



**Australian  
Retailers  
Association**

Att: [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au)

RESPONSE: E2018/233- Post Election Report: The Australian Retailers Association [DLM=For-Official-Use-Only]

Dear Compliance Team

The Australian Retailers Association has recently completed its election of councillor's process – see E2018/233. The Australian Electoral Commission (AEC) declared the outcome of the poll by email of 9 May 2018 at 3:14 pm.

Section 198 of the Act requires that if an organisation or branch is given a post-election report under Section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

The AEC drew the ARA's attention to what it perceived to be a possible ambiguity or difficulty of interpretation in terms of the councillor's election. The correspondence read:

Election of councillors and the issue regarding.

S 198 Issue regarding R 39.1(a)

Rules used for the election: [260V: Incorporates alterations of 14/11/2018] [R2017/273]  
Rules difficult to apply/interpret:

To elect the Councillors, eligibility of the electorate of the Association is not well defined. Rule 39.1(a) in regards to the election for Councillors is not clear. It is recommended that this issue be resolved.

Model Rule reference (if any): N/A

For more details, see the Model Rules on the AEC website:  
([https://www.aec.gov.au/About\\_AEC/AEC\\_Services/Industrial\\_Elections](https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections))

The ARA response follows :

The ARA thanks the AEC for its professional services of and associated with the election and in response to the election report it respectfully suggests that there is no ambiguity in the Rule 39.1 as presently worded.

Phone: 1300 368 041  
Fax: (03) 8660 3399

**MELBOURNE OFFICE**  
Address: Level 1, 112 Wellington Parade  
East Melbourne VIC 3002



**Rationale :**

The current version of the Rules of the Australian Retailers Association as it appears on the Fair Work Australia web site and in particular R39.1.

**39 - ELECTIONS**

**39.1 Scheme of Elections**

The elections of the Association shall be carried out in accordance with the following scheme:

- (a) All members shall elect by and from their numbers the ARA Council.
- (b) Nominees for election to the ARA Council shall identify the state or states wherein they represent retail stores.
- (c) Those members shall be elected who gain the most votes in each category of state and national retailer, with the maximum number being as prescribed in Rule 21.
- (d) The ARA Council shall elect by and from its number the following as the office bearers of the ARA: - ARA President, ARA Vice President, ARA Secretary and ARA Treasurer.

The ARA has considered the advice of the AEC but does not believe that there is an issue requiring rectification arising from the words used in R39.1(A)

This meaning of the words used ARA believes is patently clear from the literal reading of the Rules plus the reading together of the 39.1(a) and R39(d). Clearly any potential for members to see 39.1(a) as meaning or involving the second election – the one involving the executive is clear from 39.1(d). In summary ARA believes the matter should be left as it is.

As always ARA thanks the Commission for the important role that it plays .

Steve Plarre

Secretary

**Phone:** 1300 368 041  
**Fax:** (03) 8660 3399

**MELBOURNE OFFICE**

**Address:** Level 1, 112 Wellington Parade  
East Melbourne VIC 3002



5 June 2019

Rowan Hodge  
President  
Australian Retailers Association  
Sent via email: info@retail.org.au

Dear Rowan Hodge

**Organisation must respond to the post-election report of the Australian Electoral Commission: E2018/233**

On 24-05-2019 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2018/233. 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 Rule 39.1(a). 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](mailto: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**

24/05/2019

# Post-election report

**The Australian Retailers Association  
E2018/233**

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## Election(s) Covered in this Report

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Organisation: The Australian Retailers Association  
Election Decision Number(s): E2018/233

## Rules

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Rules used for the election: [260V: Incorporates alterations of 14/11/2018]  
[R2017/273]

Rules difficult to apply/interpret: To elect the Councillors, eligibility of the electorate of the Association is not well defined. Rule 39.1(a) in regards to the election for Councillors is not clear. It is recommended that this issue be resolved.

Model Rule reference (if any): N/A  
For more details see the Model Rules on the AEC website:  
([https://www.aec.gov.au/About\\_AEC/AEC\\_Services/Industrial\\_Elections](https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections))

## Roll of Voters

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Total number of voters on the Roll: 7526  
Number of apparent workplace addresses: 7526  
Number of non-current addresses: N/A  
Other matters pertaining to the roll of voters: None

## Irregularities

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

Other irregularities identified, and action taken: None

## Other Matters

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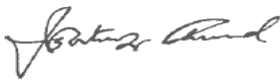
Returning Officer actions required (Section 193): Yes

Details:

- Rules of the Association are silent about the closing time of withdrawal of nomination.

