



## ROC's 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 democratically and are representative and accountable to their members. The RO Act and the rules of registered organisations provide for the regular election of office holders in organisations and branches as important elements 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, are likely to be affected by revised timeframes. The AEC has written to registered organisations advising that in light of the COVID-19 pandemic, it will:

- reset timetables for elections where ballots are currently underway (by extending the time for the ballot)
- put on hold all elections that it has not yet commenced, and
- review the situation in three months (i.e. towards the end of June).

Where an organisation or branch considers that an election is necessary for it to continue functioning, the ROC will work cooperatively with the organisation and the AEC to assist in resolving the issue. In the current environment, the priority of the Australian community, including government agencies such as the ROC and the AEC, as well as officers and members of organisations, is protecting the health and wellbeing of our community.

The AEC also must ensure that everyone who is entitled to participate in an election can do so, whether as candidates, nominators, voters or scrutineers. This includes making sure that there is no conduct that interferes with this. The AEC considers its temporary postponement of industrial elections as necessary to protect the health and well-being of everyone.

### **Should organisations continue to lodge prescribed information for an election?**

During the COVID-19 pandemic organisations should make their best efforts to lodge prescribed information for an election with the ROC, in accordance with the RO Act and their relevant rules. This will ensure that assessments and appropriate plans can be made about the timing and conduct of elections. If organisations or branches are experiencing difficulties



with lodging prescribed information, or are unsure about it, they are encouraged to engage with the ROC because we can help.

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

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

It may eventuate that office holders have been elected to hold an office for a specific term which has expired, but an election cannot be held. There is a legal doctrine of 'holding over' which means that, in most cases, a person remains in office until their removal or resignation or until another person is subsequently elected to that office (even if their term has expired).<sup>\*</sup> There are good reasons for this, in particular to ensure that an organisation can still operate. As stated in the UFU case<sup>\*\*</sup> continuity of governance is essential for organisations to operate 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 function efficiently. It may be, for example, that the office being vacated can be left vacant without significantly impacting on the organisation in the short to medium term. Organisations and their governance bodies should make that assessment and can contact the ROC for advice and assistance.

The ROC is aware that some organisations have rules which require an office to be vacated at the expiry of its term and if your organisation has a rule requiring the vacating of one of your critical offices at the expiration of its term, we would encourage engagement with the ROC to assist with an assessment of any potential impact in the short term.

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

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

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

If organisations are unsure about election requirements or processes, they are encouraged to engage with the ROC because we are keen to assist. You can contact us via email at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au) or by phone on 1300 341 665 between 9am and 5pm, Monday to Friday, AEST.

<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