

16 March 2026

Deputy President Hampton  
Fair Work Commission South Australia Registry  
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Adelaide SA 5000  
By email: [bargainingsupport@fwc.gov.au](mailto:bargainingsupport@fwc.gov.au).

Dear Deputy President Hampton,

**Review of approved eligible protected action ballot agents**

*B2026/38 Democratic Outcomes Pty Ltd T/A CiVS*  
*B2026/44 Fair Vote Services Pty Ltd*

AREEA welcomes the opportunity to provide this submission to the Fair Work Commission's (the Commission) statutory review of approved eligible protected action ballot agents (PAB Agents) under s.468A(4) of the *Fair Work Act 2009* (FW Act).

AREEA's members utilise a range of approved PAB Agents nationally. The impartiality, secrecy and democratic integrity of protected action ballots are central to ensuring legitimate outcomes in bargaining processes. In this respect, PAB Agents perform important quasi-regulatory gatekeeping functions within the statutory framework.<sup>1</sup>

This submission reflects de-identified member feedback concerning the performance, administration and conduct of certain PAB Agents. It highlights concerns and practical issues arising from the conduct of certain agents in recent matters. The purpose of this submission is to assist the Commission in ensuring that PAB Agent conduct and processes are maintained at the highest possible standards.

**PAB Agent integrity**

Where a ballot agent's performance, administration or conduct is called into question, the consequences extend beyond a single ballot. Deficiencies undermine confidence in the integrity of Australia's industrial relations framework by casting doubt on the legitimacy and effectiveness of the protected action ballot process itself.

The integrity of the protected action ballot process is fundamental to ensuring democratic outcomes before protected industrial action is authorised.

Relevantly, a PAB Agent must be capable of:

- ensuring the secrecy and security of votes cast;
- ensuring that the ballot is fair and democratic;
- conducting the ballot expeditiously; and
- complying with the *Privacy Act 1988* in relation to the handling of personal information.<sup>2</sup>

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<sup>1</sup> Section 468A(2), 469 of the FW Act and Fair Work Regulation Division 8 prescribes procedural requirements for conducting ballots.

<sup>2</sup> Fair Work Regulation 3.11.

Protected action ballots are not administrative formalities. They are statutory safeguards within Part 3-3 of the FW Act designed to ensure democratic legitimacy, informed employee participation, and compliance with strict voting thresholds before protected industrial action may lawfully occur.

PAB Agents are entrusted with independently and impartially conducting ballots, ensuring voter eligibility requirements are properly applied, safeguarding secrecy and integrity, correctly applying statutory thresholds, and certifying results that trigger significant legal rights. The system depends upon agents exercising care, neutrality and procedural rigour.

Deficiencies in ballot administration are not merely technical. They can have immediate and substantive consequences. Where agents adopt lax approaches to eligibility verification, notice requirements or ballot conduct, protected industrial action may be authorised in circumstances not contemplated by the legislation.

Defects in ballot conduct also expose parties to jurisdictional disputes and potential Court/Tribunal proceedings, increasing cost, delay and uncertainty. The ballot process is intended to operate as a structured safeguard that introduces a period of deliberation before industrial action occurs. If agents fail to apply appropriate scrutiny, this safeguard is weakened.

In safety-critical industries such as resources and energy, irregular or prematurely authorised protected action can disrupt complex operations, supply chains and essential services.

More broadly, if employees perceive ballots as procedural exercises rather than robust democratic processes, confidence in enterprise bargaining itself is diminished.

The following recent examples, provided by AREEA members involved in enterprise bargaining, illustrate practical concerns arising in relation to the conduct of certain PAB Agents.

## Privacy Concerns – Unnecessary collection of personal data

### CiVS (Case number: B2026/38)

In Fair Work Commission matter **B2025/1699**, CiVS was the PAB Agent engaged to conduct the ballot. CiVS requested the following personal information from employee voters:

- Employee ID
- Surname
- First name
- Middle name
- Work email address
- Private email address
- Mobile phone number
- Postal address (including state and postcode)

The collection of personal information beyond what is reasonably necessary to conduct a vote raises questions as to whether the information may be used for secondary purposes. If so, this raises concerns about whether employees have provided informed consent, which is a requirement under the *Privacy Act 1988*.<sup>3</sup>

While some personal information may be reasonably necessary for conducting a ballot, it is doubtful that the voting process requires an employee's middle name, private email address or postal address to conduct the vote.

Such requests appear inconsistent with the requirements of the *Fair Work Regulations* and the Australian Privacy Principles (APPs).<sup>4</sup>

<sup>3</sup> Privacy Act 1988 (Cth), including the Australian Privacy Principles

<sup>4</sup> Privacy Act 1988 (Cth) Schedule 1 – Australian Privacy Principles.

While employers may rely on the employee records exemption in relation to certain personal information, that exemption may not extend to a PAB Agent, a third party who is not the 'employer' of the individual.<sup>5</sup>

Accordingly, the request raises several questions regarding compliance with the APP framework, including:

- What was the purpose for collecting, using and storing the personal information?
- Were individuals given the option of not identifying themselves where practicable?
- Whether, how and with whom the information may be shared?
- Whether the information may be used for direct marketing purposes, such as union membership solicitation?
- What security measures were implemented to protect the information collected?

It is unclear whether CiVS provided employees with adequate notification regarding:

- why the information was being collected;
- how it would be used; or
- what steps had been taken to protect the information.

These matters are relevant to compliance with APP 5 notification requirements and correlate with the OAIC's<sup>6</sup> most recent guidance on keeping information secure.

