

23 April 2018

Australian Electoral Commission
NSW State Office
PO Box K778
Haymarket NSW 1240

BY EMAIL: industrial.elections@aec.gov.au

Re: Post Election Report E2017/249 – SDA Newcastle Response.

To the Appropriate Officer

1. Section 198 of the Fair Work (Registered Organisations) Act 2009 requires that if an organisation or branch is given a Post-Election Report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The letter from the AEC says a response should be forwarded "within thirty days of the date of the report".
2. The election of all candidates was declared unopposed on 28 March 2018. There were no irregularities. A Post-Election Report was prepared, dated 11 April 2018. It claimed that Rule 10(b) in part was difficult to apply/interpret.
3. Rule 10(b) in part says:

"The ballot box shall be locked and sealed in the presence of the scrutineers and shall not be opened until after the ballot closes and then only in the presence of scrutineers."
4. The comment made on this is:

"This part of the Rule is impracticable to apply as these stages in the election cannot be delayed to accommodate the presence of a scrutineer. The

current wording should be deleted from the rules. It is recommended the existing sentence in the first part of Rule 10 (b) that states "Any Candidate may appoint a scrutineer to act on his or her behalf, be extended to include "and the scrutineer may be present at all stages of the election".

5. This is not clearly understood. If the scrutineers (having been given notice by the AEC) are not present when the ballot box is locked and sealed or subsequently when it is opened after the ballot closes, that should not impede the conduct of the ballot and the declaration of its result, provided (as stated) the scrutineers are given notice so as to be able to be present.
6. However, in the interests of resolving perceived difficulties, the Union proposes to make a rule change as described above.
7. A number of comments were also made in the section "Other Matters". These are as follows:
 - i) "Withdrawal of Nominations. The rules appear to be silent in regard to withdrawal of a nomination of a candidate. It is suggested the rules be amended to clarify for members that candidates may withdraw their nomination in writing up till the close of the nomination period".

The Union proposes the following rule change.

Amend Rule 10 – Conduct of elections, subrule (aa) by adding a new paragraph as follows:

"Nominations may be withdrawn, in writing, up until the close of the nomination period and not thereafter. No person shall be eligible to be nominated for more than one of the positions of President, Vice President, Branch Secretary, Branch Assistant secretary and Branch Councillors."

- ii) "Tied Result. The rules appear to be silent on what steps should be taken by the Returning Officer should two or more candidates receive an equal number of votes. The Rules should be amended to include a clear directive to resolve this issue.(A suggested method is for the Returning Officer to draw lots to determine the candidate to be elected)."

The Union proposes the following rule change.

Insert in subclause (f) of Rule 10 – Conduct of Elections the following:

"When the voting is equal in any election conducted under these rules, in the event of one of the candidates being the incumbent office holding, such candidate shall be declared elected. In other cases in which a tie occurs, the matter shall be decided by the drawing of lots."

- iii) "Ballot Paper. The rules appear to be silent on the order that candidates' names should appear on the ballot paper. The Rules should be amended to

clarify the order, alphabetical by surname or by the Returning Officer drawing lots to determine the order."

Insert new_sub rule (dd) of Rule 10 – Conduct of Elections by inserting the words "(dd) The order of names on the ballot paper will be determined by the Returning Officer drawing lots to determine the order."

- iv) "Hierarchy of offices. The rules appear to be silent on the action to be taken should a member nominate and be elected to more than one office. It is suggested the rules be amended to identify if a member may be elected to more than one office and if not perhaps the order listed in Rule 6 could be implemented as the hierarchical order."

The Union proposes a rule change as in subclause i) above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Nebart', with a long, sweeping tail that extends downwards and to the right.

Barbara Nebart
Branch Secretary



19 April 2018

Branch Secretary
Shop, Distributive and Allied Employees Association-Newcastle and
Northern Branch
secretary@sdan.org.au

Cc: general@sda.org.au

Dear Branch Secretary

Organisation must respond to the post-election report of the Australian Electoral Commission: E2017/249

On 11/04/2018 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2017/249 dated 11/04/2018. The AEC will have also provided the report to the organisation under section 197 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

The report identifies rules that were difficult to interpret or apply, in particular rule 10 (b). This letter serves as a reminder of the obligations imposed on the organisation or branch as a consequence of the AEC's report. If a response has already been sent to the AEC and made available to all members please disregard this letter.

