** CL 032** | 1 August 2024

# Checklist of proposed rules

## For registration under the *Fair Work (Registered Organisations) Act 2009* (the Act)

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| **Name of Association:** |  | **Date lodged:** | Click or tap to enter a date.  For Commission use only |
| **Type of association:** | Click to select one. | **Action officer:** | For Commission use only |
| **Matter number:** | For Commission use only | **Link to matter folder in SharePoint:** | For Commission use only |

| **Section of the Act** | | | **Mandatory: Y or N** | **Met:  Y or N** | **Rule No.** | **Description/Comment** |
| --- | --- | --- | --- | --- | --- | --- |
|  | | **Section 141** | | | | |
| **141(1)(a)** |  | Purpose of the organisation   1. What does the organisation aim to achieve? 2. Commonly called objectives 3. The purpose must be consistent with:    1. a membership-based democratic industrial organisation;    2. an employer or employee (but not both) organisation;    3. a not-for-profit organisations. 4. The purpose must not be inconsistent with the Act | Y |  |  |  |
|  |  | Eligibility for membership   1. Who can join this organisation? 2. NOTE: eligibility rules must meet the requirements to be registerable, see:    1. section 18A – employer association    2. section 18B – employee association    3. section 18C – enterprise association | Y |  |  |  |
|  |  | Industry   1. Description of the industry or industries in which its members carry on business or are employed | N |  |  |  |
| **141(1)(b)** | **(i)** | Powers and duties of committees of the organisation and its branches (if any)   1. This includes committees of management, councils, conferences, boards, howsoever called, which are committees of office holders (see section 9 of the Act) | Y |  |  |  |
| **141(1)(b)** | **(i)** | Power and duties of holders of offices   1. Office and officers are defined in sections 6 and 9 of the Act | Y |  |  |  |
| **141(1)(b)** | **(ii)** | Manner of summoning meetings of members and committee meetings   1. “Summoning” can be interpreted as having the following steps:    1. who or how is it decided to have a meeting    2. who gives notice of the meeting    3. how is notice given    4. what is on the notice, including time, date and place    5. who receives notice 2. Rules are not required to have all of these steps, but as a minimum they should have:    1. how it is decided to have a meeting, and    2. how notice is given | Y |  |  |  |
| **141(1)(b)** | **(ii)(a)** | Keeping of minute books   1. Minutes books which record proceedings and resolutions of the committees of management of the org and branches to be kept 2. Ideally, the rules should set out:    1. who takes the minutes, and    2. how the minute books shall be kept | Y |  |  |  |
| **141(1)(b)** | **(iii)** | Removal of office holders   1. Under what circumstances can an officer be removed from office. 2. Note: subsection 141(1)(c) strictly limits the scope of rules which provide for the removal from office (see below) | Y |  |  |  |
| **141(1)(b)** | **(iv)** | Control of committees by members   1. This is generally determined by an assessment of the rules as whole:    1. Are there means for members to make decisions (via meetings or any other ways, such as a plebiscite)?    2. What weight do their decisions have over the committees?    3. How much control do members have in relation to the election of committees?    4. What, if anything, impedes the ability of members to control committees? | Y |  |  |  |
| **141(1)(b)** | **(v)** | Manner in which documents may be executed   1. Who shall sign documents on behalf of the organisation 2. If the common seal is required, who is empowered to affix the common seal 3. NOTE: many documents MUST be signed by an officer for the purposes of the Act, see for example sections 192, 198, 233 and 236, regulations 126 and 138, and the financial reporting statements | Y |  |  |  |
| **141(1)(b)** | **(vi)** | Manner of notifying Commission of industrial disputes   1. Who shall notify the Commission, and 2. In what circumstances | Y |  |  |  |
