



Australian Government

Registered Organisations Commission

# Elections

## Links

- [Annual returns and notification of changes](#)

## In this section

- [Conduct of an election](#)
- [After the election](#)
- [Offences](#)
- [Disqualification from office](#)
- [Exemptions in relation to elections](#)
- [Questions and answers](#)

The *Fair Work (Registered Organisations) Act 2009* (the RO Act) aims to ensure that registered organisations of employers and employees are properly regulated, 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.

Generally, the maximum term of office allowed under the RO Act is 4 years (section 145). However many organisations must hold elections more frequently as their rules provide for terms of less than 4 years.

In exceptional circumstances, the RO Act allows for organisations' rules to provide for terms of office of up to 5 years for, and only for, the purpose of synchronising elections in the relevant organisation (section 145).

## Rules must provide for elections

The rules of an organisation must provide for election of the holder of each office at the national or branch level.

The rules must also provide for nominations, ballots, scrutineers and the term of office.

The rules may also provide for filling of casual vacancies.

For information on what the rules must provide and how to make alterations please visit the [Fair Work Commission's website](#) <sup>☞</sup>. The ROC does not alter rules.

## **Conduct of election**

The general requirements are as follows:

- All elections for office holders of organisations and branches must be conducted by the Australian Electoral Commission (the AEC) through arrangements made by the Registered Organisations Commissioner (the Commissioner) (subsection 182(1) of the RO Act). The expense of conducting such elections is borne by the Commonwealth.
- Elections must be conducted by direct voting system (DVS) or by collegiate election.
- A DVS election means office holders are elected by and from members of the organisation. Collegiate elections are those whereby office holders are elected by and from a group of office holders that have already been elected (see s.6 of the RO Act for full definitions of DVS and collegiate elections).
- All elections must be conducted by secret ballot.
- All elections by a direct voting system must be conducted by a secret postal ballot and the rules of each organisation must include provisions for elections by that method.
- The RO Act allows organisations and branches to apply for exemptions from the requirement that the AEC conduct elections and/or from the requirement that elections be conducted by a secret postal ballot.

The RO Act allows organisations and branches to apply for exemptions from the requirement that the AEC conduct elections (s. 183) and/or from the requirement that DVS elections be conducted by a postal ballot (s. 144).

Further information regarding such exemptions is provided below.

## **Arranging for the conduct of an election**

**(NOTE these requirements do not apply if an organisation or branch has an**

## **exemption from the conduct of elections by the AEC.)**

Before arranging for the conduct of the election, the Commissioner must be satisfied that an election is required to be held under the rules of the organisation.

### ***Lodging prescribed information***

The organisation or branch must lodge the following prescribed information:

- the name and numbers of each office or position for which an election is due
- the reason for the election, being either:
  - scheduled - the term of office has expired or is due to expire in the normal course of events; or
  - casual vacancy; or
  - insufficient nominations - an office or position was not filled at a previous election; or
  - a new office or position has been created.
- the electorate for the ballot
- the dates and times for the opening and closing of nominations
- the day provided for in the rules on which the roll of voters is to be closed
- the voting system to be used (direct voting system or collegiate electoral system), and
- any non-office positions for which an election is requested (section 187).

The prescribed information **must** be signed by an authorised officer, the definition of which is found in ss.6 and 9 of the RO Act.

If the Commissioner is satisfied that an election is due to be held, arrangements will be made for the conduct of the election by the AEC. If an organisation or branch has any questions regarding the conduct of a particular election they should be directed to the AEC.

It is recommended that prescribed information for related collegiate elections be lodged in the same prescribed information as the first-stage direct voting election. This does not need to be lodged separately.

### ***Timeframes for lodging prescribed information***

To assist the Commissioner from that view, certain information **must** be lodged with the Registered Organisations Commission (the ROC) no later than 2 months before nominations are due to open.

Failure to lodge prescribed information within this timeframe is a civil penalty provision (section 189 of the RO Act). This means that a financial penalty can be imposed upon an organisation if the prescribed information is lodged later than 2 months before nominations are due to open.

A later day for lodgement can be applied for and granted by the Commissioner.

If an organisation or branch seeks a later day for lodgement, it is strongly recommended that an application is made **prior to** the date the prescribed information is due to be lodged. The application should specify reasons for the proposed late lodgement.

### *Non-officer positions*

If your rules provide for an election to a position that is not an office, then you may request to AEC to conduct the election (s. 187 of the RO Act).

