



Elections panel discussion – 17 September 2020

Speaker Key

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| KM | Kristina Menzies |
| BS | Bill Steenson |
| CLB | Cynthia Lo-Booth |
| AO | Andrea O'Halloran |

Note: Questions that were answered during the panel have been shaded in green within this transcript

KM Hello, and welcome to the ROC online question and answer panel about elections. Thank you so much for joining us online today. I can see the attendance numbers rise, so we're again pleased to have so many of you with us. And we hope that over the next hour, we can deliver practical information that assists you with your election work.



00:00:24

KM So, before I begin the session, I'd firstly like to acknowledge the traditional owners of the land that we're meeting on across all of Australia today. And I pay my respects to their elders' past, present, and emerging.

This is our third online panel discussion since May of this year. 2020, as we know, has been quite a challenging one for many of us. But one positive thing that we've been able to do is provide alternative ways of doing our work.



00:00:58

KM This is one example of how we, at the ROC, have adapted. My name is Kristina Menzies. I'm a senior adviser in the ROC's Education and Reporting team. And I will be today's panel facilitator. I would like to introduce you to the other three faces that you can see on your screen, if you have joined us by computer. So that's the members of our panel. They'll be helping me to answer the many questions that we've received about elections.

**00:01:32**

KM So, firstly, I'm joined by my colleague Bill Steenson. He leads the ROC Compliance and Protected Disclosures team.

We've also got Cynthia Lo-Booth. Cynthia is a senior adviser and lawyer in the team.

CL Hi, thanks for having me.

KM And we also have Andrea O'Halloran. Andrea is a lawyer and senior adviser and is also in the Compliance and Protected Disclosures team. Welcome, Andrea.

AO Good morning, everyone.

KM All members of our panel work on election matters. And they've been involved in the assessment of Prescribed Information for your elections. So, this is the information that you submit to us at the ROC to get a decision about the arrangement of your elections. And we call this PI for short.

**00:02:28**

KM Today, I'll be calling on the panel members, Bill, Cynthia, and Andrea to help explain the technical requirements of elections. And to answer the many questions that we've had submitted. Before we launch into those questions, however, I just want to cover off a few housekeeping issues. So, everybody who's joined us, except for the panel, you're all on a default mute setting.

**00:02:56**

KM We've requested many of your questions in advance of this webinar. If you have any questions as we go along through the webinar and you've joined us by computer, you will notice that you've got a GoToWebinar control panel. And you can type in the questions in that box. If we get time during the panel, during the discussion, we'll answer those questions as we go along.

**00:03:26**

KM We do have quite a full schedule of questions to go through, however, so if we don't get time during the panel to answer your questions, then we will endeavour to provide written answers on our website after this event. If you've joined us by computer, you'll also notice on your control panel that there's a handout section. And we've loaded some really helpful guidance notes and templates within that. And you can download it directly from the control panel.

**00:04:00**

KM We have two Prescribed Information templates, which we have written and published at the ROC. We'll discuss that throughout the panel today. We've also got a guidance note, a specific one about elections during the COVID-19 pandemic. And then, finally, we have a hypothetical question, which is the Test Your Knowledge question. We emailed that to you in advance of this session.

When we get to discussing that, which will be in the second half of today's panel, I would recommend that you open up that hypothetical question. And also open up the TF014, which is the Prescribed Information template about non-office and officer positions. Those will help you follow that discussion.

**00:04:55**

KM And finally, at the end, after our panel today, you will receive an email with a link to a survey. We would encourage you to complete that to help us in our efforts to continue to produce events and education tools as we have.

All right, so let's now begin our panel discussion. We've got a number of questions to get through. Many of which are about the pandemic, including the first question.

So, the first question we have been asked is what do we need to know about how elections may have changed during the COVID-19 pandemic?

**00:05:37**

KM Bill, would you like to answer this question for our audience today?

BS Yes, sure.

So, as you can imagine, lots of organisations have been in contact with us since March, with questions about their elections. As well as providing advice to all organisations in the form of those guidance notes, and fact sheets, and so on, we've been giving tailored advice to many organisations about their own specific situation.

**00:06:02**

BS And we'll continue to do so, giving guidance around particular elections, if need be, whether it's an election that's coming up if it's due now, or even if it's overdue. And we've also kept in regular contact with the AEC about election-related matters. Now on to some specifics. First, I want to confirm that the ROC's role and the way we issue election decisions hasn't changed.

**00:06:25**

BS Most of our staff are working remotely, but they can still assess Prescribed Information and prepare decisions to arrange for elections. So, if you've got an election that's due, you still need to lodge the Prescribed Information with us at least two months before nominations are due to open. And this requirement to lodge and to do it by a specified date hasn't changed. Now, you usually find any specific dates within your organisation's rules. For example, nominations open on 1st July. But if you're having difficulty lodging in any way, please contact us as soon as possible so we can help you work through those issues.

**00:07:04**

BS Now, what the pandemic has changed is the conduct of the elections themselves. You'll probably know that earlier in 2020, the AEC suspended elections for registered organisations. And that suspension is due to continue until the end of September 2020, at which time, it's going to be reviewed. During this time, very few elections have, therefore, been able to go ahead, and that's because there's a need to protect the safety of AEC staff and their officers and members of registered organisations.

