

2 August 2019

Australian Electoral Commission
Industrial & Commercial Elections Section
By email: saelections@aec.gov.au

Dear Sir or Madam

E2019/17 Post-election Report – Rules difficult to apply/interpret

We refer to the above Post-election Report which was provided to us by email on 4 July 2019.

We have set out at paragraphs 1-3, below, our response in respect of each of the Rules identified in that Report as difficult to apply/interpret. However, in the first instance, we note that:

- following its registration as an association of employers in May 2014, the Association of Independent Schools of South Australia (AISSA) undertook a comprehensive review and update of its Constitution, throughout which process either or both of the Fair Work Commission (FWC) and Australian Electoral Commission (AEC) were consulted regarding proposed changes
- the AEC's Post-election Report in respect of each of the previous five elections it has conducted under the AISSA's current Constitution has indicated a nil response against the question of "Rules difficult to apply/interpret".

1. *Rule 9.1 provides for the construction of the Board. In particular, Rule 9.1.4 provides for "up to four other persons" The Rules do not clearly define who is eligible to be a candidate for the offices identified in Rule 9.1.4. As eligibility is open to interpretation it is recommended that the organisation provide clear guidance within the Rules in this matter*

Of the 13 Board positions available under Rule 9.1, nine are to be filled only by persons who hold certain positions within AISSA member schools. In order to strengthen and expand on the breadth of skills at the Board's disposal, the group of "up to four other persons" was introduced specifically to introduce some diversity and to provide the opportunity for a proportion of Board positions to be skills based, for example, by persons with legal qualifications or advocacy experience.

The AISSA consulted with both the FWC and the AEC in determining the provisions set out at Rule 14.6 which are designed to offer some guidance on those persons eligible to nominate.

2. *Rule 14.5 states "The Returning Officer must call for nominations for Board positions by providing a nomination form to the contact person of each financial Member." The Rules however are silent on who acts as the contact person for Members. If it is the organisation's intention that the Representative, identified in Rule 6, be the contact person, Rule 14.5 should be amended to reflect this.*

AISSA membership is somewhat unusual in that it is the school which is the member and each member school is represented by its Principal and one other person. It follows that the member representative also acts as the contact person for each member. Further, it is most appropriate that postal correspondence to member schools be addressed simply to "The Principal" rather than to a named individual. This avoids the risk of post remaining unopened during a period of absence or a change in the person acting as Principal, and is consistent with the definition set out at Rule 41.16.

3. *Rule 14.6 enables a candidate to submit an Expression of Interest that meets certain criteria. Sub-rule 14.6.2 and 14.6.3 contains provisions regarding the rejection, replacement or distribution of a copy of the nomination with the ballot papers. It would appear that the Rule uses the term "nomination" in place of "Expression of Interest". If this is the case, the organisation should update the rule to reflect the intentions of the organisation.*

14.6.1 sets out the four pieces of supporting documentation which a candidate is entitled to submit with their nomination form, being a "CV, Expression of Interest, photograph of the candidate and an endorsement from an existing Board Member in support of the candidature". In circumstances where the Expression of Interest is one of the four supporting documents which together may form the "nomination", the AISSA considers that this is the correct term for the purposes of 14.6.2 and 14.6.3.

We trust the above assists but if you have any questions or wish to discuss the contents of this letter, please don't hesitate to contact us.

Yours sincerely



Carolyn Grantskalns
Chief Executive