



Fair Work (Registered Organisations) Act 2009

## POST ELECTION REPORT

**Client:** Australian Business Industrial (ABI)

**Contact details:** Mr Colin Bosworth  
Secretary / Treasurer  
Australian Business Industrial  
140 Arthur Street  
North Sydney, NSW - 2060

**Email:** industrial@australianbusiness.com.au  
**Tel:** 02 94587500

**FWC contact officer:** Stephen Kellett  
**Email:** orgs@fwc.gov.au

### ELECTIONS COVERED IN THIS REPORT

**Election Decision No/s:** E2016/139

### RULES

**Rules used for elections Rule ID:** [143N: Incorporates alterations certified on 5 April 2016 in matter R2015/277]

### **Rules difficult to apply/interpret:**

Election Of Council: Rule 28 (b) & (c) Existing Council retires / term of new Council commences at time that **all 15** Eligible Members have been declared elected. Rules do not provide for automatic recall of offices not filled. Rules unclear if election of Office Bearers – Rule 48, should be delayed till **all 15** councillors declared elected. Rule 33 – Returning Officer not appointed to conduct quadrennial Elections by the Council, the Council arranges for the conduct of the election under the provisions of the Fair Work (Registered Organisations) Act 2009 with Fair Work Commission.

Rule 40 The ballot will open no less than one week after the close of nominations. Insufficient time to provide for a 7 day defect period should a nomination be defective as per Rule 37. Additional days required to process and verify nomination eligibility, conduct a ballot draw if required, prepare and post ballot material. Minimum 14 – 21 days suggested.

Ballot paper position - Election Rules silent for both councillors and executive if names should appear on ballot paper in alphabetical order or by random draw.

Rule 48 Office Bearers – rules do not identify if members may nominate for more than one office, nor if a hierarchy exists should a member nominate / be elected to more than one office.

**Model Rule reference (if any):** N/A

### ROLL OF VOTERS

The Roll of Voters was not required for a ballot as the election was not contested.

**ALLEGATIONS OF IRREGULARITIES RECEIVED**

Details of written allegations of irregularities, and action taken by AEC: N/A

Other irregularities identified, and action taken: N/A

**ATTACHMENTS**

A: Declaration of results for Uncontested Offices - Councillors

B: Declaration Result for Uncontested Offices - Executive

A handwritten signature in black ink that reads "K. Montgomery". The signature is written in a cursive, flowing style.

Kathryn Montgomery  
Returning Officer  
29 August 2016

# Australian Business Industrial Election of Councillors

## Declaration of Results for Uncontested Offices

**E2016/139**

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.

### **ABI Council**

**Councillor (15)**

#### Candidates

BOWERS, Tom  
BRADY, Jane  
BROWNJOHN, Ann Louise  
CARR, Gerry  
CLEARLY, Jane  
COLLINS, Kathleen  
GETHING, Brad  
KIRKHAM, Rob  
LEETE, Annabel  
LILEY, Jessica  
LILLEY, Ian  
LONG, David George  
MACKENZIE, Bruce Hugh  
VLACHOS, Andrew  
WILSON, Kerry

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



Kathryn Montgomery  
Returning Officer  
20 July 2016

# Australian Business Industrial Executive Committee

## Declaration of Results for Uncontested Offices

E2016/139

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.

### Executive Committee

#### President

Candidates

WILSON, Kerry James

#### Vice-President (2)

Candidates

BOWERS, Tom  
MACKENZIE, Bruce

#### Secretary/Treasurer

Candidates

KIRKHAM, Robert

#### Executive Committee (3)

Candidates

CLEARY, Jane  
LILEY, Jessica  
LONG, David George

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



Kathryn Montgomery  
Returning Officer  
25 August 2016.



