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29 August 2024

Mr Ben Murray  
Returning Officer  
Industrial Elections and Ballots  
Australian Electoral Commission  
via email [IEBevents@aec.gov.au](mailto:IEBevents@aec.gov.au)

Dear Sir,

I refer to the Post-election Report for The Civil Air Operations Officers' Association of Australia (Civil Air) scheduled election E2024/59 dated 12 August 2024.

In the report, you suggest that we "review the relevant Rules to clarify and/or provide additional information for the vote counting system if the organisation would like to apply a different method".

We have examined the Civil Air Rules and the [AEC Model rules](#) for industrial elections - both provide similar rules when a tie or an even number of votes occurs in an election.

The AEC model rules at 29.1.5 and 29.2.4 (e) both state "If two or more candidates each receive the same number of votes the Returning Officer shall decide by lot which candidate is to be elected".

Civil Air Rule 35(d)(4)(h) is in similar terms and states:

(4) "where two (2) or more nominations are accepted for any position,

...

(h) count, in the presence of such scrutineers as may be entitled to be present pursuant to these rules, all the votes cast and declare the result of the ballot; except that, in the event of a tie occurring, determine the result by drawing lots, provided that there are only two candidates. In the event of a tie occurring and there are more than two candidates, the candidate receiving the majority of first preference votes shall be declared elected".

In both sets of rules, the preferential voting system does not apply when there are only two nominations or candidates.

Some organisations have a rule stating that in the event of a tie, the incumbent officer or the person currently holding the office shall be declared elected. This would not have assisted in Civil Air Election E2024/59 as neither candidate held the office at the time of the election, or both were "new" to the position.

In this vein, the Mining and Energy Union (MEU) has rule 17(x)(e) that states:

(e) In the event of a tie, the National Returning Officer shall determine the result by declaring a candidate(s) who currently holds the office being contested being elected, and should no candidate(s) currently hold the office the National Returning Officer shall declare the result by casting lots".

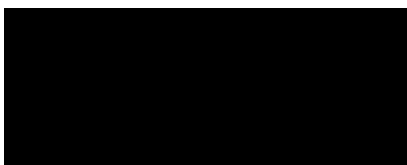
While the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) has a similar rule at rule 6 (x), it is worded a little differently as follows:

*“(x) In the event of a tie occurring in any ballot, the result shall be determined by the Returning Officer drawing lots provided that if one of the tied candidates is a retiring office holder from the position subject of the ballot he or she shall be declared elected”.*

We do not believe the AMWU rule would be suitable to adopt for our Association. It seems ambiguous because, technically, a retiring office holder would be retiring from Office and would not be contesting an election.

The next Civil Air National Executive meeting is 4-5 December 2024, at that meeting we will ask the National Executive if they wish to adopt a rule along the lines of the MEU rule 17(x)(e) above. Having said that it may be preferable to leave the rule as is because the likelihood of a tie happening again is very slight. As it has never happened in the Association’s 76-year history and from talking to other unions and even AEC personnel, it is also a rarity in other registered organisations.

Yours sincerely,



JANE DOUGLAS  
INDUSTRIAL OFFICER

cc: Fair Work Commission – [regorgs@fwc.org.au](mailto:regorgs@fwc.org.au)



13 August 2024

Thomas McRobert  
President  
The Civil Air Operations Officers' Association of Australia  
Sent via email: [civilair@civilair.asn.au](mailto:civilair@civilair.asn.au)

Dear Thomas McRobert



**IMMEDIATE ACTION REQUIRED:**

**You must take steps after your recent election E2024/59**

An election has recently been completed by the Australian Electoral Commission (AEC) for the Civil Air Operations Officers' Association of Australia 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)
- Respond to the AEC

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](#).

## STEP 4: Reply to the AEC

The AEC’s post-election report says the AEC had trouble applying some of your election rules. You **MUST** respond to the AEC about the issues in the report (section 198).

Your response to the AEC must be in writing. It must include:

- whether the organisation intends to take action
- (if yes) what action the organisation intends to take

You must send your response to the AEC within **30 days** of receiving the report and provide a copy to the Commission (section 198).



### Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

Make the report and your response available to your members

You must make the post-election report about difficult rules available to your members.

You must also make your written response to the AEC available to your members.



### Timing is very important

You must make the report about difficult rules available to your members **before or at the same time** as you make your response available.

Your response must be available to members:

- in the next edition of your journal or
- within 30 days of giving it to the AEC (if using a method other than your journal to make it available, e.g. your website)



### Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

### How do I make these documents available to my members?

The RO Act says you will have made the document available if you do all the following things:

- Publish a copy of the relevant section and your response in your next journal, AND
- Send the Commission a copy of the relevant section and your response with a declaration that you'll provide copies to any member who asks for one, AND

- Tell members in your next journal (or an appropriate newspaper) that you'll give the relevant section of the report and your response to any member free of charge if requested, AND
- Put on your website:
  - the relevant section of the report within 14 days of receiving it and
  - your response within 14 days of sending it to the AEC

But you can also make the documents available to your members in other ways as well.



### **What if we decide to change our rules?**

You can! If you think changing your rules will fix or improve the issues raised by the AEC you can change your rules.

Your rules will include a rule altering procedure that you must follow in order to do this.

We provide help changing your rules and advice on rule requirements. Please contact us at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au), or ring 1300 341 665. Alternatively you could book an online [Governance to You visit](#) with a Commission staff member to discuss the changes.

## **Questions?**



**What if I don't understand the post-election report?**

You should contact the AEC immediately to discuss what the report means.

**What if we decide not to take action?**

You must tell the AEC in writing you do not intend to act.

### **What if I have already responded to the AEC?**

If you have already done the things set out in step 4, please disregard this step.

Remember to make the relevant section of the report and your response available to your members as well.

### **Why do I need to tell you the results of the election when you've already received them?**

The RO Act requires that **you** tell us this information about your officers – it is a legal obligation. The notification of change also contains information that is not in the declaration of results.

### **What if the officer has already done training?**

Check out our [fact sheet](#) for when officers need to redo training, when they can get an exemption and when further training isn't required.

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.



12 August 2024

# Post-election report

The Civil Air Operations Officers'  
Association of Australia  
Scheduled Election  
E2024/59

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

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Organisation:	The Civil Air Operations Officers' Association of Australia
Election Decision No:	E2024/59
Election:	Scheduled Election
Date ballot closed:	31 July 2024
Date results declared:	31 July 2024
Date PER due:	30 August 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.

**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 E2024/59 on 31 July 2024. For a copy, see **Attachment A**.

## The Civil Air Operations Officers' Association of Australia Rules

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The Civil Air Operations Officers' Association of Australia Rules used for the election:

- 212V: Incorporates alterations of 24 November 2022 [R2022/113]

The election for a President was contested and went to ballot.

For the system of voting, Rule 35(b) provides that in any election conducted pursuant to these rules shall be the preferential system of voting. However, the rules do not provide further detail about the vote counting system thus I had applied a standard preferential voting system as outlined in 29.2 of the AEC model rules.

It is suggested that the Civil Air Operations Officers' Association of Australia review the relevant Rules to clarify and/or provide additional information for the vote counting system if the organisation would like to apply a different method.

## Roll of Voters

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The AEC did not identify any matters in relation to the roll of voters.

## Written allegations of any irregularities

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The AEC did not receive any written allegations of irregularities during the election.

## Other irregularities

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

# Signed

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Benjamin Murray  
Returning Officer  
Australian Electoral Commission  
E: [IEBevents@aec.gov.au](mailto:IEBevents@aec.gov.au)  
P: 03 9285 7111  
12 August 2024

# Attachments

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## A. Declaration of Results for Contested Offices



