



26 August 2024

Peter Toohey  
Branch President  
The Australian Institute of Marine and Power Engineers - Queensland Branch  
Sent via email: [qldadmin@aimpe.asn.au](mailto:qldadmin@aimpe.asn.au)

cc: National- [HOadmin@aimpe.asn.au](mailto:HOadmin@aimpe.asn.au)

Dear Peter Toohey



**IMMEDIATE ACTION REQUIRED:**

**You must take steps after your recent election E2023/195**

An election has recently been completed by the Australian Electoral Commission (AEC) for the Australian Institute of Marine and Power Engineers - Queensland Branch and a post-election report has been issued by the AEC.

This letter explains the next steps you must take, including what information you need to give to members and what information you need to lodge with the Fair Work Commission (the Commission).

**What you must do right now**

- Let your members know about the election report issued by the AEC
- Arrange financial training for officers newly elected to an office with financial management duties. (This includes all members of the committee of management).
- Complete the notification of change and email it to the Commission at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au)

This letter explains these steps and the tools available to help you.

## STEP 1: Notify members

You must put a notice on your website once you receive your post-election report. It must tell your members they can request a copy of the post-election report from you or the AEC (regulation 141). The notice must be on your website for at least three months.



Can we put more information on our website?

Yes! Being transparent is part of good governance. You can publish the whole report or the declaration of results, as well as your notice and leave them up longer than three months. You can always do more than the regulatory minimum.

The Commission will also publish your declaration of results on our [website](#).

## STEP 2: Financial training

You may have to arrange financial training for people elected to new roles.

All officers with financial management duties must complete approved financial training (section 293K). For information on when officers must redo training and hints on when to book training for officers taking up multiple offices [please see our fact sheet](#).

There are face-to-face and online [financial training packages on the Commission website](#).

You must act on this now, as affected officers **MUST** complete approved financial training OR receive an [exemption by the Commission](#) **within six months** of beginning to hold office.



### Good governance tip:

Organisations should instruct officer holders about their other obligations. This is especially important for committee of management members.

Our podcast covers the [benefits of officer induction](#). Officers have responsibilities under the rules, the *Fair Work (Registered Organisations) Act 2009* (the RO Act), and disclosure requirements around conflicts of interest, remuneration and material personal interests. Officers will benefit from our [officer induction kit](#) and our [podcast](#), such as [episode 17 - conflicts of interest](#).

## STEP 3: Notifications of change



A notification of change must be lodged with the Commission within **35 days** of the change occurring.

We have a [template](#) to help you with this, which you can send to [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au). An officer must sign the completed notification template.

You must lodge a notification of change if:

- any of your officers have not been re-elected;
- officers have changed offices; or
- you have new officers.

Only notify us of changes that have **already occurred**. If people take up office in the future, you must wait until the change happens before lodging the notification within 35 days of the change.

**Note:** One election may result in many notifications of change.



#### Penalties apply

Failing to lodge your notifications of change on time can expose your organisation and its officers to significant penalties.

**Real-life example of penalties in Court** An organisation failed to make a series of notifications of change on time.

The Full Court said ‘The record-keeping obligations imposed under the Registered Organisations Act are treated by the legislature as important and serious, and contravention of those obligations are correspondingly serious.’

The organisation was ordered to pay a penalty. More information is available in our [case summary](#).

If you have any queries we can be contacted on 1300 341 665 or by email at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au).

Yours sincerely

**Fair Work Commission**



The Commission has an interim [Compliance Policy](#) which explains how we respond to issues of non-compliance. The policy is available on our website if you would like further information on the steps the compliance team may take in response to non-lodgement of a financial report.



22 August 2024

# Post-election report

The Australian Institute of Marine and Power  
Engineers  
Queensland Branch  
Scheduled Election  
E2023/195

# Contents

Election(s) Covered in Post-Election Report (PER).....	3
Relevant legal provisions.....	3
Declaration of result of election .....	6
The Australian Institute of Marine and Power Engineers Rules.....	6
Roll of Voters.....	6
Written allegations of any irregularities.....	6
Other irregularities.....	6
Signed.....	6
Attachments.....	7
<b>A. Declaration of Results for Uncontested Offices .....</b>	<b>7</b>

# Election(s) Covered in Post-Election Report (PER)

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Organisation:	The Australian Institute of Marine and Power Engineers, Queensland Branch
Election Decision No:	E2023/195
Election:	Scheduled
Date the nominations closed:	7 August 2024
Date results declared:	12 August 2024
Date PER due:	6 September 2024

## Relevant legal provisions

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### *Fair Work (Registered Organisations) Act 2009* ('the Act')

#### **197 Post-election report by AEC**

##### *Requirement for AEC to make report*

- (1) After the completion of an election conducted under this Part by the AEC, the AEC must give a written report on the conduct of the election to:
  - (a) the General Manager; and
  - (b) the organisation or branch for whom the election was conducted.

