

MODEL RULES PROJECT

NATIONAL ORGANISATION – UNITARY FORM

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PART A – ABOUT THE ORGANISATION

A1 NAME

A1.1 The full name of the Organisation is **[INSERT name.]**

A1.2 The Organisation may also be known by the short name **[INSERT short name.]**

NOTE: Eligibility for membership is set out in Appendix A

NOTES TO RULE A1



Mandatory rule: suggested text

Key considerations

- It is mandatory for an organisation to have a name to satisfy one of the criteria for registration under the *Fair Work (Registered Organisations) Act 2009* (Cth) (RO Act). Model Rule A1 is a suggested rule that meets this requirement.
- It is also a practical step to identify your organisation.
- Criteria for registration include that the name must not be:
 - (i) the same as that of an already registered organisation, or
 - (ii) 'so similar to the name of an organisation as to be likely to cause confusion'.¹
- Once registered, your organisation cannot change its name unless the proposed name also meets these criteria.²
- Organisations that propose to amalgamate must propose a name for the amalgamated organisation that meets these criteria.³

Avoid choosing a name that may cause confusion with any other entity

The proposed name cannot risk 'mistaken identity':

- A proposed name will be 'so similar to the name of an organisation as to be likely to cause confusion' if that name would lead to 'mistaken identity'. That is, if the name proposed would lead to a reasonable belief that one organisation is the other.⁴

¹ RO Act section 19 (1) (g) and section 20 (1) (f).

² RO Act section 158 (3).

³ RO Act section 55 (1) (c).

⁴ See *Re Independent Teachers Federation* (1993) 50 IR 85, including earlier cases cited in that decision.

NOTES TO RULE A1



Mandatory rule: suggested text

Additionally, there are practical considerations. An organisation needs to be very careful when choosing or altering its name.

- Choosing a name that is the same as or very similar to another entity (for example an association registered in a different jurisdiction) will likely cause serious confusion for various people, such as members and potential members, officers, as well as others having dealings with the organisation.
- If you want your organisation to have a name that implies a relationship with another organisation or body, you should ensure that the name you choose is sufficiently distinct to avoid confusion between the two.
 - Here is a hypothetical example (not real organisations): There is a registered organisation named 'The Egg Producers Association NSW'. Egg producers in Victoria wish to register an egg producers association for Victorian producers. If its proposed name was 'The Egg Producers Association' that could well cause confusion, but if it used the name 'The Egg Producers Association Victoria' the connection between the two bodies is shown **without being likely to cause confusion**.

In conclusion, avoid choosing a name that is the same or very similar to another entity. If a similar name is needed make sure you add sufficient differentiation to distinguish the two legal entities.

'Short form' names

Organisations often have a 'long form' name (usually reflecting one or more amalgamations) but use a short form name or acronym. Both the long form name and the short form name that you choose for your organisation must comply with the criteria for registration referred to above.

Your organisation's acronym does not need to be included in the name rule.

A2 OBJECTS



NOTE: There is an **employee** and **employer** version provided. Check the box to help you mark the version to use.

☐ Objects for **employee** organisation

The objects of the Organisation are to:

- A2.1 Endeavour to promote, improve, further and safeguard the industrial, political, social and economic interests of members.
- A2.2 Endeavour to promote and improve the industrial and social conditions of all employees.
- A2.3 Be an association of employees capable of being registered as an organisation of employees under the RO Act, and to obtain and retain such registration.
- A2.4 Take all such action as may be necessary or appropriate to pursue the said objects, including without limitation, pursuing claims for members against employers, making representation to government, and undertaking media, including social media campaigns.
- A2.5 Provide financial relief or other assistance to members or families in need or distress.
- A2.6 Expend the funds of the Organisation in accordance with these objects.
- A2.7 **[INSERT: Organisation to add other objects if desired.]**
- A2.8 Do all such things and acts as may be necessary for, conducive or incidental to the furtherance or achievement of the above listed objects, or any of them or any combination of them.

☐ Objects for **employer** organisation

The Objects of the Organisation are to:

- A2.1 Endeavour to promote, improve, further and safeguard the industrial, political, and economic interests of members as employers.
- A2.2 Endeavour to promote and improve the economic or political interests of its members in all fields of public activity and enterprise.
- A2.3 Be an association of employers capable of being registered as an organisation of employers under the RO Act, and to obtain and retain such registration.
- A2.4 Take all such action as may be necessary or appropriate to pursue the said objects, including without limitation, pursuing or defending proceedings or action taken against any member by unions or employees, making representation to government, and undertaking media, including social media campaigns.
- A2.5 Expend the funds of the Organisation in accordance with these objects.
- A2.6 **[INSERT: Organisation to add other objects if desired.]**
- A2.7 Do all such things and acts as may be necessary for, conducive or incidental to the furtherance or achievement of the above listed objects, or any of them or any combination of them.

NOTES TO RULE A2



Mandatory rule: suggested text

You must have a rule in your rule book that sets out the purpose of your organisation.¹

Model Rule A2 is a suggested rule that meets this requirement.

- Commonly, such rules are titled 'Objects';
- You must decide whether you want an extensive list of objects or broad general statements;
- Objects must be consistent with the character of a membership-based, democratic industrial organisation;
- They must also be consistent with the character of your organisation as either an organisation of employees or an organisation of employers;
- You need to decide whether your organisation has other objects not listed in the model rule and, if so, add them.

¹ RO Act section 141 (1) (a).

**Objects are important**

Objects are important because they set the parameters for the types of things your organisation can do. Your organisation cannot act outside, or contrary to, these objects or purposes.

An extensive list of objects or broad general statements?

An extensive list of objects:

- Clearly sets out the types of actions that your organisation can take;
- This means that actions taken are less likely to be challenged; **but:**
- They are lengthy and cumbersome,
- You might forget to include some important actions and
- They can be difficult to interpret.

Broad general statements:

- Are consistent with modern drafting conventions; and
- Are more likely to catch every conceivable activity; **but:**
- They can be interpreted differently; and
- Whether a specific action fits within a broad statement might be challenged.

It is a matter for you to determine which approach you want to follow. This model rule adopts the 'broad general statements' approach.

Objects which are consistent with the character of your organisation

Because organisations can be either employee or employer based, two sets of purposes are provided. Make sure you choose objects appropriate to your organisation.

Adding more objects

If you add more objects, they must state a purpose, not a particular way of achieving a purpose.

A3 CONDITIONS OF MEMBERSHIP ELIGIBILITY



See [Appendix A](#).

A4 LOCATION OF ORGANISATION OFFICE

A4.1 The office of the Organisation shall be at **[INSERT street address]** or such other place as the Executive shall determine from time to time.

NOTES TO RULE A4



Optional but standard rule

It is not mandatory for an organisation to have a rule specifying the address of the organisation's main office.

However, an address rule is a standard one, often found in the rules of organisations.

If you choose to have an address rule, it is recommended that you consider adopting the wording in this model rule. If the rule simply states the address of the office, without any provision allowing for it to be changed by some appropriate authority within the organisation (e.g. the committee of management), then arguably the organisation would not be able to change the address without altering the relevant rule under section 159 of the RO Act.

PART B – INTERPRETATION

B1 INTERPRETATION AND DEFINITIONS

B1.1 In these Rules, unless a contrary intention appears:

- B1.1.1 The singular shall include the plural and vice versa;
- B1.1.2 Headings are for convenience and do not affect meaning;
- B1.1.3 The expression 'in writing' or the word 'written' includes all forms of printing, typing, facsimile, text messaging, email, minute taking and other physical or electronic means of representing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
- B1.1.4 Any reference to an act of communicating with another person other than orally in their presence, such as but not limited to 'lodging [a document] with' or 'notifying' a person, includes communicating with that person by any then available form of electronic communication, including but not limited to email;
- B1.1.5 A communication sent by email is taken to have been sent at the time of dispatch recorded on that email;
- B1.1.6 Any reference to a person 'signing' a document or to a 'signature' on a document shall include electronic signing or signature;
- B1.1.7 The word 'shall' means a mandatory requirement;
- B1.1.8 A reference to a statute, regulation or statutory instrument shall include any successor to any of them, whether in whole or in part;
- B1.1.9 If something is required to be done under these rules and the last day for doing the thing is a Saturday or Sunday or a public holiday in the place where the thing is to be done, then the thing may be done on the next day that is not a Saturday, a Sunday or a public holiday.
- B1.1.10 Any appendix to these Rules forms part of these Rules;
- B1.1.11 A reference to one gender shall include all other genders.

B1.2 In these Rules, the following expressions shall have the following meanings, unless the contrary intention appears:

'AEC' means the Australian Electoral Commission, or any other statutory agency by any name given the responsibility under the RO Act to conduct elections within registered organisations.

‘AGM’ means the annual general meeting of the members of the Organisation.

‘Day’ shall mean calendar day.

‘Deliberative vote’ by a person presiding at a meeting means a vote cast on a proposed resolution equal to that of any other vote that can be cast at the meeting.

‘Electronic means’ means all electronic methods available for use in any context at any time, including without limitation email, short message service (SMS), telephone, audio conference and video conference;

‘*Fair Work Act*’ means the *Fair Work Act 2009* (Cth), and any regulations under that Act;

‘Financial member’ means a member of the Organisation who is not an unfinancial member as specified in either sub Rule C6.1 or C6.2 (whichever may be applicable to that member). For the avoidance of doubt, honorary and life members who are not eligible to join the organisation or who have not joined the organisation are not financial members.

‘Financial year’ means the financial year of the Organisation as specified in Rule F6.

‘Full financial report’ means the full report for the Organisation for a financial year as specified in section 265 of the RO Act, being:

- (i) The auditor’s report;
- (ii) The general purpose financial report to which the auditor’s report relates; and
- (iii) The operating report.

‘FWC’ means the body constituted under the *Fair Work Act* by the name Fair Work Commission, or by any other name it is assigned in the future, and includes any successor to that body;

‘Meeting’ means a gathering of people for a common purpose either in person or by electronic means, or by any combination of personal and electronic meeting - see Rules E5 and E6.

‘Office bearers’ shall mean the officers of the Organisation specified in sub Rule D3.1.2.

‘Person’ includes a natural person, a partnership or a body corporate;

‘Present’ at a meeting includes either present in person or present by electronic means.

‘Present in person’ at a meeting means present physically in the meeting.

‘Related State association’ means **[INSERT name of state entity]** an organisation registered under the **[INSERT name of state statute]**, whether known by that name or any altered or different name, and includes any successor at law to that association.

‘RO Act’ means the *Fair Work (Registered Organisations) Act 2009* (Cth), and any regulations under that Act;

‘Rules’ means the rules of the organisation including all appendices.

‘SGM’ means a special general meeting of the members of the Organisation.

‘Special resolution’ means a resolution carried at a meeting of the Organisation by a majority consisting of not less than seventy-five percent (75%) of those present and voting either personally, by proxy or by electronic means.

[INSERT: Others as Organisation requires in alphabetical order]

NOTES TO RULE B1



Recommended rule

Key considerations

It is not mandatory to have a rule that assists with the interpretation of words and expressions in those rules.

However, it is recommended that an ‘interpretation’ rule be included in the rules. Such a rule will assist by:

- helping members and stakeholders reading the rules to derive the same meaning from the words and expressions used;
- reducing repetition throughout the rules;
- making the rules easier to read and more ‘user friendly’.

The inclusion of a rule to assist in the interpretation of an organisation’s rules has its origins in long established drafting practices for statutes. In recent years it has become a more common feature of organisation rules.



NOTE: If you decide to introduce a definitions rule into your rule book, you will need to closely scrutinise your existing rules and assess what impact the definitions will have on them.

Where should such a rule be located?

The location of such an ‘interpretation’ rule in the rule book is a matter for the organisation to decide. However, in general it is helpful to place it near the start of the rules so it will more likely be noticed.

Common features of an ‘interpretation’ rule

Usually such a rule will fall into two segments:

- the first providing general guidance about interpretation, such as ‘the singular shall include the plural’;
- the second providing meanings for particular words or expressions, such as ‘the RO Act’.

The name for such a rule is a matter for the organisation; the three most common options are ‘Interpretation’, ‘Definitions’ and ‘Dictionary’. The model rule uses ‘Interpretation’; however, the other expressions are acceptable alternatives.

NOTES TO RULE B1



Recommended rule

The model rule provides a few examples of interpretation rules and commonly used expressions in rules of organisations. It is recommended as a guide for your task. It is not meant to be exhaustive or mandatory for inclusion. The contents of the rule will always depend upon the actual content of your rules.

Electronic definitions

A feature of the model rule is its recognition that so much of human communication and activity is conducted electronically.

- Sub Rules B1.1.3 to B1.1.6 are designed with a presumption that electronic communication and conduct or transactions are included.
- The definition of 'in writing' and 'written' in sub Rule B1.1.3 is designed to capture symbols, such as emojis – as long as the symbol is clear in its meaning (e.g. 'thumbs up' meaning 'agree' or 'approved').
- The definition of 'electronic means' in sub Rule B1.2 is designed to capture all electronic methods.
- Various definitions in Rule B1 incorporate electronic means of doing important things within an organisation, including meeting and communicating – see for example the definitions of 'meeting' and 'present'.
- These provisions operate so that references throughout the rules to communications, transactions and activity are presumed to include electronic forms of these things.

ALSO: 'signing' a document electronically (see sub Rule B1.1.6) includes a printed name in a signature block of an electronic communication (e.g. an email).

Gender neutral drafting

In more recent times gender neutral drafting has become more common. If the organisation elects to use gender neutral drafting for its rules, then sub Rule B1.1.11 would not be needed and should be deleted.

Changing the rules of a registered organisation to be gender neutral is often a painstaking, though beneficial task. Care must be taken to ensure that all relevant instances are captured and changed. Also check whether a particular rule is gender specific on purpose and therefore should not be changed.



NOTE: making changes to the language of your eligibility rule will attract the eligibility rule altering procedure. Changes to your eligibility rule must be determined by a presidential member of the Commission. This includes changes that alter words to a gender-neutral position.

PART C – MEMBERSHIP

C1 ADMISSION TO MEMBERSHIP



NOTE: There is an **employee** and **employer** version provided. Check the box next to the version to use.

☐ Rule for **employee** organisation

C1.1 Subject to Rule C2 of these Rules, an applicant for membership of the Organisation ('the Applicant') shall apply for membership by completing an application form in the form approved by the Executive and submitting the completed Form to the Secretary.

Note: An application may be lodged electronically: see sub Rule B1.1.4.

C1.2 The Secretary shall promptly consider the application by the Applicant and if satisfied that the Applicant:

C1.2.1 is eligible for membership of the Organisation;

C1.2.2 has paid any fees properly payable to the Organisation in relation to membership;
and

C1.2.3 has otherwise complied with the Rules for admission to membership

C1.2.4 shall admit the Applicant to membership, unless sub Rule C1.4 applies.

C1.3 If the Secretary is not satisfied of any of the matters specified in sub Rule C1.2, the Secretary shall inform the Applicant of the deficiency and give the Applicant a reasonable opportunity to comply with the requirements of that sub Rule.

C1.4 If the Secretary receives or possesses information that would suggest to a reasonable person that the Applicant is of general bad character, the Secretary shall make appropriate enquiries to ascertain whether there are proper and sufficient grounds for rejecting the Applicant's application by reason of their general bad character.

C1.5 If the Secretary rejects the application by the Applicant, that officer shall advise the Applicant in writing:

C1.5.1 of the grounds for the rejection of the Application;

C1.5.2 as to when and the manner in which any subscriptions and fees paid by the Applicant will be refunded; and

C1.5.3 that the Applicant may appeal to the Executive against the rejection of the Application as provided for in sub Rule C1.6.

C1.6 The Applicant may lodge an appeal in writing to the Executive within fourteen (14) days of being advised of the Secretary's decision rejecting the Application, specifying the grounds for appeal. The Executive will meet and consider the appeal within twenty-eight (28) days of the appeal being lodged, and shall make a decision on the appeal as soon as practicable thereafter. Subject to the RO Act, the Executive's decision on the appeal shall be final.

C1.7 The date of admission of the Applicant to membership of the Organisation shall be the date of receipt by it of the Application.

C1.8 Applicants for membership of the Organisation shall be informed in writing of:

C1.8.1 the financial obligations arising from membership; and

C1.8.2 the circumstances, and the manner, in which a member may resign from the Organisation.

Note: Special provisions are made in Rule C11 for certain persons seeking re-admission to membership after being removed from the register of members.

☐ Rule for employer organisation

C1.1 Subject to Rule C2 of these Rules, an applicant for membership of the Organisation ('the Applicant') shall apply for membership by completing an Application Form in the form approved by the Executive and submitting the completed Form to the Secretary.

Note: An application may be lodged electronically: see sub Rule B1.1.4.

C1.2 The Secretary shall promptly consider the application by the Applicant and if satisfied that the Applicant:

- C1.2.1 is eligible for membership of the Organisation;
- C1.2.2 has paid any fees properly payable to the Organisation in relation to membership;
- C1.2.3 in the case of a partnership or body corporate, does not make provision in its constituent documents that are inconsistent with the purposes for which the Organisation was formed; and
- C1.2.4 has otherwise complied with the Rules for admission to membership

shall admit the Applicant to membership, unless sub Rule C1.4 applies.

C1.3 If the Secretary is not satisfied of any of the matters specified in sub Rule C1.2, the Secretary shall inform the Applicant of the deficiency and give the Applicant a reasonable opportunity to comply with the requirements of that sub Rule.

C1.4 This sub Rule applies to an Applicant that is a natural person only. If the Secretary receives or possesses information that would suggest to a reasonable person that the Applicant is of general bad character the Secretary shall make appropriate enquiries to ascertain whether there are proper and sufficient grounds for rejecting the Applicant's application by reason of their general bad character.

C1.5 If the Secretary rejects the application by the Applicant, that officer shall advise the Applicant in writing:

- C1.5.1 of the grounds for the rejection of the Application;
- C1.5.2 as to when and the manner in which any subscriptions and fees paid by the Applicant will be refunded; and
- C1.5.3 that the Applicant may appeal to the Executive against the rejection of the Application as provided for in sub Rule C1.6.

C1.6 The Applicant may lodge an appeal in writing to the Executive within fourteen (14) days of being advised of the Secretary's decision rejecting the Application, specifying the grounds for

appeal. The Executive will meet and consider the appeal within twenty-eight (28) days of the appeal being lodged and shall make a decision on the appeal as soon as practicable thereafter. Subject to the RO Act, the Executive's decision on the appeal shall be final.

C1.7 The date of admission of the Applicant to membership of the Organisation shall be the date of receipt by the Organisation of the Application.

C1.8 Applicants for membership of the Organisation shall be informed in writing of:

C1.8.1 the financial obligations arising from membership; and

C1.8.2 the circumstances, and the manner, in which a member may resign from the Association.

Note: Special provisions are made in Rule C11 for certain persons seeking re-admission to membership after being removed from the register of members.

NOTES TO RULE C1



Mandatory rule

Key considerations

- It is mandatory for an organisation to have a rule that specifies the terms upon which a person may become a member.¹ Model Rule C1 is a suggested rule that meets this requirement.
- The rule must be consistent with the provisions of the RO Act that confer on a person a right to membership of an organisation, provided certain conditions are met.²
- An organisation must also have a rule that requires the organisation to notify applicants for membership as to the financial obligations of membership, and the circumstances and manner in which a member may resign³ (see model sub Rule C1.8 required text).

Conditions to be admitted to membership

For employee organisations, the statutory conditions for admission of a person to membership are that they:

- are eligible for membership under the eligibility rule of the organisation;
- are not of 'general bad character'; and

¹ RO Act section 141 (1) (b) (vii).

² RO Act section 166.

³ RO Act section 141 (1) (d).



- pay any amount properly payable in relation to membership.⁴

For employer organisations, the statutory conditions for admission of an employer to membership are that they:

- are eligible for membership of the organisation;
- in the case of a natural person, are not of ‘general bad character’;
- in the case of a body corporate, do not have constituent documents that make provisions inconsistent with the purposes for which the organisation was formed; and
- pay any amount properly payable in relation to membership.⁵

The RO Act also provides that the person who meets these conditions and is admitted to membership is entitled to remain a member so long as they comply with the Rules.⁶

RO Act and rules should be consistent

Importantly, the provisions of the RO Act relating to the right to admission to membership override any rule or rules of an organisation that are inconsistent with them.⁷ Therefore an organisation’s rules relating to admission to membership should be fully consistent with the RO Act, to avoid confusion and possible legal challenges arising from any inconsistency.

The model rule, in both its employee organisation and employer organisation forms:

- incorporates all the appropriate statutory conditions, and
- includes a process for admission based upon the type of provisions commonly found in the rules of organisations.

It is noted that that process provides for membership applications to be submitted to the Secretary, as that is a common feature of organisation rules. It is not necessary that the Secretary or the holder of any other office in the organisation be the recipient of the application. The recipient could be, for example, a management level employee of the organisation. It is preferable that the recipient of such applications in the rules be the officer with responsibility for keeping the register of members.

Disqualifying conditions in respect of right to membership

A person otherwise eligible may be excluded from membership if of ‘general bad character’. That expression is subject to case law, which demonstrates that the level of character fault required to satisfy this disqualifying condition is very high.⁸ Organisations are not required to include this disqualifying condition in their rules if they do not wish to do so, and in practice most do not.

For employer organisations:

⁴ RO Act section 166 (1) (a).

⁵ RO Act section 166 (4) (a) and (5).

⁶ RO Act section 166 (1) (b) and (4) (b).

⁷ RO Act section 166 (6).

⁸ *Cahill v Sheet Metal Working Etc Industrial Union of Australia* (1956) 84 CAR 22:26-30 (obiter per Foster J); *Owens v ABCE & BLF* (1978) 46 FLR 16.



- your organisation may decide not to have a rule that excludes a body corporate employer that has constituent documents (e.g. Constitution or rules or by laws) that are inconsistent with the organisation's objects, and in practice most do not.

Lodging applications electronically

Many organisations permit electronic lodgment of membership applications.

