

16 February 2024

Post-election report

Australian Education Union
Scheduled election
E2023/169

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Election(s) Covered in this Report

Organisation: Australian Education Union (AEU)
Election Decision No: E2023/169
Election: Scheduled

Date the nominations closed:

AEU Federal	5 January 2024
AEU NSWTF	7 February 2024
AEU NT	5 February 2024
AEU QLD	5 January 2024
AEU VIC	5 January 2024

Date results declared:

AEU Federal	15 January 2024
AEU NSWTF	12 February 2024
AEU NT	13 February 2024
AEU QLD	11 January 2024
AEU VIC	9 January 2024

Date PER due: 14 March 2024

Relevant legal provisions

Fair Work (Registered Organisations) Act 2009 ('the Act')

197 Post-election report by AEC

Requirement for AEC to make report

- (1) After the completion of an election conducted under this Part by the AEC, the AEC must give a written report on the conduct of the election to:
 - (a) the General Manager; and
 - (b) the organisation or branch for whom the election was conducted.

Note: The AEC may be able, in the same report, to report on more than one election it has conducted for an organisation. However, regulations made under paragraph 359(2)(c) may impose requirements about the manner and timing of reports.

- (2) The report must include details of the prescribed matters.

Contents of report—register of members

- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the election contained, at the time of the election:
 - (a) an unusually large proportion of members' addresses that were not current; or
 - (b) in the case of a register kept by an organisation of employees—an unusually large proportion of members' addresses that were workplace addresses;this fact must be included in the report, together with a reference to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: Model rules are relevant only to the conduct of elections for office, not for elections for other positions (see section 147).

Contents of report—difficult rules

- (4) If the report identifies a rule of the organisation or branch that, in the AEC's opinion, was difficult to interpret or apply in relation to the conduct of the election, the report must also refer to any relevant model rules, which in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: For model rules, see section 147.

Subsection (3) relevant only for postal ballots

- (5) Subsection (3) applies only in relation to elections conducted by postal ballot.

Note: An organisation can obtain an exemption from the requirement to hold elections for office by postal ballot (see section 144).

190 Organisation or branch must not assist one candidate over another

An organisation or branch commits an offence if it uses, or allows to be used, its property or resources to help a candidate against another candidate in an election under this Part for an office or other position.

Penalty: 100 penalty units.

193 Provisions applicable to elections conducted by AEC

- (1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office or other position in an organisation, or branch of an organisation, the electoral official:
- (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and
 - (b) may, in spite of anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary:
 - (i) to ensure that no irregularities occur in or in relation to the election; or
 - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules; or
 - (iii) to ensure the security of ballot papers and envelopes that are for use, or used, in the election.

- (2) A person commits an offence if the person does not comply with a direction under subsection (1).

Penalty: 30 penalty units.

- (3) Subsection (2) does not apply so far as the person is not capable of complying.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) An election for an office or other position conducted by an electoral official, or step taken in relation to such an election, is not invalid merely because of a breach of the rules of the organisation or branch because of:

- (a) action taken under subsection (1); or
- (b) an act done in compliance with a direction under subsection (1).

- (7) If an electoral official conducting, or taking a step in connection with, an election for an office or other position:

- (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
- (b) ceases to be qualified to conduct the election or to take the step;

the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

6 Definitions

irregularity, in relation to an election or ballot, includes:

- (a) a breach of the rules of an organisation or branch of an organisation; and
- (b) an act or omission by means of which:
 - (i) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
 - (ii) a correct ascertainment or declaration of the results of the voting; is, or is attempted to be, prevented or hindered; and
- (c) a contravention of section 190.

Fair Work (Registered Organisations) Regulations 2009 ('the Regulations')

140 Declaration of result of election (s 193)

- (1) Within 14 days after the closing day of an election, the AEC must issue a declaration stating the following:
 - (a) the total number of persons on the roll of voters;
 - (b) the total number of ballot papers issued (if applicable);
 - (c) the total number of envelopes that were returned undelivered by the closing day of the ballot to the AEC (if applicable);
 - (d) the total number of ballot papers received by the electoral official by the closing day of the ballot (if applicable);
 - (e) the result of the election;
 - (f) the total number of informal ballot papers (if applicable).
- (2) In subregulation (1), **closing day**, for an election, means:
 - (a) if a ballot is not required—the day on which nominations for the election close; or
 - (b) if a ballot is required—the closing day of the ballot.
- (3) Immediately after issuing a declaration under subregulation (1), the AEC must give a copy of the declaration to:
 - (a) the General Manager; and
 - (b) the organisation or branch for whom the election was conducted.

