

From: Simon Bulloch [mailto:Simon.Bulloch@aec.gov.au]
Sent: Monday, 5 December 2016 12:58 PM
To: Jo.Schofield@unitedvoice.org.au; Orgs; Industrial Elections
Cc: Bev Myers
Subject: SK - E2016/249 - United Voice Election - Declaration of Uncontested Offices
[SEC=UNCLASSIFIED]

UNCLASSIFIED

Jo-anne,

I refer to the above election for your organisation.

Section 197(1) of the *Fair Work (Registered Organisations) Act 2009* ("the Act") requires the AEC to provide a written report on the conduct of the election to the Fair Work Commission and to the organisation or branch for whom the election was conducted. A copy of the report in relation to this election is attached.

Section 198 of the Act 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 response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

If the attached report identifies a rule that was difficult to interpret or apply, you should forward your response to the AEC by email to 'industrial.elections@aec.gov.au' within thirty days of the date of the report.

Section 198 and the regulations also require an organisation to make the Post Election Report and the organisation's response to the report (if applicable) available to members.

Further, Regulation 141(4) of the *Fair Work (Registered Organisations) Regulations 2009* requires an organisation or branch to publish a notice on its website advising members that a copy of the Post Election Report is available upon request. If a website is not available, publishing a notice in a journal or newsletter would be considered appropriate.

Please contact me if you wish to clarify any aspect of this report.

Regards,

Simon Bulloch | Manager
Election Services | WA State Office
Australian Electoral Commission
T: (08) 6363 8011 | M: 0413 006 210 | F: (08) 6363 8052



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E2016.249 Untied Voice Insufficient No



E2016.249 Untied Voice Insufficient No

Fair Work (Registered Organisations) Act 2009
POST ELECTION REPORT

Client: United Voice
Contact details: Jo-Anne Schofield

Email: Jo.Schofield@unitedvoice.org.au

FWA contact officer: Stephen Kellett

Tel: 02 8204 3000
Email: stephen.kellett@fwc.gov
Tel: 026746 3283

ELECTION/S COVERED IN THIS REPORT

Election Decision No/s: E2016/249

RULES

Rules used for the election: [108V: Incorporates alterations of 22/12/2015 in matter R2015/288]

Model Rule reference (if any): N/A
Rules difficult to apply/interpret: (eg, None)

ROLL OF VOTERS

The Roll of voters was supplied by United Voice and used to obtain the email and postal addresses to allow the election notice and nomination form to be emailed and posted to eligible member of national Council.

IRREGULARITIES

Details of written allegations of irregularities, and action taken by AEC: Nil

Other irregularities identified, and action taken: Nil

ATTACHMENTS

Declaration of Results for Uncontested Offices



Simon Bulloch
Returning Officer
5 December 2016

**United Voice
National Executive Member representing Western
Australia Branch**

Declaration of Results for Uncontested Offices

E2016/249

Below are 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.

National Executive Member representing Western Australia Branch

Candidates

LORD, Karma

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



Simon Bulloch
Returning Officer

5 December 2016



DECISION

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

United Voice
(E2016/249)

MR ENRIGHT

MELBOURNE, 31 OCTOBER 2016

Arrangement for conduct of election.

[1] On 26 October 2016, United Voice (‘the organisation’) lodged with the Fair Work Commission prescribed information in relation to an election to fill a vacancy in the following office:

National Executive

National Executive Member representing the following Branch

Western Australia

(1)

[2] The vacancy was the subject of a previous election, E2016/208. The organisation advised that the organisation was seeking the election because no nominations had been received in that election, which was declared on 19 October 2016. Thus, the election may be characterised as a recall election to fill a casual vacancy due to a lack of nominations at a preceding election.

[3] In its letter setting out the prescribed information, the organisation requested that a later day be allowed for lodgement. The organisation proposed that nominations open on 15 November 2016 “*subject to the agreement of the Fair Work Commission and the returning officer appointed by the AEC*”.

