



ROCpod episode 12 – Working together for an efficient election

Speaker Key

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AN: Welcome to ROCpod: Talking with the Registered Organisations Commission. The official podcast of the ROC about the regulation of unions and employer associations. And in this monthly podcast, we'll share essential information, uncover handy hints and tips, and reveal our best tools for proactive compliance with the complex legislative requirements. Don't forget to subscribe and see how ROCpod can help you and your organisation.

KM Hello, and welcome to episode 12 of ROCpod. My name is Kristina Menzies, and I am a senior adviser in the Education and Reporting Team at the ROC.



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KM Today's podcast is about how to lodge compliant prescribed information, to support a prompt election decision from the ROC. We did have plans to welcome the Australian Electoral Commission to our podcast this month. Unfortunately, the recent escalation of the COVID-19 pandemic in Victoria has meant that this wasn't able to happen.

So, like many workplaces around Australia and the world, we have pivoted slightly from our original plans, but we are pleased to nonetheless still bring you a podcast this month, about elections in registered organisations.



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KM I am today joined by my colleague, Sam Gallichio. Sam is an adviser in the Education and Reporting Team at the ROC, with extensive experience in election matters. He is an integral part of our small team that assesses elections at the ROC. If you have ever called or emailed us about your election, it is likely that Sam may have been on the other end of the line. Welcome, Sam, and thanks for stepping in.

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SG Hi, Kristina. Happy to help.

KM Now, before we dive into how organisations can expedite the process of election decisions being issued, let's stay on the topic of the pandemic. Organisations will be aware that earlier this year, the AEC put on hold all elections that had not commenced when the pandemic hit.

The AEC has advised that the suspension of elections has now been extended to 30 September 2020. Any exemptions will be quite limited, and will be assessed on a case-by-case basis.

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KM Sam, can you now please explain to our listeners what organisations need to do if they have an upcoming election? Do they still need to lodge their prescribed information or 'PI' with us?

SG Yes. So, registered organisations should continue to lodge their PI with the ROC. While the AEC have put most elections on hold, and there'll be alternative arrangements for the conduct of elections, the ROC can continue to issue election decisions in largely the same way as we always have.

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SG If organisations are experiencing difficulties with lodging their PI on time, we do ask that they touch base with us as soon as possible, so we can help.

KM Thanks, Sam. That's really important. I am aware that the change to AEC's approach has caused some confusion for registered organisations and the lodgement of their PI with us. So, thanks for clarifying.

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KM For additional information about what you should do if you have an upcoming election, you can take a look on our website, at our e-learning centre. Here you will find a module, which steps you through this issue. You can also read our guidance note.

All right, let's move away from the pandemic, and on to the focus of this episode, which is how organisations can contribute to the efficient processing of their elections with the ROC.

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KM The Fair Work (Registered Organisations) Act, or the RO Act, aims to ensure that registered organisations are properly regulated, function in a democratic way, and are representative of, and accountable to members.

The requirement that every officer in an organisation and branch is elected is an important element of ensuring democratic control, and underpins the objectives of the Act. Industrial elections can be highly contentious. We frequently see the issue of elections and what happens during them, in the whistleblower disclosures that we receive.

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KM Organisations should want to make sure that the process is complied with at all stages, as any candidate or member may dispute the election results, or ask the Court to conduct an enquiry into irregularities in the election.

SG Yes, that's a good point, Kristina. The ROC can certainly provide some assistance. We have a number of tools available to support organisation, to lodge compliant prescribed information with us.

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SG So, for example, we have two templates for prescribed information, which act as a reminder to organisations to include all the material that is required by the RO Act, as well as the RO Regulations.

We also have our proactive Election Alerts Programme, which is designed to remind organisations by letter in the months before a scheduled election that PI will be due soon, in order for that election to be arranged.