**00:07:35**

BS What the AEC also has to ensure is that when they conduct an election, no irregularities arise. Now, this means, for example, making sure that everyone who is entitled vote is given the chance to do so. That their vote is secret and that ballot papers are properly and securely dealt with and counted. And all of that while being mindful of the safety of everyone involved.

**00:07:58**

BS And you can see that in the current circumstances, that can present big hurdles.

KM No doubt, the impact of the suspension of elections for organisations has been quite varied. Obviously, depending on individual circumstances, and, also, organisations rules.

But, Bill, what are some of the specific things we are seeing with organisations, their elections, and, also, the terms of office?

BS Well, there are a couple of things. And the first ones of those is when does the term of office expire? Which is, obviously, important if there's been no new election yet.

**00:08:36**



BS Where the time listed for a term of office, so, for example, two years, three years, has expired, and the organisation's election hasn't been conducted, there's a legal doctrine known as Holding Over that will usually apply. And what that means is that a person will stay in office until the next election is completed or until they resign or are otherwise removed from office.



00:09:00

BS There are some good reasons for this doctrine. It helps ensure continuity of operations, organisations aren't left without officers who can make decisions and authorise things, so they can still function. However, in some organisations, the rules say that the person must vacate their office at the expiry of their term. If this is what your rulebook says, for example, if the rule says the President ceases to hold office on 31st December, then that doctrine of Holding Over won't apply.



00:09:31

BS And in that situation, the office will remain vacant until some action is taken to fill it, usually when the AEC conducts the next election. Now, what if that role is absolutely critical to the functioning of the organisation? So, for example, if they're the only officer that can perform certain functions. Therefore, it looks like that role has to be filled. What you should do is contact us. And also contact the AEC. The AEC have appointed relationship managers for every organisation so that they can provide assistance.



00:10:04

BS And what we've found best in these situations is when all three, the organisation, the ROC, and the AEC, work through the issue. And in a very small handful of cases, an election is identified as really being needed and arrangements are put in place. We're also aware that some organisations, because of the suspension of elections, are only partway through their election cycle.



00:10:29

BS So, they may have had their first-stage direct election, where the members elect offices, but they haven't had the second stage, where the officers themselves elect some other roles. Sometimes, they've also got rules that say certain elections must be conducted in person like at the annual conference. And that's really presented some problems in the recent months. So, in all likelihood, in those circumstances, other arrangements will likely need to be made to allow people to participate.

**00:11:01**

BS Organisations should also give some thought to whether rule changes might be a good option. For example, thinking about extending the terms of offices or providing for alternatives like postal voting instead of voting in person, or in addition to voting in person. We understand that where proposed rule changes are put up to address COVID-related issues, the Fair Work Commission is certifying those rule changes in a relatively quick timeframe.

**00:11:31**

BS Just one example there, the FWC certified some rule changes for one organisation recently, where they extended the term of the current offices for an extra year. What that means in practice is that those elections will be now held partway through 2021 instead of 2020. And that rule change was certified by the FWC within about a week of it being lodged. So, a really fast turnaround and practical solution for that organisation when their elections couldn't move forward.

**00:12:02**

BS Now, I just want to add, in relation to rules that if you do have rule changes pending with the Fair Work Commission that may affect the offices in your organisation and, therefore, the election we're making a decision about, please let us know about it. And to let us know when you lodged the Prescribed Information. We mention this on our template for a very good reason. Because your potential rule changes can be directly relevant to the election decision and its timing.

**00:12:31**

BS The reason for that is that election decisions are based on what the rules are in force at the time. So, if your rules subsequently change, how the AEC proceeds with an election that we issued under your earlier rules, the ones that were valid at the time, is not always something that the ROC can then do anything about. And you don't want to be in a situation where you're spending members money, or having to spend members money, trying to get the elections stopped so that you can run a new one under the new rules.

**00:13:02**

BS Now, if by contrast, we're made aware of those rule changes, we can work with you to find a solution that works. It may be possible to delay issuing the election decision until after the FWC certifies the rules so that the election is then in line with the new rules. Likewise, if your rule changes abolish certain offices, you should work with us



to determine whether those offices should, perhaps, be removed from the information you've sent us.



00:13:30

BS Now, we've had two organisations that have been in that exact situation recently. One, where the rule change was pending to abolish four offices that were otherwise up for election. And the other one, where the rule change was restructuring the entire organisation and every single officer would change. Clearly, in those circumstances, there'd be a problem if you were arranging elections under the old rules of election. In both those cases, we reached a solution to avoid ending up with those elections for roles that no longer exist.



00:14:01

BS And it's all about communication so we're all clear what's going on, what's expected, and can work together so there are no surprises.

KM Thanks, Bill. So, organisations and branches still need to lodge their PI with the ROC. The AEC have, however, suspended their elections until, at least, the end of the month. And given we're over halfway through the month, I anticipate that we'll probably receive an update quite soon about where the AEC is at.



