



REGISTERED ORGANISATIONS COMMISSION

Fact sheet

Elections in organisations and their branches

Notes

Note 1: registered organisations are referred to in this fact sheet simply as organisations.

Note 2: references in this sheet to regulations are to the Fair Work (Registered Organisations) Regulations 2009.

Note 3: the information in this fact sheet does not cover all matters relating to elections arising under the Fair Work legislation.

Elections conducted by the Australian Electoral Commission

The general requirements are as follows:

- All elections for office holders of organisations and branches must be conducted by the Australian Electoral Commission (the AEC) through arrangements made by the Registered Organisations Commissioner (the Commissioner) (subsection 182(1) of the *Fair Work (Registered Organisations) Act 2009* (RO Act)). The expense of conducting such elections is borne by the Commonwealth.
- All elections by a direct voting system must be conducted by a secret postal ballot and the rules of each organisation must include provisions for elections by that method.

Exemptions relating to elections

The RO Act allows organisations and branches to apply for exemptions from the AEC conducting elections and/or from the requirement that elections be conducted by a secret postal ballot. Further information regarding such exemptions is provided below.

Notification of elections

Section 189 of the RO Act requires the Commissioner to arrange for the conduct of an election by the AEC (for organisations and branches that do not have an exemption from the AEC conducting their elections) once the prescribed information has been lodged.

Before arranging for the conduct of the election, the Commissioner must be satisfied that an election is required to be held under the rules of the organisation. Where the election is for a 'non-office' position, the Commissioner must also be satisfied that the organisation (or branch) has made a request under section 187 of the RO Act.

Organisations to notify the Commission of prescribed information (regulation 138(1))

The prescribed information required to be lodged with the Registered Organisations Commission (the ROC) to trigger the arrangements for the AEC to conduct an election must include the following:

- the name and numbers of each office or position;
- the reason for the election being:
 - the term of the office or position has expired or is due to expire in the normal course of events;
 - a casual vacancy in the office or position has occurred or will occur imminently; or
 - a new office or position has been created; or
 - the office or position was not filled at the previous election;
- the electorate for the ballot (if required);
- the dates and times for the opening and closing of nominations;
- the day provided for in the rules on which the roll of voters is to be closed;
- the voting system to be used (direct voting system or collegiate electoral system);
- any non-office positions for which an election is requested.

The prescribed information must contain a statement signed by an officer of the organisation or branch and must be lodged more than two months before the first day on which a person can become a candidate in the election (regulation 138). A [sample Notice and statement of prescribed information](#) is available from the [Commission's website](#).

Records to be lodged within 35 days of changes

Where any change is made to records required to be kept under section 230 of the RO Act, an organisation must lodge details of the changes with the ROC within 35 days. This includes any changes resulting from elections conducted by the organisation or branch.

The fact sheet [Records to be kept by registered organisations](#) is available from the [Commission's website](#).

Post-election reports

Section 197 of the RO Act requires the AEC to provide a written post-election report on the conduct of the election to the Commission and to the organisation or branch for which the election was conducted.

The post-election report must include (regulation 141):

- the declaration of the result of the election;
- the number of written allegations (if any) of irregularities made to the AEC during the election;

- action taken by the AEC in relation to those allegations; and
- any irregularities identified by the AEC and action taken by the AEC.

The post-election report may also include (section 197(3) of the RO Act):

- if the AEC is of the opinion that the register of members made available to it for the purposes of a postal ballot contained an unduly large proportion of members' addresses that were not current or comprised workplace addresses, then the AEC must state that in the report;
- if the AEC is of the opinion that a particular rule was difficult to interpret or apply it must note that fact and must also refer to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address the matter.

Post-election report to be given to the Commissioner and organisation (or branch)

The post-election report is to be given to the Commissioner and the organisation or branch within 30 days of the election (section 197(1) of the RO Act and regulation 141). The AEC must publish a notice on its website advising that a copy of the report can be obtained on the request of a member who was eligible to vote in the election (regulation 141(2)).

