



Elections in organisations and their branches

This fact sheet provides an overview of the election requirements for organisations registered under the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

This fact sheet does not cover all matters relating to elections under the RO Act and the *Fair Work (Registered Organisations) Regulations 2009* (the regulations), nor does it constitute legal advice. It is designed to assist organisations, their officers and employees gain an understanding of election requirements.

Overview

- in most instances elections for office holders of organisations and branches must be conducted by the Australian Electoral Commission (AEC) through arrangements made by the
- General Manager of the Fair Work Commission (the General Manager) (section 182(1))
- the expense of conducting these elections is borne by the Commonwealth.
- all elections must be conducted by either a direct voting system or a collegiate electoral system (section 143(1)(a)). Section 6 of the RO Act defines 'direct voting system' and 'collegiate electoral system'
- all election ballots must be secret (section 143(1)(e))
- all ballots for direct voting system elections must be secret postal ballots (section 144)

Exemptions relating to elections

The RO Act allows organisations and branches to apply for exemptions from the AEC conducting elections (section 183) and/or from the requirement that direct voting system elections be conducted by a postal ballot (section 144(3)). Contact the [Fair Work Commission](#) (the Commission) for information about exemptions.



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Before an election

The General Manager makes arrangements for the conduct of elections

Section 189 of the RO Act empowers the General Manager to arrange for an election to be conducted by the AEC unless the organisation or branch has a relevant exemption.

Before arranging for an election to be conducted, the General Manager must be satisfied that the rules of the organisation or branch require one to be held. Where the election is for a 'non-office' position, the General Manager must be satisfied that the organisation or branch has made a request to the AEC to conduct the election under section 187 of the RO Act.

Organisations to notify the General Manager of prescribed information

To trigger arrangements for the election, an organisation or branch must lodge prescribed information with the General Manager (section 189). Regulation 138(1) provides that the prescribed information must include:

- the name and numbers of each office or position
- the reason for the election being:
 - the term of the office or position has expired or is due to expire in the normal course of events;
 - a casual vacancy in the office or position has occurred or will occur imminently; or
 - a new office or position has been created; or
 - the office or position was not filled at the previous election
- the electorate for the ballot
- the dates and times for the opening and closing of nominations
- the day provided for in the rules on which the roll of voters is to be closed
- the voting system to be used (direct voting system or collegiate electoral system)
- any non-office positions for which an election is requested.



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The prescribed information must also contain a statement signed by an officer of the organisation or branch (regulation 138(2)).

Two templates for the [Notice and statement of prescribed information](#), for office positions and non-office positions, are available from the [Commission's website](#).

The prescribed information must be lodged with the General Manager at least two months before nominations open (regulation 138).

Prescribed information can be lodged by email: regorgs@fwc.gov.au

Rules for the conduct of the election

The election must be conducted in accordance with the rules of the organisation or branch that were in force at the time the nominations open (section 193 and regulation 132).

Impending rule alterations that impact the election

If an organisation or branch pending rule alterations that will impact the election, it is strongly recommended that the organisation or branch advises the Commission. The templates for the [Notice and statement of prescribed information](#) contain a statement about whether there are any pending rule alterations that could impact the election. In this circumstance the Commission will engage with the organisation or branch to explore options for making arrangements for the election.

The General Manager (or Delegate of the General Manager) will then consider whether an election is required to be held. If an election is required, the General Manager (or Delegate) will issue a decision to this effect and send it to the AEC, the organisation and, if relevant, the branch of the organisation.

During the election

Once the General Manager (or Delegate) has made arrangements for the conduct of an election by the AEC, the AEC will appoint a returning officer for the conduct of the election. At this point any queries regarding the election should be directed to the AEC.



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After the election

Declaration of results and post-election reports

Section 197 of the RO Act requires the AEC to provide a written post-election report on the conduct of the election to the General Manager and to the organisation or branch within 30 days of the election (section 197(1) and regulation 141).

The post-election report must include (regulation 141):

- the declaration of the result of the election
- the number of written allegations (if any) of irregularities made to the AEC during the election
- action taken by the AEC in relation to those allegations
- any irregularities identified by the AEC and any action taken by the AEC.

The post-election report may also include (section 197(3)):

- if the AEC is of the opinion that the register of members made available to it for the purposes of a postal ballot contained an unduly large proportion of members' addresses that were not current or comprised workplace addresses, then the AEC must state that in the report
- if the AEC is of the opinion that a particular rule was difficult to interpret or apply it must note that fact and must also refer to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address the matter.

