

CFMEU

CONSTRUCTION

7 March, 2017.

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Assistant Director

Australian Electoral Commission

Industrial & Commercial Elections | NSW State Office

Attention: Ms. Renee Damasena

Dear Ms. Damasena,

Re: Post Election Report

Election E2016/134

We refer to the post-election report issued by the AEC in relation to the above election and dated 8 February, 2017.

We note that the report identified a number of rules that were said to be difficult to interpret or apply in the course of the election process. We set out hereunder the specific rules identified by the AEC and comments made by the AEC in relation to each of them, together with the union's response to those comments as required by s. 198 of the *Fair Work (Registered Organisations) Act 2009* (Cth).

A. Rule 38 Divisional Branch Elections

1. Sub-rule (a)(vi)

AEC Comment

The scale of continuous financial membership should include Federal Executive Members (elected from the QNTDB).

Response

There is no such position as ‘Federal Executive Member’ and Rule 42(a)(ii)(a) (4) makes it clear that for the QLD/NT Divisional Branch the Divisional Branch Management Committee is the same as the Divisional Branch Executive.

No further action is required in relation to this sub-rule.

2. Sub-rule (c)

AEC Comment

Delete references to District – no longer applicable

Response

The concept of Districts appears at various places throughout the rules. However, there does not appear to be any reason why a separate notification should apply to Districts under this sub-rule.

Consideration will be given to the repeal of this part of the sub-rule.

3. Sub-rule (c)

AEC Comment

The Union should review the method/s of calling for nomination to include modern means of communication. Each Branch have their own journals published at different times, which meant that it was untimely and impractical to utilise the journal to publish a whole of Division scheduled election notification for this election. Further, publication in a newspaper may also not have the wide readership to engage members in the election. Given that the timings of the election are quite specific (that is, dates of the month) – the Union should consider a notification method that is harmonious with this, for example a Divisional member news alert or a Divisional national journal edition and special election editions (including electronic means).

Response

The election notice was placed in a newspaper with national circulation and on each Divisional Branch website. Consideration will be given to alternate notification processes to print journals having regard to contact information available in relation to Divisional Branch membership and cost considerations.

4. Sub-rule (c)

AEC Comment

There is no Divisional Management Committee Members, this may refer to a former position that no longer exist and therefore should be deleted. However, due to similar naming conventions the position can be mistaken for the Divisional Branch Management Committee, which makes sub rule (o) and (c) contradictory.

Response

The reference to Divisional Management Committee members is to members of the Divisional Executive.

Consideration will be given to substituting the words 'Divisional Executive' for the words 'Divisional Management Committee' where they appear.

5. Sub-rule (d)

AEC Comment

Delete the requirement for members to apply personally or in writing for a nomination form. Delete the requirement for members to forward their nomination by certified post. This rule should simply say "nominations must be lodged with the Returning Officer before the close of nominations at the address and by the methods specified on the notice of election" – this allows for flexibility for elections conducted by the AEC or another Returning Officer to specify the method and addresses for lodgement (including electronic means). Requirements regarding financiality and/or nominators should be in a separate paragraph.

Response

Agree, other than in relation to final sentence, which may cause unnecessary re-numbering issues. Consideration will be given to a rule change in these terms.

6. Sub-rule (m)

AEC Comment

Whilst this rule is not defective - the Union should note that the list of members entitled to vote must be provided to the Returning Officer the day after the roll close, to enable compliance with Regulation 131 of the Fair Work (Registered Organisations) Regulation 2009.

Response

Consideration will be given to a rule change to the effect that a certified list is to be provided on the day after the close of the roll of voters.

7. Sub-rule (n)(vi)

AEC Comment

Delete reference to registered mail and the subsequent sentence regarding the Committee. Replace registered mail with “prepaid post”. Registered mail has the same delivery time as regular mail, see below link, instead the Union should consider extending the ballot period (see (q) below).

Response

Agreed. Consideration will be given to an alteration that provides that voters are to receive their ballot papers not less than 14 days before the closing of the ballot.

