

**Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing & Allied Services Union
Vacancy Election E2012/414**

DECLARATION OF RESULTS FOR UNCONTESTED OFFICES

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.

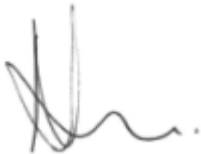
Electrical Energy and Service Division

Divisional Executive Members (New South Wales Divisional Branch)

Candidate

BUTLER, Stephen

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



Nicole Hoy
Returning Officer

16 January 2013



Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

Client: Communications, Electrical, Electronic, Energy, Information, Postal,
Plumbing and Allied Services Union of Australia
NSW Electrical Divisional Branch

Contact details: Paul Sinclair
NSW Electrical Divisional Branch
Assistant Secretary
Email: pauls@etunsw.asn.au
Tel: 02 9267 4844

FWC contact officer: Kiet Mac
Email: Industrial.elections@fwc.gov.au
Tel: 02 8374 6637

ELECTIONS COVERED IN THIS REPORT

Election Decision No/s: E2012/414

RULES

Rules used for elections Rule ID: [128V-NSW: Incorporates alterations of 29/6/2005 in R2005/212] - [128V-ELE: Incorporates alterations of 5/03/2012 in matter R2012/5]

Rules difficult to apply/interpret: None

Model Rule reference (if any): N/A

ROLL OF VOTERS N/A

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 Uncontested Offices

Nicole Hoy
Returning Officer
16 January 2013



FAIR WORK
AUSTRALIA

DECISION

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

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
(E2012/414)

AILSA CARRUTHERS

MELBOURNE, 11 DECEMBER 2012

Arrangement for conduct of election.

[1] On 27 November 2012, the Electrical, Energy and Services Division (the Division) of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) lodged with Fair Work Australia the prescribed information in relation to a casual vacancy election, for the remainder of the term, for the following office:

Divisional Executive Member: (from the following Divisional Branch)

New South Wales

(1)

[2] On 26 September 2012, I issued a decision¹ in relation to the prescribed information which was lodged by the Division on 31 August 2012 which pertained to a casual vacancy election for the same office referred to in the prescribed information for the present matter. In that decision, I found that I could not be satisfied that a casual vacancy election was required to be held under the rules of the Electrical, Energy and Services Division of the CEPU and, therefore, that I could not make arrangements for the conduct of the election under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009* (the Act) as sought by the Division. The reasoning underpinning this conclusion is set out in paragraphs [7] to [9] of the decision:

“[7] Rule 8.2.1 of the rules of the Electrical, Energy and Services Division of the CEPU (the Divisional Rules) provides that each Divisional Branch shall be entitled to representation on the Divisional Executive by one Executive member. Rule 8.2.2 further provides, however, that any Divisional Branch having in excess of 10% of the membership as calculated under sub rule 7.3.3 shall be entitled to one additional Executive member for each additional 10% of membership of the Division possessed by that Divisional Branch.

[8] Rule 7.3.3, which is concerned with determining the number of members of a Divisional Branch at meetings of Divisional Council, provides that “the receipts of such Divisional Branch for the preceding year from entrance fees and contributions” shall be divided by the dollar amount charged by the Divisional Branch in the preceding year as an annual subscription rate. Rule 5.2.6, however, provides that any person who has paid subscriptions to the

¹ *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FWAD 8274.

Electrical Trades Union of Australia, New South Wales Branch (being an organisation registered under the Industrial Relations Act 1996 (NSW)) shall be exempt from payments of subscriptions under the rules to the extent of payment to the State registered union.

[9] *The operation of rules 8.2.1, 7.3.3 and 5.2.6 of the Divisional Rules is discussed by his Honour Justice Perram in Gray v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia [2012] FCA 380 (Gray v CEPU). Justice Perram examined in detail the arrangements between the New South Wales Branch of the Division and the State registered union regarding membership and payment of dues and concluded that dues are paid to the State registered union but not to the Divisional Branch in New South Wales. Justice Perram concluded at [52] that “[m]embers of the State Union who have paid their dues in the ordinary way ... have not paid dues to the Federal NSW Branch. But they are financial members nonetheless since they are exempt from any obligation to pay dues by r 5.2.6.” The result that flows from these circumstances is that, although they are financial members of the New South Wales Branch of the Division, regardless of their number the Branch’s members will only be entitled to be represented by one person on the Divisional Executive under Divisional Rule 8.2.2 (see [35]).”*

