

Australian Rail, Tram and Bus Industry Union QLD Branch (T&B) Delegate to National Council

Declaration of Results for Uncontested Offices

E2013/171

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.

National Offices

Delegate to National Council from QLD Branch Tram and Bus Division

Candidates

BROWN, Tom

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



Noopur Madan
Returning Officer

1 July 2013



Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

Australian Rail, Tram & Bus Industry Union

Queensland Branch, Tram and Bus Division

ELECTION/S COVERED IN THIS REPORT

Election Decision No/s: E2013/171

RULES

Rules used for the election: [139V: - This Rule Book incorporates alterations certified on 9 April 2013 in R2013/141]

Rules difficult to apply/interpret: Nil
Model Rule reference (if any): N/A

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

ATTACHMENTS

1. Declaration of Results E2013 -171

Noopur Madan
Returning Officer
3 July 2013



FAIR WORK
COMMISSION

24 April 2013

Mr Bob Nanva
National Secretary
Australian Rail, Tram and Bus Industry Union
Trades Hall, Suite 210, 4-10 Goulburn Street
SYDNEY NSW 2000

Dear Mr Nanva

Re: Scheduled Elections - Australian Rail, Tram and Bus Industry Union (E2013/171)

I refer to the prescribed information lodged on 17 April 2013 under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009* in relation to an election for an additional National Divisional Delegate to National Council from the Queensland Branch Tram and Bus Division.

The election has been granted. A copy of the Delegate's Decision is enclosed.

Yours sincerely

Stephen Kellett
Senior Adviser, Regulatory Compliance Branch

From: KELLETT, Stephen
To: ["Industrial Elections"](#)
Cc: ["lee.jones@aec.gov.au"](mailto:lee.jones@aec.gov.au)
Subject: FW: Election E2013 171 ARTBIU
Date: Wednesday, 24 April 2013 9:06:00 AM
Attachments: [E2013 171 ARTBIU letter to AEC 24 April 2013.pdf](#)
[E2013 171 ARTBIU Decision 240413.pdf](#)

Dear Electoral Officer,

Please see attached.

Yours sincerely

STEPHEN KELLETT
Senior Adviser,

Regulatory Compliance Branch

Fair Work Commission

Tel: (02) 6723 7237

Mob: 0429 462 979

Fax: +61 2 9380 6990
stephen.kellett@fwc.gov.au

80 William Street, East Sydney NSW 2011

www.fwc.gov.au



FAIR WORK
COMMISSION

24 April 2013

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 2013/171

RE: Australian Rail, Tram and Bus Industry Union

Positions:

See Decision

Relevant Information:

Contact: Mr Bob Nanva, National Secretary

Phone: (02) 9310 3966; (email) rtbu@rtbu.org.au

A copy of the decision is attached.

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@fwa.gov.au.

A handwritten signature in black ink that reads 'Stephen Kellett'.

Stephen Kellett
Regulatory Compliance Branch
Fair Work Commission

Terrace Towers
80 William Street
East Sydney NSW 2011
Telephone: (02) 8374 6666
International: (612) 8374 6666
Facsimile: (02) 9380 6990
Email: sydney@fwa.gov.au



DECISION

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

Australian Rail, Tram and Bus Industry Union
(E2013/171)

AILSA CARRUTHERS

MELBOURNE, 24 APRIL 2013

Arrangement for conduct of election.

[1] On 17 April 2013 the Australian Rail, Tram and Bus Industry Union lodged with the Fair Work Commission the prescribed information in relation to an election for the following office:

Queensland Branch

National Divisional Delegate to National Council (1)
(Tram and Bus Division)

[2] 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 GENERAL MANAGER
FAIR WORK COMMISSION

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From: KELLETT, Stephen
Sent: Thursday, 18 April 2013 10:01 AM
To: 'lee.jones@aec.gov.au'
Subject: Election requests - ARTBIU - received 17/4/2013



ARTBIU_PI_(WA
Branch & National Council

Dear Lee,

Further to our conversation this morning, I set out what steps FWC has taken to deal with the attached document, and to clarify related election correspondence from FWC to the AEC.

The attached document consists of a covering letter, prescribed information particulars and a letter attachment. Elections have been requested for (1) the Western Australian Branch (quadrennially scheduled but deferred from 2012) and (2) an additional Tram and Bus Divisional Delegate to National Council from Queensland.

FWC has created a separate election matter for each: the request for an election for the WA Branch is matter E2013/170; the request for the election of the National Council delegate is matter E2013/171. The document received therefore represents the source material for each.