[4] Where the proposed date for the opening of nominations is concerned, the timing of the conduct of the election is a matter for the Australian Electoral Commission, not the Fair Work Commission. Sub-rule 22(g) provides that where an election is conducted by secret postal ballot of the members of the National Council:

“the returning officer will have the conduct of such election. The returning officer must call for nominations to be made by members of the National Council in writing and must determine a manner and time within which such nominations are to be made.”

[5] In this case the organisation desires to ensure that the position is filled as soon as possible and to conclude the election prior to the Christmas period and the annual shut down.¹ The interest in filling the vacancy as soon as permissible is consistent with the view expressed by the Court that, in relation to insufficient nominations having been received at a previous election, further elections must be held and the process must continue for as long as offices remain unfilled.² A clear implication of the Court's view is that offices should be filled as soon as possible, and consequently, prescribed information that is lodged promptly after a negative results declaration at a relevant earlier election, as in this case, may be regarded as having been lodged in a timely manner before the commencement of the next election. This is similar to the case where prescribed information is lodged promptly upon a casual vacancy first arising, and indeed, in my Decision granting the previous election, I enjoined the organisation, having delayed its lodgement of prescribed information without what I considered a satisfactory reason, to lodge future prescribed information in "a more timely manner".³

[6] In the present case, I find that the organisation has lodged prescribed information promptly following a failure to fill the office at the relevant earlier election, and therefore in a timely manner before a proposed commencement of the next election, and, to the extent that a prescribed day is calculable and applicable in this case, I allow the later day for lodgement.

[7] I am satisfied that an election for the above-named 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*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER

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¹ Email received 28 October 2016

² *Geneff v Peterson and Ors* [1986] FCA 432, Gray J at 129

³ See PR584627, 14 September 2016

From: KELLETT, Stephen
Sent: Monday, 31 October 2016 9:14 AM
To: Bev.Myers@unitedvoice.org.au
Subject: Election - United Voice - E2016/249 - Decision

Dear Ms Myers,

Please see attached a copy of the Delegate's decision in relation to the above.

Yours faithfully

STEPHEN KELLETT
Regulatory Compliance Branch
FAIR WORK COMMISSION

80 William Street
EAST SYDNEY NSW 2011

(ph) (02) 6746 3283
(mob.) 0429 462 979
(email) stephen.kellett@fwc.gov



E2016_249_UV
Decision.pdf

From: KELLETT, Stephen
Sent: Monday, 31 October 2016 9:13 AM
To: 'Industrial Elections'
Subject: Election - United Voice - E2016/249 - Decision

Dear Electoral Officer,

Please see attached a copy of the Delegate's decision in relation to the above.

Yours faithfully

STEPHEN KELLETT
Regulatory Compliance Branch
FAIR WORK COMMISSION

80 William Street
EAST SYDNEY NSW 2011

(ph) (02) 6746 3283
(mob.) 0429 462 979
(email) stephen.kellett@fwc.gov



E2016_249_UV
Decision.pdf

From: Bev Myers [mailto:Bev.Myers@unitedvoice.org.au]
Sent: Friday, 28 October 2016 10:09 AM
To: KELLETT, Stephen
Subject: RE: clarification re National Council meeting

Dear Stephen,

As discussed earlier, the proposed nomination period is desired principally to ensure that the position is filled as soon as possible after the union's National Executive meeting next week, and to conclude the election prior to the Christmas period and our annual shut down, if possible.

Should you have any further queries, please feel free to contact me.

Kind regards,

Bev

Bev Myers
Director, Corporate & Public Affairs
United Voice National Office

Direct: 02 8204 3016 | Mobile: 0449 155 673 | Fax: 02 9281 4480



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From: david.vale@fwc.gov.au [mailto:david.vale@fwc.gov.au]
Sent: Thursday, 27 October 2016 9:38 AM
To: industrial.elections@aec.gov.au
Subject: FWC Letter to AEC - E2016/249 - Application/Notification by United Voice

Please find attached correspondence regarding the matter **E2016/249 - Application/Notification by United Voice**

This correspondence was sent automatically from the Fair Work Commission.