00:14:32

KM So, the next question is also related to the suspension of elections during the pandemic. And I'll just read it out.

The questions says, our branch normally elects branch offices in October. Our particular rule says, "Election for branch offices shall be conducted at the first meeting of the branch executive after the annual general meeting in the year in which elections are required to be conducted."

Branch elections were required to be conducted this year but have been postponed indefinitely due to COVID-19 restrictions. Under these circumstances, can you advise if branch officer elections are still required to take place this year? Or could the positions be declared by the executive itself if there is going to only be one nomination for each branch officer position?

Cynthia, can you have a go at providing an answer to the organisation who asked this question?

CLB Sure. Unless an organisation warrants an exemption under section 183 of the RO Act, elections for offices must be conducted by the Australian Electoral Commission. So, I can appreciate why the organisation has enquired about whether they could declare the officer positions themselves.

**00:16:02**

CLB Particularly where it is likely that only one person will be nominated to fill the office. The RO Act does not allow an organisation to conduct its own elections unless it has the section 183 exemption. So, in these circumstances, I will repeat what Bill has said about lodgement of Prescribed Information with the ROC. Even in circumstances where we know that AEC are unlikely to immediately conduct the election, the organisation is still required to lodge their PI with us within the legislative timeframe.

**00:16:39**

CLB It also means that the AEC will be ready to go once the election starts up again. Also, the organisation should consider the doctrine of Holding Over. Unless the rules of this organisation says something to the contrary, the current branch offices can continue to hold office until the AEC conducts the election and declare their successors.

**00:17:04**

KM Thanks, Cynthia. I've just received a live question and I'll just read it out:

Is there any direct contact details for the panel, in order to pose specific questions about our constitution and elections later?

Certainly, do feel free to either give us a call on our general hotline number or email us at regorgs@roc.gov.au, with questions.

**00:17:30**

KM Many of these questions have been asked in that way. We would certainly encourage you to ask questions that relate to your organisation if you do have any. And we can, give some thought to that and touch base with you and provide you with some guidance around that. So, yes, hopefully, that provides you with some assistance there.

Thanks, Cynthia. So, let's just move on to the next question. And this question is similar to one that we've just answered live. It relates to an organisation's rules.

**00:18:08**

KM So, just bear with me with this question. You'll just have to follow it quite closely. It relates to the impact of the pandemic on the running of their elections. And this is the question:

The rules of our organisation require our federal council to meet biannually, so that's every second year. At this meeting, the federal offices of President, Vice President, and Treasurer are elected in stages. And in the meetings scheduled for this year, these three offices are due for election. The rules say that the Treasurer remains in



office until a successor is elected. But there seems to be no similar rule for the President and Vice President.

The rules also say the federal council meeting must be held in October. But COVID-19 is making it very difficult for everybody to travel and meet together. That's understandable.

So, there's two parts to this question.

The first part is, can we postpone our federal council meeting until the AEC resume their elections?

And secondly, we are likely to be without a President for some time because the AEC is not holding elections, and our rules don't specifically say that the President continues in their office until a successor is elected. Do we have to apply to change our rules with the Fair Worker Commission?

So, Andrea, did you want to answer this question? Perhaps start with the first part of the question, which is, should this organisation postpone their federal council meeting until the AEC resume their elections?



00:19:59

AO Yes, sure, Kristina. So, in this case, an election is due for the organisation. So, even though the AEC may not be able to actually conduct the election within the usual timeframe, to underline what Bill and Cynthia have said in earlier points, the organisation should still lodge their Prescribed Information with the ROC at least two months before nominations are due to open under its rules.



00:20:28

AO The ROC can then assess the information in the PI and issue a decision confirming that an election is due. And when the AEC resumes conducting elections, they can schedule your election into their timetable.

So, in relation to the organisation's federal council meeting, we're told that the organisation's rules say the meeting must be held in October. And we're also told that the pandemic is making it difficult for councillors to meet, presumably, because they can't travel and physically meet in person.



00:21:03

AO However, this organisation needs to consider what their rules expressly state. And just as importantly, what the rules don't state about how the meeting needs to take place. It's difficult to provide a really definitive answer here without thoroughly reading the rules. But if the organisation's rules are silent about the manner in which a meeting must be held, then the organisation could definitely explore alternative meeting options, such as phone conferencing or video conferencing technology like Zoom or Skype or Teams.

**00:21:42**

AO And there are plenty of these sorts of platforms available. And many organisations and businesses are already holding meetings via these platforms with great success. In our recent podcast Good Governance in Practice, Holding Meetings, we specifically addresses this issue.

**00:22:01**

AO That podcast is available on the ROC website under our education tab. But if your rules are actually restricted or are quite prescriptive about the way that the organisation can hold meetings, and the current situation is making it a bit difficult or impossible to conduct meetings as they prescribe, then we suggest that you keep detailed notes, which explained the challenges you're experiencing and why certain things, certain arrangements haven't been able to occur.

**00:22:36**

AO And why things need to occur in a way which is different from your usual practice. You may also wish to consider whether rule changes which address your organisation's meetings and how they're held might also be a way forward.

