



## 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. To protect the health and safety of officers and members of registered organisations, and AEC staff, the AEC suspended elections following the outbreak of the pandemic. However, in October 2020, the AEC announced that elections would recommence. The AEC also notified organisations that it was creating a schedule to work through elections that were unable to be conducted, or were underway and ceased, due to the pandemic.

The AEC has also identified a number of changes to their delivery of election services.

These include:

- an extension of ballot periods to 28 days to allow for the return of ballot papers sent via Australia Post; and
- an elections event portal to allow organisations and members to view election notices and make lodgements.

The ROC supports the AEC's decision to change the way that it conducts elections during this extraordinary time, and we will work cooperatively with organisations and the AEC to assist in resolving any issues that may arise.

### **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 is delayed?

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 straightaway. 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.

## What happens if a new election is due (but the old one hasn't been held yet)?

Please get in touch with the ROC and your AEC relationship manager if your rules say that a new election is due, and the previous election hasn't been held yet. For instance, if a casual vacancy election hasn't been held and the scheduled election is due again, or if it was a short term and the new prescribed information is due (either now or soon) for the next election.

The ROC and AEC will work with you to provide practical assistance and to resolve election-related issues.

<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