

Association of
Independent Schools
of South Australia

6 August 2019

Registered Organisations Commission
By email: regorgs@roc.gov.au

Dear Sir or Madam

E2019/17 Australian Electoral Commission (AEC) Post-election Report – Rules difficult to apply/interpret

I refer to the above Post-election Report which was provided to the Association of Independent Schools of South Australia (AISSA) by email on 4 July 2019 and to the letter from the Registered Organisations Commission (ROC) dated 18 July 2019 setting out the Post-election Report obligations to be met by the AISSA.

On behalf of the AISSA, I confirm and declare that:

- the AISSA provided the attached response to the AEC by email on 2 August 2019
- a copy of the AISSA's response has been posted on the AISSA website, together with a copy of the attached extract of the AEC Post-election Report
- the AISSA will include notification in the next edition of its Bulletin (which will be circulated by email to all AISSA member schools on Wednesday 4 September) that a copy of each of the extract and response referred to above are available to members on request and at no charge.

If you have any questions or concerns regarding the attached or the contents of this letter, please contact the AISSA Chief Executive, Mrs Carolyn Grantskalns, on (08) 8179 1400.

Yours faithfully

Kristian Downing
AISSA Board Chair

2 August 2019

Australian Electoral Commission
Industrial & Commercial Elections Section
By email: saelections@aec.gov.au

Dear Sir or Madam

E2019/17 Post-election Report – Rules difficult to apply/interpret

We refer to the above Post-election Report which was provided to us by email on 4 July 2019.

We have set out at paragraphs 1-3, below, our response in respect of each of the Rules identified in that Report as difficult to apply/interpret. However, in the first instance, we note that:

- following its registration as an association of employers in May 2014, the Association of Independent Schools of South Australia (AISSA) undertook a comprehensive review and update of its Constitution, throughout which process either or both of the Fair Work Commission (FWC) and Australian Electoral Commission (AEC) were consulted regarding proposed changes
- the AEC's Post-election Report in respect of each of the previous five elections it has conducted under the AISSA's current Constitution has indicated a nil response against the question of "Rules difficult to apply/interpret".

1. *Rule 9.1 provides for the construction of the Board. In particular, Rule 9.1.4 provides for "up to four other persons" The Rules do not clearly define who is eligible to be a candidate for the offices identified in Rule 9.1.4. As eligibility is open to interpretation it is recommended that the organisation provide clear guidance within the Rules in this matter*

Of the 13 Board positions available under Rule 9.1, nine are to be filled only by persons who hold certain positions within AISSA member schools. In order to strengthen and expand on the breadth of skills at the Board's disposal, the group of "up to four other persons" was introduced specifically to introduce some diversity and to provide the opportunity for a proportion of Board positions to be skills based, for example, by persons with legal qualifications or advocacy experience.

The AISSA consulted with both the FWC and the AEC in determining the provisions set out at Rule 14.6 which are designed to offer some guidance on those persons eligible to nominate.

2. *Rule 14.5 states "The Returning Officer must call for nominations for Board positions by providing a nomination form to the contact person of each financial Member." The Rules however are silent on who acts as the contact person for Members. If it is the organisation's intention that the Representative, identified in Rule 6, be the contact person, Rule 14.5 should be amended to reflect this.*

AISSA membership is somewhat unusual in that it is the school which is the member and each member school is represented by its Principal and one other person. It follows that the member representative also acts as the contact person for each member. Further, it is most appropriate that postal correspondence to member schools be addressed simply to "The Principal" rather than to a named individual. This avoids the risk of post remaining unopened during a period of absence or a change in the person acting as Principal, and is consistent with the definition set out at Rule 41.16.

3. *Rule 14.6 enables a candidate to submit an Expression of Interest that meets certain criteria. Sub-rule 14.6.2 and 14.6.3 contains provisions regarding the rejection, replacement or distribution of a copy of the nomination with the ballot papers. It would appear that the Rule uses the term "nomination" in place of "Expression of Interest". If this is the case, the organisation should update the rule to reflect the intentions of the organisation.*

14.6.1 sets out the four pieces of supporting documentation which a candidate is entitled to submit with their nomination form, being a "CV, Expression of Interest, photograph of the candidate and an endorsement from an existing Board Member in support of the candidature". In circumstances where the Expression of Interest is one of the four supporting documents which together may form the "nomination", the AISSA considers that this is the correct term for the purposes of 14.6.2 and 14.6.3.

