded to the AEC?**

If you have already done the things set out in step 4, please disregard this step.

Remember to make the relevant section of the report and your response available to your members as well.

### **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.

19 March 2024

# Post-election report

Mining and Energy Union  
(Formerly the Construction, Forestry,  
Maritime, Mining and Energy Union)  
Victorian District Branch  
Casual Vacancy election  
E2023/174



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# Election(s) Covered in this Report

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**Organisation:** Mining and Energy Union (Formerly the Construction, Forestry, Maritime, Mining and Energy Union)

**Election Decision No:** E2023/174

**Election:** Casual Vacancy

**Date ballot closed:** 29 February 2024

**Date results declared:** 29 February 2024

**Date Post election report due:** 30 March 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.

**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 E2023/174 on 29 February 2024. For a copy, see **Attachment A**.

## Construction, Forestry, Maritime, Mining and Energy Union - Rules

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Construction, Forestry, Maritime, Mining and Energy Union - Rules used for the election:

- [105N: Incorporates alterations of 16 March 2023 [ R2023/6]

The registered organisation became the Mining and Energy Union (MEU) during this election. The rule reference was:

- 301V: Rules at registration 1 December 2023, by order of the Federal Court of Australia: NSD1120/2023]

The following MEU rules were difficult to apply and for this reason directions under s 193 of the *Fair Work (Registered Organisations) Act 2009* were issued when planning the election:

Branch Rule 14(G)(2) provides the following:

The Returning Officer shall prepare a roll of voters who, on the fourteenth day before the date determined under paragraph (I)(1) of this Rule for the commencement of issuing ballot papers, are entitled to vote in the election.

However, in accordance with s 143(3) of the Act, the close of roll must be between 7-30 days before nominations open. Furthermore, closing the Roll of Voters 14 days before the commencement of issuing ballot papers is not sufficient time to call for nominations, process nominations, and prepare voting material to send to eligible members. For this reason, I timetabled the election to close the roll of voters 7 days prior to nominations opening.

Branch Rule 14(G)(3) provides the following:

The Returning Officer shall add to the roll of voters the names and addresses of persons who, after the day referred to in sub-paragraph (2) of this paragraph become entitled to vote in the election.

However, Branch Rule 14(G)(3) is inconsistent with s 143(3) of the Act . For this reason, I exercised my powers of delegation under s 193 of the Act to set aside this Branch rule.

Given these matters, it is suggested that the MEU review the relevant rules and consider whether they need revision.

## Roll of Voters

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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 allegations of irregularities during the election.

## Other irregularities

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The AEC did not identify any other irregularities.

## Signed

Ishtiaq Ahmed  
Returning Officer  
Australian Electoral Commission  
E: IEEvents@aec.gov.au  
P: 03 9285 7111  
19 March 2024

## Attachments

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A. Declaration of Results for Contested Offices

# Mining and Energy Union

## DECLARATION OF RESULTS - E2023/174

### Contested 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:

#### Victorian District Branch - Mining and Energy Division

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	926
Number of voters issued with voting material	926
Total number of voters issued with replacement voting material	1
<b>Total number of voting material packs issued</b>	<b>927</b>
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	383
Number of declaration envelopes rejected at preliminary scrutiny (minus)	8
Number of ballot papers returned outside declaration envelopes (minus)	1
COUNT	
Total ballot papers admitted to the count	374
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	20
Voting material packs not returned by voters by closing date of the ballot	524
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	41 %

#### District President (1)

<u>Candidates</u>	<u>Final Votes</u>
RICHARDS, Mark	154
SMITH, Andy	220

<b>Total ballot papers admitted for this office</b>	<b>374</b>
Formal Ballot papers	374
Informal Ballot papers	0

I declare the following elected:

- SMITH, Andy

Ishtiaq Ahmed  
Returning Officer  
Telephone: 03 9285 7111  
Email: IEBevents@aec.gov.au  
29/02/2024



## DECISION

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

**Construction, Forestry, Maritime, Mining and Energy Union**  
(E2023/174)

MR STEENSON

SYDNEY, 8 NOVEMBER 2023

*Arrangement for conduct of election.*

[1] On 30 October 2023 the Victorian District Branch (**the Branch**) of the Mining and Energy Division (**the Division**) of the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) 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:

District President

(1)

[2] I note that, under the rules of the Division, at this stage of the term of office it is open to the Branch to consider making an appointment to this vacancy. However, the Branch has opted to seek to fill the vacancy via an election, an option also available to it. I also note that the Division is in the process of withdrawing from the CFMMEU in order to become the Mining and Energy Union (MEU) and that under transitional rules that would apply, the abovenamed office will continue to exist in the MEU when it commences operation.

[3] I am satisfied that an election for the abovenamed office is required to be held under the rules of the organisation (and, upon withdrawal, will still be required under MEU rules) and, in accordance with 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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PR755167



**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, Mark Richards, being the District Secretary of the Construction, Forestry, Maritime, Mining and Energy Union, Victorian District Branch make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Construction, Forestry, Maritime, Mining and Energy Union, Victorian District 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. The resignation correspondence is attached.
5. No rule alterations are pending that will impact the election.

Signed:



Dated:

26 OCTOBER 2023

*[PLEASE NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. It can be submitted to [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).]*

**ANNEXURE A**

- Elections that are required [*insert as many pages as required*]:

Branch	Name of Office	Number required	Voting System	Reason for Election	Electorate
			<i>Direct voting system; Collegiate electoral system</i>	<i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	
<i>Victorian District Branch – Mining and Energy Division</i>	<i>District President</i>	<i>1</i>	<i>DVS</i>	<i>Casual Vacancy</i>	<i>Victorian District Membership</i>

- Important dates:

	Direct Voting System	Collegiate Electoral System
<b>Nominations OPEN</b>	To be determined by the Returning Officer	To be determined by the Returning Officer
<b>Nominations CLOSE</b>	To be determined by the Returning Officer	To be determined by the Returning Officer
<b>Roll of Voters cut off date</b>	To be determined by the Returning Officer	To be determined by the Returning Officer

Please note: that 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’. Casual vacancies must be accompanied by proof of resignation and attached to this statement.