



# ORDER

*Fair Work Act 2009*

s.437 - Application for a protected action ballot order

## **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia**

**v**

**Nilsen (NSW) Pty. Ltd.**

(B2023/725)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 21 JULY 2023

*Proposed protected action ballot of employees of Nilsen (NSW) Pty. Ltd.*

Pursuant to s.443 of the *Fair Work Act 2009* (the **Act**) the Fair Work Commission orders:

### **1. PROTECTED ACTION BALLOT TO BE HELD**

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**) is to hold a protected action ballot of employees of Nilsen NSW Pty. Ltd. (**Nilsen** or **Employer**) described in clause 3 of this order.

### **2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT**

The ballot is to be conducted by Democratic Outcomes Pty Ltd T/A CiVS (**Agent**). The contact details of the Agent are:

Michael M Michael  
Suite 12, 100 Railway Road  
SUBIACO WA 6008  
08 6314 0580  
[admin@civs.com.au](mailto:admin@civs.com.au)

### **3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTTED**

In accordance with s.437(5) of the Act, the employees to be balloted are those who will be covered by the proposed enterprise agreement and are members of the applicant for this protected action ballot order.

### **4. DATE BY WHICH BALLOT CLOSES**

The voting shall close no later than ten (10) working days from the date on which the protected action ballot order is made.

## 5. QUESTIONS

The question(s) to be put to voters in the ballot are:

*In support of reaching an Enterprise Agreement with your employer, do you endorse the taking of protected industrial action by CEPU members against your employer, which may involve taking separately, consecutively and/or concurrently any or all of the actions set out below:*

1. *An unlimited number of stoppages of work of between one (1) minute and twenty-four (24) hours duration?  
Yes [ ] No [ ]*
2. *An unlimited number of stoppages of work of indefinite duration?  
Yes [ ] No [ ]*
3. *An unlimited number of indefinite or periodic bans on the performance of non-rostered overtime?  
Yes [ ] No [ ]*
4. *An unlimited number of periodic or indefinite partial work bans?  
Yes [ ] No [ ]*
5. *An unlimited number of periodic or indefinite bans on the use of battery powered tools?  
Yes [ ] No [ ]*
6. *An unlimited number of periodic or indefinite bans on the use of 240/415V equipment?  
Yes [ ] No [ ]*
7. *An unlimited number of periodic or indefinite bans on the use of crimping tools?  
Yes [ ] No [ ]*
8. *An unlimited number of periodic or indefinite bans on the use of spanners?  
Yes [ ] No [ ]*
9. *An unlimited number of periodic or indefinite bans on the use of ladders and steps?  
Yes [ ] No [ ]*
10. *An unlimited number of periodic or indefinite bans on terminating cables?  
Yes [ ] No [ ]*
11. *An unlimited number of periodic or indefinite bans on the use of pens and pencils?  
Yes [ ] No [ ]*
12. *An unlimited number of periodic or indefinite bans on working over ground level?*

Yes [ ] No [ ]

13. An unlimited number of periodic or indefinite bans on using multi-meters?

Yes [ ] No [ ]

14. An unlimited number of periodic or indefinite bans on using test equipment?

Yes [ ] No [ ]

15. An unlimited number of indefinite or periodic bans on operating mobile plant?

Yes [ ] No [ ]

16. An unlimited number of indefinite or periodic bans on verifying and performing Mechanical and/or Electrical isolations?

Yes [ ] No [ ]

17. An unlimited number of periodic or indefinite bans on using computers/ hand-held devices?

Yes [ ] No [ ]

18. Wearing stickers on work clothes that promote, or represent the views of, the Electrical Trades Union?

Yes [ ] No [ ]

19. Distributing ETU/CEPU and industrial campaign-related material to members of the public and employees whilst performing work, including but not limited to t-shirts, caps, badges, facemasks, written communications including posters and stickers?