The Note to model sub Rule C1.1 confirms that electronic lodgment of application is available by reference to sub Rule B1.1.4. If you wish to use electronic lodgment and your rules do not include a 'Interpretation/Definitions' Rule similar to Rule B1 (or do not provide for electronic communications), you will need to modify the wording of model sub Rule C1.1. A suggested alternative version of sub Rule C1.1 would read as follows:

*'Subject to Rule C2 of these Rules, an applicant for membership of the Organisation ('the Applicant') shall apply for membership by completing an Application Form in the form approved by the Executive, **which may be electronic**, and submitting the completed Form to the Secretary.'*

Right of appeal against refusal of admission

Under the model rule, an unsuccessful applicant has a right of appeal to the Executive if they are refused admission to membership (see model sub Rule C1.6).

There is no legal requirement that an organisation's rules include such an appeal right. However, it is not uncommon to find such a right in organisation rule books. Unsuccessful applicants aggrieved by an organisation's decision to refuse them membership have rights to challenge such decisions in the Federal Court.⁹

The model rule sets certain time limits for the lodging, consideration and determination of any such appeal. Those time limits are merely suggestions for organisations to consider. If your organisation wishes to provide this type of appeal, it must work out practical time frames for the appeal process that recognises the availability and other circumstances of its members and officers.

Right to membership subject to FWC award or order

Section 166 states that the right of an employee or an employer to be a member of an organisation is 'subject to any modern award or order of FWC'. Fair Work Commission (FWC) awards and orders rarely impinge on the right of a person to join an organisation. If you have any concerns about whether an FWC award or order has relevance to membership entitlement of your organisation you should seek legal advice.

Notifying applicants as to financial obligations of and resignation from membership

Rules must include an obligation to notify applicants of the financial obligations of membership and how to resign that membership.¹⁰

⁹ RO Act section 167.

¹⁰ RO Act section 141 (1) (d).

NOTES TO RULE C1



Mandatory rule

This rule can be included in an organisation's rule book as a stand alone rule, or as a sub rule in the rule relating to admission to membership in an organisation. Rule books commonly include this rule with other admission rules and this is the approach used by the model rule.



NOTE: The phrase 'Subject to Rule C2 of these Rules' in model sub Rule C1.1 should only be included in an organisation's rule if the contents of Rule C2 are included in the rule book (which allows dual or joint membership of the organisation and a Related State association, where that is relevant and possible).

C2 DUAL MEMBERSHIP – RELATED STATE ASSOCIATION

- C2.1 Notwithstanding the terms of sub Rule C1.1, but subject to the other sub Rules in that Rule, a person that is eligible for membership of the Organisation may apply for membership by completing a dual membership form.

A dual membership form is a form approved by the Executive of the Organisation and by the Related State association which provides for the applicant for membership to apply on the one form for membership of both the Organisation and the Related State association, provided that the applicant is eligible for membership of the Organisation and the Related State association.

NOTE: 'Related State association' is defined in sub Rule B1.2.

- C2.2 The application form shall be submitted to the Organisation in accordance with the requirements of sub Rule C1.1.
- C2.3 A person obtaining membership of the Organisation under this Rule shall not be obliged to pay any monies to the Organisation provided that the Related State association pays to the Organisation in respect of each person who obtains membership of the Organisation under this Rule all or any subscriptions, fees or levies payable to the Organisation under these Rules.
- C2.4 Subject to these Rules:
- C2.4.1 a person obtaining membership of the Organisation under this Rule shall be entitled to continue membership of the Organisation whether or not the Related State association continues to make the payments referred to in sub Rule C2.3 of this Rule.
 - C2.4.2 In the event of default by the Related State association in making any payments referred to in sub Rule C2.3, that member shall be obliged thereafter to pay subscriptions, fees and levies prescribed by these Rules to the Organisation, except that full credit shall be given for payments made to the Organisation under sub Rule C2.3 of this Rule.
- C2.5 If there is default in making the payment referred to in sub Rule C2.3 in respect of any person obtaining membership through this rule, the Secretary shall notify the member, within thirty (30) days of the default, of the member's obligation to pay future membership subscriptions to the Organisation and the amounts thereof. Unless and until a member is so notified the financial status of the member of the Organisation shall be unaffected by any such default. Once a member has been notified of their obligation to pay future membership subscriptions that member shall have a period of thirty (30) days after the date of the notification before their financial status in the Organisation is in any way affected. If the Secretary fails to notify the member within thirty (30) days of the default by the Related State association, the Executive shall authorise one of its members to do so.

C2.6 If a person becomes a member of the Organisation under this Rule, the register of members maintained by the Organisation shall record that fact.

Note: 'Person' is defined in sub Rule B1.2 to include natural persons, partnerships and bodies corporate.

NOTES TO RULE C2



Optional rule

This model rule is not mandatory and is not recommended for all organisations.

The suitability of this rule in your rule book, and the content of any such rule, will depend on the circumstances of your organisation.

When would such a model rule be useful for an organisation?

- The first consideration is whether your organisation is associated or partners with an industrial organisation entity registered under State law.
- The second consideration is whether you want to have an agreement or arrangement with a 'counterpart' body that allows dual membership of both bodies.

The inclusion of such a rule may assist in ensuring that the membership of both the organisation and its associated or 'counterpart' State registered body is as near as possible the same.¹

¹ *Moore v Doyle* (1969) 15 FLR 59, where some of the legal problems arising from lack of proper arrangements for dual membership of counterpart state and federal organisations were identified. See also DW Smith *The Legal Status of Australian Trade Unions*, Butterworths, 1975:Chapter 10; WB Creighton, WJ Ford and RJ Mitchell, *Labour Law – Text and Materials*, Law Book Company, 1993:Chapter 27 from 903.

C3 LIFE MEMBERSHIP AND HONORARY MEMBERSHIP

- C3.1 Notwithstanding any other provision of these Rules, the Executive may by special resolution grant life membership of the Organisation to a member who:
- C3.1.1 has been a member of the organisation for at least fifteen (15) years; and
 - C3.1.2 in the opinion of the Executive has substantially contributed to the advancement of the objects of the Organisation during such membership.
- C3.2 A person granted life membership under this Rule ('the life member') shall not be obliged to pay any subscriptions, fees or levies to the Organisation in respect of membership of the Organisation from the date of being granted life membership.
- C3.3 The life member shall be treated as a financial member of the Organisation for all purposes of these Rules, with all the rights and responsibilities that such membership entails, for so long as the life member is eligible for membership of the Organisation.
- C3.4 Nothing in the foregoing provisions of this Rule prevents the Executive appointing a person as an honorary member of the Organisation if the Executive believes that such membership is merited. Such an honorary member shall not be obliged to pay any subscriptions, fees or levies to the Organisation. Such honorary member shall not be treated as a member of the Organisation for the purposes of the RO Act, unless the honorary member is eligible to be a member and has separately applied for and has been admitted to membership in accordance with Rule C1 or C2.
- C3.5 If the life member or honorary member is not or ceases to be eligible for membership of the Organisation they shall not be treated as a member of the Organisation for the purposes of the RO Act. In particular, such honorary or life member:
- C3.5.1 shall not be entitled to vote in any election for any office in the Organisation;
 - C3.5.2 shall not be entitled to nominate for or hold any office in the Organisation, or nominate any member for such an office;
 - C3.5.3 shall not be entitled to attend or speak at any meeting of the Organisation without the permission of that meeting;
 - C3.5.4 shall not be entitled to vote at any meeting of the Organisation; and
 - C3.5.5 is not included in the quorum at any meeting of the Organisation.
- C3.6 The Secretary shall keep a register of life and honorary members of the Organisation.

**Key considerations**

- An organisation can choose to have a rule dealing with life membership and/or honorary membership, including the terms upon which such special membership is granted.
- The rule books of most organisations include life membership, and some provide for honorary membership.
- The main benefit usually provided to a life or honorary member is relief from having to pay membership subscriptions, fees and levies.
- Life and honorary memberships are normally granted on an individual basis at the discretion of a governing body of the organisation, and usually as a form of recognition of the member's contribution to the organisation over a substantial period.
- It is very important that any rule providing for life membership and/or honorary membership recognises that, if the person ceases to be or is not eligible for membership of the organisation, they do not continue to possess the rights of a member. See below for more detail.

Life or honorary membership vs eligibility to be a member

Only a person who is eligible for membership of an organisation under its eligibility rule (see Appendix A) and who has joined the organisation has the rights that attach to membership (e.g. vote in elections, stand for office, attend meetings and vote etc.).

Sometimes life or honorary members cease to be eligible to be a member of the organisation. For example, if they are retired or cease to be in a business covered by the organisation's eligibility rule.

Therefore, when drafting a life and/or honorary membership rule, take care to ensure that the rule does not allow life or honorary members who are no longer eligible to be members full access to the rights that attach to membership. If an organisation allows that to happen, it could put its registration under the RO Act at risk of cancellation.¹

Features of the model rule

The model rule follows the most common approach found in organisation rule books when life or honorary membership may be awarded, and the traditional benefits provided to such members (i.e. relief from subscriptions and other financial obligations of full members). The model rule suggests 15 years service before life membership becomes available, but this is entirely a matter for your organisation. You can decide on a shorter or longer period.

The model rule's approach to this matter is merely an example for you to consider. Whatever approach you take bear in mind that life or honorary members may cease to be eligible members. In that case they are no longer entitled to the rights that attach to membership.



NOTE: The reference in model sub Rule C3.4 to 'C2' should only be included in an organisation's rule if the contents of Rule C2 are included in the rule book (which allows dual or joint membership of the organisation and a Related State association, where that is relevant and possible).

¹ RO Act section 30 (1) (b) (ii) and (c) (v).

C4 ASSOCIATE MEMBERS AND AFFILIATES

- C4.1 Notwithstanding any other provisions of these Rules, the Organisation may admit a person who or which is not eligible for membership of the Organisation in the category of 'associate member', on the terms specified in this Rule.
- C4.2 Any person wishing to become an associate member of the Organisation shall complete an application for membership in that category in the form approved by the Executive and pay the fees for associate membership prescribed by the Executive from time to time.
- C4.3 An associate member shall be provided with such benefits as the Executive shall determine from time to time but shall not be treated as a member of the Organisation for the purposes of the RO Act. In particular such member:
- C4.3.1 shall not be entitled to vote in any election for any office in the Organisation;
 - C4.3.2 shall not be entitled to nominate for any office in the Organisation, or nominate any member for such an office;
 - C4.3.3 shall not be entitled to attend or speak at any meeting of the Organisation without the permission of that meeting;
 - C4.3.4 shall not be entitled to vote at any meeting of the Organisation; and
 - C4.3.5 is not included in the quorum at any meeting of the Organisation.
- C4.4 The Secretary shall keep a register of all persons admitted to associate membership of the Organisation.
- C4.5 The Organisation may make provision for a person who supports the objects of the Organisation but who is not eligible to be a member to be registered with the Organisation as an affiliate. The Executive shall determine the terms and conditions for registration of persons as affiliates, and the benefits available to them, provided that an affiliate is not entitled to any of the rights or benefits of membership of the Organisation. An affiliate shall not be included in the register of members.

Note: 'Person' is defined in sub Rule B1.2 to include natural persons, partnerships and bodies corporate.

NOTES TO RULE C4



Optional rule

An organisation may choose to have a rule in its rule book to allow persons who are not eligible for membership to nevertheless have a formal 'association' or 'connection' with the organisation for purposes that it considers beneficial or advantageous. This type of rule is more common in the rule books of employer organisations but can also be included in an employee organisation's rules. This class or category of persons are usually called

NOTES TO RULE C4



Optional rule

'associate members' but sometimes described as 'affiliates'. Sometimes rules make provision for both associate members and affiliates.

It is up to an organisation to decide whether this rule is appropriate. However, if such a rule is to be included, the rule should make it clear that the 'associate member' or 'affiliate' does not have any of the rights of a member under the RO Act. This means, for example, the associate or affiliate member cannot vote in elections, nominate for or hold office.

The model rule makes clear that this category of 'associate member' or 'affiliate' is not a 'member' of the organisation as contemplated by the RO Act and thus cannot exercise the rights of such a member.

C5 SUBSCRIPTIONS, FEES AND LEVIES



NOTE: There is an **employee** and **employer** version provided. Check the box next to the version to use.

☐ Rule for **employee** organisation

C5.1 Members shall be liable to pay the Organisation amounts in respect of their membership as follows:

C5.1.1 Subscriptions;

C5.1.2 Entrance fees; and

C5.1.3 Levies.

C5.2 PROVIDED THAT an entrance fee shall not be charged to a person re-applying for membership in the circumstances specified in sub Rule C11.3.

C5.3 Subscriptions, entrance fees and levies in respect of membership of the Organisation shall be determined and be payable in accordance with this Rule.

Subscriptions and entrance fees

C5.4 The Executive shall fix the annual subscription for membership of the Organisation each year and the entrance fees for new members. The amounts so fixed shall come into effect from the commencement of the financial year following the decision of the Executive. The Executive may also fix subscriptions for periods other than one year and in different amounts for different categories of membership.

C5.5 A member's annual subscription may be paid by the member:

C5.5.1 annually, within thirty (30) days of it falling due for payment; or

C5.5.2 periodically by way of payroll deduction in accordance with an authority acceptable to the Organisation; or

C5.5.3 in such instalments and at such intervals as approved by the Secretary

PROVIDED THAT if a member has obtained membership of the Organisation in accordance with Rule C2 (dual membership with Related State association), the member shall not be required to pay any subscription to the Organisation for so long as the conditions in Rule C2

are met.

Levies

- C5.6 The Executive may by special resolution impose a levy on the members, or a group of members, for any purpose falling within the objects of the Organisation, and when doing so shall also determine the time or times when such levy shall be payable.
- C5.7 Any levy imposed by the Executive may be payable in one amount or in accordance with the alternative arrangements for the payment of subscriptions specified in sub Rule C5.5.1 or C5.5.3.

Fees – for services

- C5.8 Nothing in this Rule shall preclude the Organisation from charging a member fees for the provision of services to the member by or on behalf of the Organisation at rates or in amounts notified to the member prior to the member agreeing to the provision of such services.

Administration matters

- C5.9 Where a member pays subscriptions annually but payment is not received by the Organisation within thirty (30) days of it falling due for payment ('the default') the Secretary shall notify the member in writing within thirty (30) days of the default that:
- C5.9.1 payment is overdue;
 - C5.9.2 the amount that is overdue; and
 - C5.9.3 if payment of the overdue amount is not made within thirty (30) days of the date of the notice the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.
- C5.10 Where an arrangement with a member for payment of subscriptions by way of payroll deduction is discontinued or not honoured by the employer ('the default'), the Secretary shall notify the affected member in writing within thirty (30) days of the default of:
- C5.10.1 the fact that the arrangement has been discontinued or that the employer has not honoured the arrangement for payroll deduction of subscriptions, and
 - C5.10.2 the balance of the amount due for the financial year, and
 - C5.10.3 if, within thirty (30) days of the date of the notice, payment of the full amount due for the financial year is not made or an approved arrangement for payment of subscriptions by instalment is not entered into, the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.

- C5.11 Where a member pays subscriptions by instalments but an instalment payment is not paid ('the default'), the Secretary shall notify the member in writing within thirty (30) days of the default that:
- C5.11.1 payment is overdue;
 - C5.11.2 the amount that is overdue; and
 - C5.11.3 if payment of the overdue amount is not made within thirty (30) days of the date of the notice the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.
- C5.12 Where a member is required to pay an entrance fee or a levy but payment of any such amount is not made when due ('the default') the Secretary shall notify the member in writing within thirty (30) days of the default that:
- C5.12.1 payment is overdue;
 - C5.12.2 the amount that is overdue; and
 - C5.12.3 if payment of the overdue amount is not made within thirty (30) days of the date of the notice the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.
- C5.13 The Executive may on written application by a member waive payment of all or any part of that member's subscriptions or any levy imposed, where the Executive decides to do so having regard to that member's personal and/or financial circumstances. A member given any such waiver shall retain continuity of membership and remain a financial member for the duration of the waiver provided the member has paid all other subscriptions, entrance fees and levies otherwise payable.
- C5.14 Any member who fails to comply with the obligations imposed on that member in respect of subscriptions, entrance fees and levies as prescribed by this Rule will become unfinancial in accordance with Rule C6 (Unfinancial members).
- If the Secretary has failed to provide the member with the notice, the member will become unfinancial in accordance with Rule C6 (Unfinancial members).

[Optional transitional Rule – delete if not applicable]

- C5.15 The annual subscription for membership of the Organisation from the date of its registration as an organisation shall be **[INSERT: \$XX]** until such time as the annual subscription is fixed by the Executive under this Rule.

☐ Rule for **employer** organisation

C5.1 Members shall be liable to pay the Organisation amounts in respect of their membership as follows:

C5.1.1 Subscriptions;

C5.1.2 Entrance fees; and

C5.1.3 Levies.

C5.2 PROVIDED THAT an entrance fee shall not be charged to a person re-applying for membership in the circumstances specified in sub Rule C11.3.

C5.3 Subscriptions, entrance fees and levies in respect of membership of the Organisation shall be determined and be payable in accordance with this Rule.

Subscriptions and entrance fees

C5.4 The Executive shall fix the annual subscription for membership of the Organisation each year and the entrance fees for new members. The amounts so fixed shall come into effect from the commencement of the financial year following the decision of the Executive. The Executive may also fix subscriptions for periods other than one year and in different amounts for different categories of membership.

C5.5 A member's annual subscription may be paid by the member:

C5.5.1 annually, within 30 days of it falling due for payment; or

C5.5.2 in such instalments and at such intervals as approved by the Secretary.

PROVIDED THAT if a member has obtained membership of the Organisation in accordance with Rule C2 (dual membership with Related State association), the member shall not be required to pay any subscription to the Organisation for so long as the conditions in Rule C2 are met.

Levies

C5.6 The Executive may by special resolution impose a levy on the members, or a group of members, for any purpose falling within the objects of the Organisation, and when doing so shall also determine the time or times when such levy shall be payable.

C5.7 Any levy imposed by the Executive may be payable in one amount or in accordance with the alternative arrangements for the payment of subscriptions specified in sub Rule C5.5.

Fees – for services

- C5.8 Nothing in this Rule shall preclude the Organisation from charging a member fees for the provision of services to the member by or on behalf of the Organisation at rates or in amounts notified to the member prior to the member agreeing to the provision of such services.

Administration matters

- C5.9 Where a member pays subscriptions annually but payment is not received by the Organisation within thirty (30) days of it falling due for payment ('the default') the Secretary shall notify the member in writing within thirty (30) days of the default that:

C5.9.1 payment is overdue;

C5.9.2 the amount that is overdue; and

C5.9.3 if payment of the overdue amount is not made within thirty (30) days of the date of the notice the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.

- C5.10 Where a member pays subscriptions by instalments but an instalment payment is not paid ('the default') the Secretary shall notify the member in writing within thirty (30) days of the default that:

C5.10.1 payment is overdue;

C5.10.2 the amount that is overdue; and

C5.10.3 if payment of the overdue amount is not made within thirty (30) days of the date of the notice the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.

- C5.11 Where a member is required to pay an entrance fee or a levy but payment of any such amount is not made when due ('the default') the Secretary shall notify the member in writing within thirty (30) days of the default that:

C5.11.1 payment is overdue;

C5.11.2 the amount that is overdue; and

C5.11.3 if payment of the overdue amount is not made within thirty (30) days of the date of the notice the member will become unfinancial on and from the thirty-first (31st) day after the date of the notice.

- C5.12 The Executive may on written application in writing by a member waive payment of all or any part of that member's subscriptions or any levy imposed, where the Executive decides to do so having regard to that member's personal and/or financial circumstances. A member given any such waiver shall retain continuity of membership and remain a financial member for the

duration of the waiver provided the member has paid all other subscriptions, entrance fees and levies otherwise payable.

C5.13 Any member who fails to comply with the obligations imposed on that member in respect of subscriptions, entrance fees and levies as prescribed by this Rule will become unfinancial in accordance with Rule C6 (Unfinancial members).

If the Secretary has failed to provide the member with the notice, the member will become unfinancial in accordance with Rule C6 (Unfinancial members).

[Optional transitional Rule – delete if not applicable]

C5.14 The annual subscription for membership of the Organisation from the date of its registration as an organisation shall be **[INSERT: \$XX]** until such time as the annual subscription is fixed by the Executive under this Rule.

NOTES TO RULE C5



Recommended Rule; also standard

Key considerations

- The RO Act does not explicitly require an organisation to have a rule in its rule book dealing with the financial contributions or obligations for members. The Act does however assume that members will have financial obligations as a condition of membership.¹
- In practice, your organisation must obtain financial contributions from your members. It is therefore very important that your rules spell out what the financial responsibilities of members are, or at least how they are worked out.
- It is also important that your rules confer the power to determine financial contributions on an elected body within your organisation, and not be left to one or a few officials to determine such matters without accountability or transparency.²

Why have a rule on this subject?

- It is standard to have a rule relating to the financial contributions required of a member to an organisation as a condition of membership.
- The absence of any rules on this subject in your rule book could, in certain circumstances, result in the subscriptions, fees or levies imposed on members or applicants for membership being in contravention of the RO Act.³
- It provides transparency to members and potential members, by specifying that an elected body within your organisation is responsible for fixing the contributions.

¹ RO Act section 141 (1) (d) (i).

² *Mackenzie v ACOA* (1962) 5 FLR 342.

³ RO Act section 142 (1) (c).

NOTES TO RULE C5



Recommended Rule; also standard

- It allows potential members to easily check whether the information your organisation provides applicants for membership about the financial obligations of membership is accurate.

A rule like the model rule is thus recommended in your rule book.

Features of the model rule

The model rule incorporates elements commonly found in organisation rules on this subject.

It is however only intended as a guide; you may choose to add or modify the contents of the model rule as you see appropriate for your circumstances.