Availability of post-election reports

In the case of elections which require a ballot, the AEC must advise each voting member of the availability of a post-election report from the organisation or branch, or from the AEC, on the request of a member (regulation 139). In addition, an organisation or branch that has a website must, as soon as practicable after receiving the post-election report, publish on its website a notice of the availability of the report (regulation 141(4)).

Organisation or branch to respond to adverse post-election reports

If the post-election report identifies rules that were difficult to interpret or apply, the organisation or branch must provide a written response to the AEC within 30 days of receipt of the report (section 198). The part of the post-election report which identifies rules that were difficult to interpret or apply is referred to as the relevant extract (section 198(3) of the RO Act). The response must specify whether and what action the organisation or branch intends to take (section 198(2) of the RO Act).

Organisation or branch only required to respond if post-election report identifies difficult rules

If the post-election report of the AEC is not adverse and does not contain a relevant extract that refers to difficult rules then the organisation or branch is not required to take any further action.

Publication of relevant extract of AEC post-election report and publication of organisation or branch response to such extract

An organisation or branch in receipt of an adverse post-election report concerning difficult rules must make available to its members the relevant extract of the AEC report and a copy of the response (section 198(3) of the RO Act).

The relevant extract must be made available to members no later than the day on which the response is made available to members (section 198(4) of the RO Act).

The response must be made available to members either:

- within 30 days after it is given to the AEC; or
- in the next edition of the organisation or branch journal (section 198(5) of the RO Act).

Subsection 198(6) of the RO Act and regulation 142 provide ways in which the relevant extract and the response can be made available to members. These do not limit the ways in which they can be made available to members, but an organisation or branch will comply with this requirement if it does all of the following:

- publishes the relevant extract and its response in the next edition of the organisation or branch journal that it is reasonably practicable to do so; and
- within 30 days of giving its response to the AEC:
 - lodges with the ROC a copy of the relevant extract and its response, together with a declaration that the organisation or branch will provide a copy of the relevant extract and its response to any member who so requests; and
 - gives notice in the next edition of the organisation or branch journal, or an appropriate newspaper that covers the relevant geographic area, that a copy of the relevant extract and its response is available on request to each member free of charge; and
 - if the organisation or branch has a website, the organisation or branch publishes the relevant extract on its website within 14 days after receiving the post-election report; and
 - publishes its response on its website within 14 days of giving this response to the AEC (regulation 142(2)).

Offences

Influencing candidatures and voting—it is an offence to interfere with ballot papers, bribe a person, ask for a benefit of any kind, threaten a person, or inflict injury or damage with the intention of influencing or affecting any candidature or vote in an election (section 195).

Influencing lodgment of objections—it is an offence to use violence or cause injury or loss to a person who has objected to an organisation's application for an exemption from the requirement that its elections be conducted by the AEC. It is also an offence to give, offer,

obtain or request a benefit of any kind with the intention of influencing the lodgment of such an objection (section 185).

Assistance of candidates—it is an offence for an organisation's property to be used to help one candidate against another candidate in an election for office or other position (section 190).

Showing a ballot paper—it is an offence to require or induce another person to show a ballot paper while the paper is being marked or after it has been marked. It is also an offence for a person performing duties in an election to show another person or permit another person to have access to a ballot paper used in an election otherwise than in the performance of their duties (section 195).

Failing to comply with a request of a returning officer—it is an offence for an officer or employee of an organisation or branch to fail to comply with a written request from a returning officer conducting an election to make available the register of members for the purposes of a ballot (section 191).

Failing to comply with a direction of an electoral official—it is an offence not to comply with a direction of an electoral official given in accordance with section 193(1) (section 193(2)).

Hindering or obstructing an electoral official—it is an offence to hinder or obstruct an electoral official in the performance of his or her functions or another person complying with a direction of an electoral official (section 194).

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This fact sheet is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.