| **141(1)(b)** | **(vii)** | Times when and terms on which persons become members   1. Section 166: any person (including corporate entities for employer organisations) is entitled to be admitted as a member, as long as:    1. They are eligible under the eligibility Rule    2. They are not of general bad character, and 2. They have paid any amount properly payable in relation to membership | Y |  |  |  |
| **141(1)(b)** | **(vii)** | Times when and terms on which persons cease (otherwise than by resignation) to be members   1. Section 166: a member is entitled to remain a member as long as:    1. They remain eligible under the eligibility rule    2. They are not of general bad character    3. Paid amounts properly payable in relation to membership    4. Comply with the rules of the organisation (including rules relating to misconduct) 2. Membership can be terminated subject to Chapter 6 Part 3 of the Act:    1. The member is not a person of the kind mention section 18A, 18B or 18C (section 171A)    2. Removed from the register because they are not financial | Y |  |  |  |
| **141(1)(b)** | **(viii)** | Resignation of members under section 174   1. Section 174 sets out how a member can resign from an organisation. The rules must replicate these requirements. | Y |  |  |  |
| **141(1)(b)** | **(ix)** | Manner in which property controlled and funds invested   1. Who has the authority to control the property/funds 2. It is usual practice for specific procedures regarding control pf property and funds to be contained in policy and procedure documents | Y |  |  |  |
| **141(1)(b)** | **(x)** | Yearly (or more frequent) audit   1. The financial reports & statements required under Part 3 of Chapter 8 of the Act must be audited by an auditor registered under the RO Act 2. On at least a yearly basis | Y |  |  |  |
| **141(1)(b)** | **(xi)** | Conditions funds spent   1. Who authorises expenditure 2. It is usual practice for specific procedures for expenditure to be contained in policy and procedure documents. | Y |  |  |  |
| **141(1)(b)** | **(xii)** | Register of members   1. Who is responsible for keeping the register 2. This must be an office holder, usually the Secretary (see regulation 150) 3. If there are branches, the register may be arranged according to branches | Y |  |  |  |
| **141(1)(b)** | **(xiii)** | Alteration of rules   1. How the rules in this rulebook can be altered (including insertion of new rules and deletion of existing rules) | Y |  |  |  |
| **141(1)(c)** |  | Removal of elected persons to office   1. But **only** for the reasons specified in section 141(1)(c) 2. If found guilty in relation to the conduct specified in subsections 141(1)(c)(i), (ii) and (iii) | N |  |  |  |
| **141(1)(ca)** |  | **The development and implementation by org and branches of policies relating to expenditure**   1. This does not require the rules to set out policy and procedures relating to expenditure, it merely requires the org and branches to develop and implement policy | Y |  |  |  |
| **141(1)(d)** | **(i)** | **Informing applicants of:**  **financial obligations of membership** | Y |  |  |  |
| **141(1)(d)** | **(ii)** | **Informing applicants of:**  **circumstances and manner of resigning** | Y |  |  |  |
|  |  | Section 149 | | | | |
| **149** |  | Loans, grants and donations   1. An amount exceeding $1000 must not be made without the committee of management’s approval 2. Additional requirements are set out in section 149 | Y |  |  |  |
|  |  | **Elections: sections 143–146** | | | | |
| **143(1)(a)** |  | Election of holder of each office, by | Y |  |  |  |
| **143(1)(a)** | **(i)** | Direct voting system (DVS)   1. DVS will always be the first step for a collegiate system | Y |  |  |  |
|  |  | OR |  |  |  |  |
| **143(1)(a)** | **(ii)** | Collegiate system   1. Can only be one-tier in the case of a full-time office 2. Can be more than one-tier if office is not full-time | N |  |  |  |
| **144(1)** |  | If DVS, must be a secret postal ballot | Y |  |  |  |
| **143(1)(b)** |  | Elections must be conducted by a Returning Officer who is not an office holder or employee of the organisation | Y |  |  |  |