A copy of the request must also be lodged with the Commissioner together with prescribed information in relation to the election.

### *Elections and rules of the organisation or branch*

Elections must be conducted in accordance with the rules of the organisation or branch that are in force at the time the nominations open (s. 193 of the RO Act and regulation 132 of the RO Regulations). It is strongly recommended that you advise the ROC when lodging the prescribed information if any rule alterations are lodged, or are shortly to be lodged with the Fair Work Commission. The ROC will be able to explore options with you about making arrangements for the election.

## **After the election**

When the election is complete, the AEC provides a declaration of results and a written post-election report.

The declaration and report are given to the ROC and the relevant organisation or branch. The report includes:

- the number of written allegations (if any) of irregularities made to the AEC during the election
- action taken by the AEC in relation to those allegations
- any irregularities identified by the AEC and action taken by the AEC

- if the register of members contained an unduly large proportion of inaccurate members' addresses, a statement to that effect, and
- if a rule was difficult to interpret or apply, a statement about that matter as well as any rules which could address the matter.

If the post-election report identifies rules that were difficult to interpret or apply (an 'Adverse Report'), the organisation or branch must provide a written response to the AEC within 30 days which specifies what action, if any, the organisation or branch intends to take. An extract from the Adverse Report and the organisation's response must be made available to members within 30 days of it being provided to the AEC.

## **Offences**

Various offences exist in relation to the conduct of an election. They include:

- influencing candidatures and voting
- influencing lodgment of objections
- using an organisation's property or finances to assist one candidate against another candidate
- requiring or inducing another person to show a ballot paper while the paper is being marked or after it has been marked
- failing to comply with a direction or request of a returning officer, and
- hindering or obstructing an electoral official in the performance of his or her functions.

## **Certain persons disqualified from holding office in organisations**

Unless otherwise granted leave by the Federal Court, ss. 211 to 215 of the RO Act:

- excludes people convicted of prescribed offences from eligibility for election for 5 years; and
- stipulates that persons holding office who are convicted of offences cease to hold office at the end of the period of 28 days after a conviction of a prescribed offence.

A prescribed offence is defined by s.212 of the RO Act.

While the provisions of the RO Act relating to persons disqualified from holding

office in organisations are not extensively litigated, they are important to ensure that registered organisations are accountable to their members, efficiently managed and operate effectively.

The ROC encourages all federally registered organisations to consider these provisions when candidates are nominating or are being nominated for election to office within organisations. Organisations should also be aware of the implications for office holders who are convicted of prescribed offences while holding office.

## Exemptions relating to elections

The RO Act allows an organisation or branch to apply for two types of exemptions in relation to elections. They are as follows:

- an exemption from elections being conducted by the AEC (AEC exemption) (sections 183, 184 and 186). This type of exemption allows an organisation or branch to conduct its own elections; and
- an exemption from the requirement to conduct secret postal ballots (postal ballot exemption) (section 144). This type of exemption allows the rules of the organisation to provide for elections other than by a secret postal ballot (for example, by a secret attendance ballot).

However it should be noted that, for a DVS election, the ballot must be **secret**, irrespective of whether or not a postal ballot is conducted.

The organisation should also ensure that the provisions of ss. 215 to 217 are upheld if an office holder has been convicted of a prescribed offence.

The AEC exemption may be granted by the Commissioner if they are satisfied that:

- the rules comply with the election requirements of the Act;
- the election will be conducted under the rules of the organisation; and
- the election will be conducted in a manner that will afford members entitled to vote an adequate opportunity to vote without intimidation.

The Commissioner can also revoke the AEC exemption.

The postal ballot exemption is granted by the General Manager of the Fair Work Commission if satisfied that the relevant statutory requirements have been met. For more information on this exemption please contact the Fair Work Commission.

# General questions and answers

The RO Act seeks to encourage member participation within strong democratic organisations. To this end, the RO Act requires that an organisation's rules contain a process for electing officers directly from the members or indirectly through collegiate elections. These officers are responsible for managing and governing the organisation and branches. The RO Act also has external processes to ensure elections are efficient, transparent and conducted by the AEC.

If you have questions about your election process, including terms, nominations, balloting or schedules, you should first examine your rulebook. If your rulebook is unclear, you may want to seek advice from the ROC or the Fair Work Commission. However, ultimately, organisations are responsible for the content of their rules and the democratic structures in place. Below are some general question and answers that may help you meet your obligations under the RO Act.