# DECISION

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

## **Australian Business Industrial** (E2016/139)

MR ENRIGHT

MELBOURNE, 20 MAY 2015

*Arrangement for conduct of election.*

[1] On 6 May 2016 Australian Business Industrial lodged with the Fair Work Commission the prescribed information in relation to an election for the following offices:

### **Council**

Councillors (15)

### **Executive Committee**

President (1)  
Vice-Presidents (2)  
Secretary/Treasurer (1)  
Executive Committee Members (3)

[2] 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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**From:** KELLETT, Stephen  
**Sent:** Friday, 20 May 2016 2:22 PM  
**To:** 'cjbosworth@optusnet.com.au'  
**Cc:** dick.grozier@nswbc.com.au; 'nadee.desilva@australianbusiness.com.au'  
**Subject:** Election - ABI - E2016/139 - granted

Dear Mr Bosworth,

Please see attached a copy of the Delegate's decision in relation to the above.

Yours sincerely

STEPHEN KELLETT  
Regulatory Compliance Branch  
**FAIR WORK COMMISSION**

80 William Street  
EAST SYDNEY NSW 2011

(ph) (02) 6746 3283  
(email) [stephen.kellett@fwc.gov.au](mailto:stephen.kellett@fwc.gov.au)



ABI E2016 139  
Decision.pdf



# Copy of Signed Decision

**Title of Matter:** Election  
**Section:** S189  
**Subject:** Council, Office-bearers and Executive committee members

**Matter Number(s):** E2016/139  
**To:** Electoral Commissioner Through  
**From** Stephen Kellett

A copy of the Delegate's election decision in relation to the above matter is attached for your information.

**Please note:** Section 233(2) of the *Fair Work (Registered Organisations) Act 2009* requires details of changes to an organisation's records be declared to the Fair Work Commission. This includes changes resulting from the conduct of elections. Changes must be declared within 35 days of their occurrence.

The contact telephone number for the organization is (02) 9458 7500 – the contact person is the secretary/treasurer, Mr Colin Bosworth.

## **Inquiries:**

Any inquiries relating to this are to be directed to Stephen Kellett on (02) 6746 3283 or [stephen.kellett@fwc.gov.au](mailto:stephen.kellett@fwc.gov.au).

**20 May 2016**

**From:** KELLETT, Stephen  
**Sent:** Friday, 20 May 2016 2:30 PM  
**To:** 'Industrial Elections'  
**Subject:** Election - Australian Business Industrial - E2016/139 - copy of decision

Dear Returning officer,

Please see my cover memorandum and a copy of the Delegate's decision in relation to the above.

Yours sincerely

STEPHEN KELLETT  
Regulatory Compliance Branch  
**FAIR WORK COMMISSION**

80 William Street  
EAST SYDNEY NSW 2011

(ph) (02) 6746 3283  
(email) [stephen.kellett@fwc.gov.au](mailto:stephen.kellett@fwc.gov.au)



ABI E2016 139  
Decision.pdf



E2016 139 cover  
memo.pdf



**From:** Nadee DeSilva [mailto:nadee.desilva@australianbusiness.com.au]  
**Sent:** Wednesday, 18 May 2016 9:36 AM  
**To:** Dick Grozier; KELLETT, Stephen  
**Cc:** Col Bosworth  
**Subject:** RE: Election - E2016/139 - further information/clarification

Dear Stephen,

Please find the attached AEC declarations and council paper which recommended the Election timetable as requested.

Please feel free to contact me if you require any further information or assistance.

Thank you and Kind regards

Nadee

**Nadee DeSilva**

Administration Assistant, NSW Business Chamber

140 Arthur Street North Sydney NSW 2060

Tel: 02 9458 7540 | Web: [www.nswbusinesschamber.com.au](http://www.nswbusinesschamber.com.au)

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2016 Election - 27  
April 2016 (3).doc



Declaration of  
Results.pdf



Declaration 13  
councillors.pdf

ITEM: A.6  
SUBJECT: ABI 2016 ELECTION

**FOR DECISION**

**Recommendation:** That Council

- (i) determine that the 2016 biennial election be held on 28 October 2016
- (ii) nominate the AEC as proposed returning officer
- (iii) direct the Secretary-Treasurer to write to the General Manager FWC to arrange an election.