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SG While it doesn't cover some elections, such as casual vacancies that arise in an organisation, it can act as a helpful reminder that organisations should be turning their mind to an upcoming election. And that's all part of achieving voluntary compliance. We also have the compliance calculator on our website, to assist with calculating and meeting your election lodgement timeframe.

And for general information about how elections are conducted, we have also published a factsheet and other written information which answers frequently asked questions.

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KM So, Sam, in this podcast I want to focus on the lodgement of PI. That's the document that organisations need to lodge with the ROC, at least two months before nominations open. For big elections with lots of offices, you might actually want to lodge that document much earlier, if you think that the ROC or the AEC needs more time to process the matter.

The ROC has set itself a KPI to issue a decision for an election within 40 working days from the lodgement of PI. In reality, it doesn't need to take this long.

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KM In fact, our data tells us that it's often much sooner. In the last financial year, the ROC on average took 21 working days to issue a decision. If your decisions are taking significantly longer than this, there might be various reasons why this is the case.

But feel free to get in contact with us and ask. It might be that we are dealing with a complex election, with lots of your officers to be elected. Your rules might also take time to interpret.

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KM Or, it could be that there is important detail missing from your prescribed information, which we need to get from you. Sam, can you tell us the information that needs to be included in the PI? How can organisations ensure that they lodge it so that it's correct the first time around?

SG Sure, Kristina. The best advice I can give, and a good starting point for lodging compliant prescribed information, is to use our template. We've published two prescribed information templates on our website.

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SG I can explain the distinction between them shortly, but firstly I just want to encourage organisations to use these templates. Because, in our experience, organisations who do use the template are far more likely to provide us with all of the information that's required.

By information, I mean the name and number of office positions, the reason for the election. So, for example, if it's a scheduled election, or is it a casual vacancy because an officer has resigned. Or, have there been insufficient nominations from the previous election?

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SG If it's a casual vacancy, you'll need to provide evidence of the vacancy, so we can be satisfied that the office is actually vacant. Changes to officer or removal from office can be highly contentious, so we will need to make enquiries with you, if you don't include that evidence.

Your PI needs to tell us who the relevant electorate is, as well as the type of voting system for the election.

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SG Is it a direct election by all members, or is it collegiate? That is, elected from among a group of other officers. And key dates that may be outlined in your rules, like when nominations for the election open and close, and the day the role of voters closes.

It should also be signed by the proper person. So, that is the officer who is authorised under your rules, to sign the prescribed information.

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SG It can't be signed by an employee who's not an officer. And if something changes, please let us know. You might have realised that the person only resigned from one of their roles. Not all of them. The sooner you tell us, the better.

If you get information wrong, or you leave it out, or the declaration isn't signed by an authorised person, the ROC may take longer to issue an election decision. The action officer assessing the PI will need to get in touch with your organisation to organise for it to be corrected.

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SG And then, you'll need to respond to it. All of this takes time. This, however, can be avoided through the lodgement of compliant PI, and by using one of our templates.

KM So, that brings me to something you mentioned earlier, Sam; that the ROC has two prescribed information templates. The first template is the one that is used for the vast majority of industrial elections, and that concerns the election of officers. So, that is the election of people who meet the definition of office under the RO Act.

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KM These are people like your Secretary, your Assistant Secretary, President and Vice President. It will also include people who sit on your committee of management, and



who perform particular functions, like manage your organisation or branch's affairs, determine policy, and make and enforce rules.

If you need more information to help identify who your officers are, you can familiarise yourself with the full definition in section 9, and also your rules.



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KM You can also listen to our podcast episode 4, 'Who is an Officer?'. We produced this because it is a question that is so frequently asked, and it's integral to a number of compliance activities regulated by the ROC.

But Sam, what is the other template, and how is it different to the PI template for the election of officers?

SG Some organisations' rules allow for the election of non-office positions. So, that's people who do not meet the definition of office in section 9.



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SG It's not exceedingly common, but some organisations elect their Executive Director, for example, who's not an officer under the rules. For other organisations, it's roles such as workplace delegates. So, the ROC has a second PI template for organisations to use for these elections.