We trust the above assists but if you have any questions or wish to discuss the contents of this letter, please don't hesitate to contact us.

Yours sincerely



Carolyn Grantskalns
Chief Executive



18 July 2019

Kristian Downing
Chairperson (also Governor Group 1)
Association of Independent Schools of South Australia
Sent via email: office@ais.sa.edu.au

Dear Kristian Downing,

Reminder of actions required when persons elected to office

The Australian Electoral Commission has provided the Registered Organisations Commission (the ROC) a declaration of results for the election of contested and uncontested offices in matter E2019/17. This letter is a reminder of certain obligations imposed on organisations and on persons elected to office.

A notice must be published on the organisation's website

The organisation or branch must, as soon as practicable after receiving the post-election report, publish on its website a notice that a copy of the report is available from the organisation, branch or the AEC on request. The notice must be kept on the website for a period of at least 3 months (see regulation 141 of the Fair Work (Registered Organisations) Regulations 2009).

Holders of office required to undertake approved training

Section 293K of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires each officer with financial management duties to undertake approved training that covers those duties within 6 months after the person begins to hold office. Please ensure that relevant officers undertake approved training within the required timeframe. Please also ensure that all new holders of office are advised of their obligations to make disclosures regarding remuneration, non-cash benefits and material personal interests, the details of which are provided for in the RO Act.

Organisation must notify the Commission of changes

Also, section 233(2) of the RO Act requires that an organisation must notify the Commission **within 35 days of any changes** to the holders of office in the organisation. **If there are no changes a notification is not required.** If the election has resulted in **any changes** to the holders of office, the Association of Independent Schools of South Australia, The must notify the Commission of these changes. In particular, please advise:

1. Person(s) who have ceased to hold office:
 - the name of the office vacated;
 - the date of the change of office holder; and
 - the name of the person vacating the office.
2. Person(s) who have commenced to hold office:
 - the name of the office now held;
 - the date of the change of office holder;
 - the name of the person now holding the office;

- the postal address of the person (generally the postal address of the organisation); and
- the occupation of the person now holding the office.

The notification must include a declaration by the Secretary (or other prescribed officer) that the information is a correct statement of the changes made. A template notification of changes, which may assist you, is attached. If any change does not apply until a date in the future, you do not need to notify until then (e.g. AGM, 1 January, 2nd Monday in March). If you have already lodged this information, please disregard this reminder.

Yours faithfully,

Romy Kaur
Registered Organisations Commission



18 July 2019

Kristian Downing
Chairperson (also Governor Group 1)
Association of Independent Schools of South Australia
Sent via email: office@ais.sa.edu.au

Dear Kristian Downing

Organisation must respond to the post-election report of the Australian Electoral Commission: E2019/17

On 04-07-2019 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2019/17. The AEC will have also provided the report to the organisation under section 197 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

The report identifies rules that were difficult to interpret or apply, in particular Rules 9.1, 14.5, 14.6. This letter serves as a reminder of the obligations imposed on the organisation or branch as a consequence of the AEC's report. If a response has already been sent to the AEC and made available to all members please disregard this letter.

A notice must be published on the organisation's website

The organisation or branch must publish on its website a notice that a copy of the report is available from the organisation, branch or the AEC on request. The notice must be kept on the website for a period of at least 3 months (see regs 141(4) and (5)).

A written response must be provided to the AEC

A written response must be provided to the AEC within 30 days of receipt of the report. The organisation's response must include whether the organisation or branch intends to take action and if so what action the organisation or branch intends to take (s198(2)).

Extract of report must be made available to members

The organisation or branch must make the section of the report relating to the difficult rules available to its members (s198(3)). This extract from the report must be made available to the members before or at the same time as the organisation's response is made available to members.

Written response must be made available to members

A copy of the organisation's response to the AEC must be made available to members either:

- within 30 days after the response is given to the AEC, or
- published in the next edition of the organisation or branch journal (s198(5))

Subsection 198(6) and regulation 142 prescribe ways in which the relevant extract and the copy of the response can be made available to members. These do not limit the ways in which they can be made available to members. The organisation will comply if it does all of the following:-

- publish the report extract and the copy of the response in the next edition of the organisation or branch's journal; and
- within 30 days of giving the response to the AEC:
 - lodges with the ROC a copy of the relevant extract and response, together with a declaration that a copy will be provided to any member who so requests; and
 - give notice in the next edition of the organisation or branch's journal, or an appropriate newspaper, that a copy of the relevant extract and response are available on request to each member free of charge; and
- publish the relevant extract on the website within 14 days after receiving the report, and publish the response on the website within 14 days of giving the response to the AEC (reg 142(2)).

