



WASTE CONTRACTORS &  
RECYCLERS ASSOCIATION  
OF N.S.W

ABN 72 805 135 472

Suite 2, First Floor  
12-16 Daniel Street  
Wetherill Park NSW 2164

PO Box 6643  
Wetherill Park BC NSW 2164

Phone: (02) 9604 7206  
Fax: (02) 9604 7256  
memberservices@wcra.com.au

4<sup>th</sup> December 2018

**Registered Organisations Commission  
and  
The Australian Electoral Commission**

By e mail to  
[regorgs@roc.gov.au](mailto:regorgs@roc.gov.au)  
and  
[Neil.Kean@aec.gov.au](mailto:Neil.Kean@aec.gov.au)

**Re Post election report E2018/146**

Dear All,

We refer to your letter dated 20 November 2018 and advise as follows:-

- As advised on 15<sup>th</sup> November 2018 we again confirm that an election notice has been posted to our website [www.wcra.com.au](http://www.wcra.com.au)
- Our Executive has considered the matter of Rule 21.2 (aa). We are satisfied with the process followed by the AEC in utilising the provisions under s 193 of the Fair Work (Registered Organisations) Act 2009 to overcome these Rule deficiencies. However, we understand that a proper fix is required via a Rule change;
- In addition, we understand that a new Rule will be required to deal with "withdrawal of nominations";
- Our Executive intend to table resolutions at the half year meeting in May 2019, seeking to implement and address these Rule changes;
- We confirm that a copy of this letter will be sent to the Nominated Representative of each Member and a copy of this letter will be placed on our website [www.wcra.com.au](http://www.wcra.com.au)

Yours faithfully

Tony Khoury  
Executive Director



20 November 2018

Executive Director  
Waste Contractors & Recyclers Association of NSW  
tony@wcra.com.au

Dear Executive Director

**Organisation must respond to the post-election report of the Australian Electoral Commission: E2018/146**

On 13/11/2018 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2018/146 dated 13/11/2018. 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 21.2(aa). 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](mailto: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**



15 November 2018

Executive Director  
Waste Contractors & Recyclers Association of NSW  
tony@wcra.com.au

Dear Executive Director,

### **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 stage 1 and 2 uncontested offices for Head Office Branch [E2018/146]. 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 Waste Contractors & Recyclers Association of NSW 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

**Matthew Indrigo**  
**Registered Organisations Commission**

13 November 2018

Waste Contractors & Recyclers  
Association of NSW  
Scheduled Election  
E2018/146

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## Election(s) Covered in this Report

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Organisation: Waste Contractors & Recyclers Association of NSW

Election: Scheduled

Election Decision No/s: E2018/146

## Rules

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Rules used for the election: [149N: Incorporates alterations in matter D2014/71 effective from 1 June 2015]

### Rules difficult to apply/interpret:

I wish to draw your attention to Rule 21.2(aa) of the registered rules of the Association which states:-

**Rule 21.2(aa)** In the event that there are no duly nominated candidates for the Executive from one or more category of member, or where the number of duly nominated candidates are insufficient to fill the relevant number of Executive positions provided for rule 21.2(a), the remaining vacant positions on the Executive may be elected from duly nominated candidates irrespective of which category the nominees belong.

Note 1 Example - If there are 8 duly nominated candidates for Category A, 6 duly nominated candidates for Category B and no duly nominated candidates for Category C, the vacant Executive positions for Category C may be filled from the unsuccessful duly nominated candidates for Category A and B

Note 2 Example - If there are 5 duly nominated candidates for Category A, 7 duly nominated candidates for Category B and 1 duly nominated candidate for Category C, the Executive position for Category A and C may be filled from the unsuccessful duly nominated candidates for Category B.

The above rule does not provide a process for selecting the unsuccessful duly nominated candidates to fill any remaining vacancies should a ballot be required.

In this election, the Returning Officer applied the following process to identify the highest ranked unsuccessful candidate:-

- conduct one ballot involving all candidates from categories where the number of candidates exceeds the number required in the formula. Candidates from categories that have the required number or less will not be included in the ballot.
- To determine the unsuccessful candidates to fill a vacancy shortfall, the highest scoring candidates from the contested category/categories will be elected and the vacancy shortfall will be filled by the highest scoring unelected candidate/s.



For example, if at the close of nominations there are:

Category A - 9 candidates for 6 positions

Category B - 7 candidates for 4 positions

Category C - 1 candidate for 2 positions (leaving a vacancy shortfall of 1 in Cat C).

Cat C candidate is not include in the ballot. In this case, the Returning Officer will conduct one ballot with 16 candidates from Cat A and Cat B and select the 6 highest scoring candidates from Cat A and the 4 highest scoring candidates from Cat B to fill the Cat A and Cat B positions and then select the highest scoring unsuccessful candidate from the ballot to fill the Category C shortfall.

I would strongly recommend the organisation to include this process or another process in their rules to clearly clarify this issue.