Availability of post-election reports

An organisation or branch that has a website must, as soon as practicable after receiving the post-election report, publish on its website a notice of the availability of the report (regulation 141(4)).



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The AEC must publish a notice on its website advising that members who were eligible to vote in the election can contain a copy of the report on request (regulation 141(2)).

Also, when an election requires a ballot, the AEC must advise each voting member that a post-election report is available from the organisation, branch, or the AEC, on request (regulation 139).

Notification of changes

The Commission must be notified of any change to officeholders within 35 days

The organisation or branch must notify the Commission of any changes to officeholders in accordance with section 233(2) of the RO Act. A template [notification of change](#) is available on the Commission's website, as well as a fact sheet and other information about notifications of change.

NOTE: provision of the AEC declaration does NOT satisfy this requirement. The requirement to notify the Commission of changes rests with the organisation or branch and the notification must contain a declaration by the secretary or other prescribed officer.

Organisation or branch to respond to adverse post-election reports

If the post-election report identifies any rules that were difficult to interpret or apply (referred to as an 'adverse report'), the organisation or branch must provide a written response to the AEC within 30 days of receipt of the report (section 198). The response must specify if the organisation or branch intends to take action, and what that action would be (section 198(2)).



Provision of relevant extract of AEC post-election report and organisation or branch response to members

An organisation or branch in receipt of an adverse post-election report concerning difficult rules must make the 'relevant extract' of the AEC report and a copy of the response available to its members (section 198(3)). The relevant extract is the part of the report identifying the rules that were difficult to interpret or apply.

The relevant extract and the response must be made available to members either:

- within 30 days after it is given to the AEC; or
- in the next edition of the organisation or branch journal (section 198(4) and (5)).

Subsection 198(6) of the RO Act and regulation 142 provide ways the relevant extract and the response can be made available to members. These do not limit the ways they can be made available to members, however an organisation or branch will comply if it does all of the following:

- publishes the relevant extract and its response in the next edition of the organisation or branch journal; and
- within 30 days of giving its response to the AEC:
 - lodges a copy of the relevant extract and its response with the Commission, together with a declaration that the organisation or branch will provide a copy of the relevant extract and its response to any members who request this information; and
 - gives notice in the next edition of the organisation or branch journal, or an appropriate newspaper that covers the relevant geographic area, that a copy of the relevant extract and its response is available on request to each member free of charge; and
 - if the organisation or branch has a website, the organisation or branch publishes the relevant extract there within 14 days after receiving the post-election report; and
 - publishes its response on its website within 14 days of giving this response to the AEC (regulation 142(2)).



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Offences

Influencing candidatures and voting – it is an offence to interfere with ballot papers, bribe a person, ask for a benefit of any kind, threaten a person, or inflict injury or damage with the intention of influencing or affecting any candidature or vote in an election (section 195).

Influencing lodgement of objections – it is an offence to use violence or cause injury or loss to a person who has objected to an organisation's application for an exemption from the requirement that its elections be conducted by the AEC. It is also an offence to give, offer, obtain or request a benefit of any kind with the intention of influencing the lodgement of such an objection (section 185).

Assistance of candidates – it is an offence for an organisation's property to be used to help one candidate against another candidate in an election for office or other position (section 190).

Showing a ballot paper – it is an offence to require or induce another person to show a ballot paper while the paper is being marked or after it has been marked. It is also an offence for a person performing duties in an election to show another person or permit another person to have access to a ballot paper used in an election otherwise than in the performance of their duties (section 195).

Failing to comply with a request from a returning officer – it is an offence for an officer or employee of an organisation or branch to fail to comply with a written request from a returning officer conducting an election to make available the register of members for the purposes of a ballot (section 191).

Failing to comply with a direction from an electoral official – it is an offence not to comply with a direction from an electoral official given in accordance with section 193(1) (section 193(2)).

Hindering or obstructing an electoral official – it is an offence to hinder or obstruct an electoral official in the performance of his or her functions or another person complying with a direction of an electoral official (section 194).



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What penalties apply?

A person convicted of an offence listed above can be liable for a penalty of up to 100 penalty units¹, depending on the offence. Also if convicted of an offence listed above (other than an offence under section 190), the person cannot be a candidate, elected or appointed to an office in an organisation or branch, or if the person holds an office they cease to hold the office 28 days after conviction (see section 215).

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This fact sheet is not intended to be comprehensive. The Fair Work Commission does not provide legal advice. Users must rely upon the relevant legislation, which is set out in the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Fair Work (Registered Organisations) Regulations 2009*.

¹ Section 4AA, *Crimes Act 1914* defines a penalty unit as \$275. 100 penalty units is \$27 500.