



4 July 2019

Steven Plarre
Secretary
Australian Retailers Association
Sent via email: info@retail.org.au

Dear Steven Plarre

Organisation must respond to the post-election report of the Australian Electoral Commission: E2019/23

On 25/06/2019 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2019/23. 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 39.4 (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.

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

Christine Hibberd
Registered Organisations Commission



4 July 2019

Steven Plarre
Secretary
Australian Retailers Association
Sent via email: info@retail.org.au

Dear Steven Plarre,

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 E2019/23. 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

25/06/2019

Post-election report

**The Australian Retailers Association
E2019/23**

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Election(s) Covered in this Report

Organisation: The Australian Retailers Association
Election Decision Number(s): E2019/23

Rules

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

Rules difficult to apply/interpret: Rule 39.4 (a) is difficult to apply as the Returning Officer is appointed by the Australian Electoral Commission to conduct the election. 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)

Roll of Voters

Total number of voters on the Roll: 14
Number of apparent workplace addresses: N/A
Number of non-current addresses: N/A
Other matters pertaining to the roll of voters: None

Irregularities

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

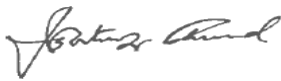
Other Matters

Returning Officer actions required (Section 193): Yes

Details:

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

Signed



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

Date: 25/06/2019

Attachments

- 1) Declaration of results for contested and Uncontested Offices.

The Australian Retailers Association

DECLARATION OF RESULTS - E2019/23

Contested and Uncontested Offices

Election of Office Bearers

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:

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters	14
Number of voters issued with voting material	14
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	14
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot	10
Number of declaration envelopes rejected at preliminary scrutiny	0
Number of ballot papers returned outside declaration envelopes	0
COUNT	
Total ballot papers admitted to the count	10
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	4
Percentage of voting material packs returned by voters to number of people on the roll of voters	71 %

ARA Vice President (1)

<u>Candidates</u>	<u>Votes</u>
WILSON, Anthony	7
GANCE, Jack	3

Total ballot papers admitted for this office	10
Formal Ballot papers	10
Informal Ballot papers	0

I declare the following elected:

- WILSON, Anthony

ARA President (1)Candidates

HODGE Rowan

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

ARA Secretary (1)Candidates

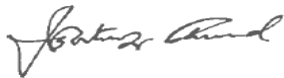
PLARRE Steven

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

ARA Treasurer (1)Candidates

DEAR Graham

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



Ishtiaq Ahmed
Returning Officer
Telephone: 02 9375 6331
Email: nswelections@aec.gov.au
25/06/2019



DECISION

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

The Australian Retailers Association (E2019/23)

MR COYLE

MELBOURNE, 27 MARCH 2019

Arrangement for conduct of election.

[1] On 25 February 2019 The Australian Retailers Association (the **organisation**), lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

ARA President	(1)
ARA Vice President	(1)
ARA Secretary	(1)
ARA Treasurer	(1)

[2] The offices in respect of which an election is requested relate to the collegiate election of ARA Office-Bearers to be elected by and from the members of the ARA Council. The ARA Rules prescribe (at Article 39.4(b)(ii)) in respect of the election of ARA Office-Bearers that the notice and nomination form [is] to be posted or handed to each member - elect of the ARA Council - within three (3) days after the declaration of the election of the ARA Council and not more than seven (7) days before the closing date for nominations.

[3] Prescribed information in relation to the election of officers to the ARA Council was lodged on 18 December 2018 and was the subject of a decision by delegate Mr Enright on 13 February 2019 in election matter E2018/233 (designated reference [2019] ROCD 18). It was only after the publication of the decision in E2018/233 that the further prescribed information in relation to this matter was received on 25 February 2019.

[4] Section 189(2) of the *Fair Work (Registered Organisations) Act 2009* (**the Act**) provides that prescribed information must be lodged before the prescribed day or such later day as the Commissioner allows. Regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009* (**the Regulations**) provides that the prescribed day is the day occurring 2 months before the first day when a person may, under the rules of the organisation or branch, become a candidate in an election.

[5] In light of Article 39.4(b)(ii) of the ARA Rules, the first day that a person could become a candidate in an election for the ARA Office-Bearers is three days after the declaration of the election of the ARA Council. Nominations for positions on the ARA Council opened on 28 February 2019, with the closing date for nominations and for the fixing of the closing date for voting (if required) to be determined by the Returning Officer.

[6] In the circumstances, it is not possible on the available evidence to determine at this time whether the prescribed information has been lodged within time by the organisation. Depending upon the conduct of the election for ARA Council, there is a significant prospect that the prescribed information has been lodged out of time. In a declaration made by Steve Plarre dated 25 February 2019 the reason for lodging after the prescribed time is stated as follows:

Whilst referred to in the original request for the holding of an election under the recently amended Rules this internal election by councillors from their number is a consequence of the full member election which the delegate Mr Enright has approved on 13 February 2019 (E2018/233). Immediately it was found that this supplemental decision of the Delegate was required notification was provided to the Registered Organisations Commission.