Earlier, on 2 April 2013, an email advising prescribed information for the WA Branch was sent to the AEC referring to matter E2013/153. This email was sent in error. Prescribed information had not been received and I have taken steps to cancel matter E2013/153 in our FWC records.

I hope this is clear. I have already provided industrial.elections@aec.gov.au with the attached document by sending an email yesterday and identifying the WA Branch election as matter E2013/170. Please advise me whether you would prefer me to also send it separately to that address in relation to the National Council Delegate election for matter E2013/171 or whether you consider this email to be sufficient for your purposes.

Thank you for your time this morning, and if you or the Returning officers have questions at any time in relation to the elections, please do not hesitate to telephone me on the number below.

Yours sincerely

STEPHEN KELLETT
Senior Adviser, Regulatory Compliance Branch
Fair Work Commission

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Mob: 0429 462 979
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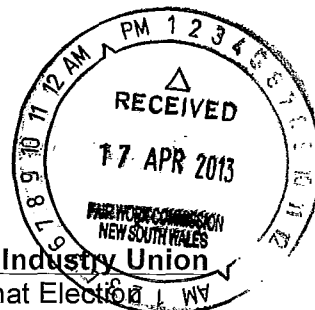
www.fwc.gov.au



RTBU

RAIL, TRAM & BUS UNION AUSTRALIA

12th April 2013
Mr. David Vale
Fair Work Australia
80 William Street
East Sydney
NSW 2011



Dear Mr. Vale

Election of Office Holders for the Australian Rail, Tram and Bus Industry Union

I refer to our recent election (E2012/334), and of our application for that Election which was dated 26th July 2012 where we requested a deferment of the West Australian Branch elections due to changes of the General Rules.

That correspondence outlined in detail the explanation for that deferment (see attached).

The changes to the Rules in effect split the Branch into two constitute parts. The WA Branch and the PTA Branch.

The Rules have essentially been altered to provide for both Branches, however the new Branch, the PTA Branch, is still being developed.

However the makeup of the WA Branch is essentially unchanged with the exception of the removal of all employees and delegates employed by the Public Transport Authority of Western Australia, who are now covered by the PTA Branch.

I also wrote to you on the 28th September outlining that we had come across an error for the number of National council delegates that the Queensland Branch were entitled.

The number of delegates on our application stated that the Queensland Tram and Bus Division are entitled to hold was two when in fact they are entitled to hold three, as the total membership numbers for that Division is 2339..

We therefore request, in accordance with Section 189 of the Fair Work (Registered Organisations) Act 2009 that you arrange for the conduct of the election of Honorary office holders for the Australian Rail, Tram and Bus Industry Union West Australian Branch and for the conduct of the election for an additional delegate to National Council for the Queensland Branch Tram and Bus Division.

Please find attached statement in accordance with Regulation 138 of the Fair Work (Registered Organisations) Regulations 2009, providing you with the prescribed information of the offices to be elected and the method of election (direct except where specified)

Your Sincerely

Bob Nanta
National Secretary

STATEMENT/APPLICATION FOR ELECTION UNDER S189

I, Bob Nanva, National Secretary of the Australian Rail, Tram and Bus Industry Union, request the General Manager, FWA to arrange for the conduct of an election by the AEC for all Honorary Officers and Delegates of the West Australian Branch of the Rail, Tram and Bus Union and for 1 Honorary delegate to National Council for the Queensland Branch Tram and Bus Division. The prescribed information in accordance with regulation 138 is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 and is set out below:

1. The name of each office or position for which an election is required is set out in the Attachment A to this statement.
2. The reasons for the election are that
 - a. The terms of the offices or positions of the West Australian Branch have expired and were deferred due to Rule changes that were significantly altering the makeup of that Branch by removing all PTA members from that Branch;

and,|
 - b. The position of the Honorary Delegate to National Council for the Queensland Branch Tram and Bus Division was intended for the recent elections that had been held (E2012/334) but due to an administrative error, was unintentionally omitted from our application for that election;
Rule 28(3) provides that:
The members of each National Division within each Branch shall be entitled to elect one delegate to the National Council for each one thousand (1,000) members or part thereof provided that where the numbers of a National Division within a Branch is less than one hundred (100) there shall be no entitlement to a Delegate. The number of Delegates to which the members of a National Division within a Branch are entitled, shall be determined on the basis of the number of financial members of the National Division within the Branch at the end of the quarter immediately preceding the date for the opening of nominations for the election of delegates.
The application that the RTBU had provided for E2012/334 stated that there were only two delegates that the Queensland Tram and Bus Division were entitled to attend National Council when, in fact, they were entitled to three due to their membership being 2339.
3. The numbers of those offices or positions where more than one is required to be elected are set out in Attachment A to this statement.
4. The electorates for each office or position are those set out in Attachment A to this statement and as per the rules, being members of the respective and/or relevant Branches, sub- branches and divisions and sub-divisions.

