

Workplace Relations Act 1996  
s.189 of Schedule 1 - arrangement for conduct of an election

**Australian and International Pilots Association**  
( E2008/259 )

TERRY NASSIOS  
DEPUTY INDUSTRIAL REGISTRAR

MELBOURNE, 1 OCTOBER 2008

*Arrangement for conduct of election.*

DECISION

[1] On 22 September 2008 the abovenamed organisation lodged in the Industrial Registry prescribed information in relation to an election to fill a casual vacancy on its Committee of Management.

[2] The election notification stated that the incumbent took office in November 2006 for a three year term. Hence, less than three quarters of the term is remaining.

[3] Section 189 of Schedule 1 of the Workplace Relations Act 1996 provides that I must arrange for the conduct of an election if, amongst other things, I am satisfied under subsection 189(3) that 'an election is required to be held under the rules of the organisation'.

[4] Earlier this year I issued a decision with respect to another casual vacancy on the AIPA Committee of Management<sup>1</sup> In that decision I noted that the AIPA Rules do not clearly provide for an election to fill a casual vacancy<sup>2</sup> However, in that decision, I did conclude that an election was required under Rules 38(u) and 56A of the Rules of the organisation because more than three quarters of the term of the office was remaining. To have done otherwise would have been contrary to Schedule 1 of the Act because section 146 of Schedule 1 provides that the rules of an organisation must not permit a casual vacancy to be filled otherwise than by an election where more than three quarters of the term remains.

[5] By contrast, in the present circumstances, less than three quarters of the term remains. In such circumstances the rules of the organisation do not provide for an election to fill such a vacancy.

[6] Accordingly, I am not satisfied under subsection 189(3) of Schedule 1 of the Workplace Relations Act 1996 that an election for the abovenamed office is required to be held under the rules of the organisation.



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<sup>1</sup> E2008/149 issued on 9 April 2008.

<sup>2</sup> The decision also recommended that this deficiency in the AIPA Rules be remedied as a matter of urgency. The present election notification states that no action has yet been taken in this regard.

22 September 2008

The Industrial Registrar  
Australian Industrial Registry  
Level 35, Nauru House  
80 Collins Street  
**MELBOURNE VIC 3000**

By email: ailsa.carruthers@air.gov.au

**Att: Ailsa Carruthers**

**Arrangements for the conduct of an election in accordance with section 189 of Schedule 1 to the Workplace Relations Act 1996**

Pursuant to Section 189(1) of Schedule 1 to the *Workplace Relations Act 1996* (~~%Act+~~) and Regulation 138 of the Workplace Relations (RAO) Regulations, I hereby lodge the following prescribed information concerning an election to fill a casual vacancy on the Committee of Management for the Australian and International Pilots Association (**AIPA**).

**Regulation 138(1)**

**(a) The name of each office in respect of which an election is required**

One member of the Committee of Management

**(b) The reason for the election**

- (i) The AIPA Committee of Management comprises 40 persons, half of whom are elected each two years out of three.
- (ii) Peter Knight, a member of the Committee of Management, is no longer eligible to be a member of AIPA or of the Committee of Management.
- (iii) I have been informed by Peter Knight that he does not, at this time, intend to resign as a member of AIPA or as a member of the Committee of Management.

- (iv) Rule 48 of the AIPA Rules deals with resignation of membership and sub-rule 48 b) relevantly provides:

“(b) **Where a member ceases to be eligible to be a member of the Organisation, the notice of resignation shall take effect:**

- (i) on the day on which the notice is received by the Organisation; or
- (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;

*whichever is later.*” [my emphasis]

No general purging rule exists but rather Rule 9A deals with purging of unfinancial members.

- (v) Peter Knight took office in November 2006 for a three year term.
- (vi) Rule 38(u)(i) of the AIPA Rules provides, in part, that casual vacancies ~~shall~~ *shall be filled by the next highest polling candidate below those elected from the ballot who is willing to accept the casual vacancy and whose status is such that the number of Flight Engineer Committeemen and “A” Pilot Committeemen specified in Rule 20 is maintained.*
- (vii) Peter Knight is not an ~~A~~ Pilot or Flight Engineer Committeeman.
- (viii) Due to other casual vacancies having arisen in regard to the election of Committee of Management members for the 2006-09 period, no further unsuccessful candidates remain from that election.
- (ix) In regard to the election of Committee of Management members for the 2007-10 period, unsuccessful candidates remain from that election.
- (x) Most recently, where a casual vacancy has arisen, AIPA has appointed the next highest polling candidate from the ballot at which the Committee of Management member whose resignation has caused the casual vacancy was elected. However, in the past AIPA has also filled casual vacancies by reference to the unsuccessful candidates at the most recent ballot, regardless of which ballot the resigning Committee of Management member was elected from.

**(c) The number of offices**

One, as set out in (a) above.

**(d) The electorate of each office**

The electorate for a Committee of Management position is the total financial membership of AIPA.

**(e) The date and time of the commencement and expiration of the nomination period as set out in the rules of the organisation**

The AIPA Rules do not provide for an election to a casual vacancy and hence no mechanism for determining the commencement and expiration of the nomination period is included.

**(f) The day on which the roll of voters is to be closed**

The AIPA Rules do not provide for an election to a casual vacancy and hence no mechanism for determining the day on which the roll of voters is to be closed is included.

**(g) The voting system to be employed in the conduct of the election**

The voting system for a Committee of Management position will be a direct voting system. Elections are by secret postal ballot.

As Office Bearer elections are underway and the voters for those positions comprise the members of the Committee of Management, we would appreciate an urgent decision on the matter of whether an election is required.

The Deputy Registrar has previously made reference to the inadequacy of AIPA's Rules in regard to the filling of casual vacancies (PR981406 9 April 2008) and proposed that a rule change should be considered as a matter of urgency. At the same time AIPA has also been considering its rules more generally and the deficiencies that are evident in many areas including in regard to the filling of casual vacancies. No rule change has been made since the date of the Deputy Registrar's decision.

If you require further information or wish to discuss the matter, please contact Peter Somerville at the address shown above.

Yours sincerely,



**Capt Ian Woods  
President**

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