



Guidance for organisations and their branches where elections have been delayed

One of the objectives of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) is to ensure that registered employee and employer organisations function in a democratic manner and are representative and accountable to members.

The RO Act requires that office holders in registered organisations are elected, which is an important element of ensuring their democratic control.

In most instances, elections for office holders must be conducted by the Australian Electoral Commission (AEC).

Every organisation must have rules which identify their offices and their terms as well as setting out how people are elected to them.

Organisations and their branches may at times be affected by issues that affect their election timeframes. This was seen most notably in recent years when, to protect the health and safety of members of registered organisations and AEC staff, the AEC suspended elections following the outbreak of the COVID-19 pandemic.

This resulted in delays to elections and, in many cases, has had effects on when terms of office started (often several months later than the timeframe set out in the rules). In some cases it has also led to election cycles potentially becoming 'out of sync'.



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Should we still lodge prescribed information for an election?

The RO Act requires organisations and their branches to lodge prescribed information with the Fair Work Commission (the Commission) when an election is required according to their rules.

This means that **if your organisation's rules say an election is due**, you must lodge prescribed information with the Commission. Late lodgement or non-lodgement of prescribed information may lead the organisation into non-compliance with the relevant rules and potentially the RO Act.

If there was a delay in your previous election taking place, please identify this when you lodge the prescribed information.

Lodging your prescribed information will ensure the AEC can make appropriate plans for the conduct of your election. If you are experiencing difficulties with lodging your prescribed information, please contact the Commission as soon as you become aware of this.

What happens if an election is delayed?

Sometimes when a person has been elected to hold an office for a specific term, circumstances might arise where an election cannot be completed before the end of that term of office. Organisations are often concerned about what happens in these circumstances.

There is a legal doctrine of 'holding over' which means that, in most cases, a person remains in the office until their removal or resignation, or until an election is held for that office (even if their term has expired).¹ There are good reasons for this, in particular to ensure that an organisation can still operate. Courts have identified that 'continuity of the "government" [is] essential...to be capable of operating effectively'.²

However, if the rules of your organisation state that the person must vacate their office at the end of a set period of time, then this may override the doctrine of holding over. In these cases, the office would be vacant until an election is held, so it is important to consider the impact of this vacancy on the ability of the

¹ *McLure v Mitchell & ors* (1974) 24 FLR 115 at 126

² *Re United Firefighters' Union* (1968) 14 FLR 467 at 478



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organisation to operate. Please contact the Commission to seek guidance about how this may affect your organisation.

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

Please get in touch with the Commission 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 a delayed election means that there may be a shortened term and under your rules the new prescribed information is due (either now or soon) for the next election.

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

If you need assistance with election requirements and processes, you can contact the Registered Organisations Services Branch of the Commission via email at regorgs@fwc.gov.au or by phone on 1300 341 665 between 9am and 5pm, Monday to Friday, AEST.