This distinction is important because the RO Act requires organisations to do something extra for elections, for non-office positions.



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SG Before you lodge your PI with us, if the election is for a non-office position, you must write to the AEC and request permission for the election in writing. You then need to provide a copy of that request to the ROC when you lodge your prescribed information with us.

Not following the correct process can slow down an election decision being issued. We have seen this happen from time to time, so to highlight the different procedure and to avoid the delays, we do have a different template for non-office position elections, to encourage the proper lodgement of documents.



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KM Sam, how else can an organisation communicate with the ROC to help us work efficiently?

SG Good communication is the key. If you let us know about issues upfront, we're able to work with you to find solutions. And we want to know about potential problems early



in the process, so that they don't slow down the decision-making process. A really good example of this is when you have rule changes that are with the Fair Work Commission, at the same time as an upcoming election.



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SG As we know, elections must be conducted in accordance with the rules of the organisational branch that are in force at the time the nominations open. The ROC and the AEC will not know about your application to the FWC to change your rules, unless you tell us.

Advising us when you lodge your PI means that we can communicate with you and make arrangements for the election that are appropriate, and considerate of your rule-change application.



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SG You may be aware of a particular case involving an organisation that ended up in the Federal Court, because of this very issue. What happened there was that the ROC issued an election decision based on the rules as they existed at the time, without knowing of a rule-change application that had been lodged.

The Fair Work Commission subsequently certified the rule changes, which entirely changed the officers relevant to the election. And the AEC had already begun to conduct the election based on the old rules.



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SG That is, the ones that were enforced at the time the ROC issued the election decision. The organisation wanted to stop this election, and have the election conducted in accordance with their newly certified rules. And they lodged prescribed information for this to occur.

However, the AEC wasn't going to stop an election that the law required them to conduct, because of the original valid decision. So, the organisation had to apply to the Federal Court, to seek orders stopping the election, and allow a new one to proceed under the new rules.



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SG The organisation eventually got the outcome they wanted, but it took Court proceedings and a lot of time and money to achieve this. We don't want these matters having to go to the Federal Court when they don't need to.

And I imagine you don't want to go there either, if it can be avoided. So, let us know when you lodge your PI, if you have a rule change before the Fair Work Commission



that may affect the election. Our template expressly asks you to tell us, so that we have notice of it, and can work with you to issue a decision that is mindful of the proposed rule change.



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SG It might be that we wait for the rule change to be certified before we issue a decision, which is what we did in the case of an organisation that recently had rule changes certified, that entirely changed its structure and offices. Or there might be some other solution. So, we'll work with you, as well as the FWC and AEC, to assist your organisation throughout the process.

KM And, Sam, what happens if an organisation skips over this part of the template and leaves it blank?



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SG We're really committed to avoiding a repeat of that organisation's experience. If you don't tell us either way on your prescribed template we will contact you directly to ask the question. Again, this might slow down the process, and that can be avoided by letting us know in your initial lodgement.

KM That's a really handy tip. Thanks, Sam. Now, in my experience of assessing election matters, it is often the reading and interpreting of organisation rules that take up a lot of the processing time.



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KM The rules of all federally registered organisations and their structures, are unique. Some organisations are small in size, with rules that are simple to interpret. Others have grown organically over time, and can be more complex.

Some have a set of national rules, and a set of branch rules. So, one example of a particular election rule that organisations can help us with is where the number of officers to be elected is based on a formula.



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KM Sam, can you explain what organisations need to do to assist the ROC if there is a formula in their election rules?

SG Sure, Kristina. Not all organisations have a formula in their election rules, but some certainly do. So, for example, your rules might say something along the lines of: the number of council delegates from each region shall be determined in accordance with this formula. And the formula will say, if you have less than 100 members, you can have two delegates.

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SG If you have between 100 and 199 members, you can have three council delegates, and so on and so forth. And to determine the amount of members, regard will be had to the number of financial members at 5 pm, on 30th June.

