



Compliance update: Whistleblower disclosures and industrial elections

Complaints about the conduct of industrial elections by registered organisations are one of the most common types of whistleblower (protected) disclosures received by the Fair Work Commission (the Commission).

The *Fair Work (Registered Organisations Act) 2009* (the RO Act) requires that registered organisations operate democratically. The Commission promotes this by focussing on the accountability of office holders to their members, and by making arrangements for elections.

Registered organisations must be able to recognise behaviours that are a potential breach of the RO Act or their rules, or that may be perceived as a breach by their members, officers or others. While not all of the whistleblower disclosures received by the Commission have resulted in further action being taken for breaches of the RO Act, the trends identified in the examples below are a timely reminder for registered organisations.

Registered organisations can work to prevent breaches through the enforcement of internal policies and other governance processes to ensure their elections are conducted in accordance with their rules and with the RO Act, and that officers and members do not engage in inappropriate conduct.

Most elections are run by the Australian Electoral Commission (AEC). However even where an organisation holds an exemption (permitting it to run its own elections) it must still comply with the requirements of the RO Act and its own rules.

The table below provides examples of the types of whistleblower complaints the Commission has received relating to elections:



Disclosure	Potential contraventions
<p>A whistleblower told us that employees of a registered organisation were using work-issued email accounts, mobile phones and vehicles to organise campaign material and events and encourage votes for the ‘ticket’ of the incumbent officers.</p>	<ul style="list-style-type: none"> • Section 190 of the RO Act (allowing an organisation’s property/resources to be used to promote one candidate over another during an election) • Section 287 of the RO Act (misuse of information to advantage yourself/others or cause detriment to the organisation or another person) • Section 288 of the RO Act (misuse of position to advantage yourself/others or cause detriment to the organisation or another person)
<p>Whistleblowers raised complaints about the deliberate addition of ineligible persons (or omitting eligible persons) from the roll of voters submitted to the returning officer.</p>	<ul style="list-style-type: none"> • Section 192 of the RO Act (false or misleading declaration about roll of voters) • Section 195 of the RO Act (improper interference with the election process)
<p>A whistleblower reported that a workplace representative set up an unofficial ‘ballot box’ in the workplace, and had asked members to deposit their votes in it (when the actual requirement is each member must individually post their ballot paper back to the AEC).</p>	<ul style="list-style-type: none"> • Section 193 of the RO Act (must not take action that would result in an ‘irregularity’ and must comply with the directions of an election official) • Section 195 of the RO Act (improper interference with election process)



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<p>We were told about instances of organisations not providing the AEC’s post-election report to members (where it contained an adverse report), not responding to the report, and not providing a copy of it to all members.</p>	<ul style="list-style-type: none">• Section 198 of the RO Act (organisation not responding to a post-election report that highlights issues with the conduct of the election. Organisations must make both the report and the response available to members in particular timeframes)
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Some of the above contraventions can actually amount to criminal offences.

What can registered organisations do?

The Commission recommends that federally registered organisations and/or their branches (where relevant) review their current rules, policies and practices to ensure that high standards of governance are achieved in relation to their elections, and that how the election is conducted actually reflects those rules.

A strong governance framework can prevent issues from arising, and when they do, empower organisations to independently resolve the concerns of their members or officers.

Suggestions for good election governance include:

- Providing a standard template for informing members about candidates and being clear whose resources will produce it
- Outlining expectations about use of the organisation’s resources such as photocopiers, phones and vehicles during election times (e.g. that reasonable private use of work phone and email accounts does not include election-related use)
- Having clear rules that define eligibility to vote for or run for office (including any cut-off dates by which members must be financial, specific election timeframes and other steps to minimise ambiguities in the election process)
- Consider and address issues brought to the organisation’s attention by any post-election reports of the AEC, and notify your members about them
- Create a ‘speak up’ culture and a process for internal complaints by members and officers to be made, considered and addressed. This is an effective form of self-audit that allows organisations to strengthen their governance and to address actual or perceived issues.



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Every organisation has the right to set its own rules, within the framework of the RO Act. However those rules must address the essential requirements set out in the RO Act, such as the democratic election of officers, the term of office, how a person can become a candidate, and how the organisation holds officers and members accountable. Section 141 of the RO Act lists items that must be addressed in each organisation's rules.



Elections during the COVID-19 pandemic

The AEC has advised that elections for registered organisations will be suspended until at least 30 September 2020.

If your organisation has an election due during this time, **you must still lodge your prescribed information with the Commission**. This requirement remains unchanged. Organisations should contact the Commission as soon as possible if they experience difficulties with the lodgement of prescribed information.

When the AEC resumes conducting industrial elections, there may be a prolonged increase in elections-related activity, as the backlog of matters that were temporarily on hold during the pandemic are processed. In the meantime it is timely to consider how your organisation can implement governance procedures to prevent the issues outlined above.

The rights of members

It is important to remember that complaints about election processes are not confined to whistleblower complaints to the Commission. Many of the above concerns may amount to irregularities in the election itself. Members and officers who believe that elections have been affected by irregularities may be eligible to complain directly to the Federal Court, seeking an inquiry into those alleged irregularities. This process can result in public hearings and in adverse findings being made, which could include the voiding of the entire election.

The RO Act also enables members to seek orders in relation to breaches of an organisation's rules and orders requiring the performance of particular rules.



Case studies

Below are some examples of non-compliance and governance failures relating to industrial elections, which have had consequences for the registered organisation

- Queensland District Branch of the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union (R2014/186); [\[2016\] FWCFB 197](#) (revocation of AEC exemption)
- Electoral Commissioner, in the matter of an inquiry relating to elections for offices in the Australian Federal Police Association Branch of the Police Federation of Australia [\[2016\] FCA 469](#) (Steps in election declared void)
- Master Builders Association of Northern Territory trading as Master Builders Northern Territory [\(R2018/143\)](#) (revocation of AEC exemption)
- Electoral Commissioner, in the matter of an election for offices in the Local Government and Shires Association of New South Wales [\[2016\] FCA 327](#) (Election of certain offices declared void)
- Registered Organisations Commission v Australian Hotels Association [\[2019\] FCA 1516](#) (Civil penalties imposed for failure to lodge prescribed information)
- White, in the matter of an election for an office in Transport Workers' Union of Australia, Queensland Branch [\[2019\] FCA 2131](#) (Irregularities identified but ultimately did not affect the election result)

Further information

If you require further information about this compliance update, please email the Fair Work Commission at regorgs@fwc.gov.au or call us on 1300 341 665.

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This Compliance Update 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*.