

MOLONEY, Carolyn

Subject: FW: PER & Declaration of Results - ACSA - NSW & ACT Incorporated - E2013/227
[DLM=For-Official-Use-Only]
Attachments: Post Election Report_ ACSA NSW & ACT Incorporated -E2013-227.pdf; Declaration of Results_Uncontested Offices.pdf

From: Marie Malfitana [<mailto:Marie.Malfitana@aec.gov.au>]
Sent: Thursday, 29 August 2013 4:03 PM
To: miras@agedservices.asn.au; industrial.elections@fwc.gov.au
Cc: Industrial Elections; VALE, David
Subject: PER & Declaration of Results - ACSA - NSW & ACT Incorporated - E2013/227 [DLM=For-Official-Use-Only]

For-Official-Use-Only

Good afternoon everyone

Please find attached Post Election Report and Declaration of Results in regard to the above matter.

Thank you and regards

Marie Malfitana | Returning Officer
Industrial & Commercial Elections | NSW State Office
Australian Electoral Commission
T: (02) 9375 6364 | F: (02) 9375 6336



Your vote is a valuable thing.
www.aec.gov.au

**ELECTION
2013**

For-Official-Use-Only

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Our Ref: N13/239

Ms Viv Allanson
President
Aged & Community Services Association of NSW & ACT Incorporated

Attention: Ms Mira Sandre

Dear Ms Allanson

**Post-Election Report For: Aged & Community Services Association of NSW & ACT Incorporated
Scheduled Elections – E2013/227**

I refer to the above election for your organisation.

Section 197(1) of the Fair Work (Registered Organisations) Act 2009 requires the AEC to provide a written report on the conduct of the election to the Delegate of the General Manager, Fair Work Commission and to the organisation or branch for whom the election was conducted. A copy of the report in relation to this election is attached.

Section 198 of the Act requires that if an organisation or branch is given a post election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

If the attached Report identifies a rule that was difficult to interpret or apply, you should forward your response to the AEC by email to 'industrial.elections@aec.gov.au' within thirty days of the date of the report.

Section 198 and the regulations also require an organisation to make the post election report and the organisation's response to the report (if applicable) available to members.

Further, Regulation 141(4) of the Fair Work (Registered Organisations) Regulations 2009 requires an organisation or branch to publish a notice on its web site advising members that a copy of the post election report is available upon request. If a website is not available, publishing a notice in a journal or newsletter would be considered appropriate.

Please contact me if you wish to clarify any aspect of this report.

Marie Malfitana
Returning Officer

29 August 2013

Level 10
59 Goulburn Street
HAYMARKET NSW 2000

P.O. Box 496
HAYMARKET NSW 1239

Telephone (02) 9375 6364
Facsimile (02) 9375 6336
Email: marie.malfitana@aec.gov.au

www.aec.gov.au
ABN 21 133 285 851

Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

Client: Aged & Community Services Association of NSW & ACT Incorporated

Contact details: Viv Allanson
President
PO Box 3124
Rhodes NSW 2138

Email: info@masterpainters.com.au

AIR contact officer: David Vale

Email: Industrial.elections@fwc.gov.au
Tel: 02 8374 6509

ELECTIONS COVERED IN THIS REPORT

Election Decision No/s: E2013/227

RULES

Rules used for elections Rule ID: [133N: Incorporates alterations of 11/06/2009 in matter R2009/291]

Rules difficult to apply/interpret: N/A

Model Rule reference (if any):

ROLL OF VOTERS

As there were no contested offices, the roll of voters was not required.

ALLEGATIONS OF IRREGULARITIES RECEIVED

Details of written allegations of irregularities, and action taken by AEC: NIL

Other irregularities identified, and action taken: NIL

ATTACHMENTS

A: Declaration of Uncontested Offices of Directors



Marie Malfitana
Returning Officer
29 August 2013

Aged & Community Services Association of NSW & ACT Incorporated Directors Election 2013

Declaration of Results for Uncontested Offices

E2013/227

Below are 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.