Penalties may apply

If the organisation or branch does not:

- respond to the AEC within 30 days,
- make the extract of the report relating to the rules available to members no later than the organisation's response is made available to members, or
- make the organisation's response available to members within 30 days or in the next edition of the journal,

the organisation may face penalties under the RO Act. Each requirement listed above is a civil penalty provision that may result in fines for the organisation

As noted above, if the response and report have already been made available to members and the AEC, please disregard this letter. If you have any questions in relation to these obligations please contact the ROC for assistance by email to regorgs@roc.gov.au.

If the organisation or branch decides to alter its rules in response to the AEC's report

If the organisation or branch decides to alter its rules in response to the AEC's report, the ROC is NOT able to provide advice and assistance regarding draft alterations or the processes required to make the alterations. Rule alterations remain a function of the Fair Work Commission.

Yours faithfully

Romy Kaur
Registered Organisations Commission

The Association of Independent Schools of South Australia
DECLARATION OF RESULTS - E2019/17 – Stage 1
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:

AISSA Members

Governor (1)

Candidates

GRIMMETT Don

Principal from any Member School (1)

Candidates

PAYNE Heidi

Other persons (4)

Candidates

CLARKE Rebecca

PROEVE John

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



Barbara Kekes
Returning Officer
Telephone: 08 8237 6555
Email: saelections@aec.gov.au
10/05/2019

The Association of Independent Schools of South Australia
DECLARATION OF RESULTS - E2019/17 - Stage 1
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:

AISSA Members

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	102
Number of voters issued with voting material	102
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	102
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	63
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	60
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	0
Voting material packs not returned by voters by closing date of the ballot	39
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	62%

Principal from a Secondary or R-12 School (1)

<u>Candidates</u>	<u>Final Votes</u>
DUNSTAN, Anne	36
POTTER, Michael	24

Total ballot papers admitted for this office	63
Formal Ballot papers	60
Informal Ballot papers	3

I declare the following elected:

- DUNSTAN, Anne



Barbara Kekes
Returning Officer
Telephone: 08 8237 6555
Email: saelections@aec.gov.au
30/05/2019

The Association of Independent Schools of South Australia

DECLARATION OF RESULTS – E2019/17 – Stage 2

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:

AISSA Board Members

Executive Committee Chair (1)

Candidate

DOWNING Kristian

Executive Committee Deputy Chair (1)

Candidate

CLARKE Rebecca

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



Barbara Kekes
Returning Officer
Telephone: 08 8237 6555
Email: saelections@aec.gov.au
25/06/2019

4 July 2019

Post-election report

The Association of Independent Schools
of South Australia

Scheduled election

E2019/17 – Stage 1 & Stage 2



AEC

Australian Electoral Commission

Contents

Election(s) Covered in this Report	3
Rules.....	3
Roll of Voters	3
Irregularities.....	4
Other Matters.....	4
Signed	4
Attachments	4
A. Declaration of Results for Uncontested Offices – Stage 1	4
B. Declaration of Results for Contested Offices – Stage 1.....	4
C. Declaration of Results for Uncontested Offices – Stage 2	4

Election(s) Covered in this Report

Organisation: The Association of Independent Schools of South Australia

Election: Scheduled

Election Decision No/s: E2019/17

Rules

Rules used for the election: [008S: Incorporates alterations of 18 September 2017 in matter R2017/134] replaces version 2 September 2016 (D2016/55)

Rules difficult to apply/interpret:

Stage 1

- Rule 9.1 provides for the construction of the Board. In particular, Rule 9.1.4 provides for “*up to four other persons*”. The Rules do not clearly define who is eligible to be a candidate for the offices identified in Rule 9.1.4. As eligibility is open to interpretation it is recommended that the organisation provide clear guidance within the Rules in this matter.
- Rule 14.5 states “*The Returning Officer must call for nominations for Board positions by providing a nomination form to the contact person of each financial Member.*” The Rules however are silent on who acts as the contact person for Members. If it is the organisation’s intention that the Representative, identified in Rule 6, be the contact person, Rule 14.5 should be amended to reflect this.
- Rule 14.6 enables a candidate to submit an Expression of Interest that meets certain criteria. Sub-rule 14.6.2 and 14.6.3 contains provisions regarding the rejection, replacement, or distribution of a copy of the nomination with the ballot papers. It would appear that the Rule uses the term “*nomination*” in place of “*Expression of Interest*”. If this is the case, the organisation should update the rule to reflect the intentions of the organisation.