KM Thanks, Andrea. So, now on to the second part of that question about the President of the organisation.

**00:23:03**

AO So, the organisation is likely to be without a President for some time because the AEC is not holding elections and the rules don't say that the President continues in their office until a successor is elected.

Does the organisation have to apply to change their rules with the Fair Work Commission? What do you think there, Andrea?

**00:23:25**

AO I think the answer will actually depend on the specific rules of the organisation. So, it's unclear from the question whether the rules are silent about whether the President can continue in their office until a successor is elected. Or whether the rules are quite prescriptive and state the President must vacate their office at the end of their term. If the rules do not expressly prohibit the President from continuing to hold office, then the doctrine of Holding Over, as Bill and Cynthia mentioned earlier, can apply, so that the President can continue to hold office until an election can be held.

**00:24:08**

- AO** But if the organisation's rules are quite prescriptive and prevent the President from continuing to hold office, then it's up to the organisation as to whether they wish to apply to the Fair Work Commission to change their rules.
- KM** Thanks, Andrea. So, whether the Holding Over doctrine can apply for the officer to continue in the office beyond the term, will depend on the organisation's rules.

**00:24:36**

- KM** If the rules do not prohibit the officer from continuing to hold office, then the doctrine of Holding Over can apply. And I remind you that there's a copy of our guidance notes in the GoToWebinar control panel, which does explain Holding Over in greater detail.

Let's now move along to the next question.

**00:24:58**

- KM** And I believe that it relates directly, also, to a question that's been asked live, so it's quite timely that we answer this question.

Our organisation wants to fill a vacancy in our organisation for the office of Vice President. We have a casual vacancy rule, which says that if the Vice President becomes vacant, and the unexpired term of the office exceeds three-quarters of the term of the office, an election needs to be arranged to fill the office.

The rule also says that if the unexpired term of the office is less than three-quarters of the term of the office, the Federal Council can appoint a replacement to the office for the remainder of the term. When our Vice President resigned, there were three years left on the four-year term. As there was more than three-quarters of the term remaining, in accordance with our rules, we lodged our PI with the ROC and a decision was issued for the arrangement of the election for our Vice President.

However, because of the pandemic, the AEC has not run the election and we are without a Vice President. At this point in time, the office is still vacant. The remainder of the Vice President's term of office is now less than three-quarters of the four-year term.

Can we now appoint someone to the office?

**00:26:31**

- KM** Cynthia, can you help the organisation with an answer to this question?
- CLB** Sure, Kristina. This question has a unique set of circumstances, but it's quite common for organisations to have a similar casual vacancy rule. The short answer to



this question is no. The organisation cannot appoint a person to the office of Vice President.



00:26:59

CLB It's unfortunate, and I sympathise with the organisation because they're faced with an unfilled office, and despite their best efforts, haven't filled. So, when you're interpreting a casual vacancy rule, and calculating the unexpired term, the relevant date of effect is when the vacancy arose. In this example, the relevant date is when the Vice President's resignation became effective.



00:27:28

CLB The relevant date is not the date that the branch is going to appoint a replacement to fill the vacant office. So, in the circumstances described here, on the date the Vice President had resigned, the unexpired period was more than three-quarters of the term. Therefore, in accordance with the casual vacancy rule, an election and not an appointment must take place. If, however, the office is a critical one, in other words, the organisation could not function without the office being filled, you should contact the ROC and the AEC to discuss this unique situation.



00:28:11

KM Thanks, Cynthia.

I've just had a live question, and it's relating to the answers to these questions. I will point out that we do transcribe these sessions, and within about a week or so, we will put a copy of the audio online, as well as the transcript of the discussion that's taking place.



00:28:31

KM So, if you do prefer to read through an answer, the transcript of these panels are quite useful to help you with that.

Now on to the next question. And it's about the ROC's Prescribed Information template. So, the question says:

Due to challenges related to COVID-19, we will be lodging our Prescribed Information late. I want to lodge an application for an extension of time.

I am preparing our Prescribed Information, and on your template, it asks me to write the date that our extension was submitted to the ROC. I'm confused why the template says this because I want to lodge the extension request with the Prescribed Information.

Andrea, what should our organisations consider here, or do, in these circumstances?

**00:29:29**

AO Yes, so we ask organisations to state in their PI, the date that their extension application was lodged if this is relevant, simply because a request for an extension should really be submitted to the ROC before non-compliance actually occurs. That being before the late lodgement of your Prescribed Information. We do this because we want to encourage good governance practices within organisations.

**00:29:59**

AO And in this instance, to think ahead of their deadlines. So, rather than react after the fact to a situation of non-compliance, if you think you're going to run into difficulties with lodging your Prescribed Information on time, we recommend you contact us as early as possible, so we can assist you with a solution. You should make every effort, though, to lodge your request for an extension of time at least two months before nominations are due to open under your rules.

**00:30:33**

AO And in any event, the reasons for the late lodgement will need to be provided to us.

KM Great, thanks, Andrea. So, we'll now move on to some general questions about elections. Our next question that's been submitted to us is about Right of Entry permits.