Aged & Community Services of NSW & ACT Incorporated

Directors (5)

Candidates

SADLER, Paul
SEWELL, Mark W.
SHAW, Alexander Lachlan McLean
WALKERDEN, Steve

No further nomination was received

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



Marie Malfitana
Returning Officer

29 August 2013





FAIR WORK
COMMISSION

23 July 2013

Mr Viv Allanson
President
Aged & Community Services Association of NSW & ACT Incorporated
PO BOX 3124
RHODES NSW 2138

Dear Mr Allanson

Re: Arrangements for the conduct of an Election (E2013/227)

A copy of the decision in relation to the above matter is enclosed.

The Fair Work Commission is making arrangements, under subsections 189(3) of the *Fair Work (Registered Organisations) Act 2009*, with the Electoral Commissioner for the conduct of the subject election by a member of staff of the Australian Electoral Commission, who will contact you in the near future about the election.

Yours sincerely

David Vale
Principal Adviser,
Regulatory Compliance Branch, NSW
Fair Work Commission



DECISION

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

Aged & Community Services Association of NSW & ACT Incorporated (E2013/227)

CHRIS ENRIGHT

MELBOURNE, 23 JULY 2013

Arrangement for conduct of election.

[1] On 12 July 2013 the Aged & Community Services Association of NSW & ACT Incorporated lodged with the Fair Work Commission prescribed information in relation to an election. The statement lodged with the prescribed information was not signed by an office holder but by the Chief Executive Officer of the abovenamed organisation.

[2] On 17 July 2013, the Fair Work Commission wrote to the abovenamed organisation to inform them that under section 189(2) of the *Fair Work (Registered Organisations) Act 2009* (the Act) prescribed information must be lodged before the prescribed day, and that as on this occasion the prescribed information had not been lodged before the prescribed day, a request for an extension of time would be required. The Fair Work Commission also informed the abovenamed organisation in the same letter that regulation 138(2) of the *Fair Work (Registered Organisations) Regulations 2009* required that a statement lodged with the prescribed information must be signed by an office holder who is authorised to sign the statement. The letter also informed the abovenamed organisation that it appeared that the prescribed information which was lodged was incorrect and amending prescribed information would be required.

[3] On 22 July 2013, the abovenamed organisation lodged a written request for an extension of time for lodgement in accordance with s.189(2) of the Act. The current President of the Association stated that;

'We apologise for not giving proper notice. We were calculating 2 months before the AGM, not 2 months before the first day when a person may become a candidate.... We therefore request an extension of time, to accommodate this oversight. It will not happen again.'

[4] I note that in 2012, prescribed information for the conduct of a scheduled election for the same abovenamed organisation (E2012/305) was not lodged within the required statutory period resulting in a request for extension of time which was supported in writing by the then President in a letter dated 29 June 2012 in which he stated that:

'I believe the dates set were wrong and it is an administrative error, I have attached the Statement of Notice with the correct scheduled dates for the upcoming election, please allow

for an extension of time. We do apologies [sic] for this inconvenience and have corrected our schedule for all future election correspondence'.

[5] On 22 July 2013, the Aged & Community Services Association of NSW & ACT Incorporated lodged with the Fair Work Commission amended prescribed information in relation to an election for the following offices:

Director (5) (three year term in accordance with Rule 25A)

[6] I allow for the extension of time up until 22 July 2013 to lodge the amended prescribed information. The statement lodged with the amended prescribed information was signed by an office holder authorised to sign the statement.

[7] 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
FAIR WORK COMMISSION

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<Price code A, PR538933>

VALE, David

From: VALE, David
Sent: Tuesday, 23 July 2013 3:35 PM
To: 'Industrial Elections'
Subject: E2013/227
Attachments: E2013_227_Signed Decision_23072013.doc; E2013_227 ACS letter to AEC_23072013.doc

Dear AEC

Please find attached a copy of the signed decision issued for the Aged & Community Services Association of NSW & ACT Incorporated in election number E2013/227.

Yours sincerely

DAVID VALE

Principal Adviser,
Regulatory Compliance Branch, NSW

Fair Work Commission

Tel: 02 8374 6509
Fax: 02 9380 6990
david.vale@fwc.gov.au

Please be aware that my email address has changed to david.vale@fwc.gov.au effective 1 January 2013. Please update your records accordingly.

