



Australian Government
Registered Organisations Commission

27 January 2023

Andrew Dettmer
Acting National Secretary
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
known as the Australian Manufacturing Workers' Union (AMWU)

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c.c. Abha Devasia, National Legal Coordinator, abha.devasia@amwu.org.au
James Rabaud, National Operations Officer, james.rabaud@amwu.org.au

Dear Andrew,

AMWU election matter E2022/182

I refer to the recently issued election Decision in this matter and to the 20 January 2023 Amending Decision, as well as to your letter to the Registered Organisations Commissioner dated 20 January 2023. The Commissioner has requested that I respond on his behalf.

I note that your letter raises concerns about some of the wording of the original 17 January 2023 election decision and what you consider to be adverse inferences drawn about the AMWU and its lodgement of prescribed information.

Draft prescribed information

I want to firstly acknowledge, as your 20 January 2023 letter does, that on 26 September 2022, the AMWU wrote to the ROC to advise it of proposed rule alterations which had been lodged with the Fair Work Commission (**FWC**). The AMWU's letter, which was accompanied by draft prescribed information, stated that:

As we wish to ensure a smooth process in preparation for the election, we attached with this letter a draft copy of the PI to allow time to make any amendments as may be needed for compliance with the Act. A finalised copy PI dealing with the alteration applications will be made when the decision of the FWC is issued.

I take this opportunity to acknowledge that such an approach of cooperative engagement with the relevant regulators, is welcomed. For its part, the ROC deploys its limited resources in every way possible to minimise the administrative burden on registered organisations to assist them in meeting their statutory obligations.

Consistent with the AMWU's request and our objective to assist registered organisations to efficiently meet their statutory obligations, ROC staff performed preliminary work associated with the draft prescribed information – for example, beginning early work on a draft election

assessment checklist – to ensure that once the (non-draft) prescribed information was lodged it could be processed as promptly as possible, particularly given the large number of offices involved. There were also a number of communications between ROC and AMWU staff between then and the 22 December 2022 lodgement.

Apparent misunderstanding of prescribed date

On 25 November 2022, an email from the FWC to the ROC indicated that rule alteration R2022/105 was still being considered. It then stated:

*This email is to advise that the above application may still be on foot once the AMWU have [sic] lodged its Prescribed Information concerning its upcoming election, scheduled for early 2023. I note that the date the **Prescribed Information must be lodged by is 14 January 2023**. [emphasis added]*

On 29 November 2022, the FWC advised the ROC that rule alteration R2022/105 had not yet been finalised.

On 2 December 2022, the AMWU emailed the FWC to seek that rule alteration R2022/105 be withdrawn. In that email the relevant AMWU staff member referred to ‘*the upcoming elections, **for which the PI is required to be lodged by 15th Jan 2023***’. [emphasis added]

On the same date, the FWC wrote to the ROC to advise of the withdrawal of the rule alteration, and further stated that:

I have been advised by the AMWU that the union intends to lodge a new rule alteration application concerning the Apprentice Rank and File Member office within the coming weeks.

*This email is to advise that the new application may be on foot at the time of the lodgment of the AMWU’s Prescribed Information, **being scheduled for 14 January 2023**. [emphasis added]*

Unfortunately it is not readily apparent that these misconceived references to a prescribed date falling in January were corrected. As will be clear from further discussion below, AMWU rules provide for *nominations for some offices to open on 14 January* in the year of election and not the lodgement of prescribed information by that date.

Election decision E2022/182

Section 189 of the *Fair Work (Registered Organisations) Act 2009* (**RO Act**) requires the Commissioner or his Delegate to be satisfied that an election is required under the RO Act and under the rules of the organisation.

The assessment of the (formally lodged) prescribed information therefore included detailed reference to the AMWU rules as part of the preparation of the Delegate’s decision. That assessment indicated that the AMWU rules provide for nominations for some offices to open on 14 January in the year of election (or the next working day if the 14th falls on a weekend).

Regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009* requires prescribed information to be lodged two months before the date provided in the rule for the opening of nominations.

It is clear that the AMWU’s engagement with the ROC and the FWC about proposed rule changes was entirely commendable. As is the AMWU’s preparation of draft prescribed information in relation to this very large election and providing it to the ROC ahead of time so that staff could begin to prepare for the later formal lodgement. Equally, the ROC has deployed its resources to work productively and positively with the AMWU to assist in arranging what is clearly a complex election.

However, as the National Secretary's 26 September 2022 letter implicitly acknowledges, the draft prescribed information was provided as a preliminary step (and it foreshadowed another lodgement). It cannot be considered the same as formally lodging it.

To the extent that parts of the decision could apparently be read as inferring that the delay in lodgement was solely due to deficiencies on the part of the AMWU, I can confirm that that is not the intention of the decision. The decision acknowledges the surrounding circumstances of proposed rule alterations as well as the engagement with the ROC referred to above.

It is apparent to me that the decision of the Delegate to exercise a statutory discretion to grant a later day for lodgement (i.e. later than the prescribed day by which it was due) is an acknowledgement of those other factors.

In that sense, it can be clearly distinguished from circumstances where an organisation or branch simply engages in non-compliance through late lodgement or non-lodgement which may render it liable for civil penalties.¹

The Delegate's granting of a later day for lodgement means that there can be no liability attached to the AMWU's lodgement in respect of this election.


Publication

It is apparent to me that each of the parties in this matter have cooperatively acted to ensure that compliance was achieved in arranging a complex election. As requested by you, we propose to publish a copy of your 20 January 2023 letter on the webpage containing the 17 January 2023 election decision and the 20 January 2023 amending decision.

For completeness, we also propose to publish a copy of this letter. If you have concerns in relation to this course of action please contact me **by Friday 3 February 2023**.

Please feel free to contact me directly on (03) 9603 0711 to discuss this matter.

Yours sincerely



Chris Enright
Executive Director
Registered Organisations Commission

¹ As in the case of *Registered Organisations Commissioner v Australian Hotels Association* [2019] FCA 1516.