A notice must be published on the organisation's website

The organisation or branch must publish on its website a notice that a copy of the report is available from the organisation, branch or the AEC on request. The notice must be kept on the website for a period of at least 3 months (see regs 141(4) and (5)).

A written response must be provided to the AEC

A written response must be provided to the AEC within 30 days of receipt of the report. The organisation's response must include whether the organisation or branch intends to take action and if so what action the organisation or branch intends to take (s198(2)).

Extract of report must be made available to members

The organisation or branch must make the section of the report relating to the difficult rules available to its members (s198(3)). This extract from the report must be made available to the members before or at the same time as the organisation's response is made available to members.

Written response must be made available to members

A copy of the organisation's response to the AEC must be made available to members either:

- within 30 days after the response is given to the AEC, or
- published in the next edition of the organisation or branch journal (s198(5))

Subsection 198(6) and regulation 142 prescribe ways in which the relevant extract and the copy of the response can be made available to members. These do not limit the ways in which they can be made available to members. The organisation will comply if it does all of the following:-

- publish the report extract and the copy of the response in the next edition of the organisation or branch's journal; and
- within 30 days of giving the response to the AEC:
 - lodges with the ROC a copy of the relevant extract and response, together with a declaration that a copy will be provided to any member who so requests; and
 - give notice in the next edition of the organisation or branch's journal, or an appropriate newspaper, that a copy of the relevant extract and response are available on request to each member free of charge; and
- publish the relevant extract on the website within 14 days after receiving the report, and publish the response on the website within 14 days of giving the response to the AEC (reg 142(2)).

Penalties may apply

If the organisation or branch does not:

- respond to the AEC within 30 days,
- make the extract of the report relating to the rules available to members no later than the organisation's response is made available to members, or
- make the organisation's response available to members within 30 days or in the next edition of the journal,

the organisation may face penalties under the RO Act. Each requirement listed above is a civil penalty provision that may result in fines for the organisation

As noted above, if the response and report have already been made available to members and the AEC, please disregard this letter. If you have any questions in relation to these obligations please contact the ROC for assistance by email to regorgs@roc.gov.au.

If the organisation or branch decides to alter its rules in response to the AEC's report

If the organisation or branch decides to alter its rules in response to the AEC's report, the ROC is NOT able to provide advice and assistance regarding draft alterations or the processes required to make the alterations. Rule alterations remain a function of the Fair Work Commission.

Yours faithfully

Christine Hibberd

Registered Organisations Commission



19 April 2018

Branch Secretary
Shop, Distributive and Allied Employees Association-Newcastle and Northern Branch
secretary@sdan.org.au

Dear Branch Secretary,

cc: general@sda.org.au

Reminder of actions required when persons elected to office

The Australian Electoral Commission has provided the Registered Organisations Commission (the ROC) a declaration of results for the election of uncontested offices for Newcastle and Northern Branch [E2017/249]. This letter is a reminder of certain obligations imposed on organisations and on persons elected to office.

A notice must be published on the organisation's website

The organisation or branch must publish on its website a notice that a copy of the report is available from the organisation, branch or the AEC on request. The notice must be kept on the website for a period of at least 3 months (see regulation 141 of the Fair Work (Registered Organisations) Regulations 2009).

Holders of office required to undertake approved training

Section 293K of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires each officer with financial management duties to undertake approved training that covers those duties within 6 months after the person begins to hold office. Please ensure that relevant officers undertake approved training within the required timeframe. Please also ensure that all new holders of office are advised of their obligations to make disclosures regarding remuneration, non-cash benefits and material personal interests, the details of which are provided for in the RO Act.

Organisation must notify the Commission of changes

Also, section 233(2) of the RO Act requires that an organisation must notify the Commission **within 35 days of any changes** to the holders of office in the organisation. **If there are no changes a notification is not required.** If the election has resulted in **any changes** to the holders of office, the Shop, Distributive and Allied Employees Association-Newcastle and Northern Branch must notify the Commission of these changes. In particular, please advise:

1. Person(s) who have ceased to hold office:
 - the name of the office vacated;
 - the date of the change of office holder; and
 - the name of the person vacating the office.

