

6 April 2021

Post-election report

Australian Education Union

Western Australian Branch

Casual Vacancy election

E2020/208

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Election Covered in this Report

Organisation: AEU - Western Australian Branch
Election: Casual Vacancy
Election Decision No/s: E2020/208

Rules

Rules used for the election: 284V: Incorporates alterations of 19 January 2021 [R2020/206] (replaces rulebook dated 21 December 2020 [R2020/160])

Rules difficult to apply/interpret: None

Model Rule reference (if any): N/A

For more details see the Model Rules on the AEC website:

https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections

Roll of Voters

As there were no contested offices, no Roll of Voters was required.

Irregularities

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

Other irregularities identified, and action taken: NIL

Other Matters

The following potential irregularities were identified, and subparagraph 193(1) (b)(i) of the *Fair Work (Registered Organisation) Act 2009* was applied to avoid the irregularities:

- Rules specifying the method of lodgement of nominations were set aside as the AEC held concerns that the coronavirus pandemic would impact on the ability for potential candidates to nominate. Instead nominations were received electronically, via email/the AEC's portal.

Procedural defects that appear to exist in the rules and steps taken under subparagraph 193(1) (b)(ii) of the *Fair Work (Registered Organisation) Act 2009*:

- As there is no rule pertaining to the withdrawal of Nomination, subparagraph 193(1) (b)(ii) of the *Fair Work (Registered Organisation) Act 2009* was applied to fix a closing time for the withdrawal of nomination and the withdrawal period was aligned with the close of the nomination period.

Signed



Sally Angus
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 03 9285 7111
6 April 2021

Attachments

A. Declaration of results for Uncontested Offices

Australian Education Union
Western Australia Branch
DECLARATION OF RESULTS - E2020/208

Uncontested Office

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:

Australian Education Union - Western Australian Branch

Senior Vice President (1)

Candidates

JARMAN Matt

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

Sally Angus
Returning Officer
Telephone: 03 9285 7111
Email: IEEvents@aec.gov.au
18/03/2021



DECISION

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

Australian Education Union Western Australian Branch (E2020/208)

MR STEENSON

SYDNEY, 27 NOVEMBER 2020

Arrangement for conduct of election.

[1] On 18 and 25 November 2020 the Western Australian Branch of the Australian Education Union (the Branch) lodged with the Registered Organisations Commission (the Commission) prescribed information for an election to fill a casual vacancy in the following office for the remainder of the term:

Senior Vice President (1)

[2] Accompanying the prescribed information was an email from the Senior Vice President, Paul Bridge, addressed to the Branch President, Patricia Byrne. The email stated that:

I am seeking to resign from my appointment as AEU WA Branch Senior Vice President, effective from the 5th January 2021.

[3] On 26 November 2020, the Commission requested further information in relation to the Senior Vice President's notice of intention to resign. On the same date, Mr Bridge emailed the Commission to confirm that he had no intention of withdrawing his resignation and that the resignation was not given involuntarily or in the 'heat of the moment'.

[4] In considering whether to arrange for the conduct of an election by the AEC, section 189 of the Fair Work (Registered Organisations) Act 2009 (the Act) requires the Registered Organisations Commissioner (the Commissioner) or me as his Delegate to be satisfied that an election is required to be held under the rules of the organisation or branch.

[5] Rule 6(2) of the Branch rules provides that the term of office is three years and that the term commences from the 1 January following the scheduled election.

[6] Branch rule 6(3) provides that where a casual vacancy arises and more than half of the term of office remains unexpired, the vacancy shall be filled by election in accordance with the Branch rules. The person elected to the casual vacancy shall hold office for the unexpired portion of the term of office.

[7] The most recent election for this office (E2019/13) was declared on 27 August 2019 and the term therefore commenced on 1 January 2020.

[8] I note that the resignation is to take effect on 5 January 2021. Therefore, more than half of the three-year term of office remains unexpired which, by application of rule 6(3), means that a casual vacancy would need to be filled by election rather than by appointment.

[9] Regulation 138(1) of the Fair Work (Registered Organisations) Regulations 2009 (the Regulations) relevantly provides that:

(1) For subsection 189(1) of the Act, the following information is prescribed information for an election conducted for an office or for a position other than an office:

(b)(ii) a casual vacancy in the office or position has occurred (**or will occur imminently**); [emphasis added]

[10] I also refer to the previous decision of the Delegate of the Commissioner in *Transport Workers' Union of Australia* [2018] ROCD 141 and of the Delegate of the General Manager of the Fair Work Commission in *Australian Education Union* [2014] FWCD 8563.

[11] In *Australian Education Union*, the Delegate referred to the decision of Vice President Watson in *Australian and International Pilots Association v Captain Michael Glynn*¹ (AIPA) as authority for the proposition that 'a resignation is effective from the date of its submission'. This authority discusses relevant legal principles concerning the withdrawal of a notice of resignation, in particular the principle that once notice has been communicated it cannot be withdrawn except by mutual consent of the parties.

[12] On balance, and following consideration of Mr Bridge's written confirmation and assurance to the Commission that his resignation has been provided voluntarily, was not made 'in the heat of the moment' and will not be withdrawn, 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 COMMISSIONER

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¹ [2011] FWA 1223



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Our Ref: MS:MF:20-21357

17 November 2020

Registered Organisations Commission
GPO Box 2983
MELBOURNE VIC 3001
Email: regorgs@roc.gov.au

Dear Sir/Madam

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, Mary Franklyn, being the Branch Secretary of the Australian Education Union Western Australian Branch make the following statement:

I am authorised to sign this statement containing prescribed information for the Australian Education Union Western Australian Branch.

The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).

The elections that are required are set out in the table in Annexure A.

The supporting information is attached for each casual vacancy.

No rule alterations are pending that will impact the election.

This statement **IS NOT** lodged at least 2 months before nominations open for the election in Annexure A.

The reason it is lodged after the prescribed time is:

- a. Resignation by elected officer

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mary Franklyn', written over a white rectangular box.

Mary Franklyn
Branch Secretary

Annexure A

- Elections that are required

Branch	Name of Office	Number required	Voting System	Reason for Election	Electorate
Western Australia	Senior Vice President	1	Direct Voting System	Casual vacancy	All financial member of the Branch – General and TAFE Divisions Rule 6(1)

- Important dates:

	Direct Voting System
Nominations OPEN	To be Determined by Returning Officer, preference 11/01/2021
Nominations CLOSE	To be Determined by Returning Officer, preference 25/01/2021
Roll of Voters cut off date	To be Determined by Returning Officer, preference 04/01/2021 (seven days prior to the day on which nominations open)