141 Post-election report by AEC (s 197(2))

- (1) For subsection 197(2) of the Act, the following matters are prescribed for inclusion in the report (the **post-election report**) given under subsection 197(1) of the Act:
 - (a) the declaration mentioned in regulation 140;
 - (b) any rules of the organisation or branch which because of ambiguity or other reason, were difficult to interpret or apply;
 - (c) any matters in relation to the roll of voters including those matters contained in subsection 197(3) of the Act;
 - (d) the number of written allegations (if any) of irregularities made to the AEC during the election;
 - (e) action taken by the AEC in relation to those allegations;
 - (f) any other irregularities identified by the AEC and action taken by the AEC in relation to those other irregularities.
- (2) The AEC must:
 - (a) give the post-election report within 30 days after the closing day of the election; and
 - (b) publish a notice on its web site advising that a copy of the post-election report can be obtained from the AEC on the request of a member who was eligible to vote in the election.

- (3) The AEC must supply a copy of the post-election report to the member as soon as practicable, but no later than 7 days, after receiving a request under paragraph (2)(b).

145 Elections conducted by AEC—no unauthorised action

- (1) For any election conducted by the AEC under Part 2 of Chapter 7 of the Act, a person other than the person conducting the election must not do, or purport to do, any act in the conduct of the election other than as directed or authorised by the person conducting the election.

Note: This subregulation is a civil penalty provision (see regulation 168).

- (2) The AEC must advise the General Manager of a possible contravention of subregulation (1) not later than 21 days after the AEC has become aware of the possible contravention.

Declaration of result of election

In accordance with reg 140 of the Regulations, the AEC issued the following declarations of the result of election E2023/169:

AEU Federal	15 January 2024
AEU NSWTF	12 February 2024
AEU NT	13 February 2024
AEU QLD	11 January 2024
AEU VIC	9 January 2024

For a copy, see **Attachment A, B, C, D and E**.

Australian Education Union Rules

Rules used for the election: 284V: Incorporates alterations of 9 August 2023 [R2023/54]

The following AEU rules were ambiguous, and difficult to interpret or apply, and for this reason directions under s193 of the *Fair Work (Registered Organisations) Act 2009* were issued when planning the election:

AEU Federal Branch:

The AEU Federal rules 35A(4), 35B(4) and 35C(4) allow for the withdrawal of Nominations in writing to the Returning Officer signed by the nominee and submitted by hand, post and facsimile only. The Returning Officer issued a direction to allow any withdrawal of nominations to be lodged via email in addition to the method of by hand, post or facsimile.

AEU NT Branch:

The NT Branch rules do not specify a date and time by which scrutineer appointments need to be made – for this reason, the Returning Officer directed that scrutineer appointments were to close at commencement of the count, because this is consistent with NSW TF rules.

As the AEU NT Branch was unable to hold an in person meeting to allow the newly elected Federal Executive Member to be declared and take office by 1 March 2024 the branch requested the AEC conduct a postal ballot. In the circumstances, a postal ballot was not required.

AEU NSWTF Branch:

Rule 34 of the AEU New South Wales Teachers Branch rules provide for a preferential system of voting, but are silent in relation to ballot paper formality, for example: is a ballot paper informal if a voter only indicates their first preference if there is more than 1 candidate? Or must they number all candidates in order of their preference? In the circumstances, the Returning Officer issued a direction to apply the Optional Standard Preferential system thus the voter will not be required to indicate a preference for each candidate in the election; and issued a direction to apply Model Rule 17.3.2 where ballot papers would only be rejected if the ballot paper did not bear the initials or other authenticating mark of the returning officer, and/or had upon it any mark or writing by which the voter can be identified, and/or was not marked substantially in accordance with the instructions included on the ballot paper and/or the marking was such that the intention of the voter was not clear, and/or was not returned inside the declaration envelope.

Given these matters, it is suggested that the Organisation may wish to review the relevant rules and whether they need revision.

Roll of Voters

There were no matters in relation to the roll of voters including those matters contained in subsection 197(3) of the Act.

Written allegations of any irregularities

The AEC did not receive any written allegations of irregularities during the election.

Other irregularities

The AEC did not identify any other irregularities.

Signed

Ann Dougan
Returning Officer
Australian Electoral Commission
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16 February 2024

Attachments

- A. Declaration of results (Uncontested) – AEU Federal
- B. Declaration of results (Uncontested) – AEU NSWTF
- C. Declaration of results (Uncontested) – AEU NT
- D. Declaration of results (Uncontested) – AEU QLD
- E. Declaration of results (Uncontested) – AEU VIC

Australian Education Union
New South Wales Teachers Federation Branch
DECLARATION OF RESULTS - E2023/169
Uncontested Offices

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:

New South Wales Teachers Federation Branch

Federal Executive Members (General Division) (4)

Candidates

FLOHM Amber

RAJENDRA Henry

SMITH Mel

WATT Natasha

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

Ann Dougan
Returning Officer
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12/02/2024

