



7 August 2024

Joanne Blair
Branch Secretary/Treasurer
Australian Hotels Association - New South Wales Branch
Sent via email: enquiries@ahansw.com.au

cc: Stephen Ferguson aha@aha.org.au

Dear Joanne Blair



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2023/201

An election has recently been completed by the Australian Electoral Commission (AEC) for the Australian Hotels Association - New South Wales 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
- 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. 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, 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.

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.

7 August 2024

Post-election report

Australian Hotels Association

New South Wales Branch

Scheduled election

E2023/201

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

Organisation:	Australian Hotels Association – New South Wales Branch
Election Decision No:	E2023/201
Election:	Scheduled Election
Date nominations closed:	26 July 2024
Date results declared:	1 August 2024
Date PER due:	31 August 2024

Relevant legal provisions

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

In accordance with reg 140 of the Regulations, the AEC issued a declaration of the result of election E2023/201 on 1 August 2024. For a copy, see **Attachment A**.

Australian Hotels Association Rules

Australian Hotels Association Rules used for the election:

- 024N-NSW: Incorporates alterations of 28/8/2009
- Election Rules – 024N: Incorporates alterations of 1 July 2023 [D2022/12]

The rules which were difficult to apply and the matters in which I have exercised the authority given to me by s.193 of the Act are:

Rule 32 allows for the provision of scrutineers, however, there is no appointed date or time by which the Returning Officer is to be notified. I issued a direction to set the date and time for scrutineer appointments to be lodged at the same time as the ballot closes.

Roll of Voters

There were no issues in relation to the roll of voters including those matters contained in subsection 197(3) of the Act.

Written allegations of any irregularities

The AEC did not receive any written allegations of irregularities.

Other irregularities

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

Signed

Chris King
Returning Officer
Australian Electoral Commission
E: IEBevents@aec.gov.au
P: 03 9285 7111
7 August 2024

Attachments

A. Declaration of Results for Uncontested Offices

Australian Hotels Association
New South Wales Branch
DECLARATION OF RESULTS - E2023/201
Uncontested 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:

Branch Committee of Management

Delegate to National Board (7)

Candidates

BLAIR Joanne

BROWN Gavin

HUMPHREYS Lyn

KENNEDY Des

LEES Robert

MALONEY Kim G.

STARKEY Michael

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

Chris King
Returning Officer
Telephone: 03 9285 7111
Email: IEBevents@aec.gov.au
01/08/2024





DECISION

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

Australian Hotels Association
(E2023/201)

MR STEENSON

SYDNEY, 17 JUNE 2024

Arrangement for conduct of election.

[1] On 20 May and 7 June 2024 the New South Wales Branch (**the Branch**) of the Australian Hotels Association (**the organisation**) lodged with the Fair Work Commission (**the Commission**) prescribed information for an election to fill the following offices for a new term of office:

Delegates to the National Board (7)

(The rules provide that, in addition to these, the Branch President is, ex officio, a Delegate to the National Board)

[2] The organisation was late in lodging prescribed information to arrange for this election – in fact, over a year late in doing so.

[3] The organisation’s rules (**the rules**) provide that the term of office for Delegates to the National Board is twelve (12) months.¹ Rule 11A.2 provides that nominations open ‘at least fourteen (14) days prior to the first day of April (or such later time as allowed by the Returning Officer) in each year’. Consequently, the rules require nominations to open on a date no later than mid-March each year.

[4] The most recent election for Delegates to the National Board from the Branch was declared on 19 May 2022 (matter E2020/220) meaning the current office holders were declared elected 25 months ago, when the term of office under the rules is 12 months.

[5] Section 189(1) of the *Fair Work (Registered Organisations) Act 2009* (**the Act**) requires that registered organisations whose elections are conducted by the Australian Electoral Commission (**the AEC**) – i.e. the default position under the legislation – must lodge prescribed information with the Commission in order for arrangements to be made for those elections. This is an essential step as an election can only be conducted after the Commission issues a decision on whether the election being sought is required, with the AEC then acting on the basis of that decision. Put simply, an election cannot be held without the lodgement of prescribed information.

¹ Rulebook R2020/170, rule 11A.8.

[6] There are specific obligations on when prescribed information must be lodged. Section 189(2) requires that prescribed information be lodged before what is known as the ‘prescribed day’. The *Fair Work (Registered Organisations) Regulations 2009* (the **Regulations**), specifically Regulation 138(3), defines ‘prescribed day’ as the date occurring ‘2 months before the first day when a person may, under the rules of the organisation or branch, become a candidate in the election’. In other words, it must be lodged at least two months before the date on which nominations open. In the case of these offices, with nominations due to open no later than mid-March, that means lodgement of prescribed information by no later than mid-January (with the precise date dependent on the opening date for nominations).

[7] Section 189(2) is a civil penalty provision. As such, late lodgement (or non-lodgement) of prescribed information, can expose an organisation to civil penalty litigation and penalties.²

[8] In providing an explanation for the delay, the Branch has advised that it misunderstood when the next scheduled election was required to take place following the insertion of Rule 44A.

