

11 June 2021

Post-election report

**The Australian Institute of Marine and Power
Engineers**

Newcastle Branch
Scheduled election
E2020/119

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Election(s) Covered in this Report

Organisation: The Australian Institute of Marine and Power Engineers - Newcastle Branch

Election: Scheduled

Election Decision No/s: E2020/119

Rules

Rules used for the election: [009V: Incorporates alterations of 03/12/2014 in matter R2013/22]

Rules difficult to apply/interpret: Rule 33B(v) The Returning Officer shall, at least fourteen (14) days before the opening of the election cause to be sent by prepaid mail to each financial member of the branch a ballot paper together with two (2) envelopes, a "declaration envelope" with a removal flap or label and a prepaid envelope.

Roll of Voters

Total number of voters on the Roll:	142
Number of apparent workplace addresses:	Nil
Number of non-current addresses:	Nil
Other matters pertaining to the roll of voters:	Nil

Irregularities

Details of written allegations of irregularities, and action taken by AEC: None

Other irregularities identified, and action taken: 5 ballot papers were returned before the ballot opened. The remedial action to admit them to the scrutiny is set out below.

Other Matters

Returning Officer actions required (Section 193): Yes

Details:

1. The requirement in rule 33B(v) to despatch postal vote packs to voters well ahead of the ballot opening risks a number of irregularities by voters returning ballots before the ballot has opened.

Despite the AEC giving appropriate instructions to the voters as to the correct timeframe in which the postal votes are to be returned, the risk remains that voters unintentionally returning the postal vote early gives rise to an irregularity that would disenfranchise the voter because the vote must be rejected. This occurred in election E2020/197, E2020/94 and E2020/160 where 10, 4 and 1 ballot papers respectively were returned to the AEC before the ballot (period) opened and again in this election E2020/119 where 5 ballot papers were returned to the AEC before the ballot period opened.

The Returning Officer exercised the power provided by subparagraph 193(b)(ii) of the *Fair Work (Registered Organisations) Act 2009* (the 'FW(RO) Act') to remedy the procedural defect that appears to exist in the AIMPE Rules mentioned above by deciding to admit postal votes returned prior to the ballot opening to the scrutiny.

The AEC's concern centres on the undesirability of resorting to exercising the remedial power provided by subparagraph 193(b)(ii) of the FW(RO) Act because timeframe for opening of the ballot is unnecessarily restrictive. The AEC understands that the early despatch of postal votes is intended to ensure voters have the fullest opportunity to receive their ballot papers, cast their vote and return their postal vote before the ballot closing time. The AEC believes that amending the AIMPE Rules to extend the ballot period by 14 days is the appropriate way to give effect to the intention behind.

[Model Rule](#) reference (if any) : Part 2, 6

2. As there is no rule pertaining to the withdrawal of Nomination, the Returning Officer has applied subparagraph 193(1) (b)(ii) of the Fair Work (Registered Organisation) Act 2009 to fix a closing time for the withdrawal of nomination and the withdrawal period was aligned with the close of the nomination period.
[Model Rule](#) reference: Part 2, 10 and Part 3, 23
3. As there is no rule pertaining to the closing time for the submission of the Resume, the Returning Officer applied subparagraph 193(1) (b)(ii) of the Act to fix a closing time for the submission of the Resume and the closing period was aligned with the close of the nomination period.

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

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

Signed



Ishtiaq Ahmed
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 02 9375 6331
11 June 2021

Attachments

- A. Declaration of Results for Uncontested Offices

- B. Declaration of Results for Contested Offices

**The Australian Institute of Marine and Power Engineers
Newcastle Branch**

DECLARATION OF RESULTS - E2020/119
Contested Offices

Scheduled 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:

Financial Members

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	142
Number of voters issued with voting material	142
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	142
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	48
Number of declaration envelopes rejected at preliminary scrutiny (minus)	0
Number of ballot papers returned outside declaration envelopes (minus)	1
COUNT	
Total ballot papers admitted to the count	47
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	0
Voting material packs not returned by voters by closing date of the ballot	94
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	34 %

