

Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Additional Estimates Hearing – February 2010

Australian Electoral Commission

Finance and Deregulation Portfolio

Outcome 2, Program 2.1.5

Topic: AEC powers in conduct of elections under *Fair Work (Registered Organisations) Act 2009*

Question reference number: F41

Type of Question: Hansard F&PA 80, 9 February 2010

Date set by the committee for the return of answer: 26 March 2010

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Senator Ryan asked:

When you manage or oversee these ballots, does the AEC have the capacity to refer issues to the general manager of Fair Work Australia or to take court legal action in its role as a returning officer? Does the AEC have that ability?

Answer:

Part 2 of Chapter 7 of the *Fair Work (Registered Organisations) Act 2009* sets out the powers and role given to the Australian Electoral Commission (AEC) in the conduct of elections for offices under this Act. Under section 182 of the *Fair Work (Registered Organisations) Act 2009* elections for offices in organisations are to be conducted by the AEC unless Fair Work Australia has granted an exemption (see section 183). Organisations are required to lodge the required details for an election with Fair Work Australia (see section 189) and when that information is provided, the General Manager of Fair Work Australia is required to pass this information to the AEC. The AEC then proceeds to conduct the election.

There are a number of offences in relation to the actions which hinder or obstruct an election and the AEC would refer allegations of breaches to either the General Manager of Fair Work Australia or to the Australian Federal Police. If the allegation can be construed as an “irregularity” (see *Mcjannett, in the matter of an application for an inquiry in relation to an election for offices in the Construction, Forestry, Mining and Energy Union, Western Australian Branch (No 2)* [2009] FCA 1015) that has affected the outcome of the election, then under subsection 200(2) of the *Fair Work (Registered Organisations) Act 2009*, the AEC is required to make an application to the Federal Court for an Inquiry.