



DECISION

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

The Association of Independent Schools of South Australia (E2017/60)

MR ENRIGHT

MELBOURNE, 7 MARCH 2017

Arrangement for conduct of election.

[1] On 27 February 2017 The Association of Independent Schools of South Australia (‘the organisation’) lodged with the Fair Work Commission prescribed information in relation to an election for the following office:

Board Member

Governor

(1)

[2] The prescribed information indicated that the office had not been filled at the relevant previous election¹ due to insufficient nominations being received. On closer examination the situation was found to be that in fact the position had also not been filled at two earlier elections.² It is relevant to review the election history of the office here and to keep in mind that the Board of management is elected in groups on a rotational or staggered election cycle that began in 2014.

[3] The office had been initially filled in the organisation’s first election in 2014³ after registration that year. In accordance with the then, now superseded, rules 11.2 and 11A.3, the position was one of the offices in a ‘first Group’ (i.e. “Group 1”) which was scheduled for a subsequent election in 2015 for a period of three years ending in 2018. Election E2015/68, granted on 9 February 2015 and declared on 27 February 2015, was that scheduled election.

[4] Election E2015/94, granted on 13 March 2015 and declared on 10 April 2015 was a second attempt to fill the office.

[5] Election E2015/270, granted on 27 January 2016 and declared on 20 May 2016 was primarily a scheduled election for the offices allocated to a ‘second Group’ (i.e. “Group 2”) with terms scheduled to commence in 2016 for a period of three years ending in 2019. The office, which as I have already said was allocated to Group 1, was added to this election.

¹ E2015/270 – see PR576202, [2016] FWCD 338

² E2015/68– see PR560708, [2015] FWCD 836; and E2015/94– see PR561829, [2015] FWCD 1643

³ E2014/161– see PR552095, [2014] FWCD 3993

[6] For all these three elections⁴ the office was an office subject to an election according to a schedule, and one that was not filled due to no or insufficient nominations.

[7] At the time of each of these elections, the office was described, both in the Decisions and/or the Declaration of results, as either “Nominee of Governing Bodies of Primary Schools” or “Nominee Governor of a Primary School”, reflecting the description in superseded sub-rule 10.2.2. On 13 May 2016 rule changes were certified that had the effect of removing the Primary School restriction. Whereas it had earlier been required to be filled by and from Primary School Members, it was now described as “Governor” and could be filled by and from all Members of the organisation.

[8] I do not have to decide whether or not this change constituted an abolition of one office and the constitution of a new office or whether, insofar as it continued the allocation of a ‘Governor’ position in Group 1, the office continued albeit with a greater candidacy eligibility and electorate. I consider on balance it is meaningful to acknowledge some continuity in the office. Sub-rule 12.2, certified on 13 May 2016, provided that incumbents at the time of certification of the new rules would continue to hold office according to the rotational timetables set out in that sub-rule. Although in this case the office was *not* held by an incumbent at the time of certification, I think that for all practical purposes, the situation is that an office included in Group 1 whose term is due to expire in 2018 is at this present time unfilled, and an election to this office at this time will address the intention of the organisation in accordance with the rules as they currently provide.

[9] 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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⁴ i.e. notwithstanding that in the Decision for E2015/270 the office was incorrectly characterised as a ‘casual vacancy’.

From: KELLETT, Stephen
Sent: Tuesday, 7 March 2017 3:19 PM
To: Sonia Albertini (albertinis@ais.sa.edu.au)
Subject: FW: Election - Assoc. Ind. Schools of SA - E2017/60 - unfilled office - granted

Dear Ms Albertini,

Please see attached 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



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Decision.pdf

From: KELLETT, Stephen
Sent: Tuesday, 7 March 2017 3:15 PM
To: 'Industrial Elections'
Subject: Election - Assoc. Ind. Schools of SA - E2017/60 - unfilled office - granted

Dear Electoral Officer,

I refer my previous email correspondence on 6 March. Please see attached a copy of the Delegate's Decision in relation to a separate election for the Board Member office of "Governor". The prescribed information for this office was included with the prescribed information in the organisation's statement and Annexure previously forwarded to you. For your convenience, I attach that Annexure here.

This office has remained unfilled due to insufficient nominations at previous elections. Although a separate election matter number was assigned to this election, it appears the intention of the organisation that for convenience the election be conducted concurrently with the election for the scheduled offices in E2017/58.

If you have any queries, please do not hesitate to contact me.