# The Civil Air Operations Officers' Association of Australia

## DECLARATION OF RESULTS - E2024/59

### Contested Offices

#### 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:

#### Civil Air Operations Officers' Association of Australia

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	884
Number of voters issued with voting material	884
Total number of voters issued with replacement voting material	7
<b>Total number of voting material packs issued</b>	<b>891</b>
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	428
Number of declaration envelopes rejected at preliminary scrutiny (minus)	3
Number of ballot papers returned outside declaration envelopes (minus)	0
COUNT	
Total ballot papers admitted to the count	425
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	18
Voting material packs not returned by voters by closing date of the ballot	445
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	48 %

#### President (1)

<u>Candidates</u>	<u>Final Votes</u>
PADDLE, David	212
NUGENT, Scott	212

<b>Total ballot papers admitted for this office</b>	<b>425</b>
Formal Ballot papers	424
Informal Ballot papers	1

Rule 35(4)(a)(h) "count, in the presence of such scrutineers as may be entitled to be present pursuant to these rules, all the votes cast and declare the result of the ballot; except that, in the event of a tie occurring, determine the result by drawing lots, provided that there are only two candidates."

A draw by lot was conducted and I declare the following elected:

- NUGENT, Scott

Benjamin Murray  
Returning Officer  
Telephone: 03 9285 7111  
Email: [IEBevents@aec.gov.au](mailto:IEBevents@aec.gov.au)  
31/07/2024





## DECISION

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

**The Civil Air Operations Officers' Association of Australia**  
(E2024/59)

MR STEENSON

SYDNEY, 5 APRIL 2024

*Arrangement for conduct of election.*

[1] On 18 March 2024 the Civil Air Operations Officers' Association of Australia lodged with the Fair Work Commission prescribed information for an election to fill the following office for a new term of office:

President (1)

[2] I am satisfied that an election for the abovenamed office 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 Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER

Printed by authority of the Commonwealth Government Printer

PR755243

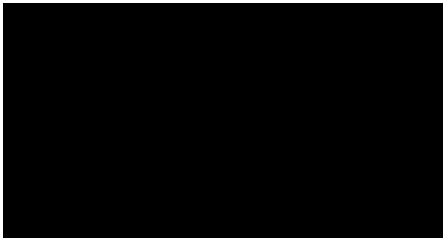
## FAIR WORK ACT 2009

In the matter of statement and notice of prescribed information under the *Fair Work (Registered Organisations) Act 2009*:

### STATEMENT

I, JAMES WALSH, Air Traffic Controller, of 214 Graham Street, Port Melbourne, in the State of Victoria, do hereby solemnly and sincerely declare;

1. **THAT** I am the Acting President of The Civil Air Operations Officers' Association of Australia.
2. **THAT** I am authorised to lodge the following prescribed information concerning forthcoming elections on behalf of the Association.
3. **THAT** I confirm that the following information is being lodged under subsection 189 of the *Fair Work (Registered Organisations) Act 2009*.
4. **THAT** there are no rule changes pending that would affect this election.
5. **THAT** this statement is lodged at least 2 months before nominations open for the elections.



JAMES WALSH  
ACTING PRESIDENT  
CIVIL AIR OPERATIONS

Dated: 18 March 2024

### ***Reasons for election***

An election for the position of **President** is required in accordance with Rules 35 and 38.

### ***Elected by:***

For these positions, the electorate for the direct voting system is the entire membership.

### ***Nominations open:***

Nominations open in accordance with a timetable provided by the Returning Officer, delegated by the Australian Electoral Commission (AEC). Refer Civil Air Rule 35(d)(2)(c) which states:

*“not later than the nineteenth day of May in any year, call for nominations for the President of the Association position becoming vacant, pursuant to rule 38 of these rules, on the last day of July in that year; by insertion of notices in journals and/or circulars to members’ employment facilities, as the returning officer deems appropriate”.*

### ***Nominations close:***

Nominations close in accordance with a timetable provided by the Returning Officer, delegated by the Australian Electoral Commission (AEC). Refer Civil Air Rule 33 (f)(ii) which states:

*“Nominations for the election of the President of the Association, conducted pursuant to these rules shall be received by the returning officer no later than the twelfth (12th) day of June in the year in which the position becomes vacant”.*

***Cut off date for roll:*** in all cases, 7 days prior to the opening date for nominations.