



## Disqualification from holding office

Officers of registered organisations must maintain standards of conduct and also be of a certain character. As well as the duties required of office-holders by the *Fair Work (Registered Organisations) Act 2009* (the RO Act), there are restrictions on who can hold office or run for election for office in a registered organisation. A person may be excluded from holding an office if they are, or have been, convicted of certain offences.

This factsheet explains the circumstances that disqualify a person from holding office. It does not cover the statutory duties of office-holders and the consequences of breaching them.



### Want to know about the duties of officers?

Read our guidance note about the [duties of officers](#) and [listen to our podcast](#) for good governance strategies.

### Who is disqualified from holding office?

Section 215 of the RO Act excludes a person who has been convicted of a prescribed offence from:

- standing for election
- being elected to office
- being appointed to an office in an organisation
- continuing to hold office.

### What is a prescribed offence?

Section 212 of the RO Act includes a list of the prescribed offences that will disqualify people from holding office. Prescribed offences are not just limited to offences committed in connection with holding an office.

Prescribed offences include:

- an offence involving fraud or dishonesty, for which a person could be punished on conviction by imprisonment for three months or more.<sup>1</sup> The offence can be under a law of the Commonwealth, a state or territory, or another country
- offences relating to elections, in particular:

<sup>1</sup> As long as the offence may result in a term of imprisonment of three months or more, it does not matter if a person receives a lesser sentence.



- hindering, obstructing or interfering with an election process or an electoral official (s 195)
- various offences relating to interference with ballot papers (s 195(1))
- failing to supply the register of members to the returning officer who is conducting an election for office (s 191)
- failing to comply with a direction given by the Australian Electoral Commission (AEC) during an election for office (s 193)
- failing to ensure ballot papers relating to elections are preserved for at least a year (s 199)
- threatening anyone who has objected to an election exemption application (s 185)
- offences in relation to a proposed amalgamation (ss 51, 72, 105)
- hindering or obstructing the Registered Organisations Commissioner (the Commissioner) about the provision or inspection of election documents (s 337BE)
- recklessly or intentionally failing to act in good faith in the best interests of the organisation (s 290A(1))
- using their position with the intention of gaining an advantage, or being reckless as to whether using their position will gain an advantage (s 290A(2))
- obtaining and using information dishonestly with the intention of gaining an advantage or being reckless as to whether they will gain an advantage (s 290A(3))
- 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, where the person was sentenced to a term of imprisonment (that they are serving, have served or had suspended) involving:
  - the intentional use of violence towards another person
  - intentionally causing death or injury to another person, or
  - intentional damage or destruction of property.

### **How long is the exclusion period?**

The exclusion period is 5 years unless the Federal Court reduces the period (on application). The exclusion period begins on the latest of the following days:

- the day on which the person was convicted of the prescribed offence
- if the person serves a term of imprisonment for the offence – the day on which the person is released from prison



- 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 suspension period.



#### Example – Dishonest David

David was a branch committee member of a registered organisation when he was arrested for theft.

He was subsequently convicted and sentenced by a Court to serve 9 months imprisonment. David served his full term before being released.

David is disqualified from holding an office of a registered organisation for 5 years from the date he is released from prison.

### Can a person convicted of a prescribed offence be exempt from disqualification from office?

An office-holder or candidate who would otherwise be disqualified can apply to the Federal Court for leave to hold office.

The Federal Court may:

- grant the person leave to hold office in an organisation
- reduce the period of disqualification from holding office
- refuse the person leave to hold office.



#### Example – David applies to the Court

One year after his release from prison, David wants to hold an office in the registered organisation.

He plans to nominate for the branch elections next year. David applies to the Federal Court for the disqualification period to be reduced. The Federal Court refuses the application.

David is still disqualified from nominating for the office.

### What if a disqualified person nominates for office?

If a disqualified person nominates for office in a registered organisation election the Commissioner may 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.

An organisation or a member of that organisation may also apply to the Federal Court for a declaration.



### Example – Disqualified David nominates as a candidate

Although the Court refused his application to reduce the disqualification period, David nominates as a candidate for the branch elections anyway.

The registered organisation applies to the Federal Court for a declaration that David is not eligible to nominate.

The Court declares that David's disqualification makes him ineligible to be a candidate and orders the AEC to exclude his nomination as part of the election process.

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

If a person who currently holds office is convicted of a prescribed offence, they will cease to hold the office 28 days after the conviction, unless they apply for and are granted an exemption by the Federal Court.



### Case examples from the courts

The ROC has [summarised decisions of cases](#) from the Courts. They include matters where the conduct of office-holders has resulted in a conviction for a prescribed offence.

## Further information

If you require further assistance regarding the information in this fact sheet please contact the ROC at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au) or call us on **1300 341 665**.