**00:31:01**

So, Right of Entry for all teams or individuals during union elections.

Incumbent officials often use their Right of Entry permits to access members during union elections. These meetings would not be official union business, but nevertheless, these meetings do happen. Challenging teams or individuals are placed at a disadvantage as they do not have the availability of Right to Entry.

Can the rules be changed so that all parties can hold on-site election meetings, by being granted Right of Entry access?

**00:31:38**

KM Bill, what do you think, here?

BS Well, we're certainly getting some interesting questions on election-related issues on this one.

So, fundamentally, when you can and can't use a Right of Entry permit is controlled by the Fair Work Act. It outlines who can get a permit and when they can use it.

**00:32:00**

BS The Fair Work Commission's website has got a section on using permits under their Registered Organisations' tab, which goes into details of that and when the permit is able to be used and under what conditions. Now, the ROC doesn't have a role in managing the Right of Entry scheme. And it's the FWC that issue the permits and handles disputes. But it sounds like a question that's, also, maybe suggesting that either the rules of the organisation or the legislation needs to be challenged.

**00:32:59**

BS So, every set of rules has a provision in it detailing how those rules can be changed. There will be a heading like Alteration or Amendment of Rules or something similar like that. And that's the process to follow when changing those rules. Go through that process and submit the rule change to the Fair Work Commission. Every current rule book of a registered organisation, and even the rule books of each of their branches where that's relevant, are sitting on the Fair Work Commission's website under the Registered Organisations' tab.

**00:32:58**

BS Now, if you want the legislation changed, then that's something that only parliament can do. Agencies like the FWC and the ROC work with the legislation that parliament gives us. What I do want to do, however, is take the opportunity to remind everyone of some of the provisions that are already in the Fair Work Act. And one of those is that using the property or resources of an organisation, or a branch, in order to favour one candidate or a group of candidates over another, is actually an offence.

**00:33:28**

BS It's a criminal offence that's set out in section 190 of the Act. And where the ROC receives evidence that indicates a possible breach of that section, so more than just a suspicion, where there's evidence of that, we take steps to refer those matters to the police. Likewise, if there are actions taken that interfere with a person's right to vote or their right to nominate in an election, that can also amount to an offence. Section 195 of the Act sets out a whole range of conduct that can amount to interference with an election in relation to candidates, eligibility, voting, ballot papers, etc.

**00:34:08**

BS And during an election, the AEC can issue directions that require people to stop doing certain things or to take particular steps to ensure that an election doesn't result in irregularities and that people's entitlements aren't interfered with.



KM Thanks, Bill. I've just got a live question. And I'll throw it out to the panel. So just have a listen to the live question. I think it might apply to various organisations, so it will be useful for us to address right here, right now.

The question is that our rules have recently changed, they were certified on 14th September, so just a few days ago. The AEC can now conduct our required election during the course of our biennial national conference. Previously, it was required on day two of the conference.

How can we request the AEC to conduct an election on day one of our conference, which is our preference?

Bill, did you want to have a go at answering that? How can we request the AEC to conduct the election on day one of our national council, which is our preference?

BS Sure, well, at first, I suspect, the answer is well, of course, you can always ask.



00:35:30

BS And it's then about explaining why it is that particular preference is there. If it's hard and fast in your rules that it must be conducted on day two of the conference, then that's a difficulty that you're going to have trouble overcoming. Because if that's what's in the rules, the AEC tries to run elections in accordance with your rules, unless that's impossible. If, however, it's just a preference that it was traditionally on day two and now we'd like it on day one, then explaining that and trying to achieve that is something that you attempt to do.



00:36:03

BS The difficulty that you'll have, I think, depending on where the conference is held, if it's an in-person vote, is actually getting everyone there. Getting everyone who is entitled to vote to be there, getting the AEC to be there in these sorts of times. Often, what's happened is where a vote is normally held at a conference, there's been a shift to running those by postal vote. So, it might be that the nomination's open at the conference, but the ballot can't be held there, just because not everyone will have a chance to vote.



00:36:37

BS So that's a round-about way of answering it. Certainly, there's a way of attempting to do that, discussing it with us and the AEC, why the preference is to deliver it day one. But then, you'll be measured against that whole notion of is having it on day one going to allow everyone to participate? Because, if the answer is no, then that will be a challenge.



00:37:00



BS If people are able to participate and they're able to ensure that their vote is, A, going to be available to them, and B, is going to remain secret if there is a ballot. They're the sort of steps that they're going to have to go through in order to continue.

KM Great, thanks, Bill.

The next question that we've got relates to how the ROC issues decisions to arrange elections.

So, the question is, how can we get a quick decision for our elections from the ROC?

We have noticed that sometimes it takes two weeks for the ROC to issue a decision. But for other elections, it has taken almost two months. Cynthia, I know you have assessed quite a lot of elections in your time.

What are some of the factors that impact on how long it takes you to consider the election materials and then communication this to the delegate to assist him to make his decision?