- The model rule is titled and uses the expressions ‘Subscriptions, fees and levies’, as those expressions are commonly used in organisation rules. But other common expressions include ‘membership contributions’ or ‘membership fees’.
- Alternative drafts of the model rule are provided for employee organisations and for employer associations, the substantive difference between the two being the possibility of payroll deduction arrangements for members of employee organisations.
- Sub Rule C5.1 allows for an organisation to impose an entrance fee for membership (in addition to subscriptions). This is optional. If you choose to do so, the maximum amount set by the Executive should be capped at a reasonable sum for the potential member, to ensure the rule does not contravene the RO Act by imposing an unreasonable condition on applicants for membership. Note also that some applicants for membership cannot be charged entrance fees – see model Rule C11 and the notes to that rule.
- Sub Rule C5.4 ensures that the fixing of subscriptions is done by an elected committee for transparency and accountability rather than by one or two employees or officers.⁴
- Sub Rules C5.9, C5.10, C5.11 and C5.12 (employee organisation) and C5.9, C5.10 and C5.11 (employer organisation) require the organisation to notify a member when they are in arrears, so they have an opportunity to pay those arrears before they become unfinancial. Becoming unfinancial has significant impacts upon a member, see Rule C6 below.
 - Here is an example for a member who pays their subscriptions annually and subscriptions fall due for payment on the first of January in each year:

Subscription falls due	1 January
Payment to be made	by 31 January
If not paid, Secretary to notify member	by 2 March (if not a leap year)
If still not paid, member becomes unfinancial	on 2 April if Secretary sent the notice on 2 March

- Sub Rules C5.13 (employee organisation) and C5.12 (employer organisation) are optional and provide for the organisation to waive wholly or partly a member’s obligations to pay subscriptions or levies due to that member’s personal or financial circumstances.

⁴ *Mackenzie v ACOA* (1962) 5 FLR 342.

NOTES TO RULE C5



Recommended Rule; also standard

- Sub Rules C5.15 (employee organisation) and C5.14 (employer organisation) provide **an optional transitional rule** for organisations seeking to be registered – explaining the fixing of fees from the date of registration until an organisation’s relevant committee can make a decision on the matter for the future – this rule must be deleted if not required.



NOTE: The paragraph in model sub Rule C5.5 regarding Rule C2 should only be included in an organisation’s rule if the contents of Rule C2 are included in the rule book (which allows dual or joint membership of the organisation and a Related State association, where that is relevant and possible).

C6 UNFINANCIAL MEMBERS



NOTE: There is an **employee** and **employer** version provided. Check the box next to the version to use.

☐ **Employee organisation**

C6.1 Any member who fails to pay any subscriptions, entrance fees or levies within thirty (30) days of being notified of their default under sub Rules C5.9, C5.10, C5.11 or C5.12, as applicable, shall be unfinancial on and from the thirty-first (31st) day after the date of the notice. Such member shall remain unfinancial until either:

C6.1.1 all amounts owing to the Organisation have been paid to it, or

C6.1.2 the member has entered into a written arrangement with the Organisation for those amounts to be paid to the Organisation in instalments as approved by the Secretary.

C6.2 If a member ('the defaulting member'):

C6.2.1 fails to pay the Organisation any subscriptions, entrance fees or levies due to be paid to it, and

C6.2.2 the Secretary does not give the defaulting member notice of non payment under sub Rules C5.9, C5.10, C5.11 or C5.12, as applicable, and

C6.2.3 the defaulting member does not pay the amounts required or enter into a written arrangement with the Organisation for instalment payments under sub Rule C6.1.2, the defaulting member becomes unfinancial on the thirty-first (31st) day after the last day by which the Secretary should have sent the notice under sub Rules C5.9, C5.10, C5.11 or C5.12, as applicable.

C6.3 An unfinancial member shall not be afforded the following rights, benefits or privileges of membership:

C6.3.1 Attending meetings of the Organisation;

C6.3.2 Voting at any such meetings;

C6.3.3 Voting in elections for any office in the Organisation;

C6.3.4 Nominating for election to any such office;

- C6.3.5 Nominating a member for election to any such office;
 - C6.3.6 Voting in any plebiscite of members conducted under these Rules;
 - C6.3.7 Having access to any part of the funds of the Organisation; and
 - C6.3.8 Continuing to hold office.
- C6.4 Subject to the RO Act, any monies owing to the Organisation by an unfinancial member may be recovered by the Organisation from the member by court proceedings. In such proceedings the Organisation may also seek to recover from the member the costs reasonably incurred by the Organisation in taking that action.
- C6.5 To avoid doubt, a member who has had any subscriptions or levies waived by the Executive, shall not be liable to action by the Organisation under sub Rule C6.4 in respect of such amounts.

Note: An unfinancial member may be removed from the register of members, and thereupon cease to be a member, under Rule C11.

☐ **Employer organisation**

- C6.1 Any member who fails to pay any subscriptions, entrance fees or levies within thirty (30) days of being notified of their default under sub Rules C5.9, C5.10 or C5.11, as applicable, shall be unfinancial on and from the thirty-first (31st) day after the date of the notice. Such member shall remain unfinancial until either:
- C6.1.3 all amounts owing to the Organisation have been paid to it, or
 - C6.1.4 the member has entered into a written arrangement with the Organisation for those amounts to be paid to the Organisation in instalments as approved by the Secretary.
- C6.2 If a member ('the defaulting member'):
- C6.2.1 fails to pay the Organisation any subscriptions, entrance fees or levies due to be paid to it, and
 - C6.2.2 the Secretary does not give the defaulting member notice of non payment under sub Rules C5.9, C5.10, or C5.11, as applicable, and

- C6.2.3 the defaulting member does not pay the amounts required or enter into a written arrangement with the Organisation for instalment payments under sub Rule C6.1.2, the defaulting member becomes unfinancial on the thirty-first (31st) day after the last day by which the Secretary should have sent the notice under sub Rules C5.9, C5.10 or C5.11, as applicable.
- C6.3 An unfinancial member shall not be afforded the following rights, benefits or privileges of membership:
- C6.3.1 Attending meetings of the Organisation;
 - C6.3.2 Voting at any such meetings;
 - C6.3.3 Voting in elections for any office in the Organisation;
 - C6.3.4 Nominating for election to any such office;
 - C6.3.5 Nominating a member for election to any such office;
 - C6.3.6 Voting in any plebiscite of members conducted under these Rules;
 - C6.3.7 Having access to any part of the funds of the Organisation; and
 - C6.3.8 Continuing to hold office.
- C6.4 Subject to the RO Act, any monies owing to the Organisation by an unfinancial member may be recovered by the Organisation from the member by court proceedings. In such proceedings the Organisation may also seek to recover from the member the costs reasonably incurred by the Organisation in taking that action.
- C6.5 To avoid doubt, a member who has had any subscriptions or levies waived by the Executive, shall not be liable to action by the Organisation under sub Rule C6.4 in respect of such amounts.

Note: An unfinancial member may be removed from the register of members, and thereupon cease to be a member, under Rule C11.

**Key considerations**

- It is not mandatory for an organisation to have a rule dealing with unfinancial members. However, it is important for you to have a rule in the same terms or to the effect of this model rule to deal with the matter as it has practical consequences.
- As the RO Act restricts important rights to financial members only, your rules must clearly identify when a member becomes unfinancial and must distinguish between those members who meet their financial obligations and those that do not.¹

The model rule adopts the most common features found in organisation rules dealing with this subject. You may however modify the model rule to accord with your requirements and policies. Remember that the RO Act gives some rights to unfinancial members, as they are still 'members'.² Your rule should be drafted so as to only remove the rights that can be removed from unfinancial members (as specified in model rule 6.3).

Expelling unfinancial members

If you wish to have the ability to expel an unfinancial member, it is recommended that that aspect be dealt with in a separate rule relating to discipline of members (see Rules C7 and C11 following).

¹ RO Act section 6, definition of 'direct voting system' and RO Act section 345.

² Examples include RO Act section 169 and section 347.

C7 DISCIPLINE AND EXPULSION OF MEMBER

- C7.1 A financial member of the Organisation may lodge a written complaint to the Secretary alleging one or more of the following acts or omissions by another member (**‘complaint’**):
- C7.1.1 knowingly failing or refusing to comply with any of the Rules of the Organisation, including refusing to pay an amount due to the Organisation in respect of that member’s membership;
 - C7.1.2 refusing to abide by a lawful resolution or direction of the Executive or National Conference;
 - C7.1.3 intentionally or recklessly obstructing the Executive or any officer in the discharge of their responsibilities under the Rules;
 - C7.1.4 knowingly giving false or misleading information to the Executive or any officer relating to the affairs of the Organisation or any of its members;
 - C7.1.5 unreasonably refusing to give information to the Executive or an officer, and which information the Executive or officer has requested, is entitled to and can reasonably expect to receive from the member;
 - C7.1.6 intentionally holding themselves out as an officer of the Organisation when they had no reasonable grounds for doing so;
 - C7.1.7 intentionally or recklessly making a false complaint, or making a vexatious complaint, against another member (including an officer) of the Organisation.
- C7.2 Upon receipt of a complaint from a member under Rule C7.1 the Secretary shall give written notification of the complaint to:
- C7.2.1 the Executive; and
 - C7.2.2 the member against whom the complaint has been made (**‘the subject member’**)
- as soon as possible after receiving the complaint, and not later than fourteen (14) days after such receipt.
- C7.3 The complaint against the subject member shall be heard and determined by the Executive in accordance with this Rule.
- C7.4 The written notification of the complaint shall be delivered by prepaid registered post to the postal address held by the Organisation for the subject member and, if the Organisation holds an email address for the subject member, to that email address. The written notification shall also advise the subject member of the date on, and the time and place at which the complaint would be heard by the Executive, which date shall be not less than twenty-eight (28) days after the date of receipt by the Organisation of the complaint.

The Executive shall complete the hearing of the complaint within ninety (90) days of its receipt by the Organisation and shall make its decision as soon as practicable after completing the hearing.

- C7.5 The Organisation shall give the subject member a reasonable opportunity to answer the complaint, including at the subject member's option:
- C7.5.1 providing to the subject member any additional information about the complaint that is relevant and available, and which is requested by the subject member prior to the hearing of the complaint;
 - C7.5.2 making a written submission in response to the complaint;
 - C7.5.3 appearing in person before the Executive at the scheduled hearing, including by electronic means;
 - C7.5.4 calling witnesses;
 - C7.5.5 all or any of the above options.
- C7.6 The Executive shall conduct the hearing of the complaint in such manner as will ensure a fair, orderly and expeditious examination of all relevant facts and circumstances and in doing so may:
- C7.6.1 summon officers, members and employees to give evidence or produce documents as it may think fit;
 - C7.6.2 direct or allow an officer, member or employee to make a written statement;
 - C7.6.3 set reasonable time frames or limits for the provision of evidence, documents or submissions to the hearing; and
 - C7.6.4 give such other lawful directions and recommendations as it thinks fit to assist in the proper conduct of the hearing.
- C7.7 If the Executive, having given the subject member a reasonable opportunity to be heard, finds that the complaint is established, it may do one or more of the following:
- C7.7.1 impose no penalty;
 - C7.7.2 fine the subject member a sum not exceeding **[INSERT \$XX]**;
 - C7.7.3 suspend all or some of the subject member's rights arising from membership for a specified period not exceeding six (6) months or until the happening of a particular event, whichever is the earlier occurring;
 - C7.7.4 remove the subject member from any position within the Organisation, other than an office to which that member has been elected;
 - C7.7.5 expel the subject member from the Organisation.

C7.8 Appeal:

- C7.8.1 The subject member may, within fourteen (14) days of being notified of the decision of the Executive under sub Rule C7.7, lodge an appeal to the National Conference against any adverse finding made or penalty imposed on the member by the Executive.
- C7.8.2 Such appeal shall be heard and determined by the National Conference within ninety (90) days of the appeal being lodged, and subject to the RO Act, shall be final.
- C7.8.3 The National Conference shall give the subject member a reasonable opportunity to be heard before making its decision on the appeal, and may dismiss the appeal, uphold the appeal or impose a different penalty under C7.7 to any imposed by the Executive.

C7.9 False or vexatious complaints:

- C7.9.1 If at any time the Executive suspects or believes, either on the application of the subject member or at its own initiative, that the complaint against the subject member is trivial, or without substance, it shall:
- (a) advise the member who made the complaint of its suspicion or belief; and
 - (b) give the member a reasonable opportunity to provide additional information or particulars about the complaint before the Executive considers dismissing the complaint.
- C7.9.2 If after giving the member that opportunity the Executive concludes that the complaint is trivial or without substance it may:
- (a) dismiss the complaint, and
 - (b) direct the Secretary to consider whether the member who made the complaint should be proceeded against under sub Rule C7.1.7 (false or vexatious complaint).

C7.10 Time frames and limits specified in this Rule are not mandatory but substantial compliance with all such provisions are required, in the interests of the organisation, and affected members including the subject member.

C7.11 If the Secretary is the member who is the subject of the complaint, the complaint shall be lodged with either the President or another officer of the Executive specified by the Executive. Any reference in this Rule to 'the Secretary' shall be taken to be a reference to that other officer if the Secretary is the subject of the complaint.



Key considerations

- It is mandatory for an organisation to have a rule that provides for the circumstances when and the terms upon which persons cease to be members.¹ If an organisation desires the power to remove a member from membership for misconduct, the organisation must have a corresponding rule in its rule book. Model Rule C7 aims to do this.
- If you choose to have a rule permitting disciplinary action against members, the rule should:
 - Express clearly the various types of misconduct that a member may be charged with, so that the member can understand the precise allegations against them;
 - Not place oppressive, unreasonable or unjust conditions on members, having regard to the objects of the Act;²
 - Provide processes and procedures that will allow the member a reasonable opportunity to answer the complaint or charge against them.
- Please contact the FWC if you want to include additional types of misconduct in your rules as there is significant case law concerning this type of rule.

Features of the model rule

In general:

- The model rule adopts the type of provisions commonly found in rules relating to discipline of members.
- It provides a list of possible 'offences' which comply with the judicial requirement of clarity for the affected member's benefit, and includes rules that give the member procedural fairness during the hearing and determination of any complaint against them.
- It provides other protections for the member, including a right of appeal (sub Rule C7.8) and potential sanction on any member who makes a false or vexatious complaint against another member (sub Rule C7.9).
- The model rule also permits the imposition of different levels of penalties on a member found guilty of any complaint brought against them (see sub Rule C7.7).

Important things to consider about this model rule:

- It is up to you to decide what should be included in your rules relating to the discipline of members, **however** it must ensure, at a minimum:
 - that the rule clearly expresses the types of misconduct that can attract a sanction, and
 - that the types of misconduct do not place oppressive, unreasonable or unjust conditions on members.
- While it is not mandatory, the rule should make provision for 'procedural fairness' for the member (see below for more information).

¹ RO Act section 141 (1) (b) (vii).

² RO Act section 142 (1) (c), and RRS Tracey, 'Determination of the Validity of the Rules of an Organisation under Section 140 of the Conciliation and Arbitration Act' 8 *Fed.L.Rev* 57, 1976: 57-76, see 71-73.

NOTES TO RULE C7



Mandatory rule: suggested text; also standard

- The rule specifies time frames for the various steps in the complaint handling and hearing process, and in relation to any appeal. These are suggestions and examples. You must decide time frames that work practically and effectively for your organisation. Be mindful that non-compliance with a time frame set by the rules may invalidate the entire process or require that it be repeated from the start.
- Your organisation can choose potential penalties that may be imposed on a member – ranging from no penalty up to expulsion depending on the severity of an offence. Whatever penalties are chosen, you must take care to ensure they are not disproportionate or harsh, otherwise they may offend the statutory prohibition against a rule imposing conditions on members that are oppressive, unreasonable or unjust.³
 - If the suspension of a member from membership is an available penalty, the period of suspension must not be too long or uncertain in duration.⁴
 - Model sub Rule C7.7.3 fixes a maximum suspension period of six months.
 - Your organisation may choose a maximum suspension period that is less than 6 months if that is more appropriate to your organisation.
 - However, it is unlikely that a suspension period longer than twelve months will be consistent with the RO Act's prohibition of rules that impose conditions on members that are oppressive, unreasonable or unjust.⁵

Clearly stated grounds for alleged misconduct

It has been accepted by the courts that a disciplinary rule is necessary for the proper conduct of the affairs of the organisation, but any such rule must be clearly expressed so that members have no difficulty understanding their obligations.⁶

- There has been considerable case law dealing with the question of whether a rule for disciplining members imposes conditions on members that are 'oppressive, unreasonable or unjust'.⁷ For example, misconduct described as 'conduct likely to weaken or destroy the organisation' or 'acting detrimentally to the interests of the organisation' have been held to be inconsistent with similar provisions in predecessor legislation to the RO Act and thus any ground based on it would be invalid.⁸
- Misconduct described as 'failing to abide by and observe resolutions' of an organisation has also been found by the courts to be so vague and uncertain as to place unreasonable conditions on members,⁹ as has not complying with policy or direction of the governing body.¹⁰ This is because members should be able to ascertain what they are obliged to do or refrain from doing.¹¹ Thus, the word 'refusing' is used in

³ Ibid.

⁴ *O'Donoghue v Amalgamated Society of Carpenters and Joiners of Australia* (1979) 41 FLR 197; *Hills v Higgins* (1982) 61 FLR 131:145-146.

⁵ *Re Australian and International Pilots* [2024] FWCD 1007.

⁶ *Maxwell v Boilermakers Society* (1964) 7 FLR 155.

⁷ RRS Tracey, 'Determination of the Validity of the Rules of an Organisation under Section 140 of the Conciliation and Arbitration Act' 8 *Fed.L.Rev* 57, 1976:71-73.

⁸ *Wishart v Australian Builders Labourers' Federation* (1960) 2 FLR 298:301-302; *Cassidy v Amalgamated Postal Workers' Union of Australia* (1967) 11 FLR 124:127

⁹ *Hardiman v Transport workers Union of Australia* (1954) 80 CAR 232:236.

¹⁰ *Thornton v MacKay* (1946) 56 CAR 561:591.

¹¹ Ibid.

NOTES TO RULE C7



Mandatory rule: suggested text; also standard

model sub Rule C7.1.2 as it reflects that the member subject to discipline is aware of the resolution or direction.

- Charges of misconduct about refusing to comply with policy documents or codes of conduct require that the relevant document must be readily available to all members, and members must be able to ascertain from the document what they are obliged to do or refrain from doing.¹²

Providing ‘procedural fairness’ for the member in the rule

- There is also considerable case law on the proper conduct of disciplinary hearings in relation to alleged misconduct by a member and ensuring that a member facing a disciplinary hearing is afforded procedural fairness or ‘natural justice’.¹³
- Therefore, you should consider including rules relating to ‘procedural fairness’, particularly rules which provide the member with a reasonable opportunity to answer the complaint against them (see sub Rules C7.4 and C7.5). This will ensure transparency and certainty for the organisation and its members.

¹² *Re Master Builders’ Association of Victoria* [2022] FWCG 43

¹³ *Cains v Jenkins* (1979) 26 ALR 652: 660-661; RRS Tracey, ‘The Conduct of Union Disciplinary Hearings’ *Journal of Industrial Relations*, 1982:204-214

C8 RESIGNATION FROM MEMBERSHIP

- C8.1 A member may resign from membership by written notice addressed to the Secretary and delivered to that officer.
- C8.2 A notice of resignation from membership takes effect:
- C8.2.1 where the member ceases to be eligible to become a member of the Organisation:
- (a) on the day on which the notice is received by the Secretary; or
 - (b) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;
- whichever is later; or
- C8.2.2 in any other case:
- (a) at the end of 2 weeks after the notice is received by the Secretary on behalf of the Organisation; or
 - (b) on the day specified in the notice;
- whichever is later.
- C8.3 Any monies payable but not paid by a former member in relation to a period before the member's resignation took effect, may, subject to the RO Act, be sued for and recovered in the name of the Organisation in a court of competent jurisdiction, as a debt due to the Organisation.
- C8.4 A notice delivered to the Secretary shall be taken to have been received by the Organisation when it was delivered.
- C8.5 A notice of resignation that has been received by the Organisation is not invalid because it was not addressed and delivered in accordance with sub Rule C8.1
- C8.6 A resignation from membership is valid even if it is not effected in accordance with this rule if the member is informed in writing by or on behalf of the Organisation that the resignation has been accepted.

NOTE: A notice of resignation under this Rule may be given electronically – see definition of ‘in writing’ in sub Rule B1.1.3.



Key considerations

- It is mandatory for an organisation to have a rule providing for the resignation of members in accordance with Section 174 of the RO Act.¹ Model Rule C8 meets this requirement.
- Section 174 of the RO Act gives a right to resign to a member of an organisation on certain conditions that ensure that the process is reasonably convenient and not too onerous on the member.²
- Sub Rule C8.2 reproduces the substantive requirements of Section 174 of the RO Act, and the text of this sub Rule must be in your rules.³
- The model rule nominates the Secretary as the officer to be the recipient of a resignation. Section 174 indicates that an organisation must designate an officer to be the recipient of a resignation, and the commonly chosen officer in rules of this character is the Secretary. You can choose to designate another officer in your rules, if you wish, but it is preferable that it be the officer with responsibility for keeping the register of members.⁴



NOTE: the model rule prescribes that where the member remains eligible for membership of the organisation, the member may resign on two weeks' notice to the organisation – C8.2.2 (a). However, Section 174 allows an organisation to set a shorter period of notice – see sub section 174(2)(b)(i). You are not able to include a longer period of notice.

Electronic delivery and receipt

A resignation can be delivered electronically if an organisation's rules allow.⁵ The model rules allow electronic delivery of a resignation because sub Rule B1.1.3 allows electronic communication generally (as referenced in the note at the foot of this model rule).

¹ RO Act section 141 (1) (b) (viii).

² RO Act section 174 (1), (2), (4), (5) and (6).

³ RO Act section 141 (1) (b) (viii).

⁴ See model Rules C9 and D8.

⁵ *Electronic Transactions Act 1999* (Cth), section 9.

C9 REGISTER OF MEMBERS

C9.1 The Secretary shall keep an up to date register of the members of the Organisation in accordance with requirements of the RO Act, which records members' names and postal addresses and, where notified, email addresses.

