



DECISION

Fair Work Act 2009

s.468A - Application for an eligible protected ballot agent

Lumi Technologies Pty Ltd

(B2025/902)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 4 JULY 2025

Application for Lumi Technologies Pty Ltd to become an eligible protected action ballot agent.

1. What this decision is about

[1] Lumi Technologies Pty Ltd (**Lumi**) has applied under s.468A of the *Fair Work Act 2009* (**FW Act**) for approval as an eligible protected action ballot agent. This application, and the concept of approved eligible protected action ballot agents, takes place in the context of certain amendments to the FW Act that were introduced by virtue of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) FW Act 2022* (**Amending Act**). These changes commenced on 6 June 2023 and amongst other matters, impact upon the making of a Protected Action Ballot Order (**PABO**) and the approval of protected action ballot agents who might conduct the ballot should a PABO be made.

[2] The issuing of a PABO is a required step for an employee bargaining representative, such as a registered employee association (**Union**) or an individual employee bargaining representative, to be able to take protected industrial action (**PIA**) as part of bargaining with employers for an enterprise agreement. The ballot is, in effect, part of the democratic process in which the relevant employees who are represented by the bargaining representative have the opportunity to vote upon, and authorise, any industrial action that might subsequently be notified and taken.

[3] Amongst other requirements, for the PABO to authorise the subsequent notification and taking of PIA, a majority of the relevant employees must vote in the ballot and a majority of voters must approve the forms of industrial action that are proposed.

[4] To conduct a ballot, the ballot agent must be supplied by the employer with a list of the relevant cohort of employees who would be covered by the proposed agreement, and a list of those employees “represented” by the bargaining representative that is the applicant for the PABO. These lists are provided separately and, in effect in confidence, by the parties, and the ballot agent compares the 2 lists to create the voting roll. To ensure the validity of that roll, each party is directed to provide contact and other identifying information to the ballot agent to enable a proper comparison to be undertaken. It is self-evident that the above information

contains details that are private in nature and potentially industrially sensitive between the parties.

[5] The ballot agent conducts the ballot in accordance with the terms of the FW Act and the associated regulations, and the requirements of the PABO issued by the Commission and any directions that may accompany that order. The results of the ballot are provided by the ballot agent to the relevant parties and to the Commission and are relied upon by the employee bargaining representative, the employer(s) and the Commission as confirming, or otherwise, the relevant statutory step for PIA to be taken.

[6] In general terms, where an applicant is approved by the Commission as an eligible protected action ballot agent, they will be authorised to conduct the ballots of employees required when a PABO is issued. Further, where named in the PABO application and proposed orders, the Commission will, subject to the FW Act, be obliged to appoint them to conduct the ballot concerned.

[7] The approval requirements for an eligible protected action ballot agent are, in effect, that the applicant is a fit and proper person to conduct protected action ballots.

[8] The above broadly stated scheme sets the context for the consideration and determination of applications of this kind.

[9] To date, 8 agents have been approved as eligible protected action ballot agents under these provisions. The Australian Electoral Commission (**AEC**) is also directly empowered under the FW Act to conduct PABO ballots.

[10] This application was lodged on 6 June 2025. Shortly thereafter, the Commission stated on its website that Lumi had made the application and that interested parties could make submissions before the closing date of 18 June 2025. Earlier, the President of the Commission issued a public Statement¹ advising that this would be the process for dealing with such applications and that the details would be available on the website. No submissions were received in response to the above notice.

[11] The Commission was subsequently provided with additional information from Lumi concerning its operations and ballot experience. This was provided in the form of an additional statutory declaration from Oliver Bampfield, APAC Sales Director of Lumi. This addressed a number of points of clarification sought by the Commission about the role to be played by Mr Bampfield, the location and oversight of the staff who would be performing the ballot work, the computer and data security systems to be utilised, and the experience of Lumi in conducting ballots and workplace voting.

[12] It remains necessary for the Commission to consider whether Lumi has established that it is entitled to apply to be an eligible protected action ballot agent and is a fit and proper person for that purpose, and to ultimately determine whether it should be approved.

[13] For reasons that are set out below, I am satisfied that I should approve the application.