*Fair Vote Services Pty Ltd (Case number: B2026/44) (Fair Vote)*

In Fair Work Commission matter B2025/1694, Fair Vote similarly requested personal information from employees. The categories of information requested were substantially the same as those requested by CiVS, including employee ID, full name, work and private email addresses, mobile phone number and postal address details.

AREEA reiterates the privacy concerns outlined above.

In that matter, the applicant union — the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) — required that personal information be transmitted by email to the ballot agency. It appeared that this process involved the transmission of personal information without additional safeguards, such as password-protected documents or secure file transfer mechanisms.

The absence of basic data-security measures raises further concerns regarding compliance with APP 11 obligations to take reasonable steps to protect personal information from misuse, interference, loss, and unauthorised access.

In AREEA's view, this issue is exacerbated by the material contained within the FWC's relevant online form (*F34: Application for a protected action ballot order*). From page 15, F34 contains a "DRAFT ORDER (Non-AEC ballot agent)" of which section 6 covers the information employers must provide the non-AEC ballot agent in relation to employees eligible to vote on the ballot.

At paragraph 6.2(b) the draft order requires an employer to provide a wide array of personal information on the eligible employees in an excel spreadsheet, which reflects the exact concerns AREEA members have had with the information sought by the ballot agents in practice.

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<sup>5</sup> Privacy Act 1988 (Cth) Section 7B(3) – Exempt acts and exempt practices of organisations.

<sup>6</sup> The Office of the Australian Information Commissioner's website: 'Chapter 1: APP 1 Open and transparent management of personal information at paragraph 1.8 ...requires an entity to a clearly expressed and up-to-date APP Privacy Policy about how it manages personal information.'

Where ballot administration processes appear to require the collection of personal information beyond what is reasonably necessary for conducting a vote, or where information handling practices appear unclear or inadequately safeguarded, these risk undermining confidence in the protected action ballot process.

Equally, practices that impose unnecessary information requirements on employees may discourage participation in ballots or create uncertainty regarding the purpose and use of personal data.

## **Other concerns raised by AREEA members**

### *CiVS – Early ballot closure*

One AREEA member also reported concerns regarding the administration of a protected action ballot conducted by CiVS, in which the ballot was reportedly closed approximately 12 hours earlier than the closing time originally communicated to employees.

While AREEA does not have full visibility of the circumstances that led to the ballot being closed earlier than stated, the early termination of a protected action ballot raises legitimate concerns regarding the integrity and perceived fairness of the voting process.

Employees must be able to rely on the published ballot period when determining whether and when to participate in a vote.

Closing a ballot earlier than the notified deadline risks depriving eligible employees of a reasonable opportunity to participate, particularly where employees may be working extended shifts, remote rosters, or FIFO arrangements common within the resources and energy sector.

Given that protected action ballots operate as the statutory gateway to protected industrial action, adherence to clearly communicated voting periods is critical to maintaining confidence in the process.

Any departure from the notified ballot timeframe may affect both participation levels and the perceived legitimacy of the ballot outcome.

### *Union involvement with Ballot Agents*

In AREEA's view it is not appropriate that unions have any direct or indirect involvement with Ballot Agents. We are aware that this is not the case for all Ballot Agents and leads to the concerns over the privacy issues raised above being even more significant.

Ballot Agents need to be independent without any connection with unions or employers to maintain integrity in the process.

## **Recommendations**

AREEA respectfully recommends the Commission consider the following:

- 1. Necessity of personal information collection**  
Whether ballot agents are limiting the collection of employee personal information to what is reasonably necessary for the conduct of a protected action ballot. And, whether the material included in Form F34 meets the same criteria.
- 2. Transparency of information handling**  
Whether ballot agents clearly inform employees why personal information is being collected, how it will be used, and how it will be protected.
- 3. Privacy Act compliance**  
Whether ballot agents have demonstrable systems in place to comply with obligations under the *Privacy Act 1988*, including the Australian Privacy Principles.

**4. Security of information transmission and storage**

Whether ballot agents implement appropriate security measures when collecting, transmitting and storing employee information.

**5. Standardised guidance**

Whether additional Commission guidance or expectations regarding information collection and data security in protected action ballots would improve consistency and confidence in the process.

**6. Independence of Ballot Agents**

The Commission to conduct an examination of the structure and ownership of all Ballot Agents to ensure that their structure and independence is open and transparent.

AREEA considers that reinforcing clear expectations regarding ballot agent conduct, information handling and procedural rigour would assist in maintaining confidence in the protected action ballot system and ensuring that the safeguards within the FW Act continue to operate as intended.

**Conclusion**

AREEA appreciates the opportunity to contribute to the Commission's review.

The examples outlined above illustrate practical issues that arise where ballot agents adopt practices that appear unnecessary, insufficiently transparent, or inconsistent with the statutory framework governing protected action ballots.

AREEA acknowledges that protected action ballot agents perform a critical function within Australia's enterprise bargaining system. Their role is not merely administrative. Rather, they are entrusted with administering a statutory safeguard that determines whether employees may lawfully take protected industrial action.

Accordingly, the conduct of ballot agents must meet the highest standards of independence, procedural rigour, privacy compliance and administrative competence.

Given that protected action ballots operate as a statutory gateway to industrial action under Part 3-3 of the FW Act, it is essential that the Commission maintains close oversight of the performance and practices of approved ballot agents.

The statutory review under s 468A(4) provides an important opportunity for the Commission to ensure that ballot agents continue to satisfy the standards expected of them when exercising this quasi-regulatory function.

AREEA would welcome the opportunity to provide any further information that may assist the Commission in its review.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tom Reid', is positioned above a horizontal blue line.

Tom Reid  
Director Industry and Advocacy  
Australian Resources and Energy Employer Association (AREEA)