| **143(1)(c)** |  | Procedures the Returning Officer must follow when the nomination is defective   1. Opportunity for nominees to remedy defects must not be less than 7 days where practicable | Y |  |  |  |
| **143(1)(d)** | **(i)** | Manner in which persons may become candidates   1. This will include how to nominate, including whether nominators are required 2. This will include who can nominate 3. This may or may not include qualifications for office, for example a requirement for continuous membership for one year | Y |  |  |  |
| **143(1)(d)** | **(ii)** | Duties of Returning Officer   1. This need not be a specific rule, the duties can be dispersed through the election rules | Y |  |  |  |
| **143(1)(d)** | **(iii)** | Declaration of result | Y |  |  |  |
| **143(1)(e)** |  | All ballots must be secret ballot | Y |  |  |  |
| 143(1)(e)  143(3) | (i) | The days on which the roll of voters is closed for DVS  Which must be no earlier than 30 days and no later than 7 days before the nomination opening date | Y |  |  |  |
| **143(1)(e)** | **(ii)** | **Absent voting** | Y |  |  |  |
| **143(1)(e)** | **(iii)** | Conduct of the ballot   1. This must include the system of counting the ballot, for example first-past-the-post or a preferential system 2. The rules should also set out how the ballot paper is to be completed | Y |  |  |  |
| **143(1)(e)** | **(iv)** | Appointment, conduct and duties of scrutineers   1. A candidate can appoint a scrutineer for the count of the ballot 2. A candidate cannot appoint themselves as a scrutineer | Y |  |  |  |
| **143(1)(f)** |  | Ensure no irregularities occur   1. This is assessed by looking at election rules as a whole, or 2. This could also be satisfied by including this requirement as a duty of the Returning Officer, as long as no other rules lead to irregularities | Y |  |  |  |
| **143(2)** |  | Compulsory voting | N |  |  |  |
| **145** |  | Terms of office   1. Cannot be longer than 4 years without re-election 2. The term may be extended for the purpose of synchronising elections, but the total term must not exceed 5 years | Y |  |  |  |
| **146** |  | Casual vacancies   1. Without a casual vacancy rule, vacancies are to be filled by election whenever they occur 2. Note, if the unexpired term exceeds 3/4s of the term or 12 months, whichever the greater, the vacancy must be filled by election | N |  |  |  |
|  |  | **General requirements: All rules need to be assessed against the following requirements:** | | | | |
| **142(1)(a)** |  | Must not be contrary to, or fail to make provision required by this Act etc | Y |  |  |  |
| **142(1)(b)** |  | Must not prevent or hinder members from observing law etc | Y |  |  |  |
| **142(1)(c)** |  | Must not impose oppressive, unreasonable or unjust conditions, obligations or restrictions | Y |  |  |  |
| **142(1)(d)** |  | Must not discriminate on certain attributes | Y |  |  |  |
|  |  | **Obligations of the Act: Do the rules impede these obligations?** | | | | |
| **172(1)** |  | Unfinancial members to be removed from register of members | Y |  |  |  |
| **188** |  | Ballots cannot be counted unless returned in the declaration envelope provided to the voter | Y |  |  |  |
| **243** |  | Rules to have a designated officer for the purpose of financial reporting for each reporting unit of the organisation | Y |  |  |  |
| **266** |  | Full financial report must be presented to meetings | Y |  |  |  |
| **266(1)** |  | To a general meeting of the reporting unit | N |  |  |  |
|  |  | **OR** |  |  |  |  |
| **266(3)** |  | To the Committee of Management of the reporting unit   * **IF** the rules provide for 5% or less of members (NOT financial members) to call a general meeting of members to consider the financial report. | N |  |  |  |
| **192, 198, 233, 236**  **regulations 9, 126(2), 138(2), 150** |  | Rules to have an office of Secretary or authorise another office to keep the Register, to make declarations and lodge notifications with the Commission | Y |  |  |  |
| **345** |  | Entitlement of every financial member to vote at any ballot taken for the purpose of submitting a matter to vote   1. Assess this by looking at the rules as a whole: are financial members excluded from any ballots? | Y |  |  |  |