2. The statutory context and the nature of the applicant as an eligible protected action ballot agent

[14] The FW Act relevantly provides as follows:

“443 When the FWC must make a protected action ballot order

- (1) The FWC must make a protected action ballot order in relation to a proposed enterprise agreement if:
 - (a) an application has been made under section 437; and
 - (b) the FWC is satisfied that each applicant has been, and is, genuinely trying to reach an agreement with the employer of the employees who are to be balloted.
- (2) The FWC must not make a protected action ballot order in relation to a proposed enterprise agreement except in the circumstances referred to in subsection (1).
- (3) A protected action ballot order must specify the following:
 - (a) the name of each applicant for the order;
 - (b) the group or groups of employees who are to be balloted;
 - (c) the date by which voting in the protected action ballot closes;
 - (d) the question or questions to be put to the employees who are to be balloted, including the nature of the proposed industrial action;
 - (e) the person or entity that the FWC decides, under subsection 444(1A), is to be the protected action ballot agent for the protected action ballot;
 - (f) the person (if any) that the FWC decides, under subsection 444(3), is to be the independent advisor for the ballot.
- (3A) For the purposes of paragraph (3)(c), the FWC must specify a date that will enable the protected action ballot to be conducted as expeditiously as practicable.
- (5) If the FWC is satisfied, in relation to the proposed industrial action that is the subject of the protected action ballot, that there are exceptional circumstances justifying the period of written notice referred to in paragraph 414(2)(a) being longer than 3 working days or 120 hours (whichever is applicable), the protected action ballot order may specify a longer period of up to 7 working days.

Note Under subsection 414(1), before a person engages in employee claim action for a proposed enterprise agreement, a bargaining representative of an employee who will be covered by the agreement must give written notice of the action to the employer of the employee.

444 Ballot agent and independent advisor

- (1) This section applies if the FWC must make a protected action ballot order under subsection 443(1).

Protected action ballot agent

- (1A) The FWC must, in accordance with subsections (1B) to (1D) of this section, decide the person or entity that is to be the protected action ballot agent for the protected action ballot.

- (1B) The person or entity must be the person or entity specified in the application for the protected action ballot order as the person or entity the applicant wishes to be the protected action ballot agent, unless:

- (a) the person or entity specified in the application does not meet the requirements of subsection (1C) (unless subsection (1D) applies); or
- (b) the FWC is satisfied that there are exceptional circumstances that justify another person or entity being the protected action ballot agent.

- (1C) The person or entity must be an eligible protected action ballot agent.

- (1D) Subsection (1C) does not apply in relation to a person if the FWC is satisfied that:

- (a) there are exceptional circumstances that justify the ballot not being conducted by an eligible protected action ballot agent; and
- (b) the person is a fit and proper person to conduct the ballot; and
- (c) any other requirements prescribed by the regulations are met.

Note: Other than the Australian Electoral Commission, an entity that is not a person cannot be the protected action ballot agent for a protected action ballot.

- (2) The regulations may prescribe:

- (a) conditions that a person must meet in order to satisfy the FWC, for the purposes of paragraph (1D)(b), that the person is a fit and proper person to conduct a protected action ballot; and
- (b) factors that the FWC must take into account in determining, for the purposes of paragraph (1D)(b), whether a person is a fit and proper person to conduct a protected action ballot.

... ..”

[15] The approval requirements for eligible protected action ballot agents are set out in the following terms.

[16] Section 12 of the FW Act contains the following relevant definitions:

“eligible protected action ballot agent: see subsection 468A(1).

protected action ballot agent for a protected action ballot means the person or entity that conducts the protected action ballot.”

[17] Section 468A of the FW Act provides:

“468A Eligible protected action ballot agents

- (1) Each of the following is an eligible protected action ballot agent:
 - (a) the Australian Electoral Commission;
 - (b) a person approved by the FWC under subsection (2).
- (2) For the purposes of paragraph (1)(b), the FWC may, in writing, approve a person as an eligible protected action ballot agent if the FWC is satisfied that:
 - (a) the person is a fit and proper person to be an eligible protected action ballot agent; and
 - (b) any other requirements prescribed by the regulations are met.
- (3) The regulations may prescribe:
 - (a) conditions that a person must meet in order to satisfy the FWC that the person is a fit and proper person to be an eligible protected action ballot agent; and
 - (b) factors that the FWC must take into account in determining whether a person is a fit and proper person to be an eligible protected action ballot agent.
- (4) The FWC must, at least every 3 years after it approves a person as an eligible protected action ballot agent, consider whether the FWC remains satisfied that the person meets the requirements mentioned in subsection (2).
- (5) If, after considering the matter under subsection (4), the FWC is no longer satisfied that an eligible protected action ballot agent meets the requirements mentioned in subsection (2), the FWC must take:
 - (a) any action prescribed by the regulations; and
 - (b) any other action the FWC considers appropriate.”