Note: The AEC may be able, in the same report, to report on more than one election it has conducted for an organisation. However, regulations made under paragraph 359(2)(c) may impose requirements about the manner and timing of reports.

- (2) The report must include details of the prescribed matters.

##### *Contents of report—register of members*

- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the election contained, at the time of the election:
  - (a) an unusually large proportion of members' addresses that were not current; or
  - (b) in the case of a register kept by an organisation of employees—an unusually large proportion of members' addresses that were workplace addresses;

this fact must be included in the report, together with a reference to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: Model rules are relevant only to the conduct of elections for office, not for elections for other positions (see section 147).

##### *Contents of report—difficult rules*

- (4) If the report identifies a rule of the organisation or branch that, in the AEC's opinion, was difficult to interpret or apply in relation to the conduct of the election, the report must also refer to any relevant model rules, which in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: For model rules, see section 147.

##### *Subsection (3) relevant only for postal ballots*

- (5) Subsection (3) applies only in relation to elections conducted by postal ballot.

Note: An organisation can obtain an exemption from the requirement to hold elections for office by postal ballot (see section 144).

## 190 Organisation or branch must not assist one candidate over another

An organisation or branch commits an offence if it uses, or allows to be used, its property or resources to help a candidate against another candidate in an election under this Part for an office or other position.

Penalty: 100 penalty units.

## 193 Provisions applicable to elections conducted by AEC

- (1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office or other position in an organisation, or branch of an organisation, the electoral official:
  - (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and
  - (b) may, in spite of anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary:
    - (i) to ensure that no irregularities occur in or in relation to the election; or
    - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules; or
    - (iii) to ensure the security of ballot papers and envelopes that are for use, or used, in the election.
- (2) A person commits an offence if the person does not comply with a direction under subsection (1).

Penalty: 30 penalty units.
- (3) Subsection (2) does not apply so far as the person is not capable of complying.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.
- (5) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) An election for an office or other position conducted by an electoral official, or step taken in relation to such an election, is not invalid merely because of a breach of the rules of the organisation or branch because of:
  - (a) action taken under subsection (1); or
  - (b) an act done in compliance with a direction under subsection (1).
- (7) If an electoral official conducting, or taking a step in connection with, an election for an office or other position:
  - (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
  - (b) ceases to be qualified to conduct the election or to take the step;the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

## 6 Definitions

*irregularity*, in relation to an election or ballot, includes:

- (a) a breach of the rules of an organisation or branch of an organisation; and
- (b) an act or omission by means of which:
  - (i) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
  - (ii) a correct ascertainment or declaration of the results of the voting; is, or is attempted to be, prevented or hindered; and
- (c) a contravention of section 190.



## Fair Work (Registered Organisations) Regulations 2009 ('the Regulations')

### 140 Declaration of result of election (s 193)

- (1) Within 14 days after the closing day of an election, the AEC must issue a declaration stating the following:
  - (a) the total number of persons on the roll of voters;
  - (b) the total number of ballot papers issued (if applicable);
  - (c) the total number of envelopes that were returned undelivered by the closing day of the ballot to the AEC (if applicable);
  - (d) the total number of ballot papers received by the electoral official by the closing day of the ballot (if applicable);
  - (e) the result of the election;
  - (f) the total number of informal ballot papers (if applicable).
- (2) In subregulation (1), *closing day*, for an election, means:
  - (a) if a ballot is not required—the day on which nominations for the election close; or
  - (b) if a ballot is required—the closing day of the ballot.
- (3) Immediately after issuing a declaration under subregulation (1), the AEC must give a copy of the declaration to:
  - (a) the General Manager; and
  - (b) the organisation or branch for whom the election was conducted.