The Association's rules do not contain a rule regarding the withdrawal of nominations. The model rules on the AEC website have a section regarding withdrawal of nominations which may assist

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

[https://www.aec.gov.au/About\\_AEC/AEC\\_Services/Industrial\\_Elections/files/model-rules-nov2010.pdf](https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections/files/model-rules-nov2010.pdf)

## Roll of Voters

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As there were no contested offices, no Roll of Voters was required.

Other matters pertaining to the roll of voters: Nil

## Irregularities

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

Other irregularities identified, and action taken: Nil

## Other Matters

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Returning Officer actions required (Section 193): Yes

Details:

Rule 21.2(aa) is procedurally defective as it does not provide RO with a process for selecting the unsuccessful duly nominated candidates to fill any remaining vacancies.

Consequently used powers under Section 193 of the *Fair Work (Registered Organisations) Act 2009*, to remedy this defect.



Neil Kean  
Returning Officer  
Australian Electoral Commission  
E: nswelections@aec.gov.au  
P: 02 9375 6362  
13 November 2018

## Attachments

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- A. Declaration of Results for Uncontested Offices – Stage 1
- B. Declaration of Results for Uncontested Offices – Stage 2

**Waste Contractors & Recyclers Association of NSW**  
**DECLARATION OF RESULTS - E2018/146**  
**Uncontested Offices**

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**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:

**Office-Bearers**

**President (1)**

Candidates

WILSON, Harry

**Vice-President (1)**

Candidates

MCBURNEY, Susie

**Treasurer (1)**

Candidates

TURNER, Gregory Ross

**Secretary (1)**

Candidates

BRANDSTATER, Jeff

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



Neil Kean  
Returning Officer  
Australian Electoral Commission  
13/11/2018

**Waste Contractors & Recyclers Association of NSW**  
**DECLARATION OF RESULTS - E2018/146**  
**Uncontested Offices**

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**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:

**Executive Members**

**Executive Category A (6)**

Candidates

JOHNSTON, David  
MCBURNEY, Susie  
NICHOLSON, Mick  
TENGDahl, Paul  
TURNER, Greg

**Executive Category B (4)**

Candidates

BRANDSTATER, Jeff  
HARRISON, David  
UNG, Nathan  
WILSON, Harry

**Executive Category C (2)**

Candidates

FALANGA, Mark  
GAUSLAA, Glenn

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



Catherine Bernoth  
Returning Officer  
Australian Electoral Commission  
11/10/2018



Australian Government

Registered Organisations Commission

## DECISION

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

### **Waste Contractors & Recyclers Association of NSW** (E2018/146)

MR ENRIGHT

MELBOURNE, 16 JULY 2018

*Arrangement for conduct of election.*

[1] On 27 June 2018 the Waste Contractors & Recyclers Association of NSW lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

Executive Category A	(6)
Executive Category B	(4)
Executive Category C	(2)
President	(1)
Vice-President	(1)
Treasurer	(1)
Secretary	(1)

[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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**PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 *Fair Work (Registered Organisations) Act 2009* and Regulation 138 *Fair Work (Registered Organisations) Regulations 2009***

**Election of Offices [E2018/146]**

I, Jeffrey Brandstater, being the Secretary of the Waste Contractors & Recyclers Association of NSW, make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Waste Contractors & Recyclers Association of NSW;
2. The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. The elections that are required are set out in the table in Annexure A.
4. No rule alterations are pending that will impact the election.
5. This statement **IS** lodged at least 2 months before nominations open for the election below.

Signed:



SECRETARY

Dated: 27th June 2018

*[PLEASE NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. It can be submitted to [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).]*

## ANNEXURE A

- Elections that are required by the Waste Contractors & Recyclers Association of NSW

Branch	Name of Office	Number required	Voting System <i>Direct voting system; Collegiate electoral system</i>	Reason for Election <i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	Electorate
	Executive, Category A	6	Direct voting system	Scheduled	Rules 21.2, 21A, 23 & 24
	Executive, Category B	4	Direct voting system	Scheduled	Rules 21.2, 21A, 23 & 24
	Executive, Category C	2	Direct voting system	Scheduled	Rules 21.2, 21A, 23 & 24
	President	1	Collegiate electoral system	Scheduled	Rules 24 & 26
	Vice President	1	Collegiate electoral system	Scheduled	Rules 24 & 26
	Treasurer	1	Collegiate electoral system	Scheduled	Rules 24 & 26
...	Secretary	1	Collegiate electoral system	Scheduled	Rules 24 & 26

- The Annual General Meeting (**AGM**) will be held at 9:30am on Tuesday 13<sup>th</sup> November 2018
- The timing of the ballot must be such that the counting of votes takes place not earlier than 14 days & not later than 7 days of the AGM (rule 24 h)

	Direct Voting System	Collegiate Electoral System
<b>Nominations OPEN</b>	<i>to be determined by the returning officer</i>	<i>to be determined by the returning officer</i>
<b>Nominations CLOSE</b>	<i>to be determined by the returning officer</i>	<i>to be determined by the returning officer</i>
<b>Roll of Voters cut-off date</b>	<i>7 days prior to the opening of nominations Rule 24 (i)</i>	<i>7 days prior to the opening of nominations Rule 24 (i)</i>