



DECISION

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

Shop, Distributive and Allied Employees Association (E2022/147)

MR STEENSON

SYDNEY, 28 JULY 2022

Arrangement for conduct of election.

[1] On 4 July 2022 the Tasmanian Branch of the Shop, Distributive and Allied Employees Association (the **Branch**) lodged with the Registered Organisations Commission (the **Commission**) an email purporting to be prescribed information for an election to fill the following offices for a new term of office:

General President	(1)
Vice President	(1)
State Councillors	(6)
Delegates to National Council	(2)
General Secretary-Treasurer	(1)

[2] Section 189 of the *Fair Work (Registered Organisations) Act 2009* (the **RO Act**) says:

Commissioner to arrange for conduct of elections

- (1) An organisation or branch of an organisation must lodge with the Commissioner the prescribed information in relation to an election that is to be conducted by the AEC.
- (2) The prescribed information must be lodged before the prescribed day or such later day as the Commissioner allows.

Civil penalty: 60 penalty units.

- (3) If:
 - (a) the prescribed information is lodged with the Commissioner by the organisation or branch (whether or not before the prescribed day or the later day allowed by the Commissioner); and
 - (b) the Commissioner is satisfied that an election is required to be held under the rules of the organisation or branch; and
 - (c) if the election is not an election for an office--the organisation or branch has made a request under section 187;

the Commissioner must arrange for the conduct of the election by the AEC.

[3] Regulation 138 *Fair Work (Registered Organisations) Act 2009 (the Regulations)* provides further detail about what information constitutes prescribed information, namely:

Prescribed information for election (s 189(1))

- (1) For subsection 189(1) of the Act, the following information is prescribed information for an election conducted for an office or for a position other than an office:
 - (a) the name of each office or position for which an election is required;
 - (b) the reason for the election is that:
 - (i) the term of the office or position has expired or is due to expire in the normal course of events; or
 - (ii) a casual vacancy in the office or position has occurred (or will occur imminently); or
 - (iii) a new office or position has been created; or
 - (iv) the office or position was not filled at the previous election;
 - (c) if more than one of the offices or positions for which an election is required has the same name, and the number of offices or positions can, under the rules of the relevant organisation or branch, be determined before the prescribed day--the number of those offices or positions;
 - (d) if the electorate comprises only members of a branch, section or other division of an organisation--the name of the branch, section or division;
 - (e) the date and time of the beginning and end of the period in which nominations of candidates will be called for or may be made under the rules of the organisation or branch in relation to the election;
 - (f) the day provided for in the rules of the organisation as the day on which the roll of voters is to be closed;
 - (g) the kind of voting system to be used in the conduct of the election is:
 - (i) a direct voting system; or
 - (ii) a collegiate electoral system.
- (2) The prescribed information lodged by an organisation or branch under subsection 189(1) of the Act must contain a statement, signed by an officer of the organisation or branch who is authorised to sign the statement, that the information is lodged under subsection 189(1) of the Act.
- (3) For subsection 189(2) of the Act, 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.

[4] The 4 July 2022 email from the Branch requesting ‘*that the General Manager [sic] of the ROC make arrangements under section 187 of the RO Act with the Australian Electoral Commission, to conduct an Election ...*’¹ did not include much of the information actually required to be lodged. In particular, it did not include: the electorate from which each office was to be elected, the nomination opening and closing dates, the date on which the roll of voters closes, and the type of voting system to be used to elect each office. Nor was there a statement in the format required by the Regulations.²

¹ Email from the Branch’s General Secretary

² Sub-regulations 138(1)(d),(e),(f),(g) and 138(2) of the Regulations

[5] As the Branch's 4 July 2022 lodgement was missing a number of essential elements, staff of the Commission contacted the Branch on several occasions³ seeking to obtain the information. This included, following an assessment of the rules, providing the Branch with a template of what appeared to Commission staff to be the required information based on those rules and the requirements of the RO Act, asking the Branch to confirm whether this was correct and, if so, to sign a declaration certifying this. On 27 July 2022, the Branch provided the Commission with a signed declaration accompanied by the required information on which an election decision could then be based.

[6] Unfortunately this is not the first time that the Branch has lodged deficient information in relation to seeking an election for office. A review of available records shows that on multiple occasions over several years the initial lodgement by the Branch, in relation to an election that is sought, has been either insufficient to meet the essential requirements for prescribed information or has been incorrect.⁴ On each of those occasions, the active intervention by staff of this Commission (and before that, the Fair Work Commission when it was the relevant regulator) was needed to bring about the lodgement of election-related information that was both correct and compliant with the RO Act and Regulations.

[7] Ultimately, the obligation to provide complete and accurate prescribed information in relation to elections for registered organisations lies with those organisations and their branches. I therefore propose to engage separately with the Branch with a view to improving the quality of election-related information submitted for elections going forward.

[8] 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 RO Act, I am making arrangements for the conduct of the election by the Australian Electoral Commission. As each of the elections is for an office (rather than for non-office positions) section 187 of the RO Act does not apply.



DELEGATE OF THE COMMISSIONER

Printed by authority of the Commonwealth Government Printer

PR352278

³ Namely 8, 15, 26 and 27 July 2022

⁴ For example, election matters E2019/182, E2017/184 and E2014/189.

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, **Paul Griffin**, being the **General Secretary - Treasurer** of the **Shop, Distributive and Allied Employees Association-Tasmanian Branch** make the following statement:

1. I am authorised to sign this statement containing prescribed information for the **Tasmanian Branch, Shop, Distributive and Allied Employees 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.
4. No rule alterations are pending that will impact the election.
5. This statement **IS** lodged at least 2 months before nominations open for the election(s) in Annexure A.
6. Formulas for the number of Offices:

- a. The rule number(s) which specify the formula are:

National Rules, Rule 8

- b. The formula is:

Branches having 2,001 – 5,500 members

2 Councillors

- c. The information for calculating the formula(s) is:

Number of financial members was 5,264

- d. The relevant date(s) for this information is:

31 December 2021

Signed:



Dated:

27. 7. 22

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

Branch	Name of Office	Number Required	Voting System	Reason for Election	Electorate
Tasmanian Branch	General President	1 - Rule 21	Direct Voting System	Scheduled	Financial members of the Branch Rule 22
Tasmanian Branch	Vice President	1 - Rule 21	Direct Voting System	Scheduled	Financial members of the Branch Rule 22
Tasmanian Branch	State Councillor	6 - Rule 21	Direct Voting System	Scheduled	Financial members of the Branch Rule 22
Tasmanian Branch	Delegate to National Council	2 – National Rule 8	Direct Voting System	Scheduled	Financial members of the Branch Rule 22
Tasmanian Branch	General Secretary - Treasurer	1 - Rule 21	Direct Voting System	Scheduled	Financial members of the Branch Rule 22

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	Latest by 7 November 2022 (no less than 14 days prior to Nov General Meeting) Rule 25(b)	N/A
Nominations CLOSE	21 November 2022, 12pm Rule 25(b)	N/A

Roll of Voters cut off date	Latest by 1 November 2022 (7 days prior to when nominations open) Rule 25(b)	N/A
------------------------------------	--	-----

NOTES: 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'. This also applies where rules are silent as to the nominated dates.

If the nomination dates are 'To be Determined by the Returning Officer', but your organisation has a *preference*, please state 'To be Determined by Returning Officer' and clearly indicate that your nominated date is a preference.

If the P.I. includes a position that is not an office, please refer to our template [Prescribed information for the election of officer and non-officer positions](#).