C9.2 The Secretary shall also ensure that the register of members records:

C9.2.1 whether the member is a financial member or an unfinancial member; and

C9.2.2 whether a member was admitted to the Organisation under Rule C1 or C2.

NOTES TO RULE C9



Mandatory rule: suggested text

Key considerations

- An organisation is required to have a rule regarding the keeping of a register of members.¹ Model Rule C9 is a suggested rule that meets this requirement.
- There are statutory obligations on the organisation to keep and maintain an up-to-date register of its members.²
- The responsibility for keeping the register of members must rest with the prescribed officer.³ In these model rules the Secretary is the prescribed officer⁴ and therefore has responsibility for keeping the register of members.

The Organisation, via the Secretary as its prescribed officer (see model Rule D8), must ensure that the organisation complies with its obligations to keep the register and to report on that every year to the FWC.⁵



NOTE: Sub rule C9.2.2 should only be included in an organisation's rule if the contents of Rule C2 are included in the rule book (which allows dual or joint membership of the organisation and a Related State association, where that is relevant and possible).

¹ RO Act section 141 (1) (b) (xii).

² RO Act Section 230 (1) (a) and (2) (a).

³ RO Regulation 150.

⁴ Model Rule D8.

⁵ RO Act Section 233 (1) and RO Regulations 147 and 149.

C10 MEMBER REPRESENTATIVES

Rule for an **Employer** Organisation

- C10.1 A member which is a corporation or an unincorporated partnership ('corporate member') shall nominate a natural person to be its representative and shall notify the Secretary of that nomination as soon as practicable after the nomination is made. The member shall also ensure that in the event of its representative ceasing to be its representative for any reason, the member nominates another natural person to replace that representative and notifies the Secretary of the change.
- C10.2 The representative of a corporate member shall, in the place of the member:
- C10.2.1 represent it at all meetings of the Organisation it would be entitled to attend if it were an individual member;
 - C10.2.2 be entitled to be heard and vote at all meetings of the Organisation, and to vote at elections and ballots as the representative of the corporate member; and
 - C10.2.3 be entitled to nominate for and stand for office in the Organisation, and to nominate another member for any such office.
- C10.3 The appointment of a representative by a corporate member shall take effect upon receipt by the Secretary of the corporate member's written nomination of that representative.
- C10.4 Where a representative of a member holding an office in the Organisation ceases to be the representative of that member, whether by reason of the member changing its or their representative, or any other reason (such as resignation of the representative from that position), that representative shall upon the date that the change takes effect cease to hold that office by reason of being no longer eligible to hold it. The office held by that former representative shall be vacant and shall be filled in accordance with Rule H1 (casual vacancies).

NOTES TO RULE C10



Recommended for employer organisations

Key considerations

- It is not mandatory for an organisation to have a rule relating to the appointment of member's representatives, but it is a standard element for employer organisations.
- Employers are usually corporate bodies or sometimes unincorporated partnerships. Such a rule is recommended so that they can fully participate in the affairs of the organisation.

**Why is this rule needed for an employer organisation**

- If an employer organisation allows membership by corporate or partnership entities then the organisation must make some provision for them to appoint representatives.
- If an organisation's rules allowed for corporate and partnership members but did not make provision for them to have representatives to stand for or hold office in the organisation, this could effectively limit holding office to members who were natural persons. Those rules would likely contravene the requirement that rules '...not impose conditions on members and applicants for membership that, having regard to the objects of the RO Act, are oppressive, unreasonable or unjust.'¹

Features of the model rule

- The model rule permits a 'corporate member' (incorporated entity or an unincorporated partnership) to appoint a representative, who then represents the corporate member at meetings of the organisation, and has the right to vote and stand for office in the organisation.
- The rule provides for the appointment to take effect upon receipt by the Secretary of the corporate member's written nomination of the representative.
- The model rule also provides for when a representative of a member has been elected to an office in the organisation and ceases to be the member's representative for any reason. It makes clear that this renders the office vacant, and that the successor to that representative does not automatically become an officer in their place.

¹ RO Act section 142 (1) (c).

C11 REMOVAL OF CERTAIN UNFINANCIAL MEMBERS

- C11.1 If an unfinancial member remains unfinancial for a period of 24 months, the Secretary shall remove the name and address of that member from the register of members.
- C11.2 A person whose name is removed from the register under sub Rule C11.1 shall cease to be a member of the Organisation from the date of such removal.
- C11.3 Any person applying for membership within six (6) months of being removed from the register of members under this Rule shall not be charged an entrance fee for membership but may be required to pay any outstanding amounts in respect of the previous membership before being re-admitted to membership.

NOTES TO RULE C11



Optional rule

- It is not mandatory for an organisation to have a 'purging' rule – i.e. a rule that requires it to remove persons from the register of members who have been unfinancial for a lengthy period.
- Even without a rule, an organisation must ensure that its register of members is an accurate representation of its actual membership. It must regularly remove persons from the register who have been unfinancial members for so long that it is appropriate to assume they have no further connection with the organisation.
- The RO Act has a specific provision that requires every organisation to take steps to remove persons from the register of members who have been unfinancial for 24 months.¹
- The RO Act also provides that if a member removed in this way re-applies for membership within six months, the organisation cannot require payment of an entrance fee.²

The benefit of such a rule ensures that unfinancial members are purged from the Register and thus promotes compliance with the RO Act. Other model rules relating to membership, for example Rule C1, refer to this model rule to draw attention to its contents.

¹ RO Act section 172.

² RO Act section 173.

PART D – GOVERNANCE

D1 OVERVIEW

- D1.1 The Organisation shall be governed by the members in accordance with these Rules and the provisions of the RO Act.
- D1.2 This Part of the Rules concerns the means by which the members govern the Organisation, and in particular how they control the committees established by these rules to conduct its affairs.
- D1.3 This Rule (D1) provides a general overview of the governance structure established by this Part and is to be read subject to the Rules.
- D1.4 The members exercise control over the affairs of the Organisation and the committees established under these rules via:
- D1.4.1 General Meetings of members;
 - D1.4.2 Election of officers to the Executive and to the National Conference;
 - D1.4.3 Deliberations and decisions of the Executive;
 - D1.4.4 Proceedings and decisions of the National Conference; and
 - D1.4.5 Plebiscites of members.

NOTES TO RULE D1



Optional rule

An overview rule is not mandatory. It may assist with understanding the governance system provided in the rules. It may also be useful as a summary of how an organisation complies with the RO Act's requirement that its rules provide for the members to control the committees within the organisation.¹

If you adopt this rule, you must delete any bodies or processes that have not been included in your rules.²

¹ RO Act section 5 (3) and section 141 (1) (b) (iv).

See also *Model Rules Guidance Note* (to be published at a later date).

² See notes to D12.

DIVISION 1: GENERAL MEETINGS OF MEMBERS

D2 ANNUAL AND SPECIAL GENERAL MEETINGS OF MEMBERS

Annual General Meeting

- D2.1 An Annual General Meeting (AGM) of the members of the Organisation shall be conducted each year no earlier than three (3) months and no later than six (6) months after the conclusion of the Organisation's financial year.
- D2.2 The agenda, date or dates and locations of an AGM shall be determined by the Executive, including electronic locations if applicable as provided for in Rule E6.
- D2.3 The business of an AGM shall be limited to consideration of:
- D2.3.1 if required under the RO Act, the full financial report for the Organisation;
 - D2.3.2 such other reports or subjects as may be required for submission to a general meeting of members by the RO Act;
 - D2.3.3 agenda items (including proposals) submitted by members in accordance with sub Rule D2.4; and
 - D2.3.4 agenda items relating to the affairs of the Organisation as are referred to the meeting by the Executive.
- D2.4 Any member ('the petitioning member') wishing to have an item placed on the agenda for the AGM shall set out in writing the terms of the item, any proposal for the AGM in relation to it, and a brief summary of the reasons for doing so. Such writing shall be submitted by the petitioning member to the Secretary not less than twenty-eight (28) days prior to the commencing date of the AGM, and shall be supported by the signatures of not less than five (5) financial members or five percent (5%) of financial members (whichever is fewer). The Executive must include such an item in the agenda if the petitioning member has complied with the requirements of this sub Rule.

NOTE: See Rule E6 in relation to conduct of or participation in meetings of the Organisation by electronic means.

Special General Meetings

- D2.5 A Special General Meeting of the Organisation (SGM) may be called at any time upon a resolution of the Executive directing that such a meeting be held.

- D2.6 An SGM shall be called upon receipt by the Secretary of a petition signed by not less than five percent (5%) of the members of the Organisation requisitioning such a meeting for the purpose of the meeting considering the Organisation's full financial report. In the case of a meeting convened pursuant to this sub Rule the Secretary shall determine the time and place of the meeting.
- D2.7 An SGM shall be called upon receipt by the Secretary of a petition signed by not less than five percent (5%) of financial members of the Organisation requisitioning such a meeting for the purpose of the meeting considering any business relating to the affairs of the Organisation specified in the petition. In the case of a meeting convened pursuant to this sub Rule the Secretary shall determine the time and place of the meeting.
- D2.8 An SGM called under either sub Rule D2.6 or D2.7 shall be convened to commence on a date not later than thirty (30) days after the receipt of the relevant petition by the Secretary.

NOTE: See Rule E6 in relation to conduct of or participation in meetings of the Organisation by electronic means.

Authority of general meetings

- D2.9 Notwithstanding any other provision of these Rules, all lawful decisions of a general meeting of members are binding on all of the committees and sub committees of the Organisation, including the Executive and National Conference, and on all members of the Organisation, and may only be altered or rescinded by decision of another general meeting.

NOTES TO RULE D2



Recommended rule and standard

Key considerations

- Rules for holding general meetings of members are a standard feature of organisation rules. While such rules are not mandatory for inclusion in an organisation's rule book they are highly recommended. The RO Act requires that an organisation's full financial report must be presented to a general meeting of members every year, unless the organisation has what is commonly known as a '5% rule'. A 5% rule allows a special general meeting (SGM) to be called by members on certain conditions. With a 5% rule, the organisation's committee of management can be presented with the full financial report instead of an AGM.¹
- It is thus recommended that an organisation's rules make provision for general meetings of members.

Agenda for AGM

¹ RO Act section 265 and section 266.



- Model sub Rule D2.3 sets out the items to be included in the agenda for an AGM. Apart from D2.3.3, which permits member-initiated agenda items; all are standard in AGM rules of organisations.
- The ability to permit member-initiated agenda items is an important aspect of membership participation in the affairs of their organisation and enhance democratic control.² It can also enhance control of the organisation and its committees.³
- However, some organisations limit member-initiated agenda items to special meetings, and thus restrict the agenda items at AGMs to matters that must be dealt with by law (e.g. the full financial report) or at the request of the Executive. This is because member-initiated items at the AGM may prolong the AGM to such an extent as to be counterproductive to member engagement and the effective management of meetings.⁴
- It is up to your organisation as to whether it wishes to allow member-initiated agenda items at an AGM.
- In this model rule, member-initiated agenda items are only permissible where the conditions prescribed in model sub Rule D2.4 are satisfied. However, these conditions are merely suggestions. It is up to your organisation to decide what conditions, if any, must be met for member-initiated items to be placed on the AGM agenda. Bear in mind that the conditions should not be so onerous that it becomes impracticable for members to place items on the agenda.
- One of the conditions in this model rule for member-initiated agenda items is setting of a minimum number of financial members signifying their support for the proposed agenda item. The model rule has elected 5 financial members or 5% of financial members, whichever is fewer. If your organisation decides that a minimum number is required, you can choose a number that suits your organisation.
- The number will depend on the circumstances of your organisation – including matters such as the number of members, their location and access to technology.
 - In general, a requirement that the members be financial is seen as appropriate, although not necessary.
 - If the number of financial members required is too high, the mechanism may not work in practice.
 - You can choose an actual number, a percentage, or combination of both, as seen in the model rule.

Rule providing for an SGM is recommended

It is recommended that an organisation's rules provide for a Special General Meeting to:

- Assist compliance with the standards that Parliament sets for organisations. Among other things, the standards include:
 - the democratic functioning and control of organisations, and
 - the participation of members in the affairs of their organisation.⁵

² RO Act section 5 (3) (b) and (d).

³ RO Act section 141 (1) (b) (iv).

⁴ RO Act section 5 (3) (a) and (c).

⁵ RO Act section 5 (3) (b) and (d).

NOTES TO RULE D2



Recommended rule and standard

- Assist compliance with the requirement that an organisation's rules provide for the control of committees of the organisation by the members, particularly if the rule provides that decisions of general meetings bind its committees and officers.⁶
- Provide for modern good governance practice; and
- Permit an organisation's full financial report to be presented to the organisation's committee of management, rather than a meeting of members if the rules allow for the calling of a general meeting to consider those reports by not more than 5% of members.⁷

NOTE: your 5% rule:



- cannot be restricted to financial members
- cannot require a number of members higher than 5% to support the request
- should be a percentage of members rather than a fixed number.⁸

Two types of SGMs are provided for in the model rule

- D2.6 is for an SGM that conforms with the requirements of the RO Act in relation to presentation of full financial report to an SGM on requisition by no more than 5% of the members;
- D2.7 is for an SGM concerned with subjects other than the organisation's financial reports. This model rule selects 5% as the number of financial members required to petition this type of meeting. For this type of rule your organisation can determine the number or percentage of members required and whether the members must be financial members.

D2.8 puts a time limit on when an SGM must be held and selects within 30 days of receipt of the petition for a meeting. It is highly recommended that the rules provide for a time limit, but it is up to your organisation to determine that limit.

It is highly recommended that your rules provide for both types of Special General Meetings.

Authority of general meetings of members

The model rule, in sub Rule D2.9, provides that lawful decisions of a general meeting of members bind all the committees and sub committees of the Organisation, including the Executive and National Conference. Such a provision is highly recommended for any general meeting rule because:

- it avoids any doubt as to the authority of general meeting decisions;
- it provides a means for members to participate in the affairs of their organisation;⁹ and
- it contributes to an organisation fulfilling its obligation under the RO Act to have rules that provide for the control of committees of the organisation by the members.¹⁰

⁶ RO Act section 141 (1) (b) (iv).

⁷ RO Act section 266 (1) and (3).

⁸ Ibid.

⁹ RO Act section 5 (3) (b).

¹⁰ RO Act section 5 (3) (d) and section 141 (1) (b) (iv).

DIVISION 2: THE EXECUTIVE

D3 ESTABLISHMENT AND COMPOSITION OF EXECUTIVE

D3.1 There shall be an Executive of the Organisation consisting of the following officers:

[EXAMPLES ONLY] (see Notes below)

D3.1.1 **[EXAMPLE ONE]**

Executive members elected by and from the financial members in each State and Territory, determined according to the following formula:

Financial membership of the State or Territory as at 31 December in the year prior to the conduct of the scheduled election for the Executive	Number of Executive members
1-1000	One
1001-5000	Two
5001-10000	Three
More than 10000	Four

[EXAMPLE TWO]

Executive members as follows:

- (a) 2 elected by and from financial members in NSW and the ACT;
- (b) 1 elected by and financial from members in Queensland;
- (c) 1 elected by and financial from members in South Australia and the Northern Territory;
- (d) 2 elected by and from financial members in Victoria and Tasmania;
- (e) 1 elected by and from financial members in Western Australia.

-
- D3.1.2 The Executive members shall elect by and from its members the following Office Bearers:
- (a) President
 - (b) Vice President
 - (c) Secretary.
- D3.1.3 No person may hold more than one Office Bearer position at the same time. An Executive member may nominate for any and all Office Bearer positions. If an Executive member is elected to a higher ranking office, as set out in [Appendix B](#), their nomination(s) for other Office Bearer positions shall be dealt with in accordance with the rules in that Appendix.
- D3.1.4 Where a person is elected to an Office Bearer position, that person retains their office of Executive member. However, that person is entitled to cast one vote only on Executive.
- D3.1.5 If an Office Bearer resigns from or is removed from their Office Bearer position, unless otherwise ineligible under these Rules, they shall continue to hold their Executive member position.
- D3.1.6 If an Office Bearer resigns from, ceases to be eligible to hold or is removed from the office of Executive member, they shall cease to hold their Office Bearer position at the same time that they cease to hold their Executive member position.
- D3.1.7 Notwithstanding sub Rule D3.1.6, if an Office Bearer is not re-elected to an Executive member position at the scheduled biennial election, they shall continue to hold their Office Bearer position and remain a member of the Executive until their successor has been elected, but are not eligible to nominate for an Office Bearer position at the scheduled biennial election.
- D3.1.8 If a Conference delegate is elected to the office of Executive member, then that person is deemed to have vacated their Conference delegate position and the vacancy shall be filled in accordance with Rule H1 (Casual vacancies in office).
- D3.2 The Executive shall be the committee of management of the Organisation for all the purposes of the RO Act including without limitation, the auditing and accounting requirements of that Act. Its powers are specified in Rule D4.
- D3.3 The powers and duties of the Office Bearers are set out in Rules D5, D6 and D7.
- D3.4 The duties of the Executive members specified in sub Rule D3.1.1 are to attend all meetings of the Executive unless excused, to participate in its deliberations and voting, and to exercise such duties as may be given to them by the Executive where these Rules permit or authorise it to do so.



This model rule should be read in conjunction with Rule D4.

Key considerations

- The RO Act requires an organisation to have a committee of management, which is the body of people that manages the affairs of the organisation. Model Rule D3 is a suggested rule that meets this requirement.
- This model rule gives the committee of management the name 'Executive'.
- The name of the body can and will vary depending on the choice of the organisation – other common names include 'Council' or 'Board of Directors'.
- If the body concerned satisfies the definition of 'committee of management' in the RO Act then the name chosen for it is of secondary significance.¹
- A member of an organisation's committee of management is designated by the RO Act as holding an 'office', so the holder must be elected to it in accordance with the Act.²

Examples of composition of the Committee (Executive)

This model rule is **an example only**, of the kind of officers on the committee. It provides two common examples of how members are elected to the executive:

- A rule that specifies a formula for representation on the body based on member numbers per electorate; and
- A rule that specifies a fixed number of representatives per electorate.

There are other ways of dividing your membership into electorates including:

- no division at all and a single electorate;
- other geographical regions;
- by industry or employer; or
- any other division that suits your organisation.

Whatever way you determine to divide up your electorates for specifying the composition of a committee of management of an organisation, particularly so far as it prescribes representation on that committee from elements or parts of the membership (e.g. occupational groups or geographical areas) depends on:

- the circumstances of your organisation,
- the requirements of the RO Act relating to participation of members in their affairs of their organisation and democratic functioning of the organisation,
- the requirements of the RO Act relating to 'control of committees by the members' and the extensive case law on the meaning of that expression.³

¹ RO Act section 6, definition of 'committee of management'.

² RO Act section 9 (1) (b) and section 143 (1) (a).

³ *Luckman v APTU* (1978) 28 ALR 393; *McLeish v Kane* (1978) 36 FLR 80; *Sheriff v Townsend* (1980) 48 FLR 20; *Hodder v AWU* (1985) 70 ALR 489; *Lawley v TWU* (1987) 22 IR 114; *Skourdoumbis v Findlay* [2002] FCA 638. See also *Model Rules Guidance Note* (to be published at a later date).



NOTE: the model rule makes clear that one person cannot hold any more than one of the National Office Bearer positions and more than one office on National Conference. Your election rules will need to set out the ranking of offices (in other words, which office is elected first, second, and so on). Your election rules will also need to set out what happens to a candidate's other nominations if they are elected to a higher office. The election model rules are in [Appendix B](#).

D4 POWERS OF THE EXECUTIVE

- D4.1 Subject to the RO Act, these Rules and any decisions of the members in general meeting or by plebiscite, the Executive shall manage and conduct the affairs and business of the Organisation between meetings of the National Conference, and shall do so in accordance with the objects of the Organisation and these Rules.
- D4.2 Without limiting the generality of the foregoing, but subject to sub Rule D4.3, the Executive shall have the following duties and powers:
- D4.2.1 Dealing with the property and assets of the Organisation, including without limitation by way of sale, purchase, lease, licence or encumbrance;
 - D4.2.2 Investing the property and funds of the Organisation;
 - D4.2.3 Managing the financial affairs of the Organisation including the expenditure of its funds;
 - D4.2.4 Fixing subscriptions, entrance fees, levies and fees for services;
 - D4.2.5 Determining which of the offices of President, Vice President and Secretary shall be remunerated and which shall be honorary, and fixing the remuneration and honorariums for such offices;
 - D4.2.6 Determining the policies of the Organisation, provided any such policy is consistent with any prior decision of the National Conference, and further provided that any such policy may be subsequently rescinded or amended by the National Conference;
 - D4.2.7 Implementing and giving effect to the policies adopted by the National Conference;
 - D4.2.8 Directing the Secretary to initiate or defend, and conduct any legal proceedings, including proceedings before the FWC and other tribunals and courts;
 - D4.2.9 Directing the Secretary to notify the FWC or other tribunal or agency of an industrial dispute;
 - D4.2.10 Directing the Secretary to represent members in industrial disputes or proceedings, including by way of initiating or responding to claims;
 - D4.2.11 Entering into agreements under the Fair Work Act;
 - D4.2.12 Subject to sub Rule D4.4, engaging and terminating the employment of employees, and fixing their remuneration and conditions of employment;
 - D4.2.13 Entering into contracts with third parties for the supply of goods or services to the Organisation, or the supply of services by the Organisation to any such party;
 - D4.2.14 Engaging lawyers or other professional experts to provide advice to or representation of the Organisation;

- D4.2.15 Approving a Scheme of Amalgamation with another organisation or organisations;
- D4.2.16 Submitting any matter or question to a plebiscite of members;
- D4.2.17 Holding a general meeting of the members;
- D4.2.18 Establishing advisory sub committees of officers and members for such purposes as the Executive thinks fit and determining the composition, meeting procedures and the scope of deliberations of any advisory sub committee so established;
- D4.2.19 In the temporary absence or incapacity of the Secretary or Vice-President, appointing another member of the Executive to carry out the duties of that officer during their absence or incapacity;
- D4.2.20 Appointing a Returning Officer for the Organisation to conduct ballots not conducted by the AEC;
- D4.2.21 Appointing and removing the Organisation's auditor;
- D4.2.22 Hearing and determining any complaint made against an officer;
- D4.2.23 Hearing and determining a complaint made against a member;
- D4.2.24 Altering the rules of the Organisation as authorised by sub Rule G1.3;
- D4.2.25 **[INSERT any other powers specific to the Organisation's circumstances here. Each additional rule should be on a new line]**
- D4.2.26 Exercising such additional powers as are specifically conferred on the Executive by other provisions of these Rules;
- D4.2.27 Doing all such things and taking all such actions as are required or conducive to the fulfilment of the objects of the Organisation or the exercise of any of the powers conferred on the Executive by this Rule, or any other rule of the Organisation;
- D4.3 Notwithstanding the terms of sub Rule D4.2, the Executive shall not have power over the following matters, which matters are reserved for decision of the National Conference:
 - D4.3.1 Establishing branches;
 - D4.3.2 Altering the Rules of the Organisation other than in the circumstances specified in sub Rule G1.3;
 - D4.3.3 **[INSERT other powers reserved to the National Conference as selected by the organisation for its circumstances here.]**
- D4.4 Notwithstanding sub Rule D4.2.12, the Executive may delegate to the Secretary the power to engage and dismiss employees of the Organisation, and to fix their remuneration and conditions in accordance with any direction given by the Executive on that subject.