Ordinary Member of Federal Council (2)

<u>Candidates</u>	<u>Final Votes</u>
SNEE, Terry	36
FRANCIS, Paddy (Sean)	8
FLETCHER, Malcolm	40

Total ballot papers admitted for this office	47
Formal Ballot papers	47
Informal Ballot papers	0

I declare the following elected:	Order Elected
• FLETCHER, Malcolm	1
• SNEE, Terry	2

Ishtiaq Ahmed
Returning Officer
Telephone: 02 9375 6331
Email: IEEvents@aec.gov.au
25/05/2021

The Australian Institute of Marine and Power Engineers
Newcastle Branch
DECLARATION OF RESULTS - E2020/119
Uncontested Offices

Scheduled 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:

President (1)

Candidates

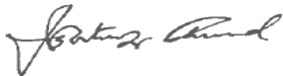
MOORE Don

Treasurer (1)

Candidates

DE VITIS Rinaldo

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
Telephone: 02 9375 6331
Email: IEEvents@aec.gov.au
23/04/2021





DECISION

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

The Australian Institute of Marine and Power Engineers (E2020/119)

MR ENRIGHT

MELBOURNE, 22 OCTOBER 2020

Arrangement for conduct of election.

[1] On 12 October 2020 the Australian Institute of Marine and Power Engineers (AIMPE) Newcastle Branch (Branch) lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

President	(1)
Treasurer	(1)
Ordinary Member of Federal Council	(2)

[2] The Branch did not lodge the prescribed information before the prescribed day as required by regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations). I note that the AIMPE rules do not specify a prescribed day but that rule 33B.(iii) requires the Returning Officer to give notice of the opening and closing dates for nominations for the election in the AIMPE magazine, at least one month before the date fixed for the election. It is clear from reviewing previous elections conducted by the Australian Electoral Commission for the Branch, that it is the established practice for the election of the above offices to have been declared in January of the year following the conduct of the election. This is supported by the fact that the prescribed information indicates that the current terms for the above offices are due to expire on 7 January 2021. Therefore the lodgement of prescribed information with the Registered Organisations Commission on 12 October 2020 does not allow for the results to be declared in the established timeframe.

[3] In his correspondence dated 12 October 2020, the Branch Secretary stated that the delay in lodgement of the prescribed information was due to the retirement of the long-standing Branch Secretary and the resulting contested scheduled election for that office. I note that a notification of change was lodged by the Branch with the Registered Organisations Commission on 7 October 2020 which notified that a change to the office of Branch Secretary occurred on 6 October 2020 due to the outcome of an election for that office. This meant that the prescribed information could not have been lodged within the relevant time frame by that Secretary.

[4] The current Branch Secretary advised that until his recent election, he was not in a position of responsibility to act in this matter but that when he commenced holding office, he became aware of the timeframe in which the prescribed information should have been lodged and made arrangements for its preparation and lodgement. In the circumstances, the Branch Secretary sought an extension of time to lodge the prescribed information as is contemplated under section 189 of the *Fair Work (Registered Organisations) Act 2009* (the Act).

[5] The Branch has requested that the Commissioner (or his Delegate) exercise his power under section 189(2) of the Act to allow a later date for lodgement of the prescribed information, namely 12 October 2020.

[6] The normal and reasonable expectation is that registered organisations will take steps to ensure they comply with the time-frame requirements set out not only in the Act but also in instruments or references pertaining to their own governance, such as their own rules. While no explanation was provided about the actual reason prescribed information was not appropriately lodged, I am satisfied on balance that the totality of the circumstances provide sufficient grounds to justify approval for allowing a later date for the lodgement. My decision is also influenced by the unprecedented impact of the COVID-19 pandemic.