Yes [ ] No [ ]

## 6. EMPLOYER TO PROVIDE LIST OF ELIGIBLE EMPLOYEES

6.1 The Employer is to provide to the Agent ([admin@civs.com.au](mailto:admin@civs.com.au)) by 4:00pm on the third working day after the day the Order is issued, a list of its employees (as at the date of the Order) being a list that includes all of the employees who would be covered by the proposed enterprise agreement, in the following format:

6.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named "NILSEN – Employee List".

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each employee who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

Column 1	Employee ID
Column 2	Surname
Column 3	First Name

Column 4	Middle Name
Column 5	Date of Birth
Column 6	Work Email Address
Column 7	Private Email Address
Column 8	Mobile Phone Number
Column 9	Postal – Address 1
Column 10	Postal – Address 2
Column 11	Postal – State
Column 12	Postal – Postcode

6.3 The list must be accompanied by a declaration in writing that the Employer reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the *Fair Work Regulations 2009* (**Regulations**).

6.4 The Employer may provide the list of employees to the Agent by way of encrypted or password protected email that is accessible by the Agent.

## 7. APPLICANT TO PROVIDE LIST OF ELIGIBLE MEMBERS

7.1 The Applicant is to provide to the Agent ([admin@civs.com.au](mailto:admin@civs.com.au)) by 4:00pm on the third working day after the day the Order is issued a list of its members (as at the date of the order) employed by the Employer in the following format:

7.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named “CEPU – Member List”

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each member who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

Column 1	Surname
Column 2	First Name
Column 3	Middle Name
Column 4	Date of Birth
Column 5	Work Email Address
Column 6	Private Email Address

Column 7	Mobile Phone Number
Column 8	Union Membership Number (if applicable)
Column 9	Postal – Address 1
Column 10	Postal – Address 2
Column 11	Postal – State
Column 12	Postal – Postcode

7.3 The list must be accompanied by a declaration in writing that the Applicant reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the **Regulations**.

7.4 The Applicant may provide the list of members to the Agent by way of encrypted or password protected email that is accessible by the Agent.

## **8. VOTING METHOD**

8.1 The ballot is to be conducted by electronic voting and take place in compliance with the Act, the **Regulations** and this Order.

8.2 Pursuant to s.450 of the Act, the Agent is to conduct the protected action ballot in accordance with the following directions.

### Timetable

8.2.1 The Agent will determine the date the ballot commences in accordance with s.451. The Commencement Date will be included in the timetable compiled in accordance with paragraph 10 of this Order. The ballot will not commence before the Commencement Date.

8.2.2 The date by which voting in the protected action ballot is to close is no later than ten (10) working days from the date of effect of this Order.

### Voting method

8.2.3 The ballot will be held electronically.

8.2.4 The Agent will design a voting website on a secure server which will allow eligible voters to vote in the ballot.

8.2.5 The Agent will allocate to each eligible voter on the list of voters a unique identifier, being a randomly generated internet voting password, to access and vote on the website.

8.2.6 Just prior to the opening of the ballot, the Agent will issue to eligible voters an Instruction Sheet. The Instruction Sheet will contain the web address for the voting

website, each eligible employee's randomly generated internet voting password, instructions on how to vote and any other material the Agent considers relevant.

- 8.2.7 The Agent will issue the Instruction Sheet to each employee's email address, where provided. Additionally, the Agent will send an SMS to any mobile number for that eligible voter, where a mobile phone has been provided.
- 8.2.8 For any eligible employees without an email address or mobile phone number, the Agent will send the Instruction Sheet by mail to that employee's home postal address.
- 8.2.9 The Agent will ensure the voting website will only be accessible for voting in the ballot by eligible voters.
- 8.2.10 The Agent will ensure that the operation of the internet voting system provides that an authenticated voter may cast only one vote in the ballot.

Updates to the list of voters

- 8.2.11 Before the Commencement Date, the Employer will provide the Agent with the names of any of its employees that have ceased employment on the day such employment ends. If any of these employees are on the list of voters, their internet voting password to vote in the ballot will be disabled.