**Biennial Elections**

1. As advised ABI's amended rules were certified with effect on 5 April 2016 which means that the forthcoming elections are conducted under the amended rules.
2. There is one exception. Rule 28, *Election of Council*, which provided for biennial elections, now provides that elections are quadrennial and the council established from this forthcoming election will be elected for a 4 year term. However, the current council was finally declared on 9 December 2014 which was prior to the rules amendments coming into effect. The current council was elected under the pre-amended version of Rule 28 and is therefore subject to the pre-amended biennial election rule. This is discussed in the Delegate's [decision](#) to certify the majority of amendments<sup>1</sup>.
3. Accordingly ABI submitted to the General Manager FWC as part of its Annual Return of Information in March 2016 that it would hold an election for offices in the year commencing 1 January 2016.<sup>2</sup>
4. Rule 28(b) provides that all councillors are retired when the new council is declared and rule 28(d) provides the eligible members can stand for re-election. An "eligible member" [R 30] is a member or appointed representative of a member<sup>3</sup>. Subject to that requirement, there are no restrictions on the number of terms of office that an individual councillor may serve.

**Returning Officer**

5. Rule 33 requires that a returning officer be appointed to conduct the election, election of office bearers and other members of the executive committee. The returning officer must not be the holder of any office in, or an employee of, the organisation, but may be an AEC officer if the election is conducted by it.
6. Rule 34 requires the returning officer to send an election notice to all members who can vote by post (or issue a notice in a newspaper circulating throughout the State) in order to:
  - (a) state that the election is to be held by the returning officer; and
  - (b) invite nominations for the election; and
  - (c) advise where nomination forms may be obtained; and
  - (d) fix the time and date for the close of nominations in the election; and
  - (e) specify the place where nominations for the election may be lodged; and
  - (f) specify the qualifications (if any) needed by candidates in the election and by a person nominating a candidate; and
  - (g) advise the time and date for the close of the ballot in the election.

<sup>1</sup> See paras [4] – [8] of [2016 FWCD 1087

<sup>2</sup> Regulation 147(g) *Fair Work (Registered Organisations) Regulations 2009* re s 230(1)(d) of the *Fair Work (Registered Organisations) Act 2009*

<sup>3</sup> This condition does not apply to Councillors who have been nominated by an association or organisation which is an ABI member – although their term also expires and their nominating organisation must be invited to re-nominate.

After the election the returning officer must also provide certain information to the FWC on the conduct of the election in accordance with s 143(b) of the (FW)RO Act.

### Conduct of Elections

7. Section 182(1) of the *Fair Work (Registered Organisations) Act 2009* requires that elections for office must be conducted by the AEC unless FWA approves an application under s183(1) of the FW(RO) Act from ABI to exempt it from this requirement. This is not readily granted and ABI's previous elections as a registered organisation were conducted by the AEC. Where the AEC conducts the election the expense is borne by the Commonwealth. It is proposed that ABI adopt past practice.
8. ABI will need to provide the prescribed information outlined at clause 138 of the Regulations to the FW(RO) Act, including information on the constitution of the Council and the expiry dates of the terms of office, two months prior to the first day a person may become a candidate (which is understood to mean the first day of the calling for nominations).
9. The FWC would then make a declaration that an election is required and direct the AEC to work with ABI to prepare the roll of voters and hold an election.

### Timetable for Elections

10. Rule 29 provides that the date of the election is determined by council provided that it is no more than 4 years after the council election date and also that the election process is to commence at least 3 months before that anniversary date. The timetable below gives effect to this 3 months rule by closing the electoral roll (the first step in conducting an election) a little more than 3 months before the anniversary of the last election.
11. This gives rise to a proposed election date (by which is understood the date on which balloting is to conclude) of 28 October 2016.