**Key considerations**

- In the model rules, the Executive is the committee of management.
- The RO Act requires that the rules of an organisation specify the powers of each its committees,¹ with the committee of management being an important committee. Model Rule D4 is a suggested rule that meets this requirement.
- This model rule provides a non-exhaustive list of the powers commonly found in the rule books of organisations in relation to their committees of management. The model rule lists the most common powers of such committees.
- You must determine for yourself the specific powers that are appropriate to be conferred on your committee of management. The list in the model rule provides a starting point when considering this matter. You may decide that some are appropriate, and others are not, and add any others you believe are appropriate, provided that they do not contravene the RO Act.

‘Reserving’ of powers to other committees within organisation

The model rule (in sub Rule D4.3) also provides a list of specific limitations on the powers of the committee of management in favour of the organisation’s national conference.

- It is common for organisations (particularly employee organisations) to also have a body of member representatives that meets occasionally (often yearly but also when required) which is the supreme authority within the organisation. The model rules dealing with that body are found in Rules D11 to D14.
- It is common for certain powers within the organisation to be reserved to this supreme authority, and not made available to the committee of management.
- The contents of model sub Rule D4.3 are merely an indicative and non-exhaustive list. You need to determine for your own circumstances the powers to be reserved to another body or removed from the authority of the committee of management.
- However, the committee of management must undertake certain functions, for example approving Loans, Grants and Donations,² and responsibilities for financial reporting.³ The rules cannot give these types of functions to other bodies or persons.

‘Delegating’ versus ‘implementing’

Organisations often have a rule that allows a committee or an officer to delegate some of their powers to another person such as another officer or an employee of the organisation. For example, in model sub Rule D4.4 the Executive may delegate to the Secretary the power to appoint and dismiss employees and fix their remuneration and conditions (within limits set by the Executive).

¹ RO Act section 141 (1) (b) (i).

² RO Act section 149.

³ Part 3 of Chapter 8 of the RO Act and the Reporting Guidelines made under RO Act section 255.

NOTES TO RULE D4



Mandatory rule: suggested text

Exercising such a 'delegation' is to be contrasted with implementing a decision of a higher authority in an organisation:

- When the officer or employee **implements** a decision of a higher authority they are giving effect to or carrying out what the higher authority has decided, not making the decision themselves;
- When the officer or employee is **delegated** a power on a subject by a higher authority that officer makes the decision on that subject themselves.

See also *Model Rules Guidance Note* (to be published at a later date).

Non-exhaustive list

The list of powers contained in the model sub Rule D4.2 is a 'non-exhaustive list'. This means that the list of powers includes the main key powers of Executive but it does not limit the powers of Executive to those expressed in D4.2.

This is the difference between:

- The powers of Executive **include** X, Y and Z.
- The powers of Executive **are** X, Y and Z.

When you use inclusive language, it can include additional, unlisted powers. However, when you use the language of 'the powers are' you risk creating an 'exhaustive' list that are the only powers Executive can use. Some organisations use that language intentionally; be aware of how the words you choose impact your rules.

D5 PRESIDENT – POWERS AND DUTIES

D5.1 The President shall preside at the following meetings of the Organisation, whenever that officer is available:

D5.1.1 general meetings of members;

D5.1.2 meetings of the Executive; and

D5.1.3 meetings of the National Conference.

D5.2 The President shall conduct all such meetings in accordance with good order and these Rules, and shall sign the minutes of each such meeting when approved by resolution of the meeting concerned. At such meetings the President shall have a deliberative vote only.

NOTE: See also Part E of these Rules, concerning conduct of meetings including voting.

D5.3 Unless otherwise determined by the Executive, the office of President shall be honorary and shall attract an honorarium in a yearly sum determined by the Executive. Any determination will take effect from the next election of the President.

D5.4 The President may attend any meeting of any sub committee, but shall not preside or vote at such a meeting unless appointed a member of that sub committee by the Executive.

D5.5 **[INSERT any additional powers or duties of the president here]**

NOTES TO RULE D5



Recommended rule

Key considerations

- An organisation is not required to have an office of President (or equivalent titled office, e.g. Chair) in its rules, but it is recommended that there be an office that has the function of presiding over meetings and undertaking other associated tasks, such as signing approved meeting minutes.¹ Such an office is a standard element of good governance practices and is almost universally found in the rule books of organisations (though not always by the name 'President').
- If you choose to have an office of President (or equivalent titled office) – it is mandatory for your rules to specify the powers of the office.²
- The holder of a position with that title is designated by the RO Act as holding an 'office', so the holder must be elected to it in accordance with the Act.³

¹ See generally in relation to the standard duties of a meeting chair: E Peden and W Muddle, *Joske's Law and Procedure at Meetings in Australia* 12th edn, Lawbook Co. of Australasia, 2021:Chapter 6.

² RO Act section 141 (1) (b) (i).

³ RO Act section 9 (1) (a) (definition of 'office') and section 143 (1) (a).



Features of model rule

- This model rule reproduces common provisions found in organisation rules in respect of the office of President. However, the contents of organisations' rules on this subject vary considerably, particularly as to the extent of the powers of an organisation's presiding officer.
- In some rule books, most commonly those of employer organisations, the President is in effect the executive officer, with a large array of powers, and is a full time paid official similar to the powers of the Secretary below.
- Most rule books however provide limited powers to the President and make it an honorary position, which is the approach adopted by the model rule. However, there is a section at the foot of the model rule for your organisation to add additional powers for the President if desired.
- The amount of an honorarium for such an officer is entirely up to the organisation but would usually be nominal. This is a subject that is best dealt with in the organisation's policies on expenditure under Rule F5. Rules should provide that a change to how much an office is paid (including making it paid or unpaid) takes effect at the next election⁴ and the model rules replicate this.

Deliberative and casting votes

The model rule provides that the President has only a deliberative vote at meetings (i.e. the same vote as all other attendees entitled to vote). Some organisations' rule books give a President a casting vote at meetings, in addition to or instead of a deliberative vote.

A 'casting vote' is a vote given to the person chairing a meeting to 'break a deadlock' (i.e. when all the other votes cast at the meeting are divided equally between for and against).

It is up to you to choose which type of vote or votes its presiding office should have. The important thing is to make provision for it in the rules.

⁴ *Ludwig v Copeland* (1995) 62 IR 356.

D6 VICE PRESIDENT – POWERS AND DUTIES

- D6.1 The Vice President shall exercise all of the powers, functions and duties of the President when that officer is absent or unavailable.
- D6.2 Unless otherwise determined by the Executive, the office of Vice President shall be honorary but shall attract an honorarium in a yearly sum determined by the Executive. Any determination will take effect from the next election of the Vice President.
- D6.3 **[INSERT any additional powers or duties of the vice president here]**

NOTES TO RULE D6



Recommended rule

Key considerations

- You can decide whether to include Vice Presidential office(s) in your rule book, but as with the office of President, the inclusion of such a rule is commonplace in such rules (although the title of the office may vary).
- If you have an office of President, then as a matter of good governance at least one Vice President is recommended, so that the rules would make clear which officer is to assume the duties of the President when that officer is absent or unavailable.
- If a Vice President office is to be included in an organisation's rule book, it is mandatory to specify the powers of that office.¹
- Any Vice President is designated by the RO Act as holding an 'office' that requires the holder to be elected to it in accordance with the Act.²

Features of this model rule

- While a rule in relation to a Vice President office is common in organisation rules, the variety of powers and duties such offices may hold in an organisation can vary considerably.
- The approach of this model rule is to reproduce the most common features of organisation rules in relation to this office, which restrict the powers of the office to assuming the powers of the President in their absence or unavailability, plus specific duties conferred by the Executive from time to time.
- The model rules are drafted so that the Vice President automatically assumes the President's duties under certain circumstances without any resolutions.
- The model rule uses the expression 'absent or unavailable' to ensure that all reasonably conceivable circumstances preventing the attendance of the relevant officer are embraced (e.g. leave, illness, incapacity, recusal due to conflict of interest).

¹ RO Act section 141 (1) (b) (i).

² RO Act section 9 (1) (a) and section 143 (1) (a).

**More than one Vice President – e.g. ‘Senior’ and ‘Junior’**

Some organisations choose to have more than one Vice President.

If you adopt that approach it is best to designate one of these offices as ‘Senior’ Vice President in the rule and specify the duties that attach to the ‘Senior’ office (usually precedence in assuming the duties of the President when that officer is absent or unavailable). When both offices exist, the rules must contain an election for each office of senior and junior Vice President.

Alternatively, the Vice Presidents might have responsibility for representing different groups of members.

D7 SECRETARY POWERS AND DUTIES

General management

D7.1 The Secretary shall -

- D7.1.1 Be the executive officer of the Organisation, who between meetings of the Executive and the National Conference shall, subject to these Rules and the directions of the Executive, manage the day to day operations of the Organisation, and do all things necessary to be done by or on behalf of an organisation registered under the RO Act;
- D7.1.2 Unless excused, attend all meetings of the National Conference and the Executive;
- D7.1.3 Cause to be kept accurate Minutes of all meetings;
- D7.1.4 Attend to all correspondence and, as appropriate, file and produce the same and all answers thereto;
- D7.1.5 Consult with the President, or in that officer's absence the Vice President, about relevant communications and information the Secretary may receive or obtain in connection with the affairs of the Organisation or of interest to it or its members;
- D7.1.6 Consult with the President, or in that officer's absence the Vice President, as to any action to be taken in any matter pending the next meeting of the National Conference or the Executive;
- D7.1.7 Determine the time and place of special general meetings, special Executive meetings or special National Conference;
- D7.1.8 Give notice of all general meetings of members, the National Conference, or the Executive;
- D7.1.9 Keep the records required to be kept by an organisation under the provisions of the RO Act and lodge with the FWC all reports, returns and information thereby required;
- D7.1.10 Notify the FWC or any other applicable tribunal or agency of industrial disputes;
- D7.1.11 Subject to any direction of the Executive, control, direct and supervise employees of the Organisation;
- D7.1.12 Arrange for the editing and publication of any Journal of the Organisation and cause it to be provided to the members; and
- D7.1.13 Exercising such additional powers as are specifically conferred on the Secretary by other provisions of these Rules.

Financial management

D7.2 The Secretary shall:

- D7.2.1 Have the day to day management of the financial affairs of the Organisation in accordance with its policies and procedures, and ensure that all monies received and payable are correctly accounted for;
- D7.2.2 Have the care, control and management of the financial records and systems of the organisation and produce financial records as and when required by the President, the Executive or the auditor of the organisation; and
- D7.2.3 Cause the full financial report to be drawn up and then to submit to the Executive and, if required by the RO Act, the Annual General Meeting of members.

Other matters

D7.3 The Secretary may also:

- D7.3.1 Carry out such further and other duties as the National Conference or Executive may from time to time require; and
- D7.3.2 **[INSERT any additional powers or duties of the Secretary here]**

D7.4 The Secretary may delegate such of that officer's functions as are not required by law to be performed directly by that officer to employees of the Organisation.

PROVIDED THAT the performance of such functions by any such employee shall be at all times under the supervision and direction of the Secretary or the Executive, as the case may require.

FURTHER PROVIDED THAT the Secretary remains responsible for all action based on any such delegation.

NOTES TO RULE D7



Recommended rule

Key considerations

- An organisation is not required to have a rule providing for an office titled Secretary or Secretary/Treasurer, or any analogous office by an alternative title.
- The office of Secretary is very common in the rules of organisations, and any position within an organisation with the title 'Secretary' is an 'office' within the meaning of that term in the RO Act, the holder of which must be elected under the Act.¹

¹ RO Act section 9 (1) (a) and section 143 (1) (a).



- It is recommended that an organisation have an officer that has the role of day-to-day management of the organisation's operations, subject to the RO Act, the Rules and the Executive's directions. In most organisations that office is titled 'Secretary', although other titles are sometimes used (e.g. 'general manager').
- It is also recommended that such an office be included in the rules because the RO Act specifically recognises such an office for various purposes (e.g. being the prescribed officer for keeping the register of members of the organisation,² and being the designated officer in connection with financial reporting).³
- If an organisation chooses to have such an office in its rules, then the rules must specify the powers of that office.⁴

Characteristics of office titled 'Secretary'

- The powers and duties conferred on a person holding the office titled 'Secretary' will depend on the requirements and circumstances of your organisation.
- Commonly the office will have the role of management of the organisation on a day-to-day basis.
- It is recommended that your rules provide that a particular officer have the role of managing the organisation's day to day operations, subject to the RO Act, the other rules of the organisation and the directions of the Executive.
- There are two common ways of allocating duties to the Secretary. Either by listing duties in a centralised rule or by conferring on the office a number of tasks and responsibilities throughout the rules relating to the management of the organisation's day to day operations. The model rules have preferred an approach listing most of the duties in a single rule.

'Secretary' type duties given to office by another name

- Sometimes, organisations have rules that bestow all or most of the characteristic 'secretary' duties listed above upon a different officer - such as the office of President or 'Chief Executive Officer'. This is more common in employer organisations.
- You must decide which office performs these duties, provided that the requirements of the RO Act are met. You must ensure that the officer concerned is identified as the 'prescribed officer' for the relevant purposes under the RO Act.

Features of this model rule

- Sub Rule D7.1 sets out a list of the managerial duties commonly found in rules of registered organisations in respect of the office titled 'Secretary' which are recommended for your consideration.
 - The first duty is important – it makes the Secretary the 'executive officer' of the Organisation, responsible for the day to day management of the organisation's operations, subject to the Rules, the RO Act and the directions of the Executive.

² RO Act section 233, section 236 and RO Regulation 150.

³ RO Act section 243.

⁴ RO Act section 141 (1) (b) (i).



- The model rule then sets out a lengthy list of particular powers and duties. These are recommended for your consideration. It can be modified to suit your circumstances, provided the requirements of the RO Act are met.
- Sub Rule D7.2 then sets out a short list of financial management responsibilities of the office of Secretary. This approach is taken because it is common for organisations to combine secretary and treasurer duties. For more on this see ‘Secretary/Treasurer’ below.
- The model rule also allows for the officer to ‘delegate’ some duties to employees, but responsibility for what is done by employees must remain with the officer (see model sub Rule D7.4).

Separate office of treasurer?

Combining the office and/or duties of Treasurer with Secretary is commonplace and may be more efficient. The single office can be known by the title ‘Secretary/Treasurer’ or ‘Secretary’.

This is a matter for your organisation. The model rule combines the duties of Treasurer and Secretary and for simplicity calls the office ‘Secretary’.

You can choose to have an office of ‘Treasurer’ separate from that of Secretary.

- If you choose to do so, you will need to specify the powers and duties of that office in the rules.⁵ They would be a list of financial management duties such as those set out in model sub rule D7.2 for the Secretary.
- If you choose to have a Treasurer, the holder must be elected to that office in accordance with the RO Act.⁶

⁵ Ibid.

⁶ RO Act section 9 (1) (b) (definition of ‘office’ in relation to membership of committee of management) and section 143 (1) (a).

D8 PRESCRIBED AND DESIGNATED OFFICER FOR RO ACT

- D8.1 The Secretary is the officer with responsibility for keeping the register of members of the Organisation and the record of the officers of the Organisation, and shall be the prescribed officer of the Organisation for the purposes of the RO Act.
- D8.2 The Secretary is the officer responsible for undertaking the functions necessary to enable the Organisation to comply with its financial management and reporting obligations under the RO Act, and shall be the designated officer for the purposes of the RO Act.
- D8.3 In the absence of the Secretary, the Executive shall authorise another officer to keep the register of members of the Organisation, the record of the officers of the Organisation and undertake the functions necessary to enable the Organisation to comply with its financial management and reporting obligations. The officer so authorised shall be the prescribed officer and the designated officer while the Secretary is absent.

NOTES TO RULE D8



Mandatory rule: suggested text

- It is mandatory for an organisation to have a prescribed officer for the RO Act.¹ This may be expressed as a rule like model sub Rule D8.1, or indicated by the duties allocated to a particular officer under another rule.
- The RO Act also requires that the rules authorise a designated officer to undertake the functions necessary to enable the organisation to comply with Part 3 of Chapter 8 (Audits and Accounts).² Likewise, this may be expressed as a rule like model sub Rule D8.2, or indicated by the duties allocated to a particular officer under another rule;
- If your rules do not provide for the office of Secretary or for the Secretary to have responsibility for the keeping of the membership register and the list of national officers, you must have a rule specifying the identity of the prescribed officer who has that responsibility. This is for the purpose of ensuring compliance by the organisation with its responsibilities under the RO Act, such as submitting its annual return of members and officers to the General Manager of the FWC.³
- Similarly, if your rules do not empower the Secretary to undertake the functions necessary to comply with Part 3 of Chapter 8 of the RO Act, then you must have a rule specifying the identity of the designated officer who has that responsibility.⁴

¹ RO Regulation 9.

² RO Act section 243.

³ RO Act section 230, section 233 (1) and RO Regulation 150.

⁴ RO Act section 243.

D9 TERMS OF OFFICE OF EXECUTIVE MEMBERS AND OFFICE BEARERS

- D9.1 Subject to the provisions of the RO Act and sub Rules D3.1 and D9.2, the members of the Executive and Office Bearers shall hold office for a term of two years, commencing on the date set out in [Appendix B](#) to these rules and concluding on the day before the second anniversary of that date.
- D9.2 In the event that the declaration of an election for an office is delayed beyond the date by which that office should be filled in accordance with sub Rule D9.1, the incumbent of that office shall continue to hold office until their successor takes office. The successor shall take office from the date of the declaration but shall hold office only for the remainder of the two year term.

NOTES TO RULE D9



Mandatory rule: suggested text

Key considerations

- It is mandatory for the rules of an organisation to prescribe the term (i.e. duration) of each office in the organisation without re-election.¹ Model Rule D9 is an example rule that meets this requirement.
- The maximum term for any office in an organisation is four years without re-election.² It is up to your organisation to decide the length of the term of office for any of its offices, up to the four year limit.
- In general, four year terms are more common in employee organisations than employer associations, and such terms are more common for full time paid positions and for office bearer positions. But in every case the duration of terms of office (up to the maximum) are determined by you based on your circumstances and best interests.

Features of this model rule

Two year terms

- The model rule sets two-year terms of office for Executive members and Office Bearers. Annual elections can create a high regulatory burden, particularly if there are collegiate elections. Two years has been chosen as a balance between efficiency, effectiveness and democratic control.
- This option has been selected to fit with the term of office for Conference delegates (Rule D13), but this option is merely an example and is not inherently better than other available options.
- You may have a shorter or longer term of office than two years. You can choose a term of office between one year and up to four years.

'Holding over' in office and shortening of term due to delay in election outcome

¹ RO Act section 145.

² RO Act section 145 (1).

NOTES TO RULE D9



Mandatory rule: suggested text

Occasionally the declaration of the result of an election may be delayed, for example because insufficient nominations were received, or because an election inquiry delays the final result being declared.

Sub Rule D9.2 caters for the consequences of such delays.

- Offices in organisations should not be left vacant. Therefore a ‘holding over’ rule is recommended.
- Model sub Rule D9.2 is drafted in terms that make clear that the general principle of ‘holding over’ in office is preserved.³
- The sub Rule also makes clear that when the election outcome for an office is delayed, the term of office for the person eventually declared elected is shortened to the balance of the term.

Example:

- If ordinarily Rule 9.1 has the effect that a term of office is from 1 July 2024 to 30 June 2026 but the declaration of the result of the election is delayed until 1 October 2024 (for any reason), then:
 - The successful candidate’s term of office is from the date of the declaration until it originally would have expired. It is for the balance of the two year term, i.e. 1 October 2024 to 30 June 2026.
 - It is NOT 2 years from 1 October 2024 to 30 September 2026.

Maximum number of terms of office

You can have a rule that limits the amount of time that one person may be allowed to hold an office in your organisation. The model rules do not include this type of rule.

It may be a limit on the:

- total number of years in the one office or all offices, or
- the total number of terms in the one office, or
- the number of consecutive terms holding one office.

It is up to you to decide if any such limits are appropriate for your organisation.

Such a rule is not commonplace in organisation rules, but modern governance principles recommend that you consider reasonable maximum terms.⁴ It is generally considered best practice that one person not hold office continuously in a corporate entity for a significant period (e.g. over ten years). It is however entirely up to you to make your own decision on this matter to fit your own circumstances.

³ As to holding over in office generally see *Higgins v McGrane* (1961) 5 FLR 82:85.

⁴ See, for example, Australian Institute of Company Directors *Not-for-Profit Governance Principles*, 2nd edn, 2019: Principle 3 - Board Composition – Tenure of Directors.

