



3 December 2018

Mr Michael Kaine
National Secretary
Transport Workers' Union of Australia
twu@twu.com.au

Dear Mr Kaine,

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 National Office [E2018/167]. 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, as soon as practicable after receiving the post-election report, 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 Transport Workers' Union of Australia 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

18 October 2018

Transport Workers' Union of Australia
Casual Vacancy Election
National Secretary
E2018/167

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Election(s) Covered in this Report

Organisation: Transport Workers' Union of Australia
Election: Casual Vacancy National Secretary
Election Decision No/s: E2018/167

Rules

Rules used for the election: [179V: incorporates alternations of 13/07/2018 R2018/141]
(replaces 21/12/2017-{R2017/304}version)

Rules difficult to apply/interpret: None

Model Rule reference (if any): N/A

For more details see the Model Rules on the AEC website:

https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections

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

Other Matters

Returning Officer actions required (Section 193): NIL

Details:

Signed



Chris Cox
Returning Officer
Australian Electoral Commission
E: nswelections@aec.gov.au
P: 02 9375 6301
18 October 2018

Attachments

- A. Declaration of results for Uncontested Offices – National

Transport Workers' Union of Australia
DECLARATION OF RESULTS - E2018/167
Uncontested Offices

Casual Vacancy 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:

National Secretary (1)

Candidates

KAINE, Michael

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



Chris Cox
Returning Officer
Australian Electoral Commission
13/08/2018



DECISION

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

Transport Workers' Union of Australia
(E2018/167)

MR ENRIGHT

MELBOURNE, 27 JULY 2018

Arrangement for conduct of election.

[1] On 2 July 2018 the Transport Workers' Union of Australia (the Union) lodged with the Registered Organisations Commission prescribed information for an election to fill a casual vacancy in the following office for the remainder of the term:

National Secretary

[2] Accompanying the prescribed information was a copy of a letter on the Union's letterhead dated 2 July 2018 addressed to the President Tim Dawson. The letter advised the following:

In accordance with rule 41(1)(a) of the rules of the Transport Workers Union of Australia, I hereby give the requisite notice of my intention to resign from the office of National Secretary. My resignation will be effective from 2 August 2018.

[3] The letter appeared to be signed electronically and underscored by the word 'Tony'.

[4] On 24 July 2018, the Registered Organisations Commission (the Commission) requested further information in relation to the National Secretary's notice of intention to resign. The National Secretary emailed the Commission on 25 July 2018 to confirm that the letter of resignation dated 2 July 2018 was from him, that he had no intention of withdrawing his resignation and that the resignation was not given involuntarily or in the 'heat of the moment'.

[5] In considering whether to arrange for the conduct of an election by the AEC, section 189 of the *Fair Work (Registered Organisations) Act 2009* (the Act) requires the Registered Organisations Commissioner (the Commissioner) or me as his Delegate to be satisfied that an election is required to be held under the rules of the organisation or branch.

[6] Rule 41(1)(a) of the Union's rules (the Rules) provides that:

Any National Officer or member of the National Committee of Management (except the National President) who intends to resign from office must:

(a) **give 1 month's notice in writing** to the National President of intention to resign;...[emphasis added]

[7] In the event of a casual vacancy for the position of the National Secretary, sub-rule 62(2) provides that:

If the expired part of the term of the position is more than both:

- (a) 12 months, and
- (b) one-quarter of the term of the position,

...an appointment for the casual vacancy must be conducted in accordance with rule 58, **as if it were an election** in accordance with sub-rule 58(2) which may occur at an ordinary or special meeting of National Council....[emphasis added]

[8] Sub-rule 58(2) of the rules provides that:

National Council must at its first meeting after a position referred to in sub-rule (1) becomes vacant elect by and from National Council a person to fill the vacant position.

[9] In pressing for an expeditious decision, the Union has advised that:

A special National Council meeting is being held as soon as possible so that the position is filled in a timely manner. The meeting is scheduled for 17 August 2018.

[10] I note that the National Secretary was declared elected and commenced a four-year term of office on 10 January 2015 [E2014/180] in accordance with sub-rule 59(24)(b). This sub-rule provides that the National Secretary takes office on 10 January every four years.

[11] On the evidence before me it is clear that the expired part of the term of the National Secretary's position has exceeded both 12 months, and one-quarter of the term of the position as prescribed by sub-rule 62(2). In view of this, it is my opinion that an election for the position of National Secretary is due to be held as provided by sub-rule 58(2).

[12] I note that the resignation is to take effect on 2 August 2018.

[13] First, I note that the manner of resignation, albeit imminent, is in accordance with the rules as outlined above.

[14] Second, regulation 138(1) of the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations) relevantly provides that:

(1) For subsection 189(1) of the Act, the following information is prescribed information for an election conducted for an office or for a position other than an office:

(b)(ii) a casual vacancy in the office or position has occurred (**or will occur imminently**);[emphasis added]

[15] I also refer to my previous decision as Delegate of the General Manager of the Fair Work Commission in *Australian Education Union [2014] FWCD 8563*. Here I referred to the decision of Vice President Watson in *Australian and International Pilots Association v Captain Michael Glynn*¹ as authority for the proposition that ‘a resignation is effective from the date of its submission’. This authority discusses relevant legal principles concerning the withdrawal of a notice of resignation, in particular, the principle that once notice has been communicated it cannot be withdrawn except by mutual consent of the parties.