Level 8, Terrace Tower
80 William Street
East Sydney NSW 2011

www.fwc.gov.au

23 July 2013



FAIR WORK
COMMISSION

Electoral Commissioner Through

Australian Electoral Officer (industrial.elections@aec.gov.au)

Under subsection 189 of the Fair Work (Registered Organisations) Act 2009, please arrange for the conduct of the following election by the Australian Electoral Commission:

E No 2013/227

RE: Aged & Community Services Association of NSW & ACT Incorporated

Offices:

See Decision

Relevant Information: Scheduled election.

Contact: Mr Viv Allanson, President, Aged & Community Services Association of NSW & ACT Incorporated

Phone: (02) 8754 0400

A copy of the decision is enclosed.

I further request that you arrange for this office to be notified that arrangements for the conduct of this election have been made, by email transmission at industrial.elections@fwc.gov.au

Yours sincerely

David Vale
Fair Work Commission

VALE, David

From: VALE, David
Sent: Monday, 22 July 2013 1:44 PM
To: 'Industrial Elections'
Subject: E2013/227
Attachments: ACS E2013_227 Amended PI lodged_22072013.pdf

Dear AEC

Please find amended prescribed information for the Aged & Community Services Association of NSW & ACT Incorporated in election number E2013/227.

Yours sincerely

DAVID VALE

Principal Adviser,
Regulatory Compliance Branch, NSW

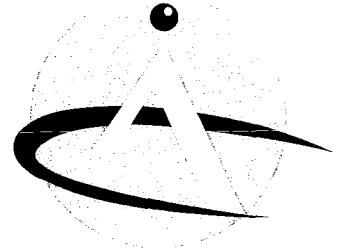
Fair Work Commission

Tel: 02 8374 6509
Fax: 02 9380 6990
david.vale@fwc.gov.au

Please be aware that my email address has changed to david.vale@fwc.gov.au effective 1 January 2013. Please update your records accordingly.

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Aged & Community Services
Association of NSW & ACT
Incorporated

17 July 2013

Mr David Vale
Principal Advisor
Fair Work Commission
Level 8, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011



Dear Mr Vale

RE ARRANGEMENTS FOR THE CONDUCT OF AN ELECTION (E2013/227)

I refer to your letter of 17 July 2013 regarding the upcoming election of the Aged & Community Services Association of NSW & ACT Incorporated (ACS).

We apologise for not giving proper notice. We were calculating 2 months before the AGM, not 2 months before the first day when a person may become a candidate. On that basis we thought we had lodged early. This is a major AGM for us and various committees needed to discuss the Agenda and who would stand for Election. We therefore request an extension of time, to accommodate this oversight. It will not happen again.

We have one extra vacancy that we will need to fill. Therefore, please note that it was always meant for (5) office bearers for a three (3) year term as per the ACS rules. This has nothing to do with the VP who is elected by the Board.

Again, we apologise. I have attached our Notice with the dates for the election. I am completing this as the President, elected in 2012. Chris Rigby is no longer on the Board, as per notification made to your office in March 2013.

Yours faithfully,

Viv Allanson
President

Statement and Notice of Prescribed Information under

Fair Work (Registered Organisations) Act 2009

Regulation 138

I, Viv Allanson, President for Aged & Community Services Association of NSW & ACT Inc. make the following statement:

I am the President of the Aged & Community Services Association of NSW & ACT Inc.

I am authorised to lodge the following prescribed information concerning forthcoming Elections for the Aged & Community Services Association of NSW & ACT Inc.

I confirm that the following information is being lodged under subsection 182(1) & 189(1) of the Fair Work (Registered Organisations) Act 2009.

Viv Allanson
President
Aged & Community Services Association of
NSW & ACT Inc.



Signature:

Date: 17 July 2013

Terms expiring in 2013

Directors (5)

Reasons for Election

An Election is required to nominate the above vacancies as per Rule 25A, the annual elections from 2013 onwards will be for five (5) office bearers for a three (3) year term.

Elected By

All financial members are entitled to vote. The voting system to be employed in the conduct of the election is direct voting (standard preferential voting system).