8. Sub-rule (q)

AEC Comment

The ballot period specified in this rule is not sufficient given current Australia Post delivery schedule (see: <https://auspost.com.au/parcels-mail/sending-in-australia/domestic-letters>). The Union should review what a more suitable period would be.

Response

See response in relation to point 7 above.

9. Sub-rule (r)

AEC Comment

Delete this rule – the AEC is not able to ensure security at the post office. Alternatively, this rule can state that the “Returning Officer collects ... and keep all returned ballot material securely under his/her custody until the commencement of the count”

Response

Agreed. Consideration will be given to a rule alteration in the terms suggested.

10. Sub-rule (s)

AEC Comment

Delete this rule due to the availability of secure space in the union rooms, or add that “in the case of an election conducted by the AEC, the counting of the ballot shall take place on AEC premises”

Response

Consideration will be given to a rule alteration in the terms suggested.

11. Sub-rule (y)

AEC Comment

This rule need to be simplified. It should simply read “The Returning Office will provide a report which contains... which will be made available to all members within 30/X number of days upon receipt”. For information, the AEC provides a Post-Election Report to the Union as required by s. 197 of the Fair Work (Registered Organisation) Act 2009. This simplified sentence would provide flexibility for an election conducted by the AEC or other, whilst maintaining the integrity and transparency of election reporting.

Response

This comment is unclear. A post-election report is separate to a declaration of results. It is desirable that successful candidates be notified promptly of the result. Consideration will be given to deletion of the requirement to publish the names of successful candidates in a newspaper.

12. Rule 38 Generally

AEC Comment

Rule 38 refers to the duties of “Divisional Branch Returning Officer” and “Divisional Returning Officer” without really identifying the difference between them. The terms seem to be interchangeable. It is recommended that the term should just be “Returning Officer”, which provides flexibility for future elections and ballots if the Returning Officer is appointed by the AEC or if appointed by the Union/Other.

Response

Consideration will be given to a reference to ‘returning officer’ throughout the rule.

B. Rule 40 – Supreme Governing Body – Divisional Branch Council

1. Rule 40 Generally

AEC Comment

Rule 40 contains a number of transitional rules that should be deleted as they are no longer applicable.

Response

Consideration will be given to the deletion of sub-rules 40(2)(i)(a), (b) and (c), 40(2)(ii)(A), (B) and (D) and 40(2)(v)(a).

2. Sub-rule (2)(i)(d)

AEC Comment

There is no definition in the rules that define the boundaries of Cumberland, Northumberland, Camden and Country Zone. It is imperative that the Zones are defined so that candidates can be properly elected from the correct Zone.

Response

The zones are in accordance with NSW lands administrative divisions which are well-defined. However, consideration will be given to including an express reference to the zones as defined by those divisions, in the rules.

3. Sub-rule (2)(ii)(C)

AEC Comment

The rule as written at this time will never allow for the full 12 members of Divisional Branch Council to be elected. Note, that there are also 3 sub-groups and not two at part (vii) of the rule.

Response

Other than changing the reference to two sub-groups to three, no change is necessary.

4. Sub-rule (2)(ii)(C)(i)

AEC Comment

The rule states that not less than three months prior to the opening of nominations, the Divisional Branch Council is to determine the number of members of the Divisional Branch Council who reside in 3 areas – the rule does not provide a mechanism for how to make the determination, and no outcome was provided to the AEC for this election.

Response

This can be done by resolution of the Divisional Branch Council. Consideration will be given to interaction with Rule 40(2)(ii)(C).

C. Rule 42 – Divisional Branch Management Committee

1. Rule 42 Generally

AEC Comment

Rule 42 contains a number of transitional rules that should be deleted as they are no longer applicable.

Response

Consideration will be given to deletion of sub-rules 42(a)(i) (first paragraph), 42(a)(ii)(a)(1) and 42(a)(v) (first paragraph).

Yours sincerely,

Dave Noonan
National Secretary
CFMEU Construction and General Division