



26 April 2019

President
Unknown
Restaurant & Catering Industrial
Sent via email: info@restaurantcater.asn.au

Dear President

Organisation must respond to the post-election report of the Australian Electoral Commission: E2018/265

On 22/03/2019 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2018/265. 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 14. A(a), 14. A f(iv) and 14.A (k). 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



26 April 2019

President
Restaurant & Catering Industrial
Sent via email: info@restaurantcater.asn.au

Dear President,

Reminder of actions required when persons elected to office

Please note that this information is intended as a reminder of all the obligations required after the receipt of results of an election. No notification of change is necessary for election E2018/265 as no nominations were received.

The Australian Electoral Commission has provided the Registered Organisations Commission (the ROC) a declaration of results for the election of uncontested offices in matter E2018/265. 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 Restaurant & Catering Industrial 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

22 March 2019

Post-election report

Restaurant & Catering Industrial
Insufficient Nominations Election
E2018/265

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Election(s) Covered in this Report

Organisation: Restaurant & Catering Industrial.
Election Decision Number(s): E2018/265

Rules

Rules used for the election: [269V-FED: Incorporates alterations of 13/07/2015 (R2015/76) and 17/07/2015 (R2014/274)][replaces 11/08/2014 version (D2014/55 and D2014/56)]

Rules difficult to apply/interpret: Rule 14. A (a) is difficult to apply as the Returning Officer is appointed by the Australian Electoral Commission (AEC) to conduct the election after receiving the decision from the Registered Organisations Commission.
It is recommended that this issue be resolved.

Rule 14. A. f (iv) is difficult to apply as ballot papers which are within the reply paid envelopes are received in nominated Australia Post mail box and later transferred to AEC office for safe custody by the Returning Officer.
It is recommended that this issue be resolved.

Rule 14.A (k) is difficult to apply as all ballot materials used in the election are kept by the Australian Electoral Commission (AEC) in a secured place for a certain period of time after the completion of the election.

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

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

Irregularities

Australian Electoral Commission

Details of written allegations of irregularities, and action taken by AEC: N/A

Other irregularities identified, and action taken:

Other Matters

Returning Officer actions required (Section 193): Yes

Details:

Voting methods for the election of Councillors and Officers were not mentioned in the rules of the Organisation. If there were a ballot, Returning Officer would have selected the 'First past the post' voting method. This issue needs to be resolved.

The Organisation does not have specific rules for the elections related to vacancy and insufficient nominations. This issue needs to be resolved.

Signed



Ishtiaq Ahmed
Returning Officer
Australian Electoral Commission
E: Ishtiaq.ahmed@aec.gov.au
P: 02 9375 6331

22 March 2019

Attachments

- 1) Declaration of results for Uncontested Offices

**Restaurant & Catering Industrial
DECLARATION OF RESULTS - E2018/265
Uncontested Offices**

Insufficient Nominations 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:

President (1)

Candidates

No Nominations Received

Treasurer (1)

Candidates

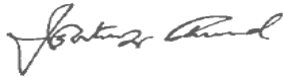
No Nominations Received

Vice President (1)

Candidates

No Nominations Received

As no nominations were received for the above positions, I declare no one as elected.



Ishtiaq Ahmed
Returning Officer
Telephone: 02 9375 6331
Email: nswelections@aec.gov.au
20/03/2019



DECISION

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

Restaurant & Catering Industrial (E2018/265)

MR ENRIGHT

MELBOURNE, 6 FEBRUARY 2019

Arrangement for conduct of election.

[1] On 30 November 2018, 7 and 21 January 2019, Restaurant & Catering Industrial (the organisation) lodged with the Registered Organisations Commission (the Commission) prescribed information for an election to fill the following offices:

President (1)
Treasurer (1)
Vice President(1)

[2] The prescribed information lodged by the organisation on 30 November 2018 was incomplete on the basis that it did not include the name of each office for which an election was required under section 189 of the *Fair Work (Registered Organisations) Act 2009* (the Act) and regulation 138(1) of the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations).

[3] The prescribed information as lodged on 30 November 2018 was also signed by an employee of the organisation, not being an officer considered authorised to make that statement. The requirement that a prescribed officer lodge the prescribed information with the Commission is set out in regulation 138(2) of the Regulations. An organisation's lodgement of the prescribed information by a person not authorised to do so ultimately prevents the Commission from arranging for the conduct of an election.

[4] The organisation was made aware on 20 December 2018 and 7 January 2019 respectively, of the organisation's statutory requirements relevant to the arrangement of an election pursuant to section 189 of the Act. The organisation was notified of its incomplete lodgement and given the opportunity to lodge with the Commission an amended prescribed information.

[5] The organisation lodged the first amended prescribed information on 7 January 2019. The first amended prescribed information was also not signed by a prescribed officer. Again, this prevented the Commission from arranging for the conduct of an election for the reasons I have outlined above.

[6] The Commission in its correspondence to the organisation dated 14 January 2019 requested, among other things, that the organisation properly consider its obligations under section 189 of the Act and lodge further amended prescribed information compliant with this requirement which would allow the Commission to arrange for the conduct of an election.

[7] On 21 January 2019 the organisation lodged a second amended prescribed information. This prescribed information was complete and signed by a prescribed officer. It is this prescribed information the Commission relies upon to arrange for the conduct of an election for the offices described above.

[8] In a previous decision I made in relation to the organisation ([2018] ROCD 168), I noted that the organisation had previously lodged on four other occasions prescribed information that did not meet its prescribed statutory requirements. I also noted in that decision, that on each occasion the organisation took immediate steps to correct or re-send the prescribed information lodged with the Commission.

[9] In considering the prescribed information lodged by the organisation in this matter, I acknowledge that while immediate steps were also taken to re-lodge prescribed information consistent with the organisation's statutory requirements, this will be the fifth occasion the organisation has lodged prescribed information which required remedial assistance. This emerging pattern seems to be unnecessarily absorbing the resources both of the organisation and the Commission. The Commission publishes and proactively provides extensive information, advice and assistance through its website and National Education Strategy in relation to elections and I am taking steps to ensure the organisation takes advantage of that readily available advice and assistance.

[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.



DELEGATE OF THE COMMISSIONER

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<PR351261>

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, Matteo Pignatelli, being an Executive Councillor of Restaurant and Catering Industrial (RCI), make the following statement:

1. I am authorised to sign this statement containing prescribed information for Restaurant and Catering Industrial.
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. Insufficient nominations were received in an earlier election and the declaration of results is attached.
5. No rule alterations are pending that will impact the election.
6. 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:
 - a. That insufficient nominations were received at the first election round and the position of President, Vice President and Treasurer remain open.

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.

Signed:



Dated: 21/01/2019

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>Vice President</i>	<i>1</i>	<i>Collegiate</i>	<i>Insufficient Nomination</i>	
	<i>President</i>	<i>1</i>	<i>Collegiate</i>	<i>Insufficient Nomination</i>	
<i>...</i>	<i>Treasurer</i>	<i>1</i>	<i>Collegiate</i>	<i>Insufficient Nomination</i>	
<i>...</i>					

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	<i>to be determined by the returning officer'</i>	<i>to be determined by the returning officer'</i>
Nominations CLOSE	<i>to be determined by the returning officer'</i>	<i>to be determined by the returning officer'</i>
Roll of Voters cut off date	<i>to be determined by the returning officer'</i>	<i>to be determined by the returning officer'</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.