[16] On balance, and upon consideration of Mr Sheldon’s written confirmation and assurance to the Commission that his resignation has been provided voluntarily, was not made ‘in the heat of the moment’ and will not be withdrawn and the fact that Mr Sheldon’s resignation was effected in accordance with the rules of the Union, 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*.

[17] Regulation 138(3) requires that, in accordance with subsection 189(2) of the Act, the prescribed day for lodgement of the prescribed information is the day occurring two months before the first day when a person may, under the rules of the organisation or branch, become a candidate in an election. As stated above, the Union has scheduled a special meeting of the National Council on 17 August 2018 specifically for the purpose of electing a National Secretary. The prescribed information was lodged on 2 July 2018 which is less than two months prior to the opening of nominations.

[18] The Union has requested that I allow a shorter period of time on the basis of the importance of the office of National Secretary and consequently the office needs to be filled as soon as possible. I also note that the Union lodged the prescribed information on the same date that Mr Sheldon provided his notice of resignation from office and therefore acted expeditiously. On the basis of the importance of the office of National Secretary and the need to fill the office quickly and taking into account the timely action undertaken by the Union I am satisfied that the above reasons are sufficient grounds to allow a shorter period of time for the lodgement of the prescribed information. Therefore I allow on this occasion under section 189(2) of the Act, a later day, that being 2 July 2018, for lodgement of the prescribed information.

[19] Regulation 138(1)(e) requires that the prescribed information state the date on which nominations of candidates may open and close under the rules of the organisation or branch in relation to the election. The prescribed information does not explicitly state the dates for the opening and closing of nominations. I note, however, that the requisite dates are implied by reference to the date of the special meeting of the National Council and sub-rules 62(2)(c) and (d) which provide that:

¹ Vice President Watson; 11 March 2011 [2011] FWA 1223.

The National Returning Officer must call for nominations from National Council to fill the vacant position **not less than 14 days before the National Council meeting** at which such position is due to be filled.....[emphasis added]

and

nominations must be received by the Returning Officer **not less than 5 days before the National Council meeting** at which the position is due to be filled. [emphasis added]

[20] In light of the above, and on my analysis, as the special meeting of the National Council is scheduled to occur on 17 August 2018, nominations for the election will open on 3 August 2018 and will close on 12 August 2018.

[21] Regulation 138(1)(f) also requires that the prescribed information state the date on which the roll of voters is to be closed. The prescribed information does not provide this information but as referred to above, the date on which the roll of voters is to be closed is implied by reference to the date of the special meeting of the National Council. As the roll of voters is to be drawn from the members of the National Council, by implication, the roll of voters will close on 17 August 2018 being the scheduled date of the special meeting of the National Council.

[22] It is expected that prescribed information lodged in respect to the Union's future elections explicitly set out the information in accordance with regulation 138(1).

[23] Notwithstanding the failure to explicitly state these dates in respect of this particular casual vacancy and in light of the importance of filling the office of National Secretary in a timely way, I have determined to make arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE COMMISSIONER

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National Office

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2 July 2018

Mr Mark Bielecki
Registered Organisations Commissioner
Registered Organisations Commission

By email: regorgs@roc.gov.au

Dear Mr Bielecki,

SECTION 189 PRESCRIBED INFORMATION FOR ELECTION

I write regarding the election by and from the organisation's National Council for the casual vacancy that will occur imminently in the office of National Secretary. The election is to be held at a special meeting of the Union's National Council Meeting on Friday 17 August 2018 at 11.30 am by telephone to be conducted by the AEC at Level 2, 388-390 Sussex Street, Sydney NSW.

The National Secretary has tendered his resignation today. I attach a copy of his resignation for your records.

A special National Council meeting is being held as soon as possible so that the position is filled in a timely manner. The meeting is scheduled for 17 August 2018. Under the rules of the Union there is no prescribed day for the election that follows a casual vacancy for National Secretary.

Such a meeting is outside the prescribed day under the *Fair Work (Registered Organisations) Act 2009*. Pursuant to section 189(1)(2) the General Manager may allow a day less than the prescribed time. We were unable to lodge the prescribed information within the specified timeframe given the resignation from the National Secretary was only provided today.

I would seek a shorter period of time to allow the election to take place at the special National Council meeting on Friday 17 August 2018. The effective date of resignation for the National Secretary is 2 August 2018. It is necessary to fill the office of National Secretary as soon as possible to ensure the effective running of the organisation.

I state, as required by Reg. 138(2) of the *Fair Work (Registered Organisations) Regulations 2009*, that this letter and the attached document is the Prescribed Information as required by s189, Sch 1, of the *Fair Work (Registered Organisations) Act 2009* and confirm that I am an officer of the organisation who is authorised to make this statement.

Yours faithfully



Michael Kaine
National Assistant Secretary
Transport Workers' Union of Australia

PRESCRIBED INFORMATION

TRANSPORT WORKERS' UNION OF AUSTRALIA

COLEGIATE ELECTIONS

National Offices

National Secretary

1

DATED: 2 July - 2018

Nomination dates: In accordance with Rules 58 and 62.
Voting system: Collegiate.

Contact: Wendy Carr, Director of Legal and Operations (02) 8114
6500 Phone

3222 Facsimile

(02) 9267

wendy.carr@twu.com.au