[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 COMMISSIONER

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AIMPE Australian Institute of Marine and Power Engineers NEWCASTLE BRANCH

APPLICATION FOR EXTENSION OF TIME to lodge

PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 Fair Work (Registered Organisations) Act 2009 and Regulation 138 Fair Work (Registered Organisations) Regulations 2009

12 October 2020

I, Henning Christiansen being the Secretary of the **Newcastle Branch** of the **Australian Institute of Marine and Power Engineers** make the following Application:

1. I am authorised to sign this statement containing prescribed information for the **Newcastle Branch of the Australian Institute of Marine and Power Engineers**].
2. In connection with the Prescribed Information I lodged earlier today (copy attached) I request an Extension of Time to allow the requirement of Fair Work (Registered Organisations) Regulation 138 to be able to be met, on the following grounds:
 - a. After the retirement of our longstanding Secretary Mr Robert Ashton, there was a contested election for the position of Secretary of the Newcastle Branch of the Australian Institute of Marine Engineers.
 - b. **Last week, on 6 October 2020, I was declared elected to that position.**
 - c. as the incumbent's Term of office all expire on 7 January 2021, today I have lodged a request for elections for 4 offices, being President, Treasurer and two (2) Ordinary Members of Federal Council.
 - d. In completing that Prescribed Information I have today become aware that the ***prescribed information***
“... **must** be lodged with the Registered Organisations Commission (the ROC) no later than two months before nominations are due to open. Failure to lodge prescribed information within this timeframe is a civil penalty provision (s. 189 of the RO Act). This means that a financial penalty can be imposed upon an organisation if the prescribed information is lodged later than two months before nominations are due to open. A later day for lodgement can be applied for and granted by the Commissioner...”
 - e. With an expiry of their terms on 7 January 2021 it is clear to me that AIMPE Newcastle Branch cannot meet the above requirement, however until my election 6 days ago I was not in a position to have responsibility for these matters.
 - f. and I must now apply to you for an extension of time sufficient such that Regulation 138 is complied with.

Sincerely

Henning Christiansen
Newcastle Branch Secretary
0419 400 324



*"Rebuild
Australian
Shipping"*



AIMPE

Australian Institute of
Marine and Power Engineers
NEWCASTLE BRANCH

PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 Fair Work (Registered Organisations) Act 2009 and Regulation 138 Fair Work (Registered Organisations) Regulations 2009

12 October 2020

I, Henning Christiansen being the Secretary of the **Newcastle Branch** of the **Australian Institute of Marine and Power Engineers** make the following statement:

1. I am authorised to sign this statement containing prescribed information for the **Newcastle Branch** of the **Australian Institute of Marine and Power Engineers**].
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. No rule alterations are pending that will impact the election.
5. 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. That I am the new Branch Secretary, having been declared elected only last week, on 6 October 2020, and as it is still more than 2 months until the relevant terms of office expire I thought I would have time to review the status of the Branch and still comply with ROC notification requirements.
 - b. I will now make application for an extension of time in order to comply with the requirements.

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.

NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. It can be submitted to regorgs@roc.gov.au.

Sincerely

Henning Christiansen
Newcastle Branch Secretary
0419 400 324



*"Rebuild
Australian
Shipping"*

Annexure A

- Elections that are required:

Branch	Name of Office	Number required	Voting System <i>Direct voting system; Collegiate electoral system</i>	Reason for Election <i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	Electorate
Newcastle	President	1	<i>Direct voting system</i>	<i>Scheduled: Current term expires 7 January 2021</i>	the financial members of the Branch Rule 33 B (i)
Newcastle	Treasurer	1	<i>Direct voting system</i>	<i>Scheduled: Current term expires 7 January 2021</i>	the financial members of the Branch Rule 33 B (i)
Newcastle	Ordinary Member of Federal Council	2	<i>Direct voting system</i>	<i>Scheduled: Current term expires 7 January 2021</i>	the financial members of the Branch Rule 33 B (i)

- Important dates:

	Direct Voting System
Nominations OPEN	To be determined by returning officer
Nominations CLOSE	To be determined by returning officer
Duration of BALLOT	Please note as many of our members can be away at sea, custom and practice is to allow a period of six (6) weeks for voting to occur.
Roll of Voters cut off date	7 days before opening of Nominations Rule 33 B (xii)

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](#)