[9] As rule 44A is relatively brief, it is convenient to reproduce it in full as part of this decision. It provides that:

44A – TERMS OF OFFICE DURING COVID-19 PANDEMIC – 2020-2021

- (a) Notwithstanding any other provisions of the Association Rules, the terms of office for those offices governed by any of those Rules that commenced in 2019 are two (2) years.
- (b) **The terms of office for the offices governed by this Rule shall expire in 2021** at the time or times prescribed by these Rules, in particular Rule 11 (delegates to National Board), 15 (members of the National Executive) and Rule 42 (offices of the National Accommodation Hotels Division). **Thereafter, the terms of office for the relevant offices shall be one year.**

[Emphasis added]

[10] I note that Rule 44A was inserted as a response to delays associated with conducting industrial elections during the COVID-19 pandemic. It is apparent, on the face of the rule, that it operated to temporarily extend the terms of offices of delegates to the National Board, members of the National Executive and offices of the National Accommodation Hotels Division (referred to in rules 11, 15 and 42 respectively).

[11] Rule 44A(b) specifically provided that the terms of the affected offices reverted to one-year terms with effect from 2021.

[12] These offices should therefore have been the subject of elections each year from (and including) 2021. I note that the other categories of offices listed in rule 44A have been the subject of annual elections other than for the single (COVID-affected) two-year term.³

[13] Section 189(2) of the RO Act enables the General Manager of the Commission (and, by inference, his Delegate) to allow a lodgement date later than the prescribed date. The Branch

² *Registered Organisations Commission v Australian Hotels Association* [2019] FCA 1516.

³ For National Executive Members: E2023/130 (declared 17/08/2023), E2022/152 (declared 17/10/2023), E2021/161 (declared 04/11/2021), E2020/155 (not conducted by AEC) and E2019/123 (declared 04/11/2019) and; For National Accommodation Hotels Division: E2023/129 (declared 21/11/2023 and 20/12/2023), E2022/140 (declared 17/10/2022), E2021/138 (declared 04/11/2021), E2020/142 (not conducted by AEC) and E2019/156 (declared 04/11/2019).

requested such an extension of time for lodgement as part of its amended prescribed information on 7 June 2024.

[14] I am not satisfied that the reason stated by the organisation is sufficient to justify the failure to comply with a statutory obligation. Having regard to the normal and reasonable expectation that registered organisations take steps to ensure they comply with the timeframe requirements set out not only in the RO Act but also in governance instruments formulated by the organisations themselves, such as their own rules, I decline on this occasion to allow, under section 189(2) of the Act, a later day for lodgement.

[15] In reaching this conclusion I have taken into account the significant delay in lodgement (over twelve months), and that, in addition to this, the Commission sent a courtesy letter to the Branch on 18 December 2023 reminding it of its obligation to lodge prescribed information. However, it does not appear that the Branch responded to this correspondence nor apparently engaged with the Commission in relation to its elections until prescribed information was lodged on 20 May 2024.

[16] However, the refusal to grant a later date for lodgement under section 189(2) of the Act does not affect the requirement that I make a determination under section 189(3) of the Act as to whether the requested election is due.

[17] 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 Act, I am making arrangements for the conduct of the election by the Australian Electoral Commission.

[18] I also note that, in accordance with its rules, the Branch will be required to lodge prescribed information by no later than mid-January 2025 to enable the next election for these offices to be arranged in accordance with the timeframes in those rules.



DELEGATE OF THE GENERAL MANAGER

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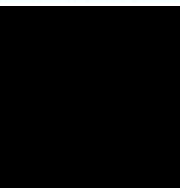
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STATEMENT OF PRESCRIBED INFORMATION FOR ELECTIONS

SECTION 189 FAIR WORK (REGISTERED ORGANISATIONS) ACT 2009 AND REGULATION 138 FAIR WORK (REGISTERED ORGANISATIONS) REGULATIONS 2009

I, Joanne Blair, being the Secretary/Treasurer of the NSW Branch of the Australian Hotels Association, make the following statement:

1. I am authorised to sign this statement containing prescribed information for the New South Wales Branch of the Australian Hotels Association.
2. The following information is lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009*.
3. The elections that are required are set out in the table in Annexure A.
4. No rules alterations are pending that will impact the election.
5. This statement is not lodged at least two months before nominations open for the election below and an extension of time is respectfully requested due to the following circumstances:
 - a. Due to the insertion of Rule 44A of the AHA National Rulebook which temporarily extended the terms of office of Branch Delegates to the National Board to two years (as a result of the COVID-19 Pandemic), there was a misunderstanding which caused the NSW Branch to understand the next scheduled election of Delegates to the National Board was required to take place following the recent election of the NSW Branch Executive Committee, which was concluded in April 2024, as opposed to 2023.



07-06-2024
Date

ANNEXURE A

- Elections that are required

Branch	Name of Office	Number required	Voting System	Reason for Election	Electorate
NSW	Delegate to National Board	8	Collegiate Electoral System	Scheduled	Members of the Branch Committee of Management, however, one of the offices is filled by the President of the Branch ex officio (see rr.11.2, 11.5 and 11A.2 of the Australian Hotels Association Rules).

- Important dates:

	Collegiate Electoral System
Nominations OPEN	To be confirmed by the AEC
Nominations CLOSE	Not less than 14 days, nor more than 30 days after the last nomination form is posted.
Roll of Voters cut-off date	Seven days before the day upon which nominations for the election open.