**9. FINALISING THE LIST OF VOTERS**

The Agent is to finalise the list of voters using its discretion.

**10. TIMETABLE FOR BALLOT AND COMPILATION OF LIST OF VOTERS**

- 10.1 The Agent will compile a timetable in accordance with the Act and the Directions outlined in paragraphs 8.2.1 and 8.2.2 of this order, to be sent to the parties.
- 10.2 The Agent may make variations to the timetable (excluding the date by which the ballot would close) as may be necessary to bring about the efficient and expeditious conduct of the protected action ballot.

**11. INFORMATION**

- 11.1 The Agent may give any ballot-related notice, information or other material to employees by means including sending the materials to employees' work email addresses and personal or other email addresses.
- 11.2 The Agent shall, as soon as practicable, issue to eligible employees on the roll of voters, the notice to employees, consistent with Regulation 3.13 of the **Regulations**, including by email to their nominated email address, and SMS to any mobile phone number for that eligible voter, where a mobile phone number has been provided. For any eligible employees without an email address or mobile phone number, the Agent will send the notice to employees by mail to that employee's home postal address.

- 11.3 The notice to employees shall contain a copy of the protected action ballot order and include the following information and statements:
- a) the name and contact details of the Agent including telephone contact and email address details;
  - b) the timetable for the conduct of the protected action ballot including the times of opening and closing the ballot;
  - c) a statement informing employees that the protected action ballot is to be conducted by electronic voting;
  - d) information about how eligible employees will receive their voting instructions and how they can vote electronically on the designated voting website using unique identifiers;
  - e) a statement inviting employees to contact the Agent if the employee believes that he or she should be included on the roll of voters;
  - f) a statement inviting employees to contact the Agent if the employee believes that he or she should not be included on the roll of voters;
  - g) a statement inviting employees to contact the Agent, the independent advisor (if any) or the Fair Work Commission in the event that the employee has any concerns or complaints relating to the conduct of the protected action ballot;
  - h) a statement that the protected action ballot is to be conducted as a secret ballot and that employees are free to approve or not approve the proposed industrial action; and
  - i) contact details of the independent advisor if one has been appointed.

## **12. PROVISION OF INFORMATION AND ASSISTANCE TO AUTHORISED BALLOT AGENT**

- 12.1 The Applicant and the Employer are to comply as quickly as is reasonably practicable with any reasonable request made by the Agent pursuant to the Act or the **Regulations** for information or assistance.
- 12.2 The Employer shall facilitate the email delivery of ballot related notices, information, or other materials to all employees by whitelisting the domain utilised by the Agent.
- 12.3 The Employer shall allow access to the voting web site from all employees' places of work and accommodation (if applicable) by whitelisting the site across the Employer's internet network.
- 12.4 Where the Employer does not manage the IT networks that employees may use to vote they will do all that is practicable to ensure that Orders 11.2 and 11.3 are complied with.

## **13. SCRUTINEERS**

- 13.1 The Applicant and the Employer are to comply with the provisions contained in the **Regulations** and to notify in writing to the Agent the names of any scrutineer(s) that they propose to authorise to attend the conduct of the ballot.
- 13.2 Any notification of the appointment of any scrutineer(s) must be served on the other party. Should the other party object to the appointment of any scrutineer(s), then that party is able to apply to the Fair Work Commission to have its objection heard and determined.
- 13.3 The functions of any scrutineer(s) appointed pursuant to this clause will only occur once all votes have been received, the ballot has closed, but before any ballot result is declared.

#### **14. RESULTS**

- 14.1 The Agent may, on request, report to either the Employer or the Applicant the participation rate.
- 14.2 The Agent shall report the results of the protected action ballot as soon as practicable after the close of voting to the Applicant, the Employer and the Fair Work Commission.

#### **15. DATE OF EFFECT**

This order shall come into force on 21 July 2023.



DEPUTY PRESIDENT

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