## Signed

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Ishtiaq Ahmed  
Returning Officer  
Australian Electoral Commission  
E: Ishtiaq.ahmed@aec.gov.au  
P: 02 93756331

Date: 24/05/2019

## Attachments

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- 1) Declaration of results for contested Offices.





17 May 2019

Rowan Hodge  
President  
Australian Retailers Association  
Sent via email: info@retail.org.au

Dear Rowan Hodge,

### **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 offices in matter E2018/233. 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 Australian Retailers Association, 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,

**Christine Hibberd**  
**Registered Organisations Commission**

# The Australian Retailers Association

## DECLARATION OF RESULTS - E2018/233 Contested Offices

### Scheduled Election for Councillors

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:

#### Financial Members

<b>VOTING MATERIAL ISSUED</b>	
Total number of people on the Roll of voters	7,526
Number of voters issued with voting material	7,526
Total number of voters issued with replacement voting material	0
<b>Total number of voting material packs issued</b>	<b>7,526</b>
<b>VOTING MATERIAL RETURNED</b>	
Total number of envelopes returned for scrutiny by closing date of ballot	927
Number of declaration envelopes rejected at preliminary scrutiny	38
<b>COUNT</b>	
Total ballot papers admitted to the count	889
<b>LATE OR UNRETURNED VOTING MATERIAL</b>	
Voting material returned as unclaimed mail by closing date of ballot	220
Voting material packs not returned by voters by closing date of the ballot	6,379
Percentage of voting material packs returned by voters to number of people on the Roll of voters (b/a)	12 %

#### Councillors (14)

<u>Candidates</u>	<u>Final Votes</u>
YOUNANE, Stephen	749
KNIGHT, Beth	793
MEADS, Drew	811
DEAR, Graham	786
WILSON, Anthony	810
DARVALL, Toby	784
LESLIE, Greg	792
DAYNES, Mark	792
PLARRE, Steven	774
HODGE, Rowan	797
DAVEY, Charles	814
EDWARDS, Ralph	804
NG, Andrew	638
GANCE, Jack	784

FORD, Clayton

762

**Total ballot papers admitted for this office**

**889**

Formal Ballot papers

835

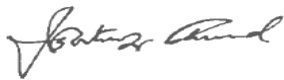
Informal Ballot papers

54

I declare the following elected:

Order Elected

- DAVEY, Charles 1
- MEADS, Drew 2
- WILSON, Anthony 3
- EDWARDS, Ralph 4
- HODGE, Rowan 5
- KNIGHT, Beth 6
- DAYNES, Mark 7
- LESLIE, Greg 8
- DEAR, Graham 9
- DARVALL, Toby 10
- GANCE, Jack 11
- PLARRE, Steven 12
- FORD, Clayton 13
- YOUNANE, Stephen 14



Ishtiaq Ahmed  
Returning Officer  
Telephone: 02 9375 6331  
Email: nswelections@aec.gov.au  
09/05/2019



## DECISION

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

### **The Australian Retailers Association** (E2018/233)

MR ENRIGHT

MELBOURNE, 13 FEBRUARY 2019

*Arrangement for conduct of election.*

[1] On 19 December 2018 The Australian Retailers Association lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

Councillors (14)

[2] The composition of the elected councillors shall be in accordance with rule 21.1 of the organisation's rule book.

[3] In accordance with rule 21.2 of the organisation's rule book, the term of office of the elected councillors shall be four (4) years, with councillors eligible for re-election.

[4] I note that the wording of rule 21.1 still refers to councillors being 'elected biennially' and the apparent conflict between this and the wording of rule 21.2. However, the approval of rule alterations by the Fair Work Commission on 14 November 2018 (in matter R2017/273) included the amendment of rule 21.2 making the term of office four (4) years.

[5] In this regard, I encourage the organisation to consider amending its rules to remove the appearance of inconsistency between rules 21.1 and 21.2

[6] I am satisfied that an election for the above named 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 COMMISSIONER

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**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, Stephen Plarre, being the Secretary of the Australian Retailers Association, make the following statement:

1. I am authorised to sign this statement containing prescribed information for the organisation.
2. The 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 the elections of councillors to comprise the council of the ARA consequent upon an election required under the rules of the organisation.
4. The electorate in each case is the members of the ARA Council.
5. the date and time of the opening and closing of nominations will be as determined by the Returning Officer.
6. The rules of the organisation are not required to provide for the day on which the roll of voters is to be closed in relation to a collegiate voting system, as is the case with an election of ARA Office-bearers. [see subsection 143(1)(e)(i)]
7. The kind of voting system is a collegiate voting system.

Signed:  [SECRETARY]

Dated: 18/12/2018

*[PLEASE NOTE: This statement should be lodged with the Registered Organisations Commission at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).]*