[3] Subsequent to my decision, a Full Court of the Federal Court in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Gray* [2012] FCAFC 158 (*CEPU v Gray*) upheld an appeal against the decision, and set aside the order made, in *Gray v CEPU*. The Court also made several findings pertinent to my consideration of whether I can be satisfied that a casual vacancy election is required to be held under the rules of the Electrical, Energy and Services Division of the CEPU for Divisional Executive member representing the NSW Divisional Branch.

[4] More specifically, the Full Court found that the payment of a single subscription to the Electrical Trades Union of Australia, New South Wales Branch (being an organisation registered under the *Industrial Relations Act 1996 (NSW)*) was effective to discharge the obligation for financial membership of both the CEPU and the State registered union. This was because rule 5.2.6 of the rules of the Electrical, Energy and Services Division of the CEPU operated so that a payment to the State registered union operated *pro tanto* as a discharge of the member’s liability to pay his or her dues to the CEPU and that it was not accurate to describe the member as exempt from paying dues to the CEPU in the sense of signifying an absence of liability to pay such dues.² Further, the Court found that Justice Perram construction of rule 7.3.3 in *Gray v CEPU* was erroneous and that his Honour’s conclusions to the effect that the NSW Divisional Branch was permitted one delegate only on the Divisional Council should be disapproved.³ This finding applies with equal force regarding the number of additional Divisional Executive Members the NSW Divisional Branch is entitled to pursuant to rules 8.2.2 and 7.3.3.

[5] In light of the findings made by the Full Court of the Federal Court in *Gray v CEPU*, I am satisfied that an election for the abovenamed office is required to be held under the rules of the Electrical, Energy and Services Division of the CEPU and, under subsection 189(3) of the Act, I am making arrangements for the conduct of the election by the Australian Electoral Commission.

² *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Gray* [2012] FCAFC 158, [24] (Keane CJ & Buchanan J). In a separate judgment, Dowsett J concurred with the reasons of the majority save for the issue of whether of the moneys paid to the State registered union were held in trust for both the State registered union and the CEPU as, according to his Honour, this was only one possible characterisation of the relationship between those two entities.

³ *Ibid* [34]-[36] (Keane CJ & Buchanan J).



DELEGATE OF THE GENERAL MANAGER
FAIR WORK AUSTRALIA

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FAIR WORK
AUSTRALIA

11 December 2012

Mr Peter Tighe
Divisional Secretary
Communications, Electrical, Electronic, Energy, Information,
Postal, Plumbing and Allied Services Union of Australia
Level 5, 370 Pitt Street
SYDNEY NSW 2000

Dear Mr Tighe

E2012/414 - Casual Vacancy Election - Divisional Executive Member - Electrical, Energy and Services Division, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

I refer to the prescribed information lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009* in relation to the above matter lodged on 11 December 2012.

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

Yours sincerely

Kiet Mac
Regulatory Compliance Branch

MAC, Kiet

From: MAC, Kiet
Sent: Tuesday, 11 December 2012 11:50 AM
To: 'industrial.elections@aec.gov.au'
Subject: E2012/414 - Application/Notification by Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia - Electrical, Energy and Services Division - New South Wales Divisional Branch (128V-NSW)
Attachments: E2012_414 ELE Divn Signed decision_11122012.pdf; E2012_414_CEPU letter to AEC_11122012.pdf

Dear AEC

Please find attached a copy of the Decision for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia for its upcoming election (E2012/414).

Kiet Mac
Regulatory Compliance Branch
Fair Work Australia
Tel: 02 8374 6511
Fax: 02 9380 6990
8/80 William Street, East Sydney, NSW 2011
www.fwa.gov.au



FAIR WORK
AUSTRALIA

11 December 2012

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 2012/414

**RE: COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION,
POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA**

Positions:

See Decision

Relevant Information:

Contact: Mr Peter Tighe, Secretary

Phone: (02) 9267 4844;

A copy of the decision is enclosed.

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.