### 141 Post-election report by AEC (s 197(2))

- (1) For subsection 197(2) of the Act, the following matters are prescribed for inclusion in the report (the *post-election report*) given under subsection 197(1) of the Act:
  - (a) the declaration mentioned in regulation 140;
  - (b) any rules of the organisation or branch which because of ambiguity or other reason, were difficult to interpret or apply;
  - (c) any matters in relation to the roll of voters including those matters contained in subsection 197(3) of the Act;
  - (d) the number of written allegations (if any) of irregularities made to the AEC during the election;
  - (e) action taken by the AEC in relation to those allegations;
  - (f) any other irregularities identified by the AEC and action taken by the AEC in relation to those other irregularities.
- (2) The AEC must:
  - (a) give the post-election report within 30 days after the closing day of the election; and
  - (b) publish a notice on its web site advising that a copy of the post-election report can be obtained from the AEC on the request of a member who was eligible to vote in the election.
- (3) The AEC must supply a copy of the post-election report to the member as soon as practicable, but no later than 7 days, after receiving a request under paragraph (2)(b).

### 145 Elections conducted by AEC—no unauthorised action

- (1) For any election conducted by the AEC under Part 2 of Chapter 7 of the Act, a person other than the person conducting the election must not do, or purport to do, any act in the conduct of the election other than as directed or authorised by the person conducting the election.

Note: This subregulation is a civil penalty provision (see regulation 168).
- (2) The AEC must advise the General Manager of a possible contravention of subregulation (1) not later than 21 days after the AEC has become aware of the possible contravention.

## Declaration of result of election

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In accordance with reg 140 of the Regulations, the AEC issued a declaration of the result of election E2023/195 on 12 August 2024. For a copy, see **Attachment A**.

## The Australian Institute of Marine and Power Engineers Rules

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The Australian Institute of Marine and Power Engineers Rules used for the election:

- [009V: Incorporates alterations of 9 May 2023 in matter R2023/4]

There were no issues applying the rules.

## Roll of Voters

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There were no issues of note with the Roll of Voters

## Written allegations of any irregularities

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The AEC did not receive any written allegation of any irregularities.

## Other irregularities

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The AEC did not identify any other irregularities in the election.

## Signed

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Hanish Gupta  
Returning Officer  
Australian Electoral Commission  
E: IEEvents@aec.gov.au  
P: 03 9285 7111  
22 August 2024

# Attachments

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## A. Declaration of Results for Uncontested Offices

**The Australian Institute of Marine and Power Engineers**  
**Queensland Branch**  
**DECLARATION OF RESULTS - E2023/195**  
**Uncontested Offices**

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**Scheduled Election**

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

**Queensland**

**Branch President (1)**

Candidates

TOOHEY Peter

**Branch Secretary (1)**

Candidates

READY Brad

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.

Hanish Gupta  
Returning Officer  
Telephone: 03 9285 7111  
Email: IEEvents@aec.gov.au  
12/08/2024





## DECISION

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

**The Australian Institute of Marine and Power Engineers - Queensland Branch**  
(E2023/195)

MR STEENSON

SYDNEY, 5 APRIL 2024

*Arrangement for conduct of election.*

[1] On 19 and 20 March 2024, the Queensland Branch (the Branch) of The Australian Institute of Marine and Power Engineers (AIMPE) lodged prescribed information with the Fair Work Commission (the Commission) seeking an election to fill the following offices for a new term of office:

Branch Secretary	(1)
Branch President	(1)

[2] The *Fair Work (Registered Organisations Act) 2009* (RO Act) and the *Fair Work (Registered Organisations) Regulations 2009* (RO Regulations) set out various requirements that registered organisations and their branches must comply with. These include specific requirements in relation to their elections.

[3] One of those is that prescribed information for elections must be lodged at least two months before the date on which nominations are due to open under the rules of the organisation.<sup>1</sup> This is a well-known requirement, appearing in several guidance documents published by the Commission, as well as the ‘courtesy letter’ which the Commission sent to the Branch in December 2023 reminding it that an election appeared to be due. I note that the obligation to lodge prescribed information rests with the organisation or branch, with or without any reminders that the regulator may send.

[4] In addition, rule 33B of the AIMPE rules, which deals with Branch Executive elections, specifies at sub-rule 33B(ii) that:

**At least six months before the term of office(s) expires**, the Branch Secretary shall **lodge ... the prescribed information relating to the election**, as required by the Acts & Regulations seeking a Decision for the conduct of the election by the Australian Electoral Commission (AEC).

[5] The prescribed information indicates that the term of office of the Branch President is due to expire on 6 June 2024. Therefore, AIMPE’s own rules required lodgement of prescribed information by 6 December 2023.

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<sup>1</sup> Section 189(2), RO Act and Regulation 138(3), RO Regulations.

