

1 November 2021

Post-Election Report

The Motor Trade Association of South
Australia Incorporated (MTASA)

Scheduled Election – E2021/55

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Election(s) Covered in this Report

Organisation: The Motor Trade Association of South Australia Incorporated
Election: Scheduled
Election Decision No/s: E2021/55

Rules

Rules used for the election: [234V: Incorporates alterations of 06/04/20 [R2019/148 & D2019/22]

Rules difficult to apply/interpret: Rule 13.1

Rule 13.1

Rule 13.1(a) provides that each Division and Zone is entitled to one nomination for the seven positions on the Board. It is not clear how a Division or Zone determines its nominee nor what happens if more than one nomination is received from a Division or Zone. It was determined that the intent of this rule was that nominees must be nominated and seconded by members who share at least one Division or Zone with themselves.

Rule 13.1(b) states that *“Each Division or Zone's nomination shall be elected by ballot by the members of that Division or Zone, and nomination is open to any member of that Division or Zone.”* This rule suggests that candidates shall be “elected” by members of the same Division/Zone. This is not possible in the context of there being 12 Divisions and 10 Zones but only seven Board Member positions without disenfranchising members from participating in the election.

Model Rule reference (if any): N/A

For more details see the Model Rules on the AEC website: www.aec.gov.au/ieb/

Other Matters

Returning Officer actions required (Section 193): Yes

Details:

Rules regarding the timetable of the election were set aside as the AEC held concerns that the coronavirus pandemic may impact on the ability for stakeholders to fully participate in the election. A timetable for the conduct of the ballot which varied from the rules was set when the AEC was satisfied that stakeholders would be able to fully participate.

Rules requiring nominations at a meeting were set aside as the AEC held concerns that the coronavirus pandemic would impact on the ability for all stakeholders to attend for the purpose of nominating.

Rule 13.1(a) was difficult to interpret. It was determined that the intention of this rule was that nominees must be nominated and seconded by members who share at least one Division or Zone with themselves. This interpretation was applied utilising the powers of section 193(1)(b)(ii).

Signed



Genevieve Hughes
Returning Officer
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1 November 2021

Attachments

- A. Stage 1 – Declaration of Results for Uncontested Offices
- B. Stage 2 – Declaration of Results for Uncontested Offices

The Motor Trade Association of South Australia Incorporated (MTASA)

DECLARATION OF RESULTS - E2021/55 - Stage 2

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:

Board

Chair (1)

Candidates

AGOSTINO Frank

Deputy Chair (1)

Candidates

GIBB Neville

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



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29/09/2021

The Motor Trade Association of South Australia Incorporated (MTASA)

DECLARATION OF RESULTS - E2021/55 - Stage 1

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:

Motor Trade Association of South Australia

Board Member (7)

Candidates

AGOSTINO Frank

GIBB Neville

HITCHCOCK John


MCGUIRE Mark

POLLEY Clive

ROBERTS Peter

SKOTHOS Tom

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



Genevieve Hughes

Returning Officer

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08/09/2021



DECISION

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

The Motor Trade Association of South Australia Incorporated (E2021/55)

MR STEENSON

SYDNEY, 27 APRIL 2021

Arrangement for conduct of election.

[1] On 23 March 2021 the Motor Trade Association of South Australia Incorporated (**the Association**) lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

Board Members	(7)
Chair	(1)
Deputy Chair	(1)

[2] Under the rules governing the operation of the Association – the current version of which was certified by the Fair Work Commission (**FWC**) on 6 April 2020 – Board members hold office for a two year term, with part of the Board being elected in one year and the other part in the next year.¹ The rules require the biennial election of the Board members, as well as the annual election of the Chair and Deputy Chair by and from those Board members.

[3] Rule 33 sets out the transitional arrangements, put in place as part of rule alteration R2019/148 by the FWC, to enable the election of the seven Board members and the subsequent ‘staggered’ election of Board members. To give effect to this arrangement, at this election of seven (7) Board members, three (3) members of the Board are to be elected for a one year term and the remaining four (4) members are to be elected for a two year term.

[4] I note that on 6 May 2020, the Association lodged prescribed information for an election (**E2020/45**) to fill the same abovenamed offices, and that on 12 May 2020, a Delegate of the Commissioner arranged for an election of those offices in E2020/45.²

[5] However, as a result of the delay in the conduct of most industrial elections by the Australian Electoral Commission (**AEC**), arising from the COVID-19 pandemic and associated restrictions, election **E2020/45** was among the elections delayed. On 22 April 2021, the AEC confirmed that election E2020/45 has not yet been conducted.

¹ Rule 12.2 of MTASA rulebook R2019/148 certified on 6 April 2020.

² Decision [2020] ROCD 79

[6] The offices that were the subject of the decision in **E2020/45** are the same as those listed in the prescribed information lodged by the Association on 23 March 2021.

[7] Clearly two elections are not required for the same offices in circumstances where the election of the reconstituted Board, in accordance with rule 33, is yet to occur.

[8] 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.

[9] I am also issuing an amendment to the Delegate's decision of 12 May 2020 in **E2020/45**, to the effect that that election is now no longer required, in order to prevent the potential duplication of elections.



DELEGATE OF THE COMMISSIONER

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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, Neville Gibb, being the Deputy Chair of the Motor Trade Association of South Australia Inc. make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Motor Trade Association of South Australia Inc.
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** lodged at least 2 months before nominations open for the election(s) in Annexure A.

Signed: _____



Dated: _____

23 March 2021

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.

Annexure A

- Elections that are required [insert as many pages as 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
Motor Trade Association of South Australia Inc.	Board Members	Seven	Direct Voting System	Scheduled	Membership – Rule 13
Board	Chair	One	Direct Voting System	Scheduled	Board – Rule 14
Board	Deputy Chair	One	Direct Voting System	Scheduled	Board – Rule 14

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	To be determined by returning officer.	Insert date and reference the relevant rule; or 'To be determined by returning officer' if the rules provide
Nominations CLOSE	To be determined by returning officer – at least five weeks before AGM scheduled for 21 September 2021	Insert date and reference the relevant rule; or 'To be determined by returning officer' if the rules provide
Roll of Voters cut off date	On date of issue of ballot papers – Rule 15.4	Insert date and reference the relevant rule

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.