Requirement	Minimum elapsed time	Proposed dates for 2014	Elapsed time from previous step
Closure of electoral roll	Not specified but must be at least 7 days' prior to nominations opening [R 35]	Thursday, 1 September	
Notice of election		Friday, 9 September	8 days
Closure of nominations	Within 3 weeks of publication of the notice of election [R 36]	Friday, 30 September	3 weeks
Opening ballot	Not less than 1 week after closure of nominations [R 40]	Monday, 10 October	10 days
Closure of ballot	3 weeks after opening [R 40]	Friday, 28 October	3 weeks
Declaration of council	Following completion of the election [R 43]	Sometime after 28 October	

12. In the event of insufficient nominations, which fact would be known no later than Monday 3 October, the election process would recommence. Allowing for the new roll closure on 6 October, the new notice to issue on 14 October, the closure of nominations for the second notice would fall on Friday 4 November. This is well inside the 2<sup>nd</sup> anniversary, and whilst balloting may be required following a second call for nominations, this seems unlikely.
13. Thus, in either case, the declaration of the council would occur in or before the week commencing 7 November which would allow calling for nominations from the electoral college by 14 November, which would close on 4 December, allowing declaration early the next week and before council's 7 December meeting.
14. If office holding positions were contested, the new office holder continuity rule would apply, but only for the December meeting. Under current arrangements, but not yet determined by council for next year, council's following meeting would not occur until 22 February 2017.

# Australian Business Industrial

## Scheduled Election 2014

### Declaration of Results for Uncontested Offices

**E2014/223**

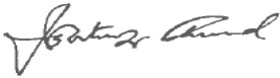
Below are the results of the election for the following offices, conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation.

**Councillor (2)**

Candidates

BROWNJOHN, Ann Louise  
MACKENZIE, Bruce Hugh

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



Ishtiaq Ahmed  
Returning Officer

09/12/2014



Australian Business Industrial

Street address  
140 Arthur Street  
North Sydney NSW 2060

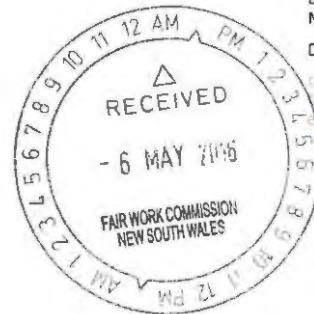
Postal address  
Locked Bag 938  
North Sydney NSW 2059

DX 10541 North Sydney

(02) 9458 7500  
(02) 992 2129  
industrial@  
australianbusiness.com.au

4 May 2016

General Manager  
Fair Work Commission  
Level 8, Terrace Towers  
80 William Street  
East Sydney, NSW 2011



Dear General Manager

**RE: LODGEMENT OF PRESCRIBED INFORMATION FOR ELECTION**

Australian Business Industrial (ABI) is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (the FW(RO) Act), organisation code 143N. ABI is seeking to conduct an election in accordance with its Rules and the FW(RO) Act, and requests that you arrange for it to be conducted.

Please accept the following as the prescribed information ABI is required to provide under s 189(1) of the FW(RO) Act and in accordance with regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009* (the regulations).

ABI is required to elect fifteen (15) offices of Councillor [Rule 26] which are directly elected by and from the membership. Under ABI's rules these positions are due to expire in the normal course of events in late 2016.

The declaration of the newly elected Council establishes an electoral college [Rule 46] from which are elected the formal office bearers: President, 2 Vice-Presidents, and the Secretary-Treasurer [Rule 48] and an additional three executive committee members [Rule 49], also by secret postal ballot.

ABI requests that you arrange for the conduct of both the general (direct) election of Councillors from the membership and the subsequent election of office bearers and executive committee members from the electoral college.

These elections will be conducted under ABI's rules as most recently certified on 5 April 2016.

ABI does not comprise branches and as such regulation 138(1)(d) does not apply.

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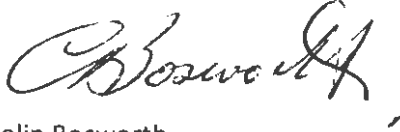
**Australian Business Industrial ABN 59 687 108 073**  
*The Industrial Relations Affiliate of New South Wales Business Chamber*

140 Arthur Street North Sydney NSW 2060 Locked Bag 938 North Sydney NSW 2059  
Telephone: 02 9458 7500 Fax: 02 9922 2129 email: industrial@australianbusiness.com.au Internet: www.australianbusiness.com.au/industrial/

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If you have any further questions please contact Dick Grozier on (02) 9458 7574 or via [dick.grozier@nswbc.com.au](mailto:dick.grozier@nswbc.com.au).

Yours faithfully



Colin Bosworth  
Secretary/Treasurer