[6] While the Branch indicates that it is up to the AEC Returning Officer to set the timetable for the election, AIMPE rule 33B(iii) requires that:

**Notice** that nominations are required and **specifying the opening and closing dates for nominations** shall be given by the Returning Officer by publication in the Institute magazine “On Watch” and on the AIMPE website or by direct mailing to members’ postal address **at least one (1) month before the date on which nominations open**. The **Nominations Period shall be for a period of six (6) weeks and the Voting Period shall also be, for a period of six (6) weeks**.

[Emphasis added]

[7] The periods specified in rule 33B(iii) – a month for notice of the nomination dates (before they open), 6 weeks for the nomination period and 6 weeks for the voting period – total a little more than 16 weeks between publication in the ‘On Watch’ magazine and the close of any ballot. Working back from the expiry of the Branch President’s term (6 June 2024), that would (at a minimum) have required nominations to open in early March and publication in ‘On Watch’ to be at least a month earlier. As indicated above, the RO Act requires lodgement of prescribed information at least two months before nominations are due to open under the rules.

[8] It is therefore apparent that the Branch did not lodge prescribed information within the timeframe required by the legislation, nor the timeframe specifically set out in the AIMPE rules.

[9] Section 189(2) of the RO Act, regarding lodgement of prescribed information, is a civil penalty provision. Therefore, the failure to lodge prescribed information either on time or at all, can render an organisation liable for a civil penalty.<sup>2</sup>

[10] The Branch requested this election decision be issued before 9 April 2024: the next deadline for publication of AIMPE’s ‘On Watch’ journal. In light of this request, the Commission has prioritised the issuing of this decision. The sense of urgency expressed to the Commission would likely have been avoided if the prescribed information had been lodged on time. However, another difficulty may arise with a 9 April publication deadline. As indicated in the prescribed information lodged by the Branch, AIMPE rules require that the publication include opening and closing date for nominations – something which only the AEC can specify.

[11] I am satisfied that an election for the abovenamed offices 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 AEC.



DELEGATE OF THE GENERAL MANAGER

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PR755241

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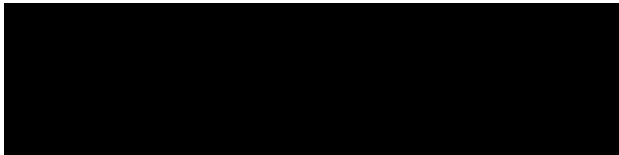
<sup>2</sup> *Registered Organisations Commissioner v Australian Hotels Association* [2019] FCA 1516

# **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, Peter John Toohey, being the Queensland Branch President of the Australian Institute of Marine and Power Engineers make the following statement:

1. I am authorised to sign this statement containing prescribed information for Queensland Branch of the Australian Institute of Marine and Power Engineers.
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. No rule alterations are pending that will impact the election.
5. This statement IS lodged at least 2 months before nominations open for the election(s) in Annexure A.

Signed:



Peter John Toohey, Queensland Branch Secretary  
Australian Institute of Marine and Power Engineers

Dated: 19 March 2024

Queensland

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

## Annexure A

- Elections that are required [insert as many pages as required]

Branch	Name of Office	Number required	Voting System Direct voting system; Collegiate electoral system	Reason for Election Scheduled; Casual vacancy; New office created; Insufficient nominations	Electorate
Queensland Branch	Branch President	1	Direct Voting System	Scheduled	Queensland
Queensland Branch	Branch Secretary	1	Direct Voting System	Scheduled	Queensland

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	Date is dependent on Election Decision date and AEC. [NOTE: Term of offices expire: Secretary <u>6 July 2024</u> and President: 6 June 2024].  Rule 33B(iii): Notice that nominations are required and specifying the opening and closing dates for nominations shall be given by the Returning Officer by publication in the Institute magazine "On Watch" at least one (1) month before the date fixed for the election. (Close for copy for Publication is generally the end of the first week of each month. Published online 2 <sup>nd</sup> week of the month).	N/A
Nominations CLOSE	5 weeks after nominations open	N/A
Roll of Voters cut off date	Rule 33B(XII) & 7 days before the opening of nominations	N/A

**NOTES:** 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'. This also applies where rules are silent as to the nominated dates. If the nomination dates are 'To be Determined by the Returning Officer', but your organisation has a preference, please state 'To be Determined by Returning Officer' and clearly indicate that your nominated date is a preference. If the P.I. includes a position that is not an office, please refer to our template [Prescribed information for the election of officer and non-officer positions](#).