31479D7A947E83F2 ORG letter AEC.doc
BB9E30AD48F0E4786



Copy of Prescribed Information

Title of Matter: Application/Notification by United Voice
Section: s.189(1) RO Act - Notification of elections for office - Casual vacancy or insufficient nominations
Subject:
Matter Number(s): E2016/249

Attn: Electoral Officer

A copy of the Prescribed Information in relation to the above matter is attached for your information.

The election decision will be forwarded to your office in due course.

Inquiries:

Any inquiries relating to this are to be directed to: orgs@fwc.gov.au.

27 OCTOBER 2016

From: Bev Myers [mailto:Bev.Myers@unitedvoice.org.au]
Sent: Wednesday, 26 October 2016 1:49 PM
To: Orgs
Cc: Julie Sprake
Subject: Request for an Election

Dear Sir/Madam,

Please find attached a request to the General Manager for an election to be held for the National Executive of United Voice.

Should you have any queries, please feel free to contact me.

Kind regards,

Bev

Bev Myers
Director, Corporate & Public Affairs
United Voice National Office

Direct: 02 8204 3016 | Mobile: 0449 155 673 | Fax: 02 9281 4480



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FW Message from
Kelly Shay .msg



Ltr to FWC WA Oct
26.pdf



26 October 2016

The General Manager
Fair Work Commission
80 William Street
EAST SYDNEY NSW 2011
By email: orgs@fwc.gov.au

Dear Madam,

Notice of prescribed information for election

I write to request that an election be held for the National Executive of United Voice.

The prescribed information pursuant to s.189(1) of the *Fair Work (Registered Organisations) Act 2009* ("the Act") and Regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009* is as follows:

1. The name of each office or position for which an election is required is:
 - 1.1. Member of the National Executive (WA Branch)
2. The reason for the election is that a casual vacancy the above office or position has occurred. Kelly Shay, member of the National Executive from WA resigned from her role. A copy of her resignation is attached.
3. Not applicable.
4. The electorates for the office or position are the delegates to National Council - Rule 22(g).
5. The date and time of the beginning and end of the period in which nominations of candidates will be called for or may be made under the rules of United Voice in relation to the election are contained in rules 22(f) and 22(g) of the Rules. It is proposed that, subject to the agreement of the Fair Work Commission and the returning officer appointed by the AEC, that nominations be called on 15 November 2016 and close on 30 November 2016.
6. The day on which the roll of voters is to be closed is provided for in Rule 22(f) of the United Voice rules. The roll of voters has already closed as it consists of the delegates to the National Council of United Voice elected at the last quadrennial election as well as those subsequent casual vacancies filled either by Branch election or Branch Council appointment.

7. The voting system to be employed in the conduct of the election is a direct voting system.

I confirm that I am authorised by United Voice and by the rules of United Voice to make this statement on behalf of United Voice and that this information is lodged under subsection 189(1) of the Act.

In the event that nominations close on 30 November 2016, the prescribed information will not have been lodged more than two months before the first day when a person may, under the rules of United Voice, become a candidate in an election. Accordingly, I request that the General Manager allows it to be lodged on a later day in accordance with s.189(2).

As you may be aware, a previous request for an election in respect of the afore-mentioned office or position was submitted on 19 August 2016. Nominations were called for and closed on October 6, 2016. No nominations in respect of the office or position were received. In the interests of filling vacant positions or offices in the union, United Voice seeks to therefore conduct the election again, notwithstanding the short passage of time.

If you have any queries please contact Bev Myers on (02) 8204 3016 or bev.myers@unitedvoice.org.au

Yours faithfully



Jo-anne Schofield
NATIONAL SECRETARY

Attachments:

Kelly Shay, letter of resignation