[18] I observe that no regulations have been made for the purposes of s.468(2)(b) of the FW Act.² This means that the Commission must consider whether the applicant, in this case Lumi, is a fit and proper person by reference to the general concept unaided by additional requirements or considerations. If satisfied, a discretion arises to approve the application.

[19] The Explanatory Memorandum associated with the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Explanatory Memorandum)* helpfully provides an

overview of the purpose of the changes to introduce the notion of an eligible protected action ballot agent as follows:

“841. These amendments remove the AEC as the default PAB agent and empower the FWC to ‘pre-approve’ a person as an ‘eligible PAB agent’. More than one person may be approved by the FWC. The AEC is defined as an ‘eligible PAB agent’ and does not need to be approved by the FWC. In effect, there may be a panel of alternative agents who can be appointed as an alternative to appointing the AEC. The amendments also set out the requirements when appointing a PAB agent that is not the AEC. These amendments would require the FWC to regularly review and consider whether it remains satisfied that the eligible PAB agent or agents meet the requirements at least every three years.

842. This item would amend section 12 of the FW Act by inserting a new signpost definition of ‘eligible PAB agent’. This new definition is particularly relevant to determining who is an eligible PAB agent for the purposes of Division 8 of Part 3-3 of the FW Act. The signpost definition is required due to the creation of a panel of PAB agents proposed by Item IA16.”

[20] For reasons set out in an earlier decision³ of the Commission, I find that a “person” in s.444, s.468A and related provisions includes a corporation. This means that an eligible protected action ballot agent may be an individual (natural person), a corporation, or the AEC, which as explained earlier is, in effect, approved as a ballot agent directly by the FW Act. A non-corporate or non-individual entity cannot be considered for approval as an eligible protected action ballot agent by the Commission.

[21] Lumi, as a corporation, is eligible to apply and be approved as an eligible protected action ballot agent.

3. Is Lumi a fit and proper person?

[22] I begin with the consideration of what is a fit and proper person for present purposes.

[23] Section 444 and associated provisions of the FW Act aim to protect the interests of the employees participating in the ballot and those of the employer(s) involved. Further, there is a statutory imperative arising from the scheme of the FW Act that any ballot that might authorise the taking of industrial action be conducted in a proper, democratic, prompt and robust manner by agents that are appropriate to undertake that task.

[24] The Commission has found⁴ that the assessment of whether a proposed protected action ballot agent is a fit and proper person should take place in that context. The test is whether a person is fit and proper to conduct protected action ballots, not whether they are fit and proper in some abstract sense. Further, and without being definitive, considerations that might inform whether an applicant is a fit and proper person to be an eligible protected action ballot agent might include (where relevant):

- The qualifications and experience of the individuals that lead the organisations and/or those that are intended to conduct the ballots;

- The experience with conducting ballots and the absence of issues (non-conformances) evident from that experience;
- The systems that are in place to ensure that ballots are conducted fairly, democratically, and expeditiously by fit and proper individuals and which ensure the integrity and privacy of the information provided to them by the parties;
- General standing within the community including whether they have a record of non-compliance with workplace laws and the absence of criminal convictions; and
- Independence, or robust systems to ensure proper separation, from the interests and influence of those whose members are being balloted and their employers.⁵

[25] Reference to “systems” above would include both information processes (technology and security arrangements) and staffing systems. In addition, findings made by the Commission as to whether the applicant is a fit and proper person for some equivalent ballot role or related purpose would also be relevant.

[26] As to the assessment in this case, I observe that unlike almost all of the eligible protected action ballot agents approved to date, the Commission has not previously been required to consider whether Lumi is a fit and proper person to conduct protected action ballots. That is, Lumi has not previously been requested or authorised to conduct PABO ballots under the FW Act or its predecessors. I make no adverse finding in that regard; however, this means that the assessment must be made unaided by previous directly relevant decisions of the Commission.

[27] The application was accompanied by a comprehensive Declaration from Mr Bampfield, and the other substantive material subsequently provided on its behalf has been outlined earlier in this Decision. Having regard to all of that material, the following findings are appropriate.

[28] Lumi was registered as a company on 1 November 2002. Prior to 30 May 2014, Lumi was previously registered under the names IML Interactive Pty Ltd and EZICOMMS Pty Ltd. Lumi is entirely owned by Lumi Global Limited. Lumi has been a provider of voting and ballot platforms in Australia for over 15 years. This has included conducting employee ballots such as voting for the approval of enterprise agreements.