00:37:58

CLB Yes, thanks, Kristina. So, the time that it takes the ROC to issue a decision from the date of receiving the Prescribed Information will depend on the size of the election and the complexity of the rules. And election for a single officer is likely to take the assessing officer less time to read all the materials than a scheduled election for over 100 offices from various divisions, divisional branches and branches with DVS and collegiate elections. That's the simple answer.



00:38:32

CLB However, there are certain ways that organisations can make it easier for me and my colleagues to quickly read through the material. So, how can organisations make things quicker? Basically, use our Prescribed Information template. We have two of these. One template is for the election of offices, and the second template is for the election of both offices and non-office positions.



00:38:59

CLB Some organisations use their own templates. And it's not compulsory for organisations to use our templates, but what I see is that organisations who don't use our templates are more likely to leave out vital information. And this slows down the process. It will take time for me to contact you to request the missing information. And it may take additional time for you to provide me with the missing information or to lodge amended Prescribed Information.



00:39:29



CLB These delays can be avoided by using our templates. For instance, information about whether or not there are pending alterations is often missing from the lodged prescribed information. If you don't tell us whether you have current rule alterations before the Fair Work Commission, as your action officer, I will call and ask you. The template will prompt you to include information like this and avoid unnecessary delays. And there are copies of our templates, which you can download from the GoToWebinar control panel.



00:40:04

CLB And you can also download them from our website.

KM Yes, that's a good point you make, Cynthia. I've noticed as an assessing officer, myself, that when I receive the Prescribed Information and it's using one of our templates, I'm quite familiar with the layout of the template. So, it's actually more efficient for me to read through the material because I'm trained in how to read the material. It's familiar to me.



00:40:32

KM Andrea, how else can an organisation help you to assess your PI in a really quick way? Are there any other things that you would like to add?

AO Yes, I just emphasise Cynthia's point about the use of our templates. Because there are repeat issues that I see with Prescribed Information that can be avoided by using our template and following the instruction prompts, which is set out in our templates.



00:40:58

AO For example, in the circumstances of a casual vacancy election, the ROC template prompts organisations to include evidence of that casual vacancy. So, for example, in the form of a resignation letter or email. And to confirm that the role is, in fact, vacant. If you include that information with your Prescribed Information, as the template prompts you to do, it's a much quicker and simpler process for us to assess the information and for the delegate to, in turn, be satisfied that an election is required.



00:41:34

AO Another example we see is that in some organisations' rules, the number of offices for election is based upon a formula. Say, for example, the number of national council delegates due for election. It may depend on the number of financial members of your branch at a particular point in time.



00:41:57



AO If you do not include that information, then we can't verify the number of offices, in this case, national council delegates, that are due for election in accordance with the formula in your rules. And I'll need to request that information from you, which, again, is likely to take additional time. I'd recommend having a listen to our podcast episode number 12, which is titled Working Together for an Efficient Election.



00:42:26

AO It outlines some of the common mistakes that we see being made in the PI and how to supply all of the required information.

KM Great. So, before we get to the hypothetical question, and I want to make sure we have enough time for that.

Bill, can you just quickly go through the distinction between those two templates that we've loaded into the control panel? I understand that there's a slightly different process for the two different types of elections. Can you just take us quickly through that?



00:42:59

BS Yes, sure. So, of the two templates, one is just for elections for office. So, this is the one that you'd use for the election of offices like the Secretary, Assistant Secretary, President, Vice President. And people who sit on your committee as management and perform particular functions like managing the affairs of a branch, determining policy, making important rules. You can refer to your rules and what they say about the functions of particular roles in your organisation. And to Section 9 of the Act, to determine whether or not a person is an officer.



00:43:33

BS If you require some extra guidance on this, again, we've got a podcast about it, I think it's episode four, Who is an Officer?

Now, separate to this, some organisations' rules also provide for the election of people who aren't officers. For example, their role exists under the rule, but they're not officers because they don't exercise powers to run the organisation or they only act under the authority of those who are officers.



00:43:58

BS We refer to these kinds of roles as non-office positions. Now, it's not exceedingly common, but some organisations do elect people like their Executive Director or their Chief Executive. Some other examples of these non-office positions are things like work-place delegates or some branch representatives. So, they're elected, they're



part of the rules, but they're not officers. For the election of those non-office positions, the RO Act, in this particular section 187, allows the AEC to run these elections.



00:44:32

BS But it requires the organisations to first write to the AEC to seek permission for these non-office elections to be conducted. So, in a nutshell, that has to be requested for the AEC to agree to run the elections of these positions. Now, when an organisation submits their Prescribed Information to us, a copy of the request has been made to the AEC about those non-office positions must also be provided to us.



00:44:58

BS And if you use our PI template, the one that makes provision for both officer and non-office positions, then it will take you through those steps. What we've sometimes seen, though, is that there are organisations who don't distinguish between them. And they don't distinguish that these are non-office positions. Now, in those circumstances, what will happen is after we've checked your rules, we'll need to get in touch with you confirm the situation. And if there are some non-office roles you want elected, get the organisation to make the required contact with the AEC.



00:44:35

BS And request that agreement. Again, that can delay the decision-making process, so, following the correct process and following the template before you lodge the PI can certainly speed things up. And we're always happy to help if you want to get in contact beforehand to check things with us.