5. Due to the fact that the elections for the West Australian Branch are actually deferred elections from the recently held general elections (E2012/334), there is no defined start and end period, however the criteria for General Elections is set out in Rule 70. (See attached Rule 70).
6. These elections will be direct except for the position of delegate to National Council for the Queensland Branch Tram and Bus Division, which will be done by attendance ballot.

I am an Officer of the Organisation authorised to make and sign the above statement.

Signed.

A handwritten signature in black ink, appearing to be 'D. ...', written over a horizontal line.

Date

12/4/13

ATTACHMENT A

RAIL TRAM & BUS ELECTIONS 2013

Branch Offices

Western Australian Branch

Branch President (1) Honorary position 2 year term

Electorate
Whole Branch Membership

Branch Vice President (1) Honorary position 2 year term

Electorate
Whole Branch Membership

Affirmative Action (1) Honorary position 2 year term

Electorate
Whole Branch Membership

Eligibility

A candidate for the position of Affirmative Action must be of female gender and be a financial member of the Union on the date on which nominations open.

Branch Sections

Intrastate Section – ARG (Aurizon)

Goldfields Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary position	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Kalgoorlie and Esperance, and be employed by ARG(Aurizon) on the date on which nominations open

Metro Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Kwinana and Forrestfield, and be employed by ARG on the date on which nominations open.

Midwest Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Narngulu, and be employed by ARG (Aurizon), on the date on which nominations open.

Southwest Sub Branch

Branch President (1)	Honorary position	2 year term
Branch Vice President (1)	Honorary position	2 year term
Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Picton and Collie, and be employed by ARG(Aurizon) on the date on which nominations open.

Wheatbelt Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Northam, Merredin, Wagin and Albany, and be employed by ARG(Aurizon) on the date on which nominations open.

Interstate Section – Pacific National and SCT

Metropolitan Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Forrestfield, and Kewdale, and be employed by Pacific National or SCT on the date on which nominations open.

Regional Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch which encompasses Merredin and Kalgoorlie, and be employed by Pacific National or SCT on the date on which nominations open.

Infrastructure Section – John Holland and Westnet Rail(Brookfield Rail)

John Holland Sub Branch

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch , and be employed by John Holland on the date on which nominations open.

Westnet Rail Sub Branch (Brookfield Rail)

Sub Branch President (1)	Honorary position	2 year term
Sub Branch Vice President (1)	Honorary position	2 year term
Sub Branch Secretary (1)	Honorary position	2 year term
Committee Members (7)	Honorary positions	2 year term

Eligibility

A candidate for a position of Sub Branch President, Vice President, Secretary or Committee Member must be a financial member of the Union and a member of the Sub Branch , and be employed by Westnet Rail(Brookfield Rail) on the date on which nominations open.

Divisional Delegates to National Council

National Infrastructure Division (1)

National Rail Operations Division (1)

National Locomotive Division (1)

QUEENSLAND BRANCH

1 additional honorary delegate to National Council for the Queensland Branch Tram and Bus Division (elected by all Queensland Branch Bus and Tram Division members).



RTBU

RAIL, TRAM & BUS UNION AUSTRALIA

Mr Stephen Kellett
The General Manager
Fair Work Australia
GPO Box 1994
Melbourne,
VIC 3001

Election of Offices and Positions for the Australian Rail Tram and Bus Industry Union.

I write further to my earlier correspondence regarding the upcoming elections for offices in the Western Australian Branch. I have foreshadowed in that correspondence the reasons why the RTBU seeks the agreement of FWA (and consequently the AEC) to the slight deferment of the calling of nominations in that branch.

The request arises because important Rule Changes which will affect the structure, offices and positions of that Branch are to be considered by the National Council of the RTBU.

As stated earlier, these rules alterations have become necessary because of rules alterations which have occurred in the West Australian State Registered 'counterpart' union and elections in that union which are about to be conducted by the West Australian Industrial Registrar. The rules alterations which are in the process of adoption, will provide for two branches of the RTBU to replace the present Western Australian Branch. Those two branches will cover RTBU members in Western Australia - the first will cover members employed by the Public Transport Authority of Western Australia (or who are employed in or in connection with the activities of the Public Transport Authority), the second will cover members employed by other employers in Western Australia (e.g. Freight Rail and Infrastructure).