D10 ELECTORATES FOR EXECUTIVE MEMBERS

- D10.1 Each Executive member representing a State or Territory as specified in sub Rule D3.1.1 shall be elected by and from the financial members of that State or Territory as at the close of the roll of voters.
- D10.2 The Office Bearers shall be elected by and from Executive members following the election of the Executive members.
- D10.3 Where an election is required for any office specified in this Rule, that election shall be conducted in accordance with [Appendix B](#) of these Rules, the RO Act and the directions of the Returning Officer.

NOTES TO RULE D10



Mandatory rule: suggested text

Key considerations

- It is mandatory for the rules of an organisation to provide for:
 - an election for every holder of office in the organisation
 - an election that must be either a direct voting system or a collegiate electoral system (where people in the college are already officers)
 - if it is a full time office, the election can only be direct or a one tier collegiate election.¹
- Model Rule D10 is an example rule that meets this requirement.
- The circumstances of your organisation will dictate what your rules will provide in relation to the basis of election of its officers, but such rules must comply with:
 - the statutory requirement that its rules provide for the ‘control of committees...by the members’²
 - the requirement that rules must not impose oppressive, unreasonable or unjust conditions on members having regard to, among other things, the objects of the RO Act³ and
 - the procedural rules and requirements for such elections (see [Appendix B](#)).

Features of the model rule

- Subject to the limits prescribed for elections of officers in the RO Act and the procedural rules and requirements in [Appendix B](#); it is up to your organisation to determine which particular type or types of elections it will use.
- In the model rules, the electorates for the Executive members are based on the geographical location of members (by State or Territory). This is a common way in which electorates are established for an organisation. However, if your organisation has a different structure for its membership that is not based

¹ RO Act section 143 (1) (a); see also definitions of ‘collegiate electoral system’ and ‘direct voting system’ in RO Act Section 6.

² RO Act section 141 (1) (b) (iv).

³ RO Act section 142 (1) (c).



on geography (e.g. by occupation or by business type or category), you must adapt this model rule so that it accords with your membership structure.

- The model rules use a method of election where:
 - In stage one, all the members of the Executive are first directly elected by the organisation's membership, and
 - In stage two, once elected those Executive members then elect the Office bearers by and from their number (a one tier collegiate election under the RO Act).
- The phrase 'by and from' is used to identify:
 - who can vote for the candidate – voting by financial members in the state or territory, and
 - who can nominate to be a candidate – nominated from the financial members in the state or territory.

This is the most common way of using electorates in rules of organisations.

- This model has been chosen as it is a simple, two-step process with a short timeline that allows for both direct and collegiate elections. Terms of office are uniform across the organisation and electorates are based on geographic boundaries.
- Your election rules must set out the ranking of offices (in other words, which office is elected first, second, and so on). Your election rules must also set out what happens to a candidate's other nominations if they are elected to a higher office. This is covered in [Appendix B](#).

Though recommended, this approach is an **example only**. Some organisations have more complex arrangements for this matter, and such situations are adverted to and discussed in the *Model Rules Guidance Note*.⁴

⁴ See *Model Rules Guidance Note* (to be published at a later date).

DIVISION 3: NATIONAL CONFERENCE

D11 CONSTITUTION OF NATIONAL CONFERENCE

D11.1 There shall be a national assembly of member representatives titled the National Conference, which is constituted by this Rule and which has the powers specified in Rule D12.

D11.2 The National Conference shall be comprised of the following members.

D11.2.1 All the members of the Executive, ex officio;

D11.2.2 Conference delegates from all the States and Territories of the Commonwealth, determined in accordance with the formula specified in sub Rule D11.3.

D11.3 The delegations from the respective States and Territories of the Commonwealth to the National Conference shall be determined as follows:

Percentage of financial membership of the Organisation in a State or Territory	Number of Conference delegates
If less than 5% of financial members	Four
5 to 19.99% of financial members	Eight
20 to 39.99% of financial members	Ten
40 to 59.99% of financial members	Twelve
60 to 79.99% of financial members	Fourteen
80 to 100% of financial members	Sixteen

D11.4 The number of financial members in a State or Territory for the purpose of calculating the number of Conference delegates shall be those financial members of the Organisation as at 31 December in the year immediately before the next scheduled election for Conference delegates.

NOTES TO RULE D11



Recommended rule

This model rule should be read in conjunction with Rule D12.

Key considerations

NOTES TO RULE D11



Recommended rule

- It is not mandatory for an organisation to have a rule for a larger assembly of representatives of members in addition to the committee of management.
- It is however common for organisation rule books to include provision for such an assembly. It would meet either annually or biennially, or more frequently if needed (see model sub Rules E1.8 and E1.9). It would serve as the 'supreme governing body' of the organisation on all or selected matters, subject to decisions of the members in general meeting.
- It is up to you to decide whether you wish to have such a body in your rules, and if you do, what name to give it. Common names are 'National Conference' or 'National Council'.
- While having such an assembly is not mandatory, it is recommended that you consider having such a body. Such an assembly is a means by which your organisation can meet the statutory objectives of 'democratic functioning' and 'encouraging members to participate in the affairs of the organisation'.¹
- The name given to these member representatives varies but the expression used in the model rule is 'Conference delegate', in order to differentiate such representatives from an organisation's 'workplace delegates' recognised and regulated by the *Fair Work Act 2009* (FW Act).²
- If you choose not to have a National Conference, you must make consequential changes to other model rules that refer to it.

Features of the model rule

Organisation rules relating to the composition of this type of body vary considerably, so the model rule incorporates the most common features and only provides an example of a formula that might be used.

Common features that are replicated in the model rule are:

- Establishing that the body is an assembly of member representatives;
- Setting out the formula and calculations for the composition of the body (sub Rules D11.2, D11.3 and D11.4).

Devising the 'formula' to determine representation of members

A rule specifying the composition of an assembly of representatives of members of an organisation should set out representation from elements or parts of the membership (e.g. States and Territories, occupational groups or geographical areas). The parts and the number of representatives depends on the circumstances of your organisation, the requirements of the RO Act relating to 'democratic control' and 'control of committees by the members', and the extensive case law on the meaning of those expressions.³

In the model rule the formula that has been developed (which is simply **an example**) endeavours to ensure that:

- the representation of the various parts of the organisation fairly reflects the distribution of financial members throughout the nation; and
- there is a sufficient number of Conference delegates to ensure that the Executive members (who are made members of the Conference 'ex officio') do not have a disproportionate voice in the Conference's

¹ RO Act section 5 (3) (b) and (d).

² FW Act section 350C.

³ RO Act section 5 (3) (b) and (d) and section 141 (1) (b) (iv). See *Luckman v APTU* (1978) 28 ALR 393; *McLeish v Kane* (1978) 36 FLR 80; *Sheriff v Townsend* (1980) 48 FLR 20; *Hodder v AWU* (1985) 70 ALR 489; *Lawley v TWU* (1987) 22 IR 114; *Skourdoumbis v Findlay* [2002] FCA 638.



deliberations. The Conference can therefore properly function as a 'check' or 'supervisor' of the Executive.

These considerations are dealt with in more depth in the *Model Rules Guidance Note*.⁴

'Conference delegates' are 'officers' under the RO Act

- While the title of persons elected to participate in a National Conference varies in organisation rules, they are commonly referred to as 'delegates' or sometimes 'representatives'. In the model rules they are referred to as 'Conference delegates' to differentiate them clearly from workplace delegates recognised by the FW Act.⁵
- Whatever name is chosen, they each hold an 'office' within the meaning of the RO Act. Members of a conference will be defined as officers because the conference will usually have one or more of the powers of an 'office' as defined in the RO Act. These powers include, among other things, managing the affairs of the organisation, determining policy or altering the rules.⁶
- As officers they must be elected to the office of Conference delegate and cannot be removed from office during their term other than in accordance with the organisation's rules and the provisions of the RO Act.⁷
- It is possible to create a national conference that is purely advisory and does not have the powers that would make the members officers. It is, however, uncommon.

'Ex officio' office holding

In this model rule, provision is made for the members of the Executive to be members of the Conference 'ex officio' (sub Rule D11.2.1). This means that by virtue of their election to office on the Executive they are granted the additional office (and all the rights) of a National Conference member, without the need for separate election.

An organisation can choose to use this method in its rules if it wishes, but there is no requirement to do so. It is however a common mechanism used in organisations. The Federal Court has held that a rule providing for 'ex officio' holding is generally permissible.⁸

⁴ See *Model Rules Guidance Note* (to be published at a later date).

⁵ FW Act section 350C.

⁶ RO Act section 9, particularly 9 (1) (b) (ii) and (iii).

⁷ RO Act section 141 (1) (c).

⁸ *Re Airline Hostesses Association* (1980) 48 FLR 214.

D12 POWERS OF NATIONAL CONFERENCE

D12.1 Subject only to sub Rule D12.2 and decisions of members in General Meeting or by plebiscite, the supreme governing body of the Organisation is the National Conference, which has full power and authority to carry out the objects of the Organisation.

D12.2 The National Conference has no power in relation to the financial management of the organisation.

D12.3 The powers in sub Rule D12.1 include:

D12.3.1 Make policy for the Organisation on all matters falling within its objects;

D12.3.2 Amend these rules in order to establish a Branch, and if so established, amend these rules in order to close or alter the boundary or coverage of any Branch;

D12.3.3 Make, amend or rescind these rules;

D12.3.4 Hear and determine an appeal by a member against disciplinary action taken against that member by the Executive;

D12.3.5 Hear and determine an appeal by any officer dismissed from office by the Executive;

D12.3.6 Enter into agreements with corporate entities, including state industrial organisations;

D12.3.7 Direct that a plebiscite of members be taken;

D12.3.8 **[INSERT any other powers here; and]**

D12.3.9 Any powers conferred on the National Conference by any other Rule or Rules.



Key considerations

- If you choose to have a body of this type in your Rules, it is mandatory for the body's powers to be specified in the Rules.¹ Model Rule D12 is a suggested rule that meets this requirement.
- It is usual for this type of body to be the supreme governing body, subject to decisions of members in general meeting.
- This model rule provides a non-exhaustive list of the powers commonly found in rule books in relation to these types of governing bodies. You must determine for yourself the specific powers that are appropriate to be conferred on such a body. The list in the model rule provides a starting point when considering this matter. You may decide that some are appropriate, and others are not, and may add any others you believe are appropriate, provided that they do not contravene the RO Act.

Features of the model rule

Title

The name given to such a governing body can vary at your wish – it could be called 'Conference' or something else appropriate such as 'Council' or 'Assembly'. The model rule chooses 'National Conference' as that is a commonly used title for such a governing body. The model rule also chooses to intentionally list the powers of the National Conference in a single rule called 'Powers of National Conference.'

Decision making power over major matters

This model rule establishes the National Conference as the supreme governing body of the Organisation, apart from the financial affairs of the Organisation.

The powers of the National Conference are subject to decisions of members in General Meetings or by plebiscite.

This model rule lists several commonly encountered powers of such bodies in organisations' rule books. It is common for such bodies to have decision making power over matters of major importance to the organisation such as:

- Policies;
- Changing the structure of the organisation;
- Hearing an appeal by a member against a disciplinary decision by the Executive affecting that member;
- Hearing an appeal against a decision of the Executive to remove an officer from office;
- Directing the taking of a plebiscite of the members; and
- Altering the Rules of the organisation.

You can choose to add to or delete from the model rule's list (but see comments below).

'Financial duties'

¹ RO Act section 141 (1) (b) (i).

NOTES TO RULE D12



Mandatory rule: suggested text

The model rule does not confer any powers on the National Conference in relation to financial matters (e.g. fixing membership subscriptions or levies, or determining the remuneration of paid officers). This ensures that Conference delegates under the model rule are not required to undertake mandatory financial management training.

Your organisation may wish to have such matters within the power of its National Conference.

If the National Conference has any financial management duties, all Conference members:

- must undertake financial training
- with a provider approved by the General Manager of the FWC
- within 6 months of Conference members taking up office.²

The organisation has the responsibility for organising and paying for that training.

Non-exhaustive list

The list of powers contained in the model rule is a 'non-exhaustive list'. This means that the list of powers includes the main key powers of National Conference but it does not limit the powers of National Conference (except for in relation to financial powers).

This is the difference between:

- The powers of National Conference **include** X, Y and Z.
- The powers of National Conference **are** X, Y and Z.

When you use inclusive language, it can include additional, unlisted powers. However, when you use the language of 'the powers are' you risk creating an 'exhaustive' list that are the only powers National Conference can use. Some organisations use that language intentionally; be aware of how the words you choose impact your rules.

There is no requirement for an organisation to have a member representative assembly/Conference

You may choose not to include a body like a National Conference in your rule book. However, your rules must comply with the statutory standards for member participation and democratic control of registered organisations overall.³

If you do not incorporate a National Conference into your rules, you will need to delete or alter a number of the model rules. In particular, you must undertake a careful examination of your rules to ensure that:

- you have removed all references to National Conference, and
- the powers and duties of National Conference in these model rules are assigned to a body of office holders.



SUGGESTION: Search for the word 'Conference' in the model rule book– this should identify all the relevant rules that will need to be deleted or altered if you are not including a Conference in your rules.

² RO Act section 293K and section 293L.

³ See *Model Rules Guidance Note* (to be published at a later date).

D13 TERMS OF OFFICE OF CONFERENCE DELEGATES

D13.1 Subject to the provisions of the RO Act and sub Rule D13.2, a Conference delegate shall hold office for a term of two years, commencing on the date set out in [Appendix B](#) to these Rules and concluding on the day before the second anniversary of that date.

D13.2 In the event that the declaration of a Conference delegate's election is delayed beyond the date by which that office should be filled under sub Rule D13.1, the incumbent in that office shall continue to hold office until the successor takes office. The successor shall take office from the date of the declaration but shall hold office only for the remainder of the two year term.

NOTES TO RULE D13



Mandatory rule: suggested text

Key considerations

- A Conference delegate to the organisation's National Conference holds an office within the meaning of the RO Act.¹ It is mandatory for the rules of the organisation to specify the term (i.e. duration) of that office.² Model Rule D13 is an example rule that meets this requirement.
- The maximum term for any office in an organisation is four years without re-election.³
- It is a matter for an organisation to decide the length of the term of delegates to its National Conference up to the maximum length of four years without re-election.
- The model rule chooses a term of two years, and that preference is explained below.

Features of this model rule

- The model rule prescribes a term of two years for Conference delegates, but an organisation can choose that the term of office be up to four years without re-election.
- However, you should consider whether a term longer than two years is best for your organisation. The longer the term of office for a Conference delegate, the more likely that:
 - vacancies may occur, or
 - changes in membership levels might affect the number of delegates a State or Territory would be entitled to have at a Conference.
- Alternatively, if you wish to utilise four-year terms for delegates then your organisation should consider having 'mid term' elections to ensure that the delegates remain representative of the membership numbers or distribution of members throughout the nation. This can be done either as:
 - A top up election if individual states or territories have increased their financial membership so much that they are entitled to an additional Conference delegate
 - Staggered elections where half of the Conference is elected every two years.

¹ RO Act section 9.

² RO Act section 145.

³ RO Act section 145 (1).

NOTES TO RULE D13



Mandatory rule: suggested text

The model rule also makes provision for ‘holding over’ in office by a delegate when there is a delay in that officer’s election being declared.⁴

⁴ See notes to Rule D9 concerning ‘holding over’ generally.

D14 ELECTORATES FOR NATIONAL CONFERENCE DELEGATES

D14.1 Each National Conference delegate representing a State or Territory as specified in sub Rule D11.2.2 shall be elected by and from the financial members of that State or Territory as at the close of the roll of voters.

D14.2 Where an election is required for an office specified in this Rule, that election shall be conducted in accordance with [Appendix B](#) of these Rules, the RO Act and the directions of the Returning Officer.

NOTES TO RULE D14



Mandatory rule: suggested text

Key considerations

- It is mandatory for the rules of an organisation to provide for the election of the holder of each office in the organisation either by a direct voting system or by a collegiate electoral system.¹ In the case of a full time office, it must be direct or a one-tier collegiate electoral system.² Model Rule D14 is an example rule that meets this requirement.

Features of this model rule

In this model rule geographic state based electorates are used for the election of National Conference delegates, but it is an example only. The circumstances of your organisation will determine what particular election structure is appropriate for your rules, as long as those rules comply with:

- the requirements of the RO Act in relation to election structures and procedures; and
- the extensive case law on the principles for ensuring ‘control of committees...by the members’.³

The phrase ‘by and from’ is used to identify:

- who can vote for the candidate – voting **by** financial members in the state or territory, and
- who can nominate to be a candidate – nominated **from** the financial members in the state or territory,

This is the most common way of using electorates in rules of organisations.

For election procedure rules, see [Appendix B](#) to these model rules.

¹ RO Act section 143 (1) (a);

² Ibid.; see also definitions of ‘collegiate electoral system’ and ‘direct voting system’ in RO Act section 6.

³ RO Act section 141 (1) (b) (iv), section 142 (1) (c) and section 5 (3) (d). See *Luckman v APTU* (1978) 28 ALR 393; *McLeish v Kane* (1978) 36 FLR 80; *Sheriff v Townsend* (1980) 48 FLR 20; *Hodder v AWU* (1985) 70 ALR 489; *Lawley v TWU* (1987) 22 IR 114; *Skourdoubis v Findlay* [2002] FCA 638. See also *Model Rules Guidance Note* (to be published at a later date).

DIVISION 4: DISCIPLINE OF OFFICERS

D15 GROUNDS FOR REMOVAL FROM OFFICE

D15.1 An officer may be removed from office in the Organisation if that officer:

D15.1.1 is found guilty under Rule D16 of either one or more of the following:

- (a) misappropriation of the funds of the Organisation;
- (b) a substantial breach of the Rules;
- (c) gross misbehaviour or gross neglect of duty;

or

D15.1.2 has ceased to be eligible under the Rules to hold their office.

NOTES TO RULE D15



Mandatory rule: required text

Key considerations

- It is mandatory for an organisation to have a rule dealing with the removal of officers.¹ Model Rule D15 meets this requirement.
- It is also mandatory that any such rule limit the grounds for removal for elected officers to the precise grounds set out in model sub Rule D15.1.² These restrictions were inserted into the RO Act to protect elected officers from removal between elections for improper or inadequate grounds (sometimes by rival officers).
- The rule must not depart from the precise words prescribed by the statute as allowable grounds for removal. The model rule complies with that approach.
- No officer of an organisation may be removed from office without being afforded procedural fairness, see model Rule D16 and the notes accompanying it.

Sanctions other than removal from office

- You might wish to have more flexibility in your rules on this subject. While you cannot change the reasons to remove an officer from office, you can:

¹ RO Act section 141 (1) (b) (iii).

² RO Act section 141 (1) (c).

NOTES TO RULE D15



Mandatory rule: required text

- have a rule that allows the decision making body to choose other penalties to impose on the officer who has committed one of the specified offences (e.g. admonishment, suspension or a financial penalty).
- specify lesser offences in the rule than the serious statutory ones, which then attract other penalties (but these cannot include removal from office).
- If you are considering either of these options, you should consult with the FWC.



NOTE: if an officer is found no longer eligible to hold their office, they **must** be removed from office. You cannot suspend or fine them. They cannot remain in office if ineligible to hold it.

D16 PROCEDURE FOR REMOVAL OF OFFICERS

D16.1 A financial member of the Organisation may lodge a written complaint ('complaint') with the Secretary alleging either

D16.1.1 that a named officer is guilty of one or more of the following:

- (a) misappropriation of the funds of the Organisation;
- (b) a substantial breach of the Rules; or
- (c) gross misbehaviour or gross neglect of duty;

or

D16.1.2 that the named officer has ceased to be eligible to hold the office.

D16.2 If the Secretary is the officer who is the subject of the complaint, the complaint shall be lodged with either the President or another officer of the Organisation specified by the Executive. Any reference hereafter in this Rule to 'the Secretary' shall be taken to be a reference to that other officer if the Secretary is the subject of the complaint.

D16.3 Upon receipt of the complaint the Secretary shall give written notification of the complaint to:

D16.3.1 the Executive; and

D16.3.2 the officer against whom the complaint has been made ('the subject officer')

as soon as possible after receiving the complaint, and not later than fourteen (14) days after such receipt.

D16.4 The complaint against the subject officer shall be heard and determined by the Executive in accordance with the succeeding provisions of this Rule.

D16.5 The written notification of the complaint shall be delivered by prepaid registered post to the postal address held by the Organisation for the subject officer and to the email address of the subject officer advised by the latter to the Organisation. The written notification shall also advise the subject officer of the date on, and the time and place at which the complaint would be heard and determined by the Executive, which date shall be not less than twenty-eight (28) days after the date of receipt by the Organisation of the complaint.

D16.6 The Organisation shall give the subject officer a reasonable opportunity to answer the complaint, including at the subject officer's option:

D16.6.1 providing to the subject officer any additional information about the complaint that is relevant and available, and which is requested by the subject officer prior to the hearing of the complaint;

D16.6.2 making a written submission in response to the complaint;

- D16.6.3 appearing in person before the Executive at the scheduled hearing, including by electronic means;
- D16.6.4 calling witnesses to any hearing;
- D16.6.5 all or any of the above options.
- D16.7 If the Executive, having given the subject officer a reasonable opportunity to be heard, finds that the subject officer has ceased to be eligible to hold the office it must remove the subject officer from that office. A person removed from office under this sub rule is deemed to have ceased to be eligible to hold office on and from the date of the Executive's decision.
- D16.8 If the Executive, having given the subject officer a reasonable opportunity to be heard, finds the subject officer guilty of one or more of the offences specified in sub Rules D15.1.1 (a), (b) or (c), it may remove the subject officer from office.
- D16.9 The subject officer may within fourteen (14) days of being notified of the decision of the Executive under sub Rule D16.6 or D16.7, as the case may be, appeal to the National Conference against the decision of the Executive.
- D16.9.1 Any such appeal shall be heard and determined by the National Conference within twenty-eight (28) days of the appeal being lodged, and subject to the RO Act, its decision shall be final.
- D16.9.2 The National Conference shall give each of the subject officer and the National Executive a reasonable opportunity to be heard before making its decision on the appeal, and may dismiss the appeal or uphold the appeal.
- D16.9.3 Removal of the subject officer from office shall be suspended until any appeal by the subject officer is determined under this Rule.
- D16.10 If at any time the Executive concludes that the complaint against the subject officer is trivial, or of no substance, it may dismiss the complaint forthwith and direct the Secretary to consider whether the member who made the complaint should be proceeded against under sub Rule C7.1.7 (false or vexatious complaint).