KM Great. So that takes us through all the pre-submitted questions.



00:45:58

KM And again, I'll repeat, if you do have any particular questions that relate to your organisation, I can see a number of you have asked some questions through the chat box, do get in contact with us. We can try to provide you with some guidance as they relate to your particular circumstances.

What I want to do with the remaining 15 minutes is just go through the hypothetical question that we emailed to you prior to this event. Which was the information about QRS.



00:46:34

KM So, you can either open up those documents in that email. Or within the handout section, you can download the Test Your Knowledge elections document. And also, I



think it would be helpful if you opened up TF014, which is the non-officer and office Prescribed Information template. So, what we're told is a set of facts about QRS.



00:47:00

KM And let's presume that QRS is the full name of the organisation. And we'll use that name throughout their Prescribed Information. We're told that they have various elections that are coming up. And they need to lodge Prescribed Information to have their elections arranged. So, the idea here is that all these elections are due and so one PI can be completed for all these elections. That's a really good handy tip there if that, similarly, applies for your organisation. If you've got multiple elections that are due or there are multiple states in an election, put in one PI so we can issue one decision for you.



00:47:43

KM So, with the help of the panel, Bill, Cynthia, Andrea, I just want to go through the information about QRS. And discuss how they can complete their Prescribed Information for these elections. Cynthia, did you want to first talk about the first position in the question which is the Chief Executive Officer.



00:48:04

KM How are the facts that we're given relevant to their Prescribed Information?

CLB Sure, Kristina. The QRS rule provides that the Chief Executive Officer is elected. The scenario says that Rule 10.1 outlines the functions of the CEO and this person acts in accordance with the directions given by the Committee of Management.



00:48:30

CLB This goes towards what Bill described earlier about the election of non-office positions. The CEO of QRS is not a holder of an office because the CEO is required to act under the directions of the Committee of Management. Although the rules provide that the CEO is elected, the CEO has no voting rights in managing the affairs of QRS. And doesn't have any voting rights in determining policies for the organisation.



00:49:04

CLB The template we have provided to complete this task is our template for the election of offices and non-office positions. Now, the first page of the PI template is a statement, a set of declarations that are being made. The second half of the template is a table in Annexure A. Let's talk about the statement on page one and how to include the relevant information we know about the CEO.

**00:49:33**

CLB Now, under point four, you will see that it says a copy of the request under Section 187 for the AEC to conduct an election for the non-office positions is attached. The template is prefilled so that this statement relating to the non-office position is included.

**00:49:56**

CLB QRS must write to the AEC before submitting their PI to the ROC and ensure that they attach a copy of their letter with their PI at lodgement.

Now, under point eight of the PI statement, you're also asked to confirm whether the PI for your scheduled election has been lodged on time. You can delete any of the instructional tips that doesn't relate to your PI and keep the information that is relevant to your PI. So, if your PI will be submitted on time, then keep that part which says it'll be lodged on time and remove the option about why PI is late and the date you lodged the request for an extension of time.

**00:50:39**

CLB As Andrea pointed out earlier, we want to encourage organisations to lodge their extension request ahead of time, before they miss the timeline requirement, which is two months before nominations are due to open.

Now, on the last page of the template, if you scroll down you will see the table that is Annexure A. There is a sub-heading within the first table that says, "For the Election of Non-Office Positions requested under Section 187 of the RO Act".

**00:51:13**

CLB Under this heading, you will put in the information about the election of the CEO. So, let's read across this line. You can type the organisation name, QRS, in the first box labelled branch. In the next column, you would type Chief Executive Officer, being the role to be elected.

**00:51:34**

CLB Reading across it says to type in the number required. So, here, you would type in one. Next, the voting system for the election. The scenario tells us that Rule 10.5 says, "the method of electing the Chief Executive Officer shall be by secret postal ballot of all financial members of QRS". This is describing a direct voting election.

**00:52:02**



CLB As all financial members get to vote directly for the role. So, you should select this option. And then, finally, identify the electorate, which is all financial members of QRS. And please provide the relevant rule reference, which is Rule 10.5. The rule reference is really helpful for us to quickly read and understand the rules to see if that's correct.



00:52:30

KM Great, thanks, Cynthia. Well, we're just running out of time, so we'll go quickly through these. Going on to QRS Treasurer, which is the second election. Andrea, did you want to explain how we add the information for the Treasury to the PI?

AO Yes, sure. So, we know that there was an earlier election for the Treasurer, but no one nominated for the office in that earlier election. So, this tells me that this is an insufficient nomination election for the Treasurer.



00:52:59

AO Rule 16.6 of the QRS rules state that the election for the Treasurer is a collegiate election because a group of elected people, in this case, collectively known as the Executive, vote for this office rather than it being a vote of the whole of the membership. So, let's go to the same PI template. We can enter the text at paragraph six of the statement on the first page to include details for the election of the Treasurer.