[29] Mr Bampfield has considerable experience in the establishment and conduct of ballot-related systems and will be responsible as the primary contact point for parties and will be directly responsible for the management and supervision of the employees involved in the PABO function.

[30] Lumi’s functions as a PABO agent will be completed by staff members of the company which have been trained in Lumi Electa software and systems and have had a minimum of 6 months' experience with the company. Lumi staff have extensive expertise and experience in the design and implementation of voting projects. These staff will all be based in Australia, subject to Australian law and will be trained in the relevant provisions of the FW Act and associated Rules as well as the reporting and conduct standards required by the Commission

for ballot agents. All activities related to the conduct and oversight of PABOs will be carried out by the Australian-based staff in compliance with the FW Act.

[31] The Commission is not aware of any adverse findings made by a relevant Court or Tribunal concerning Mr Bampfield or Lumi more generally. Lumi conducts criminal record checks as part of pre-employment procedures.

[32] Lumi follows the principles defined by the ISO/IEC 27001 standard, as reflected in its Information Security Management System. Lumi also undergoes annual reviews to ensure ongoing compliance with the requirements and controls set forth by the ISAE 3000 SOC2 standard. These standards are internationally recognised benchmarks relating to organisational controls including security, data processing integrity, confidentiality and privacy.

[33] Lumi will conduct ballots utilising its online platform, Lumi Electa. Electa is a platform which enables users to vote on any modern internet-enabled device, and votes are cast instantly. At the end of the voting period ballots are decrypted, and results are produced within minutes. Electa has been certified under Cyber Essentials Plus, an international security standard by the United Kingdom's National Cybersecurity Centre.

[34] Lumi contends that a PABO ballot can be set up on under 48 hours' notice. The system would ensure that employees receive their login credentials via email and/or SMS immediately upon the opening of voting, and they can cast their ballot right up until the time voting closes. Votes are tallied immediately after the vote closes.

[35] Lumi would email the results of the ballot to the employer, the applicant and FWC, shortly after the results are confirmed. The results can be expected to be declared within 24 hours of a vote closing.

[36] The material before the Commission also confirms to my satisfaction, general consistency with all the other considerations set out earlier. This includes details about the nature of the information and other systems to be used for the ballots of various types, and steps that will be taken to ensure that the ballots are conducted fairly, democratically, and expeditiously by fit and proper individuals. This involves, amongst other matters, the nature of the data storage systems and associated practices, the proposed supervision and training of staff, and the independence of the organisation and those systems from the parties who are likely to be involved in future PABOs.

4. Conclusions and approval

[37] Lumi is entitled to apply, and I have found that it is a fit and proper person to be approved as an eligible protected action ballot agent. I also consider that in all of the circumstances, I should approve it to act in that capacity under the terms of the FW Act.

[38] The application is approved. Lumi Technologies Pty Ltd is approved as an eligible protected action ballot agent under s.468A of the FW Act.

[39] Under s.468A(2) the approval must be in writing and this Decision serves that purpose.

[40] This Decision will be published, and the identity of Lumi as an approved eligible protected action ballot agent set out on the Commission’s website.

[41] Section 468A(4) of the FW Act requires that this approval, and any other eligible protected action ballot agent approvals, be reviewed by the Commission at least each 3 years to ensure that the Commission remains satisfied that the relevant agents continue to meet the requirements in s.468A(2). The 3-year period is a maximum, and earlier, and potentially multiple reviews, are possible. A program for the review of these approvals is presently being developed by the Commission.

[42] I observe that there is also a robust scheme⁶ under the FW Act that permits complaints about the conduct of PABO ballots by eligible protected action ballot agents to be reported to the Commission. There are also statutory offences related to any person hindering, obstructing or interfering in a relevant ballot.⁷

[43] Lumi, unlike most other approved eligible protected action ballot agents, does not have a track record of undertaking PABO ballots. In that light, I consider that when the Commission establishes its program of reviews, the present approval should be an earlier priority. A time-period between 18 months and 2 years from approval, would appear to be appropriate.



DEPUTY PRESIDENT

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¹ Statement issued 5 June 2023.

² Regulations have been made for the approval of non-eligible protected action ballot agents under s.444(1D)(c) of the *FW Act – Fair Work Regulations* – reg.3.11; however these do not extend to the present form of application or approval.

³ *Democratic Outcomes Pty Ltd T/A CIVS* [2023] FWC 1400.

⁴ *Ibid* at [41].

⁵ *Ibid* at [42].

⁶ Section 458 of the *FW Act* and *Fair Work Regulations* - reg. 3.13(4).

⁷ Section 462 of the *FW Act*.