NOTE: this is civil penalty provision and a failure to lodge on time can lead to penalties under the RO Act. Extensions of time should be requested at least 2 months before nominations open.

The Australian Electoral Commission has requested that if the request is approved that the Commission issues instructions under the original delegate decision (ROCD18).

[7] If the organisation requests that the Commission issue an amended decision in respect of E2018/233 because the offices were referred to in the prescribed information lodged on 18 December 2018, that request is declined. The original prescribed information cannot be construed as including a request for the election of ARA Office-Bearers. The only incidental reference to ARA Office-Bearers in that prescribed information related to whether the rules provide for a day on which the roll of voters is to be closed. No reference is made to the offices referred to in paragraph [1] above. If the organisation intended by its earlier prescribed information to seek the election of ARA Office-Bearers, it failed to communicate that request in a comprehensible manner. In the circumstances, I treat this matter as a separate lodgement of prescribed information seeking an election to be conducted in relation to separate offices.

[8] No reason has been given for the possible late lodgement of the prescribed information for these offices, other than to assert that the organisation has taken action 'immediately' once it became aware the additional offices required electing. Having regard to the normal and reasonable expectation that registered organisations should take steps to ensure they comply with the statutory time limits set out in the Act and Regulations, but also in respect of the rules pertaining to their own governance amended recently by the organisation itself, I decline, on this occasion, to allow, under section 189(2) of the Act, a later day for lodgement. Subject to timing issues relevant to the conduct of the election in matter E2018/233, this could result in the organisation having contravened a civil penalty provision pursuant to section 189(2) of the Act.

[9] The refusal of an extension of time under section 189(2) of the Act, if required, does not however affect a determination of an election notification matter for the purposes of section 189(3) of the Act.

[10] 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.

[11] In light of the process for the election of the ARA Office-Bearers to be elected by a collegiate election from the ARA Council shortly after the declaration of those offices, it would be appropriate in future for the organisation to lodge prescribed information requesting for the election of ARA Office-Bearers at the same time as for the ARA Councillors, and I would commend it to do so.



DELEGATE OF THE COMMISSIONER

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<PR351305>

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, Steve 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 elections required to be held under its Rules of Association.
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.

[delete as appropriate]

~~4. *[If there is a Casual Vacancy]* The resignation letter is attached for each casual vacancy.~~

~~5. *[If there are insufficient nominations]*: Insufficient nominations were received in an earlier election and the declaration of results is attached.~~

~~6. *[If rule alterations are pending that will impact **THIS** election]* A brief outline of the proposed rule alterations affecting this election is attached. These rule alterations ~~[HAVE/HAVE NOT]~~ been lodged with the Fair Work Commission.~~

OR

[If no rule alterations are being considered] No rule alterations are pending that will impact the election.

~~7. *[If lodged 2 months prior to nominations opening]* This statement **IS** lodged at least 2 months before nominations open for the election below.~~

OR

[If lodged less than 2 months before nominations open] This statement **IS NOT** lodged at least 2 months before nominations open for the election below. The reason it is lodged after the prescribed time is:

Whilst referred to in the original request for the holding of an election under the recently amended Rules this internal election by councillors from their number is a consequence of the full member election which the delegate Mr Enright has approved on 13 February 2019 (E2018/233). Immediately it was found that this supplemental decision of the Delegate was required notification was provided to the Registered Organisations Commission.

NOTE: this is civil penalty provision and a failure to lodge on time can lead to penalties under the RO Act. Extensions of time should be requested at least 2 months before nominations open.

The Australian Electoral Commission has requested that if the request is approved that the Commission issues instructions under the original delegate decision (ROCD18).

A handwritten signature in black ink, appearing to read 'Steve Plarre', with a large, stylized loop at the beginning.

Signed: Steve Plarre

Dated: 25 February 2019

[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 [*insert as many pages as 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
<i>National</i>	<i>ARA President</i>	<i>1</i>	<i>Collegiate</i>	<i>Scheduled</i>	<i>ARA Rules Article 39.1(d) Art 35</i>
	<i>ARA Vice President</i>	<i>1</i>	<i>Collegiate</i>	<i>Scheduled</i>	<i>ARA Rules Article 39.1(d) Art 35</i>
<i>...</i>	<i>ARA Secretary</i>	<i>1</i>	<i>Collegiate</i>	<i>Scheduled</i>	<i>ARA Rules Article 39.1(d) Art 35</i>
	<i>ARA Treasurer</i>	<i>1</i>	<i>Collegiate</i>	<i>Scheduled</i>	<i>ARA Rules Article 39.1(d) Art 35</i>
<i>...</i>					

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN for main election		<i>28th February 2019</i>
Nominations OPEN for office bearer election		<i>Not less than 3 or more than 7 days from the declaration of the election of the ARA Council a notice and nomination form to be provided to each member- elect.</i>

Please note: that for insufficient nominations and casual vacancies, the date nominations open and close, unless specified in the rules, should be listed as 'to be determined by the returning officer'. Casual vacancies must be accompanied by proof of resignation and attached to this statement.