Kiet Mac
Regulatory Compliance Branch
Fair Work Australia

MOLONEY, Carolyn

From: MOLONEY, Carolyn
Sent: Tuesday, 27 November 2012 5:13 PM
To: 'Industrial Elections'
Subject: E2012/414
Attachments: CEPU Elec NSW E2012_414 Pl lodged_27112012.pdf; 128V CEPU ELECTRICAL DIV NSW 29jun05.pdf; 128V CEPU Electrical 128V-ELE_R2011_111.pdf

Dear AEC

Please find attached prescribed information and a copy of the current rulebooks of the Electrical, Energy and Services Division, and for the NSW Divisional Branch, of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, for its upcoming casual vacancy election (E2012/414).

Kind regards,

CAROLYN MOLONEY
Assistant Adviser
Regulatory Compliance Branch

Fair Work Australia
Tel: 02 8374 6510
Fax: 02 9380 6990
carolyn.moloney@fwa.gov.au

Level 8, Terrace Tower, 80 William Street
East Sydney NSW 2011

www.fwa.gov.au

27 November 2012

Mr D Vale
Manager, Registered Organisations NSW
Fair Work Australia
Level 8, Terrace Towers
80 William Street
EAST SYDNEY NSW 2011



ETU

Electrical Trades Union

Dear David

**RE: Casual Vacancy Divisional Executive Member of the NSW Divisional Branch
of the Electrical, Energy and Services Division of the CEPU**

Since your correspondence of 26 September 2012, there have been developments with the *Gray v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FCA 380 which has resulted in the injunction on the meeting of Divisional Council being lifted.

Therefore, the Communications Electrical and Plumbing Union (Electrical Division) once again requests that Fair Work Australia arrange an election for an Executive Officer of our Electrical Division pursuant to Sections 182(1) and 189 of The Fair Work (Registered Organisations) Act 2009. The election relates to the casual vacancy of a New South Wales Divisional Branch representative on the Divisional Executive (pursuant to Section B Rule 15 and 16.2, of the CEPU Rules).

Attached is the prescribed information pursuant to Section 189(1) and Regulation 138, along with the resignation letter of the former Divisional Executive Member of the ETU.

If you have any further queries, please contact the undersigned or Emily Johnson at our National Office.

Yours faithfully

Peter Tighe
Divisional Secretary

The Electrical Division

of the Communications,
Electrical, Electronic, Energy,
Information, Postal, Plumbing
and Allied Services Union of
Australia (CEPU)

Peter Tighe
Divisional Secretary

Allen Hicks
Assistant Secretary

Suite 701, Level 7
5-13 Rosebery Avenue
PO Box 380
Rosebery NSW 2018

Ph: (02) 9663 3699
Fax: (02) 9663 5599

The Fair Work Australia (Registered Organisations) Act 2009
prescribed information pursuant to Section 189(1)

**Casual Vacancy Election
NSW Branch Divisional Executive Member**

- a. **Name of each office for which an election is required:**
NSW Branch Divisional Executive Member
- b. **Reason for the election**
Resignation, Casual Vacancy
- c. **Offices with the same name and the number of such offices**
NSW Divisional Branch Divisional Executive Member (1 Existing, 1 Vacant) (2)
- d. **Electorate**
The position is to be elected by the Divisional Councillors representing the NSW Divisional Branch.
- e. **Date of the commencement and expiration of the nomination period**
To be determined by the Returning Officer
- f. **The day on which the roll of voters is to be closed**
Opening of Nomination
- g. **Voting System**
Secret ballot by a vote of the Divisional Councillors representing the NSW Divisional Branch

The Fair Work Australia (Registered Organisations) Act 2009

prescribed information pursuant to Regulation 138 of (RAO) Regulations

I, Peter Anthony Tighe, state that I am the officer authorised to make a statement pursuant to S. 189(1) of Schedule 1B of *The Fair Work (Registered Organisations) Act 2009* with respect to the Casual Vacancy election of the Divisional Executive of the Electrical Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).

The information required by reg. 138 is appended as Attachment '1'.

Signed:

A handwritten signature in black ink, appearing to read 'P. Tighe', is positioned above the printed name.

Peter Tighe
Divisional Secretary