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



Annexure A.pdf



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Decision.pdf

From: Sonia Albertini [mailto:albertinis@ais.sa.edu.au]
Sent: Monday, 27 February 2017 9:27 PM
To: Orgs
Cc: Carolyn Grantskalns
Subject: SK - ON CMS - E2017/58 - Election - The Association of Independent Schools of South Australia

Dear Sirs,

Please see attached letter, Prescribed Information for Elections and Annexure A.

If you have any questions or have difficulty opening the documents please do not hesitate to contact me.

Kind regards,

Sonia Albertini
Senior Legal Consultant

301 Unley Road Malvern SA 5061
T: 08 8179 1424 M: 0407 752 500 F: 08 8373 1116
albertinis@ais.sa.edu.au www.ais.sa.edu.au

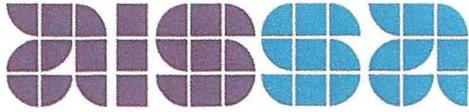


Letter to FWC
27.2.17.pdf



Annexure A.pdf

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Association of
Independent Schools
of South Australia

Fair Work Commission
By email orgs@fwc.gov.au

27 February 2017

Attention: The General Manager

Dear General Manager

The Association of Independent Schools of South Australia – 2017 Elections

I refer to the upcoming election of the Association of Independent Schools of South Australia Board members.

In accordance with our association's rules, our next election will take place at our Annual General Meeting held on 1 June 2016.

Attached is our Prescribed Information for Elections. Regretfully, I advise that our Prescribed Information for Elections was meant to have been filed before 20 February 2017.

The delay is due to the unexpected personal leave absence of the staff member responsible for the preparation of the documentation. Unfortunately, this has meant that our Prescribed Information has been filed one week out of time.

I respectfully request additional time in which to file our Prescribed Information for Elections pursuant to section 189(2) of the *Fair Work (Registered Organisations) Act 2009 (Cth)*.

If you have any further queries about this matter, please do not hesitate to contact me or Sonia Albertini (08 8179 1424 or albertinis@ais.sa.edu.au)

Yours faithfully

Kym Wallent
Chair

Enclosure – Prescribed Information for Elections

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

I, Kym Wallent, being the Board Chair of the Association of Independent Schools of South Australia (AISSA), make the following statement:

1. I am authorised to sign this statement containing prescribed information for the AISSA.
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. Insufficient nominations were received in an earlier election and the declaration of results is attached.

This statement **IS NOT** lodged at least 2 months before nominations open for the election below.

Signed:



Dated:

27 - 2 - 17

[PLEASE NOTE: This statement should be lodged with the Fair Work Commission at least 2 months prior to nominations opening. It can be submitted to orgs@fwc.gov.au.]

ANNEXURE A

- Elections that are required:

Branch	Name of Office	Number required	Voting System	Reason for Election	Electorate
			<i>Direct voting system; Collegiate electoral system</i>	<i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	
N/A	Committee of Management Member (Principal from a Primary Only School – Rule 9.1.1(a))	1	Direct	Scheduled	All Members (Rule 13.1)
N/A	Committee of Management Member (Principal from any Member School - Rule 9.1.1(c))	1	Direct	Scheduled	All Members (Rule 13.1)
N/A	Committee of Management Member (Governor – Rule 9.1.2)	1	Direct	Scheduled	All Members (Rule 13.1)
N/A	Committee of Management Member (Bursar, Business Manager or Administrator – Rule 9.1.3)	1	Direct	Scheduled	Bursars, Business Managers or Administrators of each Member (Rule 13.5)
N/A	Committee of Management Member (Governor – Rule 9.1.2)	1	Direct	Insufficient Nominations (Declaration of Results attached)	All Members (Rule 13.1)
N/A	Chair	1	Collegiate	Scheduled	By and from the Board (Rule 10.1.1)
N/A	Deputy Chair	1	Collegiate	Scheduled	By and from the Board (Rule 10.1.1)

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	<i>At least 6 weeks before 1 June 2017 (ie by no later than 20 April 2017 (rule 14.4)</i>	<i>8 June 2017 (rule 13.4(a))</i>
Nominations CLOSE	<i>Date to be determined in consultation with the AEC</i>	<i>Date to be determined in consultation with the AEC</i>
Roll of Voters cut off date	<i>7 days prior to nominations opening (rule 14.10)</i>	<i>7 days prior to nominations opening (rule 14.10)</i>

Please note: that for insufficient nominations and casual vacancies, the date nominations open and close, unless specified in the rules, should be listed as 'to be determined by the returning officer'. Casual vacancies must be accompanied by proof of resignation and attached to this statement.