2. Person(s) who have commenced to hold office:
 - the name of the office now held;
 - the date of the change of office holder;
 - the name of the person now holding the office;
 - the postal address of the person (generally the postal address of the organisation); and

- the occupation of the person now holding the office.

The notification must include a declaration by the Secretary (or other prescribed officer) that the information is a correct statement of the changes made. A template notification of changes, which may assist you, is attached. If any change does not apply until a date in the future, you do not need to notify until then (e.g. AGM, 1 January, 2nd Monday in March). If you have already lodged this information, please disregard this reminder.

Regards

Christine Hibberd
Registered Organisations Commission

NOTIFICATION OF CHANGES TO RECORDS (Changes to Records in the Annual Return) required to be kept in accordance with section 230 *Fair Work (Registered Organisations) Act 2009* and regulation 147 *Fair Work (Registered Organisations) Regulations 2009*

I, [NAME], being the [OFFICER] of the [ORGANISATION NAME], declare the following:

1. I am authorised to make this declaration.
2. The following is a correct statement of the changes made to the information contained in the records required to be kept by the organisation in accordance with s.230(1)(b), (c), and (d) of the *Fair Work (Registered Organisations) Act 2009*:

[delete all that do not apply]

- On [DATE] the address of the organisation changed to [STREET ADDRESS].¹
- On [DATE] the name and/or address of a branch[es] of the organisation changed to:²
 1. *[include OLD name and address and NEW name and address of every branch that has changed]*
 2. ...
- A list of changes to offices and the names, postal addresses and occupations of persons holding those offices is attached to this declaration at Annexure A and forms part of this declaration.
- On [DATE] the following branch[es]:³
 - COMMENCED operation:
 1. *[include name of each new branch]*
 2. ...
 - CEASED operation:
 1. *[include name of each closed branch]*

¹ s.230(1)(d); reg.147(d)

² s.230(1)(d); reg.147(a) & (d)

³ s.230(1)(d); reg.147(b) & (c)

2. ...

Signed: [SECRETARY OR OTHER AUTHORISED OFFICER]

Dated: [DATE]

*[PLEASE NOTE: This declaration must be submitted to the Registered Organisations Commission within **35 days** of the change. It can be submitted to regorgs@roc.gov.au.]*

ANNEXURE A

- Changes to Offices and Office Holders in the Organisation and its Branches [*insert as many pages as required*]:

Please note the 35 days begins at the earliest event (for instance when the officer retires) and an organisation may need to notify the events separately if the appointment or election process will take longer than 35 days.

Branch	Date of Change	Name of Office that has changed	Name of <u>Outgoing</u> Office Holder	Name of <u>New</u> Office Holder	Postal Address of <u>New</u> Office Holder	Occupation of <u>New</u> Office Holder
<i>National</i>	<i>1.1.2014</i>	<i>Secretary</i>	<i>Full Name</i>	<i>Full Name</i>	<i>c/- the Registered Organisation, postal address of Registered Organisation</i>	<i>Paid official</i>
	<i>25.12.2013</i>	<i>President</i>	<i>vacant</i>	<i>Full Name</i>	<i>As above</i>	<i>mechanic</i>
<i>...</i>						
<i>NSW</i>	<i>1.1.2014 (resigned) 7.1.2014 (appointed)</i>	<i>President</i>	<i>Full Name</i>	<i>Full Name</i>	<i>c/- the Branch, postal address of the Branch</i>	<i>mechanic</i>
		<i>Committee of Management Member</i>	<i>Full Name</i>	<i>Full Name</i>	<i>As above</i>	<i>mechanic</i>
		<i>Treasurer</i>	<i>Full Name</i>	<i>vacant</i>	<i>vacant</i>	<i>vacant</i>
<i>...</i>						

11 April 2018

Post-election Report

**Shop, Distributive and Allied Employees
Association E2017/249**

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Election(s) Covered in this Report