## Prescribed information template

*Where can I download the template for prescribed information?*

You can download the template for prescribed information from the [Registered organisations fact sheets](#) page on this website.

*If I want advice on a draft of prescribed information, who should I contact?*

Please email requests for advice, with a copy of your draft, to [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au). If you would like to discuss your concerns over the phone please request this in your email and provide your contact details.

## Nomination dates

*How do I find out when nominations open?*

Please read your rulebook carefully. The rules will normally provide time frames, dates or information on when the nominations open. Timeframes may be impacted by many factors, such as when the last election occurred, terms of office, duration of the ballot, timelines for the opening and closing of nominations and closing of the roll of voters. If you are uncertain, please contact us for advice at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au)

For casual vacancies and insufficient nominations elections, rules might provide time

frames for the opening and closing of nominations. If they do you must comply with those time frames. However rules are often silent regarding time frames for casual and insufficient nominations elections. In these instances, prescribed information should be lodged as soon as possible and the dates described as 'to be determined by the Returning Officer'.

*What do I put if our rules do not state the date & times nominations open and close?*

Please state 'To be determined by the Returning Officer' on the prescribed information. This is also relevant to casual vacancy and insufficient nominations elections.

## **Casual vacancies & insufficient nominations**

*Do we have to have an insufficient nominations election?*

The RO Act requires that all offices are elected, so whenever a term of office expires it must go to an election. You **cannot** appoint someone to an office under a casual vacancy rule if it was not filled at an election

If the office is not filled at the election, unless the rules state otherwise, new prescribed information must be lodged as soon as possible and another election held to fill it (an insufficient nominations election).

Insufficient nominations elections must be held when mandated by the rules. Such elections must also be held for offices which are vital to the functioning of the branch or organisations, for example, a Secretary or for members of a non-functioning Committee of Management.

If your rules allow, you may decide not to fill an office that is vacant. However you must check your rules to ascertain whether this is possible. Note, however that key offices such as the Secretary, President, Treasurer etc. must be filled if the branch or organisation is to fulfill its function.

You should first examine your rules because it is those rules that will be relied upon. If you think your rules are unclear about whether you can leave an office empty or are required to have an election, please contact us at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).

*Do we have to have casual vacancy elections?*

If a vacancy has occurred (casual vacancy), you will need to check your rulebook to find out if that office must be filled or if it can remain vacant. if your rules are silent, it



is the view of the ROC that the office must be filled if it is vital to the functioning of the branch or organisation (for example, the National Secretary).

The RO Act requires that all offices are elected, so unless the rules state otherwise, whenever an office is vacated it cannot be filled other than by an election.

Sometimes rules will allow the organisation to appoint someone into the office once a set period of time has passed since the last scheduled election. The RO Act allows this to occur.

You should first examine your rules because it is those rules we rely on. If you think your rules are unclear about whether they allow an appointment or whether you are required to have an election, please contact us at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).

*What evidence do I need to provide for casual vacancy because of resignation or death?*

When an officer resigns, you can provide a copy of the email or letter that informed the organisation of the resignation as evidence of the casual vacancy election.

If the officer has died, you can provide a declaration signed by an authorised officer.

*What information needs to be in the resignation letter?*

A resignation letter or email must show that the person has resigned and when the resignation took effect.

Some officers hold multiple offices, for instance Branch Committee Member and National Representative. In this case, the resignation letter or email must clearly identify which office or offices the person is resigning from.

*What if the resignation letter contains private information?*

Resignation letters can contain private or sensitive information. When providing them as evidence you can redact private or sensitive information from the resignation, however it must be clear that information has been redacted.

Despite any redaction the letter must still show that the resignation is from the person resigning, that the person has resigned, from what offices the person has resigned and when the resignation took effect. We do not publish resignation letters or emails online for public viewing.

## **Lodging two months before nominations open**

*How do I lodge the prescribed information two months before nominations open in a casual vacancy election or an insufficient nominations election?*

Sometimes the rules will specify when nominations open and close for casual vacancy or insufficient nominations elections, however this is rare. If they do, you must comply with the time frames in the rulebook and the prescribed information will be in accordance with those timeframes.

Where the rulebook is silent, the two-month time frame is unknown. In this case prescribed information should be lodged as soon as possible once you know the office is or will be vacant.

