



## **Fact sheet**

### **Certain persons disqualified from holding office in organisations**

Chapter 7, Part 4 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) imposes limitations on persons who hold or wish to hold an office of an organisation.

#### **Who is disqualified from holding office?**

Section 215(1) of the RO Act bars a person convicted of a prescribed offence from standing for election, or being elected or appointed to an office in an organisation.

#### **What is a prescribed offence?**

Prescribed offences include:

- an offence under a law of the Commonwealth, a State, or Territory, or another country which involves fraud or dishonesty and is punishable on conviction by imprisonment for a period of 3 months or more
- failing to provide information to the Australian Electoral Commission (AEC) in relation to a proposed amalgamation
- various offences relating to interference with ballot papers
- threatening an objector to an election exemption application
- failing to supply the register of members to the returning officer who is conducting an election for office
- failing to comply with a direction given by the AEC during an election for office
- hindering, obstructing or interfering with an electoral official or the election process
- failing to ensure ballot papers relating to elections are preserved for at least a year
- hindering or obstructing the Registered Organisations Commissioner (the Commissioner) in connection with the provision or inspection of election documents
- recklessly or intentionally fails to act in good faith in the best interests of the organisation
- uses their position with the intention of gaining an advantage or reckless as to whether use of their position will gain an advantage
- obtains and uses information dishonestly with the intention of gaining an advantage or reckless as to whether will gain an advantage

- various offences in relation to the formation, registration or management of an association or organisation (but only for indictable offences)
- any other offence under a law of the Commonwealth, a State or Territory, or another country, involving:
  - the intentional use of violence towards another person
  - intentionally causing of death or injury to another person or intentional damage or
  - destruction of property
 and was sentenced to a term of imprisonment that they served, are serving or received a suspended sentence.

### **What if a person convicted of a prescribed offence nominates for office?**

The Commissioner is able to apply to the Federal Court for a declaration that a person is not eligible to be a candidate for election or be elected to office.

Also an organisation or a member of an organisation may apply to the Federal Court for such a declaration.

### **What if a person convicted of a prescribed offence currently holds office?**

If a person who currently holds office is convicted of a prescribed offence, that person will cease to hold the office 28 days after their conviction.

### **Are there any exceptions to disqualification from office for persons convicted of a prescribed offence?**

These disqualification provisions are subject to exceptions on application to the Federal Court by a prospective candidate for office or office holder.

### **A person convicted of an offence is excluded from holding office for 5 years**

Unless otherwise specified by the Federal Court, the exclusion period for a person who has been convicted of a prescribed offence is 5 years beginning on the latest of the following days:

- the day on which the person was convicted of the prescribed offence
- if the person was sentenced to a term of imprisonment for the offence but the sentence was suspended and the person is not imprisoned for the offence during the suspension period – the day immediately after the end of the period
- if the person serves a term of imprisonment for the offence – the day on which the person is released from prison.

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