NOTES TO RULE D16



Recommended rule

Key considerations

- It is not mandatory for an organisation to have a rule that specifies the procedures to be followed when an officer is subject to disciplinary action. However, common law requires that any officer facing disciplinary action within the organisation is entitled to procedural fairness from the decision makers before any penalty is imposed.¹

¹ RRS Tracey 'The Conduct of Union Disciplinary Hearings' *Journal of Industrial Relations*, 1982, 204.



- Satisfying this common law principle depends on the circumstances of the particular organisation involved. At a minimum it requires that the accused person be given:
 - proper particulars of the charge they face, and
 - a reasonable opportunity to mount their defence, or give their response, to that charge.²
- Even though it is not mandatory, it is recommended that an organisation have a rule prescribing procedural fairness measures. This way both officers and members are on notice of the requirements when disciplinary action is taken against an officer.

Features of this model rule

- The model rule recognises common law principles of procedural fairness. It provides examples of the types of provisions that can satisfy the requirements of procedural fairness in an organisation's disciplinary process for officers.
- It includes:
 - provisions for particulars of the charge to be given,
 - how the charged officer may respond,
 - the hearing process for the charge,
 - the decisions that the decision makers may make, and
 - the availability of an appeal.
- You must consider what provisions are suitable to your organisation. You should ensure that the minimum common law requirements of proper notice of the charge and a reasonable opportunity to answer it are enshrined in your rule.

Procedure at disciplinary meeting

The actual procedure at a meeting of the decision-making body is not appropriate for inclusion in a rule. However, the case of *Cain v Jenkins* provides a useful example of what might be appropriate in a disciplinary meeting, depending on the circumstances of your organisation and the subject matter of the proceedings before the decision makers.³

² Ibid.

³ *Cains v Jenkins* (1979) 26 ALR 652:660-661. See also Tracey, *ibid*:210-211.

DIVISION 5: PLEBISCITES OF MEMBERS

D17 PLEBISCITES

D17.1 A plebiscite of the members or any part of the membership of the Organisation may be conducted on any question that falls within the Objects of the Organisation, except that a plebiscite may not be conducted on any matter related to a proposed amalgamation of the Organisation with another organisation under the RO Act.

D17.2 A plebiscite may be requested:

D17.2.1 of the whole or a part of the membership of the Organisation - by the National Conference or the Executive; or

D17.2.2 of the whole or a part of the membership of the Organisation - by a petition signed by ten percent (10%) of the financial members of the Organisation.

D17.3 Where a plebiscite is to be held:

D17.3.1 of the whole membership, only financial members of the Organisation shall be entitled to vote;

D17.3.2 of a part of the membership, only financial members of the Organisation in that part shall be entitled to vote.

D17.4 The question to be put to a plebiscite shall:

D17.4.1 In the case of plebiscite requested by the National Conference or Executive, be specified in the relevant resolution;

D17.4.2 In the case of a plebiscite requested by the membership, be specified in the petition and no departure from the terms of the resolution or the petition shall be permitted in the question put to the members in the plebiscite.

D17.5 A plebiscite conducted under this Rule shall be by way of secret ballot.

D17.6 Where a plebiscite is held of the whole of the membership the decision shall be binding on the Organisation, the National Conference, the Executive, other committees, sub committees and all members.

PROVIDED THAT a question shall not be treated as carried unless at least ten percent (10%) of the financial members eligible to vote cast their vote.

D17.7 Nothing in this Rule shall prevent more than one question being put to a plebiscite at the same time, provided that all questions are set out on the ballot paper, or on separate ballot papers, and the votes recorded separately in respect of each question.

D17.8 Where a request for a plebiscite is received the Secretary shall immediately advise the Returning Officer who shall direct the conduct of a plebiscite and take all necessary steps to ensure the secrecy of the ballot.

D17.9 Without limiting the power of the Returning Officer under sub Rule D17.8 the Returning Officer may:

D17.9.1 direct the Secretary to supply a list of the financial members of the Organisation or relevant part of it;

D17.9.2 give such other directions as may be required to ensure the prompt and effective conduct of the ballot, and to avoid irregularities;

D17.9.3 appoint a member to prepare the YES case and a member to prepare the NO case on the question for the plebiscite, and to distribute these written cases to the members with the ballot papers, or in the case of a ballot conducted electronically, to place them on the Organisation's website at least seven (7) days prior to the date for closing of the ballot

PROVIDED THAT nothing in this sub Rule prevents any member lawfully making representation to any other member about the case for or against the question.

D17.10 The Returning Officer shall declare the result of the ballot in writing to the Secretary.

D17.11 Following the declaration of the ballot the Executive shall ensure that all steps are taken as are reasonable and necessary to implement the result of the ballot.

**Key considerations**

- You may choose to include a plebiscite rule in your rule book to comply with the objects of the RO Act. The most relevant standards are those of encouraging members to participate in the affairs of their organisation, and providing for democratic functioning and control of their organisation.¹
- A plebiscite rule goes toward satisfying an organisation's statutory obligation to have rules for the control of committees by the members. A court would take it into account when considering whether an organisation's rules comply with that statutory obligation as well as the standards the organisation must meet in relation to 'democratic control' by the members and 'member participation' in the affairs of the organisation.²
- You may choose to include a plebiscite rule in your rule book to comply with the objects of the RO Act. The most relevant standards are those of encouraging members to participate in the affairs of their organisation, and providing for democratic functioning and control of their organisation.³
- A plebiscite rule goes toward satisfying an organisation's statutory obligation to have rules for the control of committees by the members. A court would take it into account when considering whether an organisation's rules comply with that statutory obligation as well as the standards the organisation must meet in relation to 'democratic control' by the members and 'member participation' in the affairs of the organisation.⁴
- A plebiscite rule, if it is to effectively serve its purpose, must:
 - be available at the initiative of a reasonable but not impractically large number of members, and
 - have provisions that allow the plebiscite to bind committees of the Organisation.⁵

Features of this model rule

Many organisations have a plebiscite rule, but it is not a universal feature of organisation rule books. It is up to you to decide whether to have such a rule. If you do, you should ensure:

- a reasonably small percentage of the membership (which can be restricted to financial members) can initiate the plebiscite;
- the plebiscite is conducted by a returning officer appointed by the organisation (unlike elections which are conducted by the AEC);
- appropriate provisions are included to ensure the ballot is conducted in a transparent fashion and without serious risk of irregularities; and

¹ RO Act section 5 (3), (b) and (d).

² RO Act section 141 (1) (b) (iv) and section 5 (3) (b) and (d).

³ RO Act section 5 (3), (b) and (d).

⁴ RO Act section 141 (1) (b) (iv) and section 5 (3) (b) and (d).

⁵ *Byrnes v FIAA* (1957) 3 FLR 309; *McKenzie v A.C.O.A.* (1962) 5 FLR 342; *McLeish v Kane* (1978) 36 FLR 80; *Wright v McLeod* (1983) 51 ALR 483; *Loh v O'Grady* (1991) 42 IR 215.



- the governing bodies of the organisation must abide by and implement the decision made by the members in a plebiscite.

This model rule is an example of a potential plebiscite rule. It is up to you to determine your plebiscite rule, provided it is a reasonable measure that enhances member participation in, and democratic control of, the organisation by fostering control of committees by the members.⁶

Model rule's approach to member participation

The model rule provides that a plebiscite may be requested by 10% of the financial membership, but this percentage is only a **suggestion**, not a recommendation. The appropriate percentage is entirely up to your organisation to decide, provided it is not too high as to be unachievable in practice.

The model rule also provides that for a decision in the plebiscite to be binding there must be a participation rate of at least 10% of the financial members. It is not mandatory to have a minimum participation rate, but it is highly recommended to ensure against a very small number of unelected members controlling the decisions of the organisation.



NOTE: a plebiscite should **not** be taken on the question of whether the organisation should amalgamate with another registered organisation. The RO Act confers on an organisation's committee of management the right to make that decision irrespective of its rules.⁷ The model rule thus excludes such a question – see model sub Rule D17.1.

⁶ RRS Tracey, 'The Legal Approach to Democratic Control of Trade Unions', *MULR* 177, 1985:197-199.

⁷ RO Act section 42 (2).

PART E – MEETINGS

E1 CALLING OF AND BUSINESS AT MEETINGS

Notice of general meetings of members

E1.1 Notice of any general meeting of the members shall be given by the Secretary to all financial members of the Organisation and shall be:

E1.1.1 posted to a member's postal address provided to the Organisation; or

E1.1.2 sent by email communication to a member's email address provided to the Organisation, in which case such notice shall be presumed to have been given at the time specified in sub Rule B1.1.5; or

E1.1.3 delivered by hand to a member;

and at the option of the Secretary may also be:

E1.1.4 sent or delivered to and posted in a conspicuous place at each member's place of employment; or

E1.1.5 provided by notice on the Organisation's website to members who have access to that website; or

E1.1.6 provided by any other electronic means; or

E1.1.7 provided by any combination of the foregoing methods of communication which will maximise the likelihood that notice of the meeting will be seen by members.

E1.2 The Secretary shall give at least thirty-five (35) days' notice if notice is sent by post, otherwise at least twenty-eight (28) days' notice of any general meeting of members.

PROVIDED THAT in the case of an SGM, the Executive may reduce the period of notice of such a meeting to not less than seven (7) days if it believes that there are reasonable grounds, such as but not limited to urgency, to so direct the Secretary. If so, notice shall not be sent by post.

Executive meetings

E1.3 The Executive shall meet at such times and in such places as it shall determine, and may meet as many times in a calendar year as it should so determine.

PROVIDED THAT it shall meet no less than eight (8) times in any one calendar year. To avoid doubt, there is no limit on the number of such meetings that may be conducted in any one calendar year.

- E1.4 A meeting of the Executive may also be convened at the written request of either the President or at least twenty-five percent (25%) of the members of the Executive then holding office, submitted to the Secretary. The Secretary shall determine the time and place of any meeting convened under this sub Rule.
- E1.5 The Secretary shall give written notice of the time and place of each meeting of the Executive in accordance with the provisions of E1.1.2, E1.1.3 or a combination of both, and as follows:
- E1.5.1 In the case of a meeting convened under sub Rule E1.3 of this Rule, not less than seven (7) days' notice; and
- E1.5.2 In the case of a meeting convened under sub Rule E1.4 of this Rule, not less than forty-eight (48) hours' notice, where practicable;
- E1.6 Where the Executive resolves to schedule more than one meeting under sub Rule E1.3, the Secretary may notify the members of those dates and places by one communication listing all dates and places so fixed.
- E1.7 It shall be the duty of each member to attend every meeting of the Executive unless granted leave of absence by it.

Meetings of National Conference

- E1.8 The National Conference shall meet a minimum of once in each year at such time and place as is determined by the Executive.
- E1.9 The National Conference shall also meet at such other time or place:
- E1.9.1 as directed by the Executive;
- E1.9.2 as requisitioned by a petition signed by not less than five percent (5%) of the members of the National Conference, delivered to the Secretary, in which case the Secretary shall determine the time and place of the meeting.
- E1.10 Notice of any National Conference shall be given by the Secretary to all members of the National Conference in accordance with the provisions of E1.1 and E1.2.
- E1.11 The agenda for any National Conference shall be as determined by the Executive.
- PROVIDED THAT the following business shall be included:
- E1.11.1 all business referred by the Executive to the Conference;
- E1.11.2 any business referred to the Conference by any Conference delegate;

FURTHER PROVIDED THAT:

- (a) any agenda item and supporting briefing or other papers referred by a Conference delegate must be lodged with the Secretary not less than fourteen (14) days prior to the commencement of the Conference;
- (b) the Executive may add items to the agenda for the Conference up to forty-eight (48) hours prior to the commencement of the Conference;
- (c) the Conference may by resolution add items to the agenda prior to commencing the consideration of substantive business already on the agenda; and
- (d) the Conference may by special resolution add an item to the agenda at any time during the Conference.

NOTES TO RULE E1



Mandatory rule: suggested text

‘Summoning’ meetings

- It is mandatory to have a rule dealing with the manner of ‘summoning’ meetings of members, and meetings of the committees of the organisation.¹ Model Rule E1 is a suggested rule that meets this requirement.
- There is no definition of ‘summoning’ meetings in the RO Act, but the expression covers a range of matters that need to be included in a rule on this subject. These matters include:
 - How and who decides to have a meeting;
 - How and who decides when and where the meeting will be held;
 - Who gives notice of the meeting;
 - How much notice of the meeting is to be given; and
 - How notice is given.

About this model rule

- This model rule provides suggested terms for an organisation to satisfy the various usual requirements for summoning of both general meetings of members and of its governing committees (in the model rules they are the Executive and the National Conference).
- The model rule uses common provisions in rules of organisations on this matter, and conventional guidelines for the conduct of meetings by various types of associations.²
- The model rule sets notice periods for the meetings of the organisation, with the standard one being 28 days. That standard is then subject to exceptions depending on the body concerned (e.g. the Executive, where notice periods for meetings are 7 days).

¹ RO Act section 141 (1) (b) (ii).

² E Peden and W Muddle, *Joske’s Law and Procedure at Meetings in Australia* 12th edn, Lawbook Co. of Australasia, 2021.



- The provisions in the model rule for notice of meeting are a guide for organisations, not mandatory.
- When considering the notice periods for meetings in your organisation's rules, you should be mindful of the requirements below.
- The model rule also sets outlines for placing items on the agenda. These timelines are a guide for organisations, not mandatory.

Setting reasonable notice periods for meetings

Generally:

- An organisation has discretion available in deciding the notice periods for meetings in its rules.
- However, if the periods are either too long or too short they may contravene the RO Act requirement that rules not impose conditions on members that are oppressive, unreasonable or unjust having regard to the objects of the RO Act, particularly in relation to encouraging member participation in an organisation.³
- Commonly encountered notice periods are:
 - 28 days for the calling of a general meeting or a member representative body such as the National Conference; Executive meetings 7 days notice;
 - Urgent meetings of the Executive however might need to be called on quite short notice e.g. 48 hours.

Relevant factors for determining notice periods

- Notice of meeting in an organisation's rules depends on all the circumstances, particularly the type of meeting, how it can be attended and who would be attending it. Here are some relevant matters for consideration when drafting rules consistent with the RO Act's requirements.
 - Longer notice periods are required for larger gatherings of members, such as general meetings. The rules need to give people who would be voluntarily attending a meeting in their own time a reasonable chance to read any associated material and to organise to be available and (e.g. time off work, child minding, long distance travel etc.).
 - Shorter periods of notice are more appropriate for a gathering of members who are either working for the organisation or who have voluntarily nominated for and been elected to an office (e.g. Executive member) that carries with it regular attendance at organisation meetings.
 - Meetings on very short notice also need to be provided for, particularly for Executive meetings, to deal with urgent matters.
 - The shorter the periods chosen for a meeting, the more important that the relevant rules provide alternative means for attendance at the meeting (e.g. by electronic means, as provided for in model Rules E5 and E6). A shorter meeting period can also impact how prepared the attendees are if there are large amounts of material to read.

Language relating to notice

The model rules use the language of **not less than** when specifying notice. Notice is a difficult and complex area of law and there are many cases on the issue. The language around notice has been debated and even the

³ RO Act section 142 (1) (c).

NOTES TO RULE E1



Mandatory rule: suggested text

leading textbooks in Australia do not always agree on what a particular term means. To decrease your risk of non-compliance with notice rules, we recommend a conservative interpretation of notice periods. The conservative definition includes **clear calendar days**, it:

- Does not include the day you are sending the notice;
- Does not include the day of the event you are giving notice of;
- Includes all weekends and public holidays.

Therefore, if you are required to give notice of seven (7) days of a meeting – you count seven (7) days from the day **AFTER** you send the notice and you end the day **BEFORE** the meeting.

Example:

You have a meeting that will occur on 1 February and you are required to give seven (7) days' notice:

- You do not count 1 February as one of your days.
- Seven (7) days before 1 February (not including 1 February) is 25 January.
- You include the weekends and the public holiday (26 January) in your count.

To ensure full compliance we recommend you give notice the **day before** 25 January, or even earlier.

If notice is given on 24 January you have given seven (7) clear days' notice of a meeting occurring on 1 February.

Effect of failure to give notice of meetings as required by rules

A failure to give notice of one of these meetings may invalidate the meeting or any decisions made at it. Whether it does is a matter for legal advice. You should take particular care, and have systems of reminders in place, to ensure that notice periods in the rules are complied with.

E2 QUORUM

General meetings

- E2.1 The quorum for a general meeting of members shall be fifteen (15) or five percent (5%) of financial members of the Organisation, whichever is fewer, present or by proxy.

PROVIDED THAT if proxies are used, more than one member must be present.

If a quorum is not achieved within thirty (30) minutes of the time fixed for the commencement of the meeting, the meeting shall lapse, but without prejudice to the calling of another general meeting in accordance with the requirements of Rule E1 to consider the same business as that specified for the meeting that lapsed.

Executive meetings

- E2.2 The quorum for a meeting of the Executive shall be at least half of the number of members of the Executive then holding office, present or by proxy.

PROVIDED THAT if proxies are used, more than one member of the Executive must be present.

If a quorum is not achieved within thirty (30) minutes of the time stated for the commencement of the meeting, the meeting shall lapse, but without prejudice to the calling of another Executive meeting upon seven (7) days' notice (or 48 hours if there are reasonable grounds) to all Executive members, including Office Bearers, by the Secretary.

National Conference meetings

- E2.3 The quorum for a meeting of the National Conference shall be at least half of the number of members of the Conference then holding office present or by proxy.

PROVIDED THAT if proxies are used, more than one member of the Conference must be present.

If a quorum is not achieved within thirty (30) minutes of the time stated for the commencement of the meeting, the meeting shall lapse, but without prejudice to the calling of another Conference in accordance with the requirements of Rule E1.

Committees and sub committees

- E2.4 The quorum of any sub committee shall be determined by the Executive, or in the absence of any determination, fifty percent (50%) of the number of members of the body concerned present or by proxy shall form a quorum.

PROVIDED THAT if proxies are used, more than one member of the body must be present.

Loss of quorum

- E2.5 If during a meeting of the Organisation the quorum for that meeting is lost:

E2.5.1 The presiding officer may adjourn the meeting for not more than thirty (30) minutes to ascertain if a quorum can be achieved; and

E2.5.2 If a quorum cannot be achieved, adjourn the meeting to another date and time.

NOTE: See also Rules E5 and E6 (electronic and alternative means for conducting meetings).

NOTES TO RULE E2



Recommended rule

For a meeting to do business it must have enough people present to satisfy the quorum rule.

If there are not enough people (or proxies) at the meeting to make up the quorum – the meeting cannot make any decisions. The meeting must also stop making decisions if, at any time during the meeting, people leave and the meeting drops below quorum.

The language of the quorum rule is important:

- ‘present in person’ will only include the people physically in the room. It will not include proxies, or people who are present electronically;
- ‘present’ will include people in person and people who are attending electronically. It will not include proxies;
- adding ‘or by proxy’ will allow proxies to be counted towards the quorum.

The quorum rule must specifically mention proxies or they cannot be counted towards the quorum. Even if the rule does allow proxies to be counted – to have a valid meeting there must be at least two people present at the meeting (this includes online).

The other important language is whether your quorum is:

- a percentage of ‘persons then holding office’ – is a percentage of filled offices and excludes vacancies from the count (50% of executive members then holding office) OR
- a percentage of offices – is a percentage of the maximum offices on the body and will include vacant offices in the count as non-attendees (50% of the executive).



EXAMPLE:

If the Executive committee consists of twelve (12) offices but there are four (4) vacancies waiting to be filled through elections.

- 50% of the members then holding office will require 4 people to be quorate (12 minus 4 vacant offices equals 8 possible attendees and 50% of 8 is 4 people).
- 50% of the Executive will require 6 people to be quorate (50% of 12 is 6, the four vacant offices count as non-attendees).

This model rule uses the language of:

- present (allowing attendees through digital means to be counted),
- by proxy (allowing proxies to be counted)
- of members then holding office (allowing vacancies to be ignored in the count).

NOTES TO RULE E2



Recommended rule

If there is not a quorum rule, every person must be in attendance for the meeting to be able to make decisions. It is therefore highly recommended that all general meetings of members and of each collective body in the organisation have a quorum rule.

The actual size of the quorum for meetings, is a matter for an organisation to decide. That decision may be impacted by such matters as:

- the number of members,
- their location or
- access to electronic participation.

Quorums for meetings that are too high may contravene the RO Act requirement that rules not be ‘oppressive, unreasonable or unjust’ having regard to the objects of the RO Act particularly in relation to encouraging member participation in an organisation.¹ High quorums can also mean many collective bodies in the organisation are not able to properly function. This can be a particular concern if there are vacant offices or low attendance numbers.

¹ RO Act section 5 (3) (b) and section 142 (1) (c).

E3 PROXIES

E3.1 In relation to proxies at any meeting of the Organisation:

- E3.1.1 A proxy form must be completed by the proxy giver in accordance with a form approved by the Executive.
- E3.1.2 The proxy giver and the holder of that proxy must both be eligible to attend and vote at the meeting.
- E3.1.3 The proxy may be for a specific meeting, including any adjourned meeting, or for more than one meeting.
- E3.1.4 The proxy giver may specify how the holder of the proxy may vote on any matter before the meeting, and the holder shall cast any vote accordingly, otherwise the holder may vote as the holder deems fit.
- E3.1.5 The completed proxy form must be given to the Chair not later than the commencement of the meeting.
- E3.1.6 The Chair shall declare all proxies to the meeting as soon as possible after the commencement of the meeting.
- E3.1.7 Non compliance with any of sub Rules E3.1 to E3.6 shall invalidate a proxy and any votes of the proxy holder in reliance on it.
- E3.1.8 A proxy may not be given in relation to any part of a meeting where a ballot for the election of an office holder is conducted. The provisions of [Appendix B](#) to these rules apply if a member of a college is unable to attend a meeting where a ballot for the election of an office holder is due to be conducted.