00:53:30

AO So, it would say something like insufficient nominations for the office of Treasurer were received in an earlier election. Please reference the election number, that's very helpful, and the declaration of results is attached. And then make sure that you actually do attach the declaration of results, which shows that no nominations were received when you submit the PI to us.



00:53:57

AO We can then scroll down the document, to the table and Annexure A. The Treasurer is an office, so in that section which applies to the election of offices, you need to include the information relevant to this particular section. So, reading across the table in Annexure A for the election of Treasurer, you should record branch as QRS. The name of office is Treasurer. The number of offices is one. The voting system is collegiate. The reason for the election is insufficient nominations. And the electorate is the QRS Executive.



00:54:42

AO And if you can please refer to the relevant rule, in this case, 16.6.



KM Great. So, the next election we need to address here is the office of Secretary.

Bill, can you quickly explain how we properly include the information for this office in the PI?



00:55:03

BS Sure. So, the scenario says that the Secretary resigned after serving the first few months of a four-year term. We know that the organisation's got a casual vacancy rule, which says that if the unexpired term is more than three-quarters of the term, it has to be filled by election, not appointment. So, we're only in the early part of the term of office, the remainder is more than three-quarters, so there must be an election to fill it. You can't just appoint someone for the remainder because you'll have a non-elected person sitting the role for three-and-a-half years, or thereabouts.



00:55:34

BS Now, we mentioned earlier that you calculate that time based on when the person leaves office, not some later date. So, looking at the template as it relates to the Secretary, page one on the statement part, point five of the declaration for casual vacancies. And so, you can insert some relevant information there. Something like a casual vacancy has arisen for the office of Secretary. A copy of the resignation is attached. Obviously, if you've got more than one casual vacancy, you attach evidence for more than one.



00:56:02

BS If you don't attach the evidence that it's vacant, we'll come and ask you for it, in order to be satisfied that the role is actually vacant. Now, turning to the table on the next page. Because the Secretary is an officer role, it goes in the same part as the Treasurer's election. So, you go across the table, you put the organisation name in the first column. Secretary is the office. One, because that's obviously the number of that office to be elected.



00:56:30

BS And we're told that Rule 15.5 says that the Secretary is elected by a ballot of all financial members. The voting system is a direct voting system. Under the reason for elections, casual vacancy. And finally, the election is all financial members, and the relevant rule is 15.5.

KM Great. Thanks, Bill. We've just got a few minutes left. Cynthia, did you want to quickly cover-off the information for the Committee of Management?



00:56:59



CLB Sure. Thanks. So, this scenario tells us that the members of the Committee of Management is a scheduled election under the rules. And we're told that the number of members for the Committee of Management is dependent on a formula. So, QRS will need to identify this rule that provides the formula. And put that in point nine. And the information is, the count of the members is as at 30th June 2020.



00:57:55

CLB So, if it's a future date, can you please state that for the ROC so that we would know to hold off asking you for the numbers. If it's only two weeks away, we will hold off and ask in two weeks' time. But if it's more than two weeks' time, what we'll do is we won't delay issuing the decision, we'll issue the decision without the number of committee members listed. And instead, we will write to be ascertained, in accordance with the rules.



00:58:27

CLB So, then, the AEC will determine the numbers when they conduct the election.

KM Great, thanks, Cynthia. We've also got one piece of information around QRS having rule changes that are pending with the FWC. Andrea, did you just want to briefly mention the relevance of letting us know about this information?

AO Yes, so we've been told that there's rule changes that provide for the new office of Assistant Secretary.



00:58:58

AO So, this goes to Bill's earlier point about letting us know or stating in your Prescribed Information document if there are rule changes which are pending, that will impact the election. So, for example, here, the Assistant Secretary of QRS is more than likely to be part of the QRS Executive. And, therefore, have voting powers in respect to the election of the Treasurer. Therefore, the new office may be relevant to this election.



00:59:28

AO On our template at point seven, there are prompts to include this information in the PI. So, if QRS left this information blank, the assessing officer at the ROC would need to make email or telephone contact with QRS to confirm whether they have a rule change pending with the FWC. If a rule alteration application has been lodged with the FWC, we really urge organisations to ensure that they attach a brief outline of the proposed alterations with their PI.



01:00:06



KM Okay, great. So, there's just one final table within the PI template. And that relates to those important dates relating to your election. I think the main point here that we want to raise is that the dates you include in that table match up with what or organisation's rules say. And also, I think we mentioned preferences previously. So, if you have preferences around the dates of an election, just let us know on your PI template that these are merely preferences.



01:00:38

KM And that they aren't prescribed by your rules, just to avoid confusion there.

So, what we'll do with that response is we will actually provide you a copy with how we have completed that PI for you, following this session. We will also, in that email, provide the link to the survey that I had referred earlier.



01:01:02

KM So, I think that's all that we have time for today. Thanks so much for joining us. We hope that this session has been really helpful and practical. And as we said earlier, if you do have questions that we haven't answered in this session, specifically ones that relate to your organisation, please do feel free to contact us as other organisations have.



01:01:27

KM So, have a good rest of the day. And thank you to our panel for joining us today.

CLB Thanks, Kristina.

KM Thank you.

BS Thanks for having us.