



8 May 2024

Michael Kaine
National Secretary
Transport Workers' Union of Australia
Sent via email: legal@twu.com.au

Dear Michael Kaine



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2024/58

An election has recently been completed by the Australian Electoral Commission (AEC) for the Transport Workers' Union of Australia 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.

7 May 2024

Post-election report

Transport Workers' Union of Australia
Casual Vacancy election
E2024/58

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Election(s) Covered in this Report

Organisation: Transport Workers' Union of Australia
Election: Casual Vacancy
Election Decision No/s: E2024/58

Rules

Rules used for the election: 179V: Incorporates alterations of 26 September 2023 [R2022/5]

Rules difficult to apply/interpret: No

Model Rule reference (if any): N/A

For more details see the Model Rules on the AEC website: www.aec.gov.au/ieb/

Other Matters

Returning Officer actions required (Section 193): No

Signed

Darren Wade
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 03 9285 7111

7 May 2024

Attachments

A. Declaration of results for Uncontested Offices

Transport Workers' Union of Australia
DECLARATION OF RESULTS - E2024/58
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:

National Council

National Assistant Secretary (1)

Candidate/s

MCMILLAN, Emily

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

Darren Wade
Returning Officer
Telephone: 03 9285 7111
Email: IEBevents@aec.gov.au

02/05/2024



DECISION

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

Transport Workers' Union of Australia
(E2024/58)

MR STEENSON

SYDNEY, 2 APRIL 2024

Arrangement for conduct of election.

[1] On 15 March 2024, the Transport Workers' Union of Australia (the **organisation**) 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:

National Assistant Secretary (1)

[2] I note that the incumbent National Assistant Secretary (the **incumbent**) was declared elected in the previous scheduled election in **E2022/120**¹ and commenced their four-year term on 10 January 2023 with the term due to expire on 9 January 2027, in accordance with sub-rule 59A(4)(b).

[3] On 15 March 2024, the incumbent notified the organisation of their intention to resign from office, to take effect on 15 April 2024. At the date that the notice of resignation was provided to the organisation (and from the date the resignation is due to take effect), more than 12 months *and* one-quarter of the four-year term of office will have expired.

[4] Sub-rule 62(2) of the organisation's rules provide that in the event of a casual vacancy occurring in the office of the National Assistant Secretary:

If the expired part of the term of the position is more than both:

- (a) 12 months, and
- (b) one-quarter of the term of the position

then, subject to sub-rule (4) (eligibility requirements), an appointment for the casual vacancy must be conducted in accordance with rule 58, as if it were an election in accordance with sub-rule 58(2) which may occur at an ordinary or special meeting of National Council ... provided that ...

.....

¹ [2022] ROCD 123 – result declared by Australian Electoral Commission Returning Officer on 4/11/2022

(c) the National Returning Officer must call for nominations from National Council to fill the vacant position not less than 14 days before the National Council meeting at which the position is due to be filled, by way of a notice posted to each National Councillor;

(d) Nominations must be received by the National Returning Officer not less than 5 days before the National Council meeting at which the position is due to be filled;...

[5] Sub-rule 58(2) provides that the National Council must, at its first meeting after a position referred to in sub-rule (1) (i.e. the National President, the National Vice-President, and three (3) National Trustees) becomes vacant, elect by and from the National Council a person to fill the vacant position.

[6] On 8 February 2024, an election decision was issued in matter **E2024/11**,² arranging an election for other national offices in the organisation (i.e. National President, National Vice-President and three (3) National Trustees).

[7] In the prescribed information lodged for this present election request (**E2024/58**), the organisation advised that the election for the offices referred to in **E2024/11** is set to be held at the annual National Council meeting, which is scheduled to occur on 6 May 2024.

[8] As the electorate for the national offices (i.e. the members of National Council) and the election forum (i.e. the first meeting of National Council)³ in **E2024/11** is the same as those required to conduct the casual vacancy election for National Assistant Secretary, the organisation has communicated its strong preference for the scheduled election and the (newly arising) casual vacancy election for National Assistant Secretary to be held concurrently.

[9] To facilitate this timetable, the organisation has proposed that nominations for the election for National Assistant Secretary open on 22 April 2024,⁴ and close no later than 1 May 2024⁵ in line with the timeframes set out in sub-rules 62(2)(c) and (d). This appears to be a sensible approach and should also lend itself to an efficient use of Australian Electoral Commission (AEC) resources. I therefore request that the AEC accommodate the proposed arrangements if possible, particularly given the significant national office that is involved.

[10] 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

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² [2024] FWCD 14.

³ Transport Workers Union of Australia rules – subrule 58(2).

⁴ Refer sub-rule 62(2)(c).

⁵ Refer sub-rule 62(2)(d).

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, Michael Kaine, being the National Secretary of the Transport Workers' Union of Australia, make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Transport Workers' Union of Australia.
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. The resignation letter or other supporting information is attached for each casual vacancy.
5. No rule alterations are pending that will impact the election.
6. This statement **IS NOT** lodged at least 2 months before nominations open for the election(s) in Annexure A. The reason it is lodged after the prescribed time is:
 - a. The Union was notified of the resignation on 15 March 2024, being today's date.
 - b. The Union's strong preference is for this election to be held in conjunction with elections for positions set out at E2024/11 being conducted at our annual National Council on 6 May 2024. We note that the Electorate will be the same as that for E2024/11 and the directions can mirror those in terms of nominations opening, closing and method of voting under our Rules.
 - c. It would be much more convenient for members of National Council, many of who are rank-and-file union members with full-time jobs, that this election is held in conjunction with E2024/11 rather than having to organise a special National Council shortly after for the sole purpose of conducting this election.
 - d. The position of National Assistant Secretary is an important position in terms of financial and governance duties and responsibilities and should be filled as soon as is possible.
 - e. We note the decision in E2018/173 provides authority for the General Manager to exercise their discretion at s 189(2) of the *Fair Work (Registered Organisations) Act 2009* in these circumstances.

NOTE: Extensions of time should be requested at least two months before nominations open.

A failure to lodge Prescribed Information on time can lead to civil penalties under the RO Act.

Signed:



Dated: 15 March 2024

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

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

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
National	National Assistant Secretary	1	Collegiate electoral system	Casual vacancy	By and from National Council, Rules 62(1)-(2) and 58(2).

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	n/a	22 April 2024 per Rule 62(2)(c).
Nominations CLOSE	n/a	No later than 1 May 2024 per Rule 62(2)(d).
Roll of Voters cut off date	n/a	Members of National Council at the relevant time per Rules 62(2) and 58(1)-(3).

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*](#)