



4 December 2018

Mr Michael Kaine  
National Secretary  
Transport Workers' Union of Australia  
legal@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 and contested offices for National Office [E2018/173]. 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 Assistant Secretary and  
National Trustee  
E2018/173

# Contents

Election(s) Covered in this Report.....	3
Rules .....	3
Roll of Voters.....	3
Irregularities.....	3
Other Matters.....	4
Signed.....	4
Attachments.....	4
A. Declaration of results for Uncontested Offices – National.....	4

# Election(s) Covered in this Report

---

Organisation: Transport Workers' Union of Australia  
Election: Casual Vacancy  
Election Decision No/s: E2018/173

## 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](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](mailto: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 - E2018/173**  
**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 Trustee (1)**

Candidates

PIERI, 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  
23/08/2018

**Transport Workers' Union of Australia**  
**DECLARATION OF RESULTS - E2018/173**  
**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 Assistant Secretary (1)**

Candidates

MCINTOSH, Nicholas

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  
17/08/2018





## DECISION

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

**Transport Workers' Union of Australia**  
(E2018/173)

MR ENRIGHT

MELBOURNE, 1 AUGUST 2018

*Arrangement for conduct of election.*

[1] On 6 July 2018 the Transport Workers' Union of Australia (the Union) lodged with the Registered Organisations Commission prescribed information for an election to fill casual vacancies in the following offices for the remainder of the term:

National Assistant Secretary (1)

National Trustee (1)

### **National Assistant Secretary**

[2] Accompanying the prescribed information was a copy of a letter on the Union's letterhead dated 6 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 Assistant Secretary. My resignation will be effective from 6 August 2018.

[3] The letter appeared to be signed electronically by the incumbent, Mr. Michael Kaine.

[4] 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 Delegate to be satisfied that an election is required to be held under the rules of the organisation or branch.

[5] 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]

[6] In the event of a casual vacancy for the office of the National Assistant 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]

[7] 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.

[8] I note that the National Assistant Secretary was declared elected and commenced a four year term of office on 10 January 2015 <sup>1</sup> in accordance with sub-rule 59A(4)(b). This sub-rule provides that the National Assistant Secretary takes office on 10 January every four years thereafter.

[9] In response to a query by the Commission, the National Assistant Secretary emailed the Commission on 30 July 2018, stating that he had no intention of withdrawing his resignation and that the resignation was not given involuntarily or in the 'heat of the moment'.

### **National Trustee**

[10] Accompanying the prescribed information was a copy of a letter on the Union's NSW Branch letterhead dated 6 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 the National Trustee. My resignation will be effective from 6 August 2018.

---

<sup>1</sup> *Transport Workers Union of Australia [2014] FWCD 5701*,

[11] The letter appeared to be signed electronically by the incumbent, Mr. Nick McIntosh.

[12] As is the case for the National Assistant Secretary, a notice of resignation for the National Trustee is required to be given in the form and manner prescribed by rule 41(1)(a) as set out above.

[13] In the event of a casual vacancy for the office of National Trustee, rule 61 provides that the position:

...must be filled by an appointment conducted in accordance with rule 58, which may occur at an ordinary or special meeting of National Council.

[14] Sub-rule 58(1) of the rules provides that:

National Council must, elect by and from National Council annually.

(c) 3 National Trustees.

and Sub-rule 58(2) provides that:

National Council must, at its first meeting after a position referred to in sub-rule 58(1) becomes vacant, **elect by and from National Council** a person to fill the vacant position...[emphasis added]

[15] I note that the National Trustee was declared elected and commenced a 12 month term of office on 21 May 2018<sup>2</sup> in accordance with sub-rule 58(1).

[16] In response to a query by the Commission, the National Trustee similarly emailed the Commission on 30 July 2018, stating that he had no intention of withdrawing his resignation and that the resignation was not given involuntarily or in the 'heat of the moment'.

### General Considerations

[17] In seeking a timely decision, the Union has advised that:

A special National Council meeting is being held as soon as possible so that the positions can be filled in a timely manner. The meeting is scheduled for 21 August 2018.

[18] I note that the resignations for the respective offices are to take effect on 6 August 2018.

---

<sup>2</sup> *Transport Workers Union of Australia [2018] ROCD 49*

[19] In this respect, first, I note that the manner of resignation for both offices, albeit imminent, is in accordance with rules as outlined above.

[20] 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]

[21] I also refer to my 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*<sup>3</sup> 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.

[22] On balance, and upon consideration of the written assurances provided to the Commission by the respective office holders, that their resignations have been provided voluntarily, were not made in ‘the heat of the moment’ and will not be withdrawn, and the fact that both resignations were effected in accordance with the rules of the Union, I am satisfied that elections for the abovenamed offices are required to be held under the rules of the organisation and, under subsection 189(3) of the Act.