The decision to re-constitute the branch into two branches was made following a protracted dispute within the Branch primarily concerning Public Transport Authority employees. The origins of this dispute coincided with the discovery that the branch of the federal RTBU did not - as previously believed by officials - have 'counterpart' status under section 71 the Industrial Relations Act (1979) WA. You will be aware that section 71 the Industrial Relations Act (1979) WA permits (for practical purposes) the relevant state registered union (in this case the Australian Rail Tram and Bus Industry Union Western Australian Branch, Union of Employees) to be administered as a single entity with the relevant 'federal counterpart' (in this case the Australian Rail Tram and Bus Industry Union Western Australian Branch).

The Industrial Relations Act (1979) WA stipulates that it necessary for a Full Bench of the Western Australian Industrial Relations Commission to be satisfied that a certificate may be granted. A section 71 certificate had been granted by the Full Bench many years ago and on the faith of that certificate, the two entities were operated as one. There were (at least) two significant flaws in the assumption by officials that the certificate continued to operate.

The first - and legally fatal to the certificate - was that the for Australian Railways Union of Workers, West Australian Branch (as the RTBU then was) amalgamated with the state registered union of locomotive drivers , known as the West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers. Following that amalgamation, no fresh section 71 certificate was obtained because the belief of officials appeared to be that none was necessary. It should be noted that this was a view widely held among officials of many unions in Western Australia. [Thompson & Ors v Reynolds & CFMEU (2009) WAIRC 00024 January 23rd, 2009 (Per Ritter Acting President)]

The Full Bench of the WAIRC on July 11, 2012 [Re application by the RTBU West Australian Branch (union of employees) 2012 WAIRC 00431] explained this history:

“5. The union became registered as an organisation under the Act on 12 March 1999 when the Australian Railways Union of Workers, (WA Branch) and The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers amalgamated: (1999) 79 WAIG 975. Since the time of registration the union operated under the incorrect assumption that an effective s 71 certificate was in place. If a valid certificate had been in place there would have been no necessity for separate elections for office bearers as officers in the union's counterpart Federal body could hold office in the State body. As a consequence of this assumption, since 1999 the union failed to call for elections for office bearers and it failed to keep a proper and current list of its members. These facts became apparent recently. In 2009, Acting President Ritter delivered his decision in Thompson v Reynolds [2009] WAIRC 00024; (2009) 89 WAIG 287. In that matter and in other related matters it was revealed that The Construction, Forestry, Mining and Energy Union of Workers did not have an operative s 71 certificate. Following the delivery of the decision in Thompson v Reynolds a review of registered organisations was conducted by the Registrar and it was revealed that a number of organisations registered under the Act did not have s 71 certificates or did not have s 71 certificates that had current operative effect. As a result of the review, a number of organisations have recently taken steps to regularise their affairs and modernise their rules. One of the organisations that took such steps is the union in this matter.”

The second matter which presented significant problems was the fact that the industrial coverage of the state registered Rail Tram and Bus Industry Union Western Australian Branch, Union of Employees) was confined to the public sector, whereas the industrial coverage of the RTBU extends across both private and public sectors.

Proceedings before the WAIRC - and the resolution of the dispute within the branch - involved protracted internal discussions and the development of a complex legal strategy to re-constitute the state registered union. This involved, among other things, the re-writing of the rules of the state registered union. The new rules were endorsed by the Full Bench on July 11, 2012 [Re application by the RTBU West Australian Branch (union of employees) 2012 WAIRC 00431] and an election will be shortly held for positions in the Union. The history of the matter is usefully set out in the decision of the Full Bench.


Given the significance of the problems identified in Western Australia and the complexity of achieving a resolution, an election in in the West Australian branch under the present rules will present significant problems for the RTBU nationally and run counter to the agreement within the branch to restructure the branch to reflect members' wishes and to resolve what might otherwise become a significant and potentially extremely destructive dispute within that state - with national implications for the federal union.

It should be noted however that the rules alterations to which I refer will be adopted National Council by late August/ early September - thus allowing the opening of nominations to occur on or very close to, the date specified in the rules.

I look forward to your favourable consideration of this request.

Please contact me on (02) 9310 3966 or by email bnanva@rtbu.org.au if you have any queries.

Yours Sincerely



26/7/12

NATIONAL SECRETARY

c Lee Jones AEC