

Shop, Distributive and Allied Employees Association South Australian Branch Elections

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.

E2012/363

South Australian Branch

Branch President

Candidate

Lyn RIVERS

Branch Vice President (2):

Candidates

Maree APPELKAMP

Anne REVELL

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



Gerry Williams
Returning Officer

26 September 2012



FAIR WORK
AUSTRALIA

DECISION

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

Shop, Distributive and Allied Employees Association
(E2012/363)

AILSA CARRUTHERS

MELBOURNE, 10 SEPTEMBER 2012

Arrangement for conduct of election.

[1] On 7 September 2012 the Shop, Distributive and Allied Employees Association - South Australian Branch lodged with Fair Work Australia the prescribed information in relation to an election for the following offices:

Branch President
Branch Vice-Presidents (2)

[2] The prescribed information was not lodged before the day prescribed by subregulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009*, being the day occurring 2 months before the first day when a person may, under the rules of the organisation or branch, become a candidate in the election. The effect of the Branch's rules is that the day that is prescribed by subregulation 138(3) is 1 June 2012. The Branch Secretary has stated that this error occurred due to a misunderstanding regarding the manner in which elections are arranged and has asked me to allow a later day for lodgment of the prescribed information under subsection 189(2) of the *Fair Work (Registered Organisations) Act 2009*. Having considered the reasons for late lodgment, I allow lodgment on 7 September 2012 in this instance.

[3] 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 GENERAL MANAGER
FAIR WORK AUSTRALIA

Printed by authority of the Commonwealth Government Printer

<Price code A, PR528933 >



7 September 2012

Ms Bernadette O'Neill
General Manager
Fair Work Australia
Level 4
11 Exhibition Street
MELBOURNE VIC 3000

Attention: Mark Elliott/Eve Anderson

Dear Ms O'Neill

**Shop, Distributive and Allied Employees Association (SA Branch) -
Application for Conduct of Elections**

I **enclose** a Statement which sets out prescribed information for the purposes of Section 189 of the *Fair Work (Registered Organisations) Act 2009* and Regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009* (Cth).

I request that you arrange for an election to be conducted for the offices specified in the Statement ("**the relevant offices**").

Request for extension of period for lodging prescribed information and for directions

I note that the prescribed information is not being lodged within the timeframe required by Regulation 139(3), which is 2 months before the first day when a person under the rules of the Branch can become a candidate for the relevant offices. Under the rules of the Branch, a person was entitled to nominate as a candidate for the relevant offices this year on 1 August 2012. Accordingly, the prescribed day was 1 June 2012.

In the circumstances, I request that you allow further time for the lodgement of the prescribed information pursuant to section 189(2) of the Act. I also request, to the extent that you are able to do so, that you give directions to the Australian Electoral Commission ("**the AEC**") in order to address an apparent irregularity that has arisen in relation to the election.

The circumstances of these requests, and my reasons for making them, are as follows:

1. By way of background, I note that the relevant offices are elected from the Branch Committee of Management and that the only persons eligible to nominate are those members who have been elected in the same year as members of the Committee (Rule 32). There has been an election for members of the Committee this year, which was conducted in accordance with the rules and the Act by the AEC following a request that I lodged pursuant to section 189 of the Act on or about 28 March 2012.

2. I became the Branch Secretary/Treasurer in July 2008, having previously held the office of Branch Assistant Secretary. On the basis of my limited previous involvement in arranging elections, I had understood that a request for the conduct of elections for members of the Committee was sufficient to cause an election for the offices of President and the Vice-Presidents. That is, the election for these offices followed automatically on the election of members of the Committee.
3. On 5 September 2012, I telephoned Mr Gerry Williams at the AEC, who this year conducted the election for members of the Committee and also Branch Assistant Secretary. The purpose of my call was to inquire about conducting elections for the relevant offices, given that no steps had been taken in relation to those elections. Mr Williams informed me that there had been no request under section 189 for an election for these offices and that he could therefore not conduct the election. This was the first time when I became aware that an election for the relevant offices required a separate request under section 189.
4. I immediately obtained legal advice and instructed solicitors for the Branch to contact Fair Work Australia to discuss what had occurred and what steps should be taken to rectify the situation.
5. It seems that what has occurred involves an irregularity for the purposes of the Act. However, I note that section 193 of the Act allows an electoral official in spite of anything contained in the rules of an organisation, to take such action and give such directions as the official considers necessary to ensure that no irregularities occur in relation to an election. In light of what has occurred, it is open to the AEC to proceed to conduct an election for the relevant offices in spite of the delay in lodging the prescribed information and the timeframe under the rules for conducting the election.
6. I submit that there is an appropriate basis for an extension of time and for directions to be given under section 193 of the Act because the delays that have occurred involve very little or no prejudice to the members of the Branch. As I have explained, the only persons who are eligible to nominate for the relevant offices are those members of the Committee who were elected this year. The relevant electorate is the members of the Committee. An election has been conducted this year for these positions in accordance with the rules and there are only eight persons who are entitled to nominate. In other words, the apparent irregularity occasions no prejudice to the wider membership of the Branch.

Conclusion

I trust that the information that I have provided is sufficient. However, I am more than happy to speak further about these matters with you or a delegate.

I also apologise for any inconvenience.

Yours faithfully



Peter Malinauskas
Secretary (SA Branch)

Encl: As above

Fair Work (Registered Organisations) Regulations 2009

Prescribed Information for election (section 189(1))

STATEMENT

I, **PETER MALINAUSKAS** of 69 Fullarton Road, Kent Town in the State of South Australia, Trade Union Secretary, make the following statement for the purposes of section 189(1) of the Act and regulation 138:

1. I am the Secretary/Treasurer of the Shop, Distributive and Allied Employees Association (SA Branch) and am authorised to sign this statement.
2. The prescribed information for the purposes of Regulation 138 is as follows:
 - 2.1. the name of each office and position in respect of which an election is required is:
 - 2.1.1. Branch President (one position);
 - 2.1.2. Branch Vice-Presidents (two positions);
 - 2.2. the reason for the election is that the terms of office will expire during 2012 in the normal course of events;
 - 2.3. the electorate comprises only the Branch Committee of Management;
 - 2.4. nominations:
 - 2.4.1. must open on the first day in August 2012;
 - 2.4.2. must close no later than 12 noon on the following Wednesday;
 - 2.5. given that the officers are to be elected from the elected members of the Branch Committee of Management, there is no relevant roll of voters other than the members of the Branch Committee of Management;
 - 2.6. the voting system to be employed is the exhaustive preferential system.



PETER MALINAUSKAS