[23] Regulation 138(3) requires that, in accordance with subsection 189(2) of the Act, the prescribed day of 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 21 August 2018 specifically for the purpose of electing a National Assistant Secretary and a National Trustee. The prescribed information was lodged on 6 July 2018 which is less than two months prior to the opening of nominations.

[24] I refer to my recent decision in respect to the arrangement for the conduct of an imminent election for the position of Union National Secretary, *Transport Workers Union of Australia [2018] ROCD 141*. In that matter the Union requested that I allow a shorter period of time on the basis of the importance of the office of National Secretary and the need for the office to be filled as soon as possible. In my consideration of the relevant circumstances of that matter, I took into account the fact that the Union had lodged the prescribed information on the same date as the incumbent had provided his notice of resignation, and had therefore acted expeditiously.

---

<sup>3</sup> Vice President Watson; 11 March 2011 [2011] FWA 1223.

[25] On 31 July 2018, the Union's Director of Legal & Operations emailed the Commission, noting that, the special meeting of the National Council is scheduled to occur outside of the prescribed day required in accordance with regulation 138(3). In view of the date in which the requisite resignations from office were received, the Union has requested that I allow a shorter period of time on the basis of the need to fill the offices in a timely manner at the special meeting of National Council scheduled on 21 August 2018.

[26] As the present circumstances are identical to those considered in my decision referred to above, those being the importance of the offices and the need to fill them as quickly as possible, and the fact that the Union lodged the prescribed information on the same date that Mr. Kaine and Mr. McIntosh provided their notices of resignation, I am satisfied the circumstances are sufficient grounds to allow a shorter period of time for the lodgement of the prescribed information.

[27] Therefore I allow on this occasion under section 189(2) of the Act, a later day, that being 6 July 2018, for lodgement of the prescribed information.

[28] 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. The prescribed information does not explicitly state the dates for the opening and closing of nominations for election of the respective offices. I note, however that the requisite dates are implied by reference to the date of the special meeting of the National Council.

[29] In the case of the opening and closing of nominations for election to the office of the National Assistant Secretary, sub-rules 62(2)(c) and (d) provide that:

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]

[30] In the case of the opening and closing of nominations for election to the office of the National Trustee, sub-rule 58(4) provides that:

The National Returning Officer must call for nominations **during the first session of the meeting of the National Council** referred to sub-rule (1) and (2)...[emphasis added]

[31] In light of the above, and on my analysis, as the special meeting of the National Council is scheduled to occur on 21 August 2018, nominations for the election of the National Assistant

Secretary will open on 7 August 2018 and will close on 16 August 2018. Nominations for the election of the National Trustee will open and close at the special meeting of the National Council on 21 August 2018.

[32] 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 in each case, is to be drawn from the members of the National Council, by implication, the roll of voters will close on 21 August 2018 prior to the scheduled time for the conduct of the special meeting of the National Council.

[33] Notwithstanding the failure to explicitly state these dates, and in light of the importance of filling the office of the National Assistant Secretary and the National Trustee in a timely manner, I have determined to make arrangements for the conduct of the elections by the Australian Electoral Commission.



---

DELEGATE OF THE COMMISSIONER

Printed by authority of the Commonwealth Government Printer  
<PR351124>

**National Office**

a 388-390 Sussex St, Sydney NSW 2000

t 02 8114 6500

f 02 9267 3222

6 July 2018

Mr Mark Bielecki  
Registered Organisations Commissioner  
Registered Organisations Commission

By email: [regorgs@roc.gov.au](mailto: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 vacancies that will occur imminently in the office of National Assistant Secretary and National Trustee. The election is to be held at a special meeting of the Union's National Council Meeting on Tuesday 21 August 2018 at 11.30 am EST by telephone to be conducted by the AEC at Level 2, 388-390 Sussex Street, Sydney NSW.

The National Assistant Secretary and National Trustee have tendered their resignations today. I attach a copy of their resignations for your records.

A special National Council meeting is being held as soon as possible so that the positions can be filled in a timely manner. The meeting is scheduled for 21 August 2018. Under the rules of the Union there is no prescribed day for the election that follows a casual vacancy for National Assistant Secretary or National Trustee.

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



Anthony Sheldon  
**National Secretary**  
**Transport Workers' Union of Australia**



**PRESCRIBED INFORMATION**

**TRANSPORT WORKERS' UNION OF AUSTRALIA**

**COLEGIATE ELECTIONS**

**National Offices**

National Assistant Secretary 1

National Trustee 1

DATED: 6 July - 2018

Nomination dates: In accordance with Rules 58, 61 and 62.  
Voting system: Collegiate.

---

**Contact:** Wendy Carr, Director of Legal and Operations

**Phone** (02) 8114 6500

**Facsimile** (02) 9267 3222

[wendy.carr@twu.com.au](mailto:wendy.carr@twu.com.au)