Model Rule reference (if any): None

For more details see the Model Rules on the AEC website:

https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections

Roll of Voters

STAGE 1

Total number of votes on the Roll:	102
Number of apparent workplace addresses:	102
Number of non-current addresses:	None

Other matters pertaining to the roll of voters:

Please see above bullet points on Rules difficult to apply/interpret relating to the term “*contact person*” in Rule 14.5 and Rule 6.1 relating to Representation of Member.

STAGE 2

As there were no contested offices, no Roll of Voters was required.

Irregularities

Details of written allegations of irregularities, and action taken by AEC: None

Other irregularities identified, and action taken: None

Other Matters

Returning Officer actions required (Section 193): Yes

Details:

The Organisation's Rules are silent on withdrawal of nominations. I have therefore exercised the powers that s193 of the FWRO Act affords me, to determine that withdrawal of nominations must occur no later than the date and time for the close of nominations.

Signed



Barbara Kekes
Returning Officer
Australian Electoral Commission
E: saelections@aec.gov.au
P: 08 8237 6555
4 July 2019

Attachments

- A. Declaration of Results for Uncontested Offices – Stage 1
- B. Declaration of Results for Contested Offices – Stage 1
- C. Declaration of Results for Uncontested Offices – Stage 2



DECISION

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

The Association of Independent Schools of South Australia (E2019/17)

MR COYLE

MELBOURNE, 7 MARCH 2019

Arrangement for conduct of election.

[1] On 11 February 2019 The Association of Independent Schools of South Australia (the organisation), lodged with the Registered Organisations Commission prescribed information for a scheduled election to fill the following offices:

Board Members

Governor	(1)
Principal from a Secondary or R-12 School	(1)
Principal from any Member School	(1)
Other persons	(4)

Office Bearers (Executive Committee)

Chair	(1)
Deputy Chair	(1)

[2] 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 Australian Electoral Commission.

DELEGATE OF THE COMMISSIONER



Printed by authority of the Commonwealth Government Printer

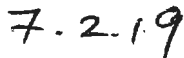
<PR351307>

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, Kristian Downing, being the Board Chair of the Association of Independent Schools of South Australia (AISSA), make the following statement:

1. I am authorised to sign this statement containing prescribed information for the AISSA.
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 below.

Signed: 
.....
Kristian Downing, AISSA Board Chair

Dated: 
.....

[PLEASE NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. It can be submitted to regorgs@roc.gov.au.]

ANNEXURE A

- Elections that are required:

Branch	Name of Office	Number required	Voting System <i>Direct voting system; Collegiate electoral system</i>	Reason for Election <i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	Electorate
N/A	Board Member (Governor) (Rule 9.1.2)	1	Direct voting system	Scheduled	All AISSA Members (Rule 13.1)
N/A	Board Member (Principal from a Secondary or R-12 School) (Rule 9.1.1(b))	1	Direct voting system	Scheduled	All AISSA Members (Rule 13.1)
N/A	Board Member (Principal from any Member School) (Rule 9.1.1(c))	1	Direct voting system	Scheduled	All AISSA Members (Rule 13.1)
N/A	Board Member (Group of up to four (4) other persons) (Rule 9.1.4)	4	Direct voting system	Scheduled	All AISSA Members (Rule 13.1)
N/A	Chair (Rule 10.1.2)	1	Collegiate electoral system	Scheduled	By and from the Board (Rule 10.1.1)
N/A	Deputy Chair (Rule 10.1.2)	1	Collegiate electoral system	Scheduled	By and from the Board (Rule 10.1.1)

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	At least 6 weeks before 13 June 2019 (ie by no later than 2 May 2019) (Rule 14.4)	13 June 2019 (rule 13.4(a))
Nominations CLOSE	Date to be determined in consultation with the AEC	Date to be determined in consultation with the AEC
Roll of Voters cut off date	7 days prior to nominations opening (rule 14.10)	7 days prior to nominations opening (rule 14.10)