



## Guidance on the conduct of elections in organisations and their branches during coronavirus (COVID-19) restrictions

The Fair Work (Registered Organisations) Act 2009 (the RO Act) aims to ensure that registered organisations of employers and employees function in a democratic manner and are representative and accountable to members. The requirement that every office in an organisation and branch of an organisation is elected is an important element of ensuring democratic control.

In most instances, elections for office holders of organisations and their branches must be conducted by the Australian Electoral Commission (AEC).

During the COVID-19 pandemic, organisations and their branches already in the process of conducting an election, or due to hold an election at this time, may be affected by revised timeframes.

The AEC has written to registered organisations advising that in light of the COVID-19 pandemic, it will:

- reset timetables for elections where ballots are currently underway (by extending the time for the ballot); and
- put on hold all elections that it has not yet commenced until at least 30 September 2020.

The ROC supports the AEC's decision. Where an organisation or branch considers that an election is necessary for it to continue functioning, the ROC will work cooperatively with the organisation and the AEC to assist in resolving the issue.

In the current environment, the priority of the Australian community, including government agencies such as the ROC and the AEC, as well as officers and members of organisations, is protecting the health and wellbeing of our community as best we can.

The AEC also must ensure that everyone who is entitled to participate in an election can do so, whether as candidates, nominators, voters or scrutineers. This includes making sure that there is no conduct that interferes with this. In the current circumstances, the AEC's temporary postponement of industrial elections is considered necessary and is supported by the ROC.

### **Should we still lodge prescribed information for an election?**

Yes, you should still make your best efforts to lodge prescribed information with the ROC. The requirements to lodge prescribed information with the ROC remain unchanged. Lodging your prescribed information will ensure that the AEC can make appropriate plans for the



conduct of your election. If you are experiencing difficulties with lodging your prescribed information, please get in contact with the ROC as soon as possible.

### **What happens if an election isn't held?**

During the current COVID-19 pandemic, it is highly likely that elections for officers of some organisations will not be held in accordance with the time-lines set out in their rules.

It may eventuate that someone has been elected to hold an office for a specific term which has expired, but an election cannot be held. There is a legal doctrine of 'holding over' which means that, in most cases, a person remains in office until their removal or resignation or until another person is subsequently elected to that office (even if their term has expired).<sup>\*</sup> There are good reasons for this, in particular to ensure that an organisation can still operate. As stated in UFU<sup>\*\*</sup> 'continuity of the "government" [is] essential...to be capable of operating effectively'.

However, if the rules of your organisation state that the person must vacate their office at the end of their term, then this overrides the doctrine of holding over. In these cases, the office will be vacant until an election is held, so it is important to consider the impact of this vacancy on the ability of the organisation to operate.

### **The important questions for your organisation are:**

- Which offices are potentially impacted by rules requiring an office to be vacated at the end of its term?
- Is the organisation able to operate without that office being filled?

The AEC has advised that where elections are necessary to ensure the continuing governance of organisations it will work with the organisation and the ROC to arrange for the conduct of the election, noting that these will be for critical offices only.

<sup>\*</sup> McLure v Mitchell & ors (1974) 24 FLR 115 at p.126

<sup>\*\*</sup> Re United Firefighters' Union (1968) 14 FLR 467 at p.478