Election Decision No/s: E2017/249

Rules

Rules used for the election:	[006N-NCNN: alternations of 9/11/2016 (R2016/213)]
Rules difficult to apply/interpret:	Rule 10 (b) the later part of rule 10 (b) states in part " <i>the ballot box shall be locked and sealed in the presence of the scrutineers and shall not be opened until after the ballot closes and then only in the presence of scrutineers</i> ". This part of the Rule is impracticable to apply as these stages in the election cannot be delayed to accommodate the presence of a scrutineer. The current wording should be deleted from the rules. It is recommended the existing sentence in the first part of Rule 10 (b) that states "Any Candidate may appoint a scrutineer to act on his or her behalf, be extended to include <i>and the scrutineer may be present at all stages of the election</i> ".
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: None

Other irregularities identified, and action taken: None

Other Matters

Withdrawal of Nominations – the rules appear to be silent in regard to withdrawal of a nomination by a candidate. It is suggested the rules be amended to clarify for members that candidates may withdraw their nomination in writing up till the close of the nomination period.

Tied Result – the rules appear to be silent on what steps should be taken by the Returning Officer should two or more candidates receive an equal number of votes. The rules should be amended to include a clear directive to resolve this issue. (A suggested method is for the Returning Officer to draw lots to determine the candidate to be elected).

Ballot paper – the rules appear to be silent on the order that candidates' names should appear on the ballot paper. The rules should be amended to clarify the order, alphabetical by surname or by the Returning Officer drawing lots to determine the order.

Hierarchy of offices – the rules appear to be silent on the action to be taken should a member nominate and be elected to more than one office. It is suggested the rules be amended to identify if a member may be elected to more than one office and if not perhaps the order listed in Rule 6 (a) could be implemented as the hierarchical order.

Attachments

- 1) Declaration of Results for Uncontested Offices – Newcastle and Northern Branch



Kathryn Montgomery
Returning Officer

11 April 2018

Shop, Distributive and Allied Employees Association

Newcastle and Northern Branch

DECLARATION OF RESULTS - E2017/249

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:

Newcastle and Northern Branch

Branch Secretary/Treasurer (1)

Candidates

NEBART Barbara

Branch Assistant Secretary (inaugural election) (1)

Candidates

BLISS David

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

Kathryn Montgomery
Returning Officer



28 March 2018



DECISION

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

Shop, Distributive and Allied Employees Association (E2017/249)

MR ENRIGHT

MELBOURNE, 10 JANUARY 2018

Arrangement for conduct of election.

[1] On 19 December 2017 the Newcastle and Northern Branch of the Shop, Distributive and Allied Employees Association lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

Branch Secretary/Treasurer
Branch Assistant Secretary (inaugural election)

[2] 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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19 December 2017

Registered Organisations Commission
414 La Trobe Street
Melbourne VIC 3000

By Email: regorgs@roc.gov.au

Dear Sir/Madam

**RE: STATEMENT AND NOTICE OF PRESCRIBED INFORMATION UNDER SECTION 189(1)
OF THE FAIR WORK (REGISTERED ORGANISATIONS) ACT 2009**

I, Barbara Nebart, Branch Secretary - Treasurer of the Shop, Distributive and Allied Employees' Association, Newcastle and Northern Branch, make the following statement:

I am the Branch Secretary – Treasurer of the Shop, Distributive and Allied Employees' Association, Newcastle and Northern Branch,

I am authorised to lodge the following prescribed information concerning forthcoming elections in the Newcastle and Northern Branch of the Shop, Distributive and Allied Employees' Association, and

I confirm that the following information is being lodged under section 189(1) of the Fair Work (Registered Organisations) Act 2009.

Elections that are required

Branch Secretary/Treasurer	1 to be elected	DVS
Branch Assistant Secretary	1 to be elected	DVS

Reasons for Election

Election for Officers as above is required as the terms of office are due to expire in the normal course of events under the rules of the organisation.

The Branch Assistant Secretary is a new position created under the new rules approved in 2016, therefore the first time this position will be up for election. The term and timelines are the same as for the Branch Secretary.

This statement is lodged at least 2 months before nominations open for the election.

Elected by

The electorate for the direct voting system is the whole of the Branch.

Nominations open

Not less than 2 weeks nor more than 3 weeks prior to the close of nominations – Rule 10(c)

Nominations close

4th Friday in March at 3.00pm, which is 23 March 2018 – Rule 10(c)

Cut off date for roll

Last working day in February before the day on which nominations open - Rule 10(h)

Signed:



Barbara Nebart
BRANCH SECRETARY - TREASURER

Date: 19 December 2017