*How do I lodge prescribed information two months before the 2nd or 3rd stage (collegiate) election?*

For a collegiate election, or a subsequent stage election, we strongly recommend that the prescribed information is lodged all at once at least two months before nominations open in the first stage of the election.

This means the prescribed information for the direct election and all collegiate elections are lodged at the same time. We can then arrange for every stage in one decision, and this allows the election to progress as quickly as possible.

*In what circumstances are extensions of time for lodgment of prescribed information granted?*

Extensions of time for lodgment of prescribed information should be applied for at least two months before nominations open in the election.

The application should explain the extenuating circumstances that will cause the prescribed information to be late. The Commissioner will determine on a case-by-case basis whether an extension should be granted or not.

Please note that based on a range of previous decisions concerning extensions of time, it is unlikely that explanations such as 'too busy' or 'unaware' will be accepted as extenuating circumstances. Extenuating circumstances are likely to involve something more significant that demonstrates why the delay could not reasonably be avoided.

*Should I lodge the prescribed information if pending rule alterations are lodged with*

*the Fair Work Commission?*

Yes, the prescribed information should be lodged within the statutory timeframe.

The Fair Work Commission is responsible for the alteration of rules of registered organisations. Sometimes rule changes can affect elections, for example, timelines or the number of offices.

The prescribed information should be lodged in accordance with the rules that are current at that particular point in time. It is strongly recommended that you advise us of any rule alterations that have been lodged with the Fair Work Commission, and if and how the proposed changes are likely to affect the upcoming election.

The ROC will be able to explore options with you about making arrangements for the election.

## **Election Alerts**

*What is the new Election Alert program?*

The Election Alert program is a proactive strategy of the ROC designed to remind organisations by letter about three months before a scheduled election that their prescribed information will be due soon.

It is designed to help organisations achieve voluntary compliance.

While the letter is designed to help organisations, the obligation to lodge prescribed information rests with the organisation. It should be noted that this is a civil penalty provision and non-compliance can result in fines.

It is important that you remember that it is a statutory obligation for organisations to be aware when elections are due and lodge the prescribed information on time. There are about 500 branches and central bodies in registered organisations, and because of the diverse range of office holders, election cycles and complexity of rules, election alerts are, at best, an aid and cannot be relied upon.

It should also be noted that the ROC election alert system is still under development and may contain errors. If you receive an alert and you do not believe that an election is due, please contact the ROC so that we can amend our alert system.

Alternatively, if an election is due and we have not sent an alert, this does not mean

that the organisation or branch is not obligated to lodge prescribed information. The obligation to ensure the appropriate prescribed information is lodged remains, and will continue to remain with the organisation or branch.

The Alert does not apply to casual or insufficient nominations elections.

## **Process & requirements after lodging prescribed information**

*How long does it take the ROC to process my election?*

We try to assess the prescribed information as quickly as possible but timelines will be affected by the complexity of the election, workloads and other factors.

We endeavour to have election decisions issued within 40 working days.

*I have a question about how the election will be run, or how long the election will take, who can I talk to?*

Once the decision has been issued instructing the AEC to arrange the election, the ROC does not have any further role. For information about how long the election will take or what processes are involved please contact the AEC directly.

*Once the election is done, do I need to do anything else?*

You will need to publish a notice on your website informing members that your post-election report is available.

If you have new office holders, you need to send the ROC a formal notification of change within 35 days. This is a statutory requirement and must be complied with.

You can download a template declaration for notifications of change on the [Registered organisations fact sheets](#) page on this website.

*Our post-election report has a paragraph that explains one of our rules was difficult to interpret or apply, what do I do now?*

You have received an 'adverse report'. You must reply to the AEC within 30 days of receiving it.

Your reply must be in writing and explain what steps, if any, you intend to take to fix the problem that the Returning Officer has identified. This may include altering your rules.

Once you have replied to the AEC you need to provide your reply and the relevant section of the AEC's post-election report to your members.

If you have any questions about this process or the timelines involved, or if you would like advice on possible rule alterations, please contact us at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au)

## **Legislative changes**

*Do election requirements change and how do I find out about changes?*

Election requirements can be changed by parliament at any time, however they have not been changed for many years.

The ROC has a [subscription service](#) which we use to send updates and important information about obligations under the legislation.

ROC policies and procedures may alter in response to feedback received. Please send any feedback to us via email at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).

## **Find out more**

- [Webinar - Elections](#)
- [Fact sheet - Elections in organisations and their branches \(PDF 224.6KB\)](#)