NOTES TO RULE E3



Recommended rule

Without a proxy rule, an organisation cannot use proxy voting at its meetings. Provision for proxy voting is commonly found in organisation rule books. However, a meeting cannot be valid if it consists only of one person holding proxies.

The model rule incorporates the common features of a rule relating to proxies.

A person who gives a proxy to another person can direct that person how to vote or what to say for all other matters except an election. However, a person cannot give another person their proxy to vote in a ballot for the election of an office holder. To do so would mean that the ballot would not be secret and therefore contrary to the RO Act.¹

¹ RO Act section 143 (1) (e).

E4 VOTING

General meetings

- E4.1 Voting at a general meeting shall be by show of hands or electronic poll, or such other method as the meeting determines, such as but not limited to a secret ballot. Except in relation to a resolution proposed at a meeting conducted under Rule H5 (Dissolution), the outcome of any resolution shall be by way of a simple majority of those present and voting, whether on their own behalf or by proxy. In the event of a tied vote, the resolution is lost.
- E4.2 The chair or presiding officer at a meeting shall have a deliberative vote only.

Meetings of the Executive

- E4.3 At all meetings of the Executive voting shall be by show of hands or electronic poll unless the meeting decides on another method, such as but not limited to a secret ballot. The Chair shall have a deliberative vote only. Except in relation to a resolution that under these Rules must be adopted by an absolute majority or by way of a special resolution, the outcome of any resolution shall be by way of a simple majority of those present and voting, and in the case of a tie the resolution is lost.

NOTE: See sub Rule B1.2 for definition of 'special resolution' and sub Rule G1.3 for an example where it applies to the Executive. See sub Rule F7.4.2 where an absolute majority is required for a resolution.

National Conference Meetings

- E4.4 Voting at a National Conference shall be by show of hands or electronic poll, or such other method as the meeting determines, such as but not limited to a secret ballot. The Chair shall have a deliberative vote only. Except in relation to a resolution that under these Rules must be adopted by way of a special resolution, the outcome of any resolution shall be by way of a simple majority of those present and voting, on their own behalf or by proxy. In the event of a tied vote, the resolution is lost.

NOTE: See sub Rule B1.2 for definition of 'special resolution' and sub Rule E1.11 for an example where it applies to the National Conference.

Executive: out of session voting

- E4.5 When the Executive is not in session, the President may determine that a proposed resolution of the Executive be voted upon by email or other electronic means. In any such case the Secretary shall forward the proposed resolution electronically to the Executive members, including Office Bearers, and require the electronic return of their vote not less than fourteen (14) days after it has been forwarded. At the conclusion of the period set for the return of votes the outcome shall be:

- E4.5.1 where these rules do not require an absolute majority or special resolution, by way of a simple majority of those voting.

PROVIDED THAT if the total number of votes returned is less than fifty percent (50%) of the number of Executive members, including Office Bearers, then holding office, the resolution shall be recorded as lost.

- E4.5.2 where these rules require an absolute majority or special resolution, by way of the relevant majority.

PROVIDED THAT if the total number of votes returned is less than fifty percent (50%) of the number of Executive members, including Office Bearers, then holding office, the resolution shall be recorded as lost.

National Conference: out of session voting

- E4.6 When the National Conference is not in session the Executive may determine that a proposed resolution of the Conference be voted upon by the Conference members by email or other electronic means. In any such case the Secretary shall forward the proposed resolution electronically to the Conference members and require the electronic return of their vote not less than fourteen (14) days after it has been forwarded. At the conclusion of the period set for the return of votes the outcome shall be:

- E4.6.1 where these rules do not require a special resolution, by way of a simple majority of those voting.

PROVIDED THAT if the total number of votes returned is less than fifty percent (50%) of the number of Conference members then holding office, the resolution shall be recorded as lost.

- E4.6.2 where these rules require a special resolution, by way of the relevant majority.

PROVIDED THAT if the total number of votes returned is less than fifty percent (50%) of the number of Conference members then holding office, the resolution shall be recorded as lost.

NOTES TO RULE E4



Recommended rule

- An organisation can decide how voting may be undertaken at any of its meetings, provided that those rules are consistent with the requirements of the RO Act.
- In designing rules about voting at meetings, you should consider the objects of the RO Act that organisations 'encourage members to participate in the affairs of the organisation', and 'provide for the democratic control and functioning of the organisation'.¹
- The model rule makes provisions for voting that are commonly found in rule books.

¹ RO Act section 5 (3) (b) and (d) and section 142 (1) (c).

NOTES TO RULE E4



Recommended rule

- The model rule provides for the chair or presiding member at a meeting to have a deliberative vote only. A deliberative vote is a vote of equal value to every other person entitled to vote at the meeting. If the number of votes is tied, the resolution will not pass.
- Alternatively, an organisation can choose to give the chair or presiding member a casting vote. A casting vote is an additional or alternative vote to determine the outcome when all other votes are equal to 'break the deadlock'. Giving the chair a casting vote is not inconsistent with any provision of the RO Act.

E5 ELECTRONIC MEANS FOR CONDUCT OF EXECUTIVE AND NATIONAL CONFERENCE MEETINGS

E5.1 Notwithstanding any other provision of these Rules, any meeting of the Executive or the National Conference may be conducted in person, by telephone, videoconference, any other electronic means available, or by a combination of these forms of meeting or communication. Where any such meeting is conducted other than by way of all of the participants being present in person, such meeting shall be as valid as if all participants had met in person.

PROVIDED THAT:

E5.1.1 Any such meeting is otherwise convened and conducted in accordance with the requirements of the Rules; and

E5.1.2 Each of the members attending the meeting have a reasonable opportunity to observe and participate in the meeting, including communicating conveniently through electronic means.

E5.2 Where all participants are not present in person at a meeting the location of the meeting shall be taken to be the national office of the Organisation.

NOTES TO RULE E5



Recommended rule

Considering the developments in electronic communications, devices and meeting techniques, it is recommended that organisations have rules that utilise all these options for the conduct of their meetings. This is consistent with the objects of the RO Act (i.e. 'encouraging members to participate in the affairs of their organisation').¹ It is possible that not using such easily available techniques might mean the organisation's rules impose a harsh unjust or unreasonable hindrance on members participating.²

The model rule makes provision for electronic meetings for the Executive and the National Conference, using drafting commonly found in rule books.

¹ RO Act section 5 (3) (b).

² RO Act section 142 (1) (c).

E6 GENERAL MEETINGS CONDUCTED AS A SERIES OR ELECTRONICALLY

- E6.1 Notwithstanding any other provisions of these Rules a general meeting may be conducted either:
- E6.1.1 by way of one meeting of the members at one location, or by way of a series of meetings at different locations, with the general meeting being taken to have occurred, and the requirements for a quorum being determined, at the time of the last of the meetings in the series; or
 - E6.1.2 by way of one meeting of the members where electronic facilities allow a reasonable opportunity for members present at the meeting to observe and participate in the meeting, including communicating conveniently through electronic means; or
 - E6.1.3 by any combination of the methods specified in sub Rules E6.1.1 and E6.1.2.
- E6.2 Where all participants are not present in person at a meeting the location of the meeting shall be taken to be the national office of the Organisation.

NOTES TO RULE E6



Recommended rule

As to meetings utilising electronic communication, see the Note to Rule E5.

It is not mandatory to have a rule to conduct a general meeting by way of a series of meetings. However, such rule is recommended if the organisation wishes to have its yearly financial reports presented to a general meeting as contemplated by the RO Act.¹

¹ RO Act section 265 and section 266.

E7 STANDING ORDERS

- E7.1 The Standing Orders at all meetings of the Organisation shall be those determined by the Executive from time to time. Any such determination or alteration to such Orders by the Executive shall take effect for meetings to be conducted subsequent to the adoption or alteration of such Orders.
- E7.2 Nothing in sub Rule E7.1 prevents a meeting of the Organisation resolving to suspend Standing Orders, or a particular such Order, for that meeting.
- E7.3 'Standing Orders' are provisions governing the procedure to be followed at meetings of the Organisation, including but not limited to rules of debate at such meetings.

NOTES TO RULE E7



Optional rule

- 'Standing Orders' is the expression given to describe the established and agreed procedures a body adopts for the conduct of its meetings.¹
- It is not mandatory for an organisation to have a rule dealing with Standing Orders at its meetings. If it does not, then the common law rules for the conduct of meetings will prevail at the meetings, unless varied by resolution or for any particular meeting. Details of the common law on this subject can be found in such textbooks as Joske's 'Law and Procedure at Meetings in Australia'.²
- If you do not have a rule, it is recommended that you nevertheless establish Orders for the conduct of its meetings. That can be implemented by a resolution of your governing body (Executive or committee of management) or by a rule in the rule book.
- The model rule does not prescribe the actual procedures to be used:
 - the contents of the rule are facilitative.
 - it contemplates the Executive determining and amending the orders, while allowing any particular meeting to suspend those orders by resolution on occasion where necessary.
 - if the actual procedures and debate rules are set out in the rule, the organisation must amend its rules in accordance with the requirements of the RO Act to change these procedures.³

¹ E Peden and W Muddle, *Joske's Law and Procedure at Meetings in Australia* 12th edn, Lawbook Co. of Australasia, 2021

² Ibid.

³ RO Act section 159 (1).

E8 MINUTE BOOKS

E8.1 The Organisation shall keep minute books in which are recorded proceedings and resolutions of all meetings of the Organisation.

E8.2 If proxies are used at any meeting, the minutes of that meeting shall record the proxies.

NOTE: The Secretary has responsibility under sub Rule D7.1.3 to keep accurate minutes of all meetings of the Organisation.

NOTES TO RULE E8



Mandatory Rule for committee of management, but recommended for all meetings

The RO Act requires an organisation to have a rule for the keeping of minute books, recording proceedings, and resolutions of all meetings of its committee of management.¹

This model rule is drafted in terms that comply with the organisation's statutory obligation and extends beyond the requirement of the RO Act by obliging the organisation to keep minute books of the proceedings and resolutions of all its meetings (e.g. general meetings of members, and any assembly of member representatives, such as a National Conference).

It is recommended that the model rule be adopted as a matter of good governance. In practice, most organisations keep minutes of all their meetings, not just committee of management meetings, so the model rule is merely a reflection of common and accepted practice.

While the expression 'resolutions' is clear and specific, the expression 'proceedings' is more general. Thus, it would be a matter for an organisation to determine how detailed its minutes should be.

The minute book of the organisation can be kept in a physical or electronic format.

¹ RO Act section 141 (1) (b) (iia).

PART F – ASSETS AND FINANCES

F1 FUNDS AND PROPERTY

F1.1 The funds and property of the Organisation shall consist of:

- F1.1.1 Any real or personal property of which the Organisation by these Rules or by any established practice not inconsistent with these Rules, has, or, in the absence of any limited term lease bailment or arrangement, would have, the right of custody, control, or management;
- F1.1.2 The amounts of subscriptions, fees and levies payable to the Organisation under these Rules;
- F1.1.3 Any interest, rents, dividends, or other income derived from the investment or use of such funds and property;
- F1.1.4 Any superannuation or long service leave or other funds operated or controlled by the Organisation in accordance with these Rules for the benefit of its officers or employees;
- F1.1.5 Any sick pay funds, accident pay funds, benevolent fund, funeral fund or like funds operated by the Organisation as a whole in accordance with these Rules for the benefit of its members;
- F1.1.6 Any property acquired wholly or mainly by expenditure of the moneys of such funds and property or derived from other assets of such funds and property; and
- F1.1.7 The proceeds of any disposal of parts of such funds and property.
- F1.1.8 **[INSERT: Organisation to specify any further categories if required].**

NOTES TO RULE F1



Recommended rule

An organisation is not required to have a rule that specifies the various types or categories of funds and properties that it may have but it is fairly common. It is recommended that an organisation have such a rule, so that the funds and property of the organisation are clear to members and other interested parties. The model rule sets out common types of funds and property that an organisation may have, but an organisation can add or substitute categories relevant to its affairs.

An organisation that decides to have such a rule should avoid using words in its rule that requires the organisation to have a fund with a particular name or kept with a particular bank – e.g. ‘the Organisation shall have a fund entitled XYZ for that type of property’, because if such a fund becomes redundant or not fit for purpose the organisation would have to alter the rule to have that fund removed. The model rule does not take this approach.

F2 CONTROL OF PROPERTY AND INVESTMENT OF FUNDS

- F2.1 The funds and property of the Organisation shall be held in the name of the Organisation at all times, and, shall be controlled by the Executive.
- F2.2 Without limiting its powers in relation to property and investment specified in sub Rule D4.2, the Executive may invest the funds and property of the Organisation in such manner and in such ways as it thinks fit to carry out the purposes of the Organisation as specified in Rule A2 (Objects).

NOTES TO RULE F2



Mandatory rule

Key considerations

- An organisation must have a rule concerning the control and investment of its property.¹
- The content of such a rule is a matter for the organisation. However, it must specify which governing body or officers have the control over of the funds and property. The rule should also specify that the investment of the property must be for purposes contemplated by its Objects Rule.
- The content of an organisation's rules on this mandatory subject varies considerably in length and detail. This model rule seeks to capture the essential elements for such a rule.

Trustees are not needed

- Some organisations have rules which provide for trustees to hold assets in the name of the organisation.
- This practice has been unnecessary and arguably inappropriate for many years, because it has been recognised since 1959 that registered organisations have full corporate identity and capacity, and thus can hold all classes of assets in their registered name.²
- Consequently, the model rules do not provide for trustees.

¹ RO Act section 141 (1) (b) (ix).

² RO Act section 27; see also *Williams v Hursey* (1959) 103 CLR 30.

F3 EXPENDITURE OF FUNDS

- F3.1 The funds of the Organisation may only be expended in pursuit of the objects of the Organisation and with the authority provided by this Rule.
- F3.2 The Executive shall develop, implement and monitor policies and procedures in relation to the expenditure of the organisation's funds in accordance with Rule F5.
- F3.3 The Executive is responsible for the expenditure of the funds of the organisation and shall carry out that responsibility in accordance with the requirements of this Rule, the RO Act and the policies and procedures of the Organisation made by the Executive under Rule F5.
- F3.4 Without limiting the effect of sub Rule F3.3, as soon as practical after the end of each financial year the Executive shall adopt a budget of receipts and expenditure for the next occurring financial year. The Executive may review and alter the budget for a financial year during that year if it believes it is necessary to do so.
- F3.5 At each meeting of the Executive, other than a meeting convened under sub Rule E1.4, the Secretary shall:
- F3.5.1 report on the actual receipts and expenditures for the financial year to that date, compared to the budget; and
 - F3.5.2 provide an explanation to the Executive for any significant variances to the budget.
- F3.6 The Executive or any member of it may request from the Secretary details of any particular item of expenditure, whether incurred or proposed. The Secretary shall provide all such reasonable details of any requested item as soon as possible after the request and, if requested, also provide access to primary records relating to the item as soon as practicable. The Executive may direct that an item of expenditure not be incurred until approval is given by it.

NOTES TO RULE F3



Mandatory rule: suggested text

Key considerations

- It is mandatory for an organisation to have a rule that specifies when the funds of the Organisation may be spent.¹ Model Rule F3 is a suggested rule that meets this requirement.
- Such a rule must be read in conjunction with another mandatory rule for organisations – a rule requiring its committee of management to develop and implement policies in relation to expenditure of its funds (rule F5 in the model rules).²
- While it is a matter for an organisation to decide the specific conditions imposed by its rules for the expenditure of its funds, there are two critical requirements. First, that the expenditure must be within

¹ RO Act section 141 (1) (b) (xi).

² RO Act section 141 (1) (ca).



the objects of the organisation. Second, that the committee of management ultimately controls and has responsibility for approval of all such expenditure.

How much detail is needed in such a rule?

- It is not recommended to include a high level of detail. These matters are more appropriately set out in an organisation's policies and procedures on expenditure as determined and monitored by its committee of management, so they can be modified as needed.
- Historically it has been common for the rules on this subject to be very detailed and prescriptive, including: the process for approval of every item of expenditure, delegations in relation to expenditure and the conditions attaching to the expenditure process, setting up bank accounts, permissible signatories to cheques, how moneys are transferred etc. This level of detail predates modern accounting practices and technological developments.

Features of this model rule

- The model rule specifies that all expenditure must be confined to the objects of the organisation and be under the control and responsibility of the Executive (mandatory).
- It requires the Executive to develop and implement expenditure policies and procedures (mandatory).
- It also incorporates a financial management practice common within both for profit and not for profit corporations, whereby a budget is set at the start of every financial year, so that the financial performance of the entity can be tracked through the year by the Executive and its advisors. This practice is then coupled with an ability for the Executive and individual members to call for additional details, and access to primary records if needed. However, such matters need not be spelt out in a rule; they could be included in the organisation's policies and procedures.

It is up to you to determine how much detail should be included in this rule, however the first two dot points immediately above are mandatory.

Detailed financial rules are not recommended, for two reasons: first, most of these matters can be included in the organisation's policies and procedures document; and secondly, detailed provisions in the rule could result in inflexibility, as the organisation would have to alter its rules whenever processes and practices change to make that change effective. This can result in differences between what an organisation's rules say they do and what they are doing in practice – which creates non-compliance and legal risks.

F4 LOANS, GRANTS AND DONATIONS

F4.1 A loan, grant or donation of an amount exceeding \$1,000 shall not be made:

F4.1.1 unless the Executive has satisfied itself:

- (a) that the making of the loan grant or donation would be in accordance with the other Rules of the Organisation; and
- (b) in the case of a loan - that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory;

and

F4.1.2 the Executive has approved the making of the loan, grant or donation.

F4.2 Notwithstanding sub Rule F 4.1, the Secretary may make a loan, grant or donation of an amount not exceeding \$3,000 to a member from the funds of the Organisation if the loan, grant or donation:

F4.2.1 is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and

F4.2.2 is subject to the condition that if the Executive, at its next meeting, does not approve the loan, grant or donation, it must be repaid as determined by the Executive.

F4.3 In considering whether to approve a loan, grant or donation made under sub Rule F4.2, the Executive must have regard to:

F4.3.1 whether the loan, grant or donation was made under the Rules of the Organisation; and

F4.3.2 in the case of a loan:

- (a) whether the security (if any) given for the repayment of the loan is adequate; and
- (b) whether the arrangements for the repayment of the loan are satisfactory.

F4.4 Nothing in this Rule is intended to apply to or prevent the payment or reimbursement of out-of-pocket expenses incurred by any person for the benefit of the Organisation.

**Key considerations**

- An organisation must have a rule relating to the making of loans, grants and donations that accords with the requirements in the RO Act.¹ Model Rule F4 meets this requirement.
- The model rule reproduces the precise requirements and conditions set out in the RO Act, except it calls the committee of management 'the Executive' (consistent with these model rules) and nominates the Secretary as the officer who can grant a loan grant or donation under sub Rule F4.2. Your Organisation may choose another relevant officer or officers to put into the rule for this purpose (e.g. the President rather than the Secretary).
- It is common practice for organisations to reproduce as closely as possible in their rule books the statutory provisions.

Two different types of loan, grant or donation

A loan, grant or donation specified in sub Rule F4.1 may be made to any person, persons or entity, subject to the conditions set out in that Sub Rule (i.e. compliance with the rules and Executive approval). By contrast, a loan, grant or donation under sub Rule F4.2 may only be made to a member of the organisation on the conditions set out in that sub Rule and sub Rule F4.3 (i.e. severe financial hardship of the member or their dependents).

Must be within the objects of the Organisation

With both types of loan, grant or donation, the other Rules of the Organisation must be complied with. A particularly important one is that the payment be for a purpose falling within the objects of the Organisation.²

¹ RO Act section 149.

² Model Rule A2, and notes to that Rule.

F5 POLICIES AND PROCEDURES IN RELATION TO EXPENDITURE

- F5.1 The Executive shall develop, implement and monitor policies and procedures in relation to the expenditure of the funds of the Organisation ('expenditure policy') which, without limiting the matters that may be included in the expenditure policy shall include:
- F5.1.1 authority for the expenditure of funds;
 - F5.1.2 levels of delegation for such authorities;
 - F5.1.3 manner of approving and making expenditure;
 - F5.1.4 the fixing of honorariums for honorary officers;
 - F5.1.5 conditions for the payment or reimbursement of expenses incurred by officers or employees of the Organisation.
- F5.2 The Executive shall review the expenditure policy as soon as practical after the end of each financial year of the Organisation, for the purposes of:
- F5.2.1 assessing whether and the extent to which the expenditure policy has been implemented within the Organisation in the period under review;
 - F5.2.2 making any changes to the expenditure policy that it believes to be necessary to maintain and/or enhance its implementation; and
 - F5.2.3 giving such directions as it believes necessary to ensure the expenditure policy is implemented or continues to be implemented.

NOTES TO RULE F5



Mandatory rule: suggested text

Key considerations

- An organisation must have a rule that requires the organisation to develop and implement policies relating to the expenditure of the organisation.¹ Model Rule F5 is a suggested rule that meets this requirement.
- The committee of management would be the usual governing body with this responsibility.
- The statutory requirement is for the relevant rule to require policies to be developed and implemented; the content of those policies is then a matter for the organisation to decide, typically with the guidance of relevant internal or external financial experts or advisors.
- The statutory requirement requires both development and implementation of the policies, which necessarily implies that the duty on the organisation is ongoing, not a 'set and forget' one.

¹ RO Act section 141 (1) (ca).

NOTES TO RULE F5



Mandatory rule: suggested text

An organisation could choose to have that duty imposed on another governing body, such as its National Conference. However, as the rule requires that policies be developed and implemented, it would be appropriate in most instances for the body within the organisation that has the regular management and oversight of its financial affairs to have this responsibility. If you choose to impose