So, with this example, the ROC needs additional information to calculate the number of officers the branch is entitled to.

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SG In their PI, the organisation needs to tell us where in the rules to find this formula, and also how many financial members each region had at 5 pm, on 30th June. Again, this goes to the issue of communicating information to the ROC. If you don't tell us, we won't know, and it will take time to request the information from you, and for you to provide it to us.

To remind you to provide the ROC with this information, we've made some changes to our PI template over the last 12 months.

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SG We now ask you to provide all the information relevant to formulas contained in your rules. This is another benefit of using our template.

KM And what about elections with multiple stages? How can organisations maximise efficiency for these elections?

SG Organisations can and should lodge their PI for all stages at once with the ROC, at least two months before nominations open for the first stage of the election. This will help us to address every stage of the election in a single decision.

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KM However, something to consider here is to watch your electorates, because they will probably change from one level to the next. Remember, a DVS election, or direct voting system election, is one where all of the members vote. And a CVS, or collegiate voting system election, is one where a bunch of already elected officers vote to elect other officers. We see organisations confuse this in their PI quite frequently.

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KM So, earlier you mentioned that organisations must include in their PI the key dates that may be contained in the rules, like when nominations for an election open and close. What happens if your organisation's rules don't provide a date? How can organisations complete this part of their PI?

SG Where rules don't specify a date, organisation should write on their PI that the date and time are to be determined by the returning officer.



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SG This is included in our template, which guides you through it. Even if your rules are silent on dates, you might have a preference around when you want nominations to open and close. In the current pandemic situation, it's unlikely that all preferences will be accommodated by the AEC, given the temporary stop on elections.

And there may be delays returning to normal. However, ordinarily, and in the past, the AEC, for the most part, have been able to accommodate preferences.



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SG You'll just need to identify on your PI that the dates you have written down are only preferences, and are not prescribed by your rules. I don't think I can stress the importance of communication in this area.

KM And, finally, while we're on the topic of communication, let's finish up today with a post-election report. This is issued by the AEC after the results of the election have been declared. It's a way for the AEC to communicate to organisations any issues that occurred during the conduct of the election.



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KM Sam, can you explain the post-election report, and what organisations need to do with it?

SG You're right. The post-election report is an opportunity for the AEC to identify and then communicate to an organisation any issues that have occurred during the election, and to advise them to remedy these before the next election.

So, for example, the report may identify rules that were difficult for the AEC to interpret or apply.



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SG If the report identifies that rules were difficult to interpret or apply, then your organisation must reply to the AEC within 30 days, providing a response to the issues raised. It is up to your organisation what particular action you take, but you need to give proper consideration to it.



Any response that you provide to the AEC must also be available to members, for example, on your website.

KM Thanks, Sam. So, just to summarise our discussion:

Industrial elections require good communication between organisations, the ROC, AEC, and even the FWC on occasions



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KM The ROC works to issue election decisions in a timely manner. There are ways that organisations can influence our processing time, through the lodgement of correct PI, and by letting us know early of certain issues like pending rule changes.

During the pandemic, the ROC is processing election decisions in largely the same way as we always have.



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KM The AEC have, however, changed their approach in response to current restrictions. Please get in contact with us, if you have a question about an election decision or any other election-related issue. You will need to contact the AEC if, however, your question relates to an election that is already underway.

Thanks so much for joining me today, Sam.

SG Thanks very much for having me, Kristina.

KM Please join us for next month's podcast, the second instalment in our Good Governance in Practice Series: Holding Meetings, where we'll aim to give you the best practical tips and real-life examples about how to hold meetings in compliance with the legislation.



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UN It is designed to assist in gaining an understanding of the relevant provisions of the legislation, the ROC, and its work. The ROC is not able to provide legal or accounting advice.



For further information, please see the materials on our website, www.roc.gov.au, or contact us at regorgs@roc.gov.au.