The electorate for the direct voting system is for five (5) Directors.

Nominations Open

For a Director to be elected by direct voting system on Friday, 09 August 2013.

Nominations Close

For Directors to be elected by direct voting system on Friday, 23 August 2013 at 4.00pm.

Cut Off Date for Roll

In all cases seven (7) days prior to the opening date for nominations per Rule 24.12, part1.1 of First Schedule.

Suggest Post Ballot Papers

Friday, 6 September 2013.

Suggest Close Ballot Papers

Tuesday, 17 September at 10.00am

Our aim is to obtain a result two (2) weeks prior to the AGM held on Tuesday, 1 October 2013.

Please note that this election will be conducted according to the existing Association Rules.



17 July 2013

Ms Illana Halliday
Chief Executive Officer
Aged & Community Services Association of NSW & ACT Incorporated
PO BOX 3124
RHODES NSW 2138

Also by fax and email: (02) 9743 4556 and mail@agedservices.asn.au

Attention: Mr Rigby

Dear Ms Halliday

Re: Arrangements for the conduct of an Election (E2013/227)

I refer to the prescribed information dated 10 July 2013 which was lodged with the Fair Work Commission (**FWC**) on 12 July 2013 for the conduct of an election for offices of the Aged & Community Services Association of NSW & ACT Incorporated (**ACS**).

Before an election Decision can be issued the following matters must be resolved.

Firstly, regulation 138(2) of the *Fair Work (Registered Organisations) Regulations 2009* (the regulations), requires the statement lodged with the prescribed information to be signed by an office holder authorised to sign the statement. Ms Halliday, you are not an office holder as defined in section 9 of the *Fair Work (Registered Organisations) Act 2009* (the Act). Please organise for a statement accompanying the prescribed information to be signed by an office holder.

Secondly, section 189(2) of the Act states that prescribed information must be lodged before the prescribed day, which under regulation 138(3) of the regulations is two months before the first day when a person may become a candidate. Since s.189(2) is a civil penalty provision and the prescribed information for this election was not lodged before the prescribed day, the Delegate of the General Manager requires a written request for an extension of time and providing reasons why the prescribed information was not lodged before the prescribed day. A similar request was made last year in a letter addressed to you on 26 June 2012 in election number E2012/305.

Thirdly, before the Delegate of the General Manager issues a Decision, he or she must be satisfied that an election is required to be held under the rules of the organisation whilst regulation 138(1)(a) of the regulations requires the name of each office for which an election is required. The prescribed information you have lodged refers to an election for four (4) Directors and one (1) Vice President, and that 'an election is required.....as per rule 25A, the annual elections from 2013 onwards will be for five (5) office bearers for a three (3) year term'.

However rule 25A makes no reference to the office of Vice President. Rule 25A is a transitional rule which provided for elections between 2009 and 2011. It states that from 2012 onwards the annual elections will be for five (5) office bearers for a three (3) year term. From my analysis of the ACS rulebook, I believe the prescribed information may need to be amended to request an election

for five (5) Directors, not four (4). It is my understanding that the office of Vice President is then to be elected from the Board of Directors (see reference to rules below).

Rule 14.4 of the ACS rulebook provides that the 'Officers of ACS shall consist of the President.....and a Vice President. Rule 14.4 also states that the office of Vice President is 'elected by the Board from among its members', whilst rule 24.1(c) states that '**the elected Directors per 24.1(b) shall elect one of the Board to the position of Vice President**' (my emphasis).

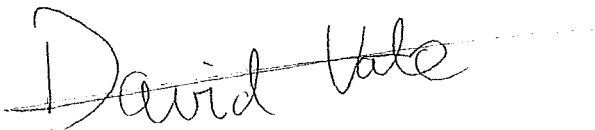
If the ACS considers that an election should be held for four (4) directors and one (1) Vice President, rather than five (5) directors, could you point to which rule in the ACS rulebook provides for this.

The current rulebook, in my opinion, when reading rules 14, 24, 25 and 25A together, is confusing and unclear and I would recommend the ACS to consider making rule alterations to remove any ambiguity for future elections.

Once amended and correct prescribed information is lodged we will be in a position to issue a decision for the Australian Electoral Commission.

If you have any questions relating to this matter please do not hesitate to contact me on (02) 8374 6509.

Yours sincerely

A handwritten signature in black ink that reads "David Vale". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

David Vale
Principal Adviser,
Regulatory Compliance Branch, NSW
Fair Work Commission

Copy working

VALE, David

From: VALE, David
Sent: Monday, 15 July 2013 10:31 AM
To: 'Industrial Elections'
Subject: E2013/227
Attachments: ACS E2013_227 lodged 12072013.pdf; Aged & Community Services R2009_291_11062009.doc

Dear AEC

Please find the prescribed information and a copy of the current rulebook of the Aged & Community Services Association of NSW & ACT Incorporated in election number E2013/227.

Yours sincerely

DAVID VALE

Principal Adviser,
Regulatory Compliance Branch, NSW

Fair Work Commission

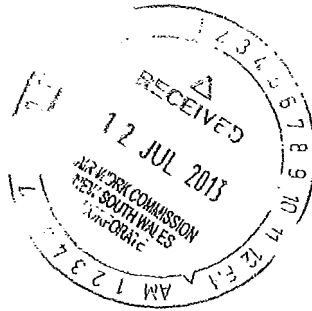
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Fax: 02 9380 6990
david.vale@fwc.gov.au

Please be aware that my email address has changed to david.vale@fwc.gov.au effective 1 January 2013. Please update your records accordingly.

Level 8, Terrace Tower
80 William Street
East Sydney NSW 2011

www.fwc.gov.au

E2013/



Aged & Community Services
Association of NSW & ACT
Incorporated

10 July 2013

Mr Hugh Williams
Fair Work Australia
Level 8, Terrace Towers
80 William Street
EAST SYDNEY NSW 2011

Dear Mr Williams

AGED & COMMUNITY SERVICES ASSOCIATION OF NSW & ACT INC

ELECTIONS

Please find attached information required to enable ACS's annual election process to be initiated by your Registry for 2013.

Please contact Mira Sandré on 8754 0400 should you require further information.

Yours sincerely

A handwritten signature in black ink, appearing to read "Illana Halliday".

Illana Halliday
Chief Executive Officer

**Please see attachments for election date processing.*

Statement and Notice of Prescribed Information under

Fair Work (Registered Organisations) Act 2009

Regulation 138

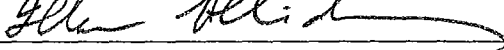
I, Illana Halliday, Chief Executive Officer for Aged & Community Services Association of NSW & ACT Inc. make the following statement:

I am the Chief Executive Officer and Public Officer for Aged & Community Services Association of NSW & ACT Inc.

I am authorised to lodge the following prescribed information concerning forthcoming Elections for the Aged & Community Services Association of NSW & ACT Inc.

I confirm that the following information is being lodged under subsection 182(1) & 189(1) of the Fair Work (Registered Organisations) Act 2009.

Illana Hallida
Chief Executive Officer
Aged & Community Services Association of
NSW & ACT Inc.

Signature: 

Date: 10 July 2013

Terms expiring in 2013

Vice President (1)

Directors (4)

Reasons for Election

An Election is required to nominate the above vacancies as per Rule 25A, the annual elections from 2013 onwards will be for five (5) office bearers for a three (3) year term.

Elected By

All financial members are entitled to vote. The voting system to be employed in the conduct of the election is direct voting (standard preferential voting system).

The electorate for the direct voting system is for one (1) Vice President and four (4) Directors.

Nominations Open

For a Director to be elected by direct voting system on Friday, 09 August 2013.

Nominations Close

For Directors to be elected by direct voting system on Friday, 23 August 2013 at 4.00pm.

Cut Off Date for Roll

In all cases seven (7) days prior to the opening date for nominations per Rule 24.12, part 1.1 of First Schedule.

Suggest Post Ballot Papers

Friday, 6 September 2013.

Suggest Close Ballot Papers

Tuesday, 17 September at 10.00am

Our aim is to obtain a result two (2) weeks prior to the AGM held on Tuesday, 1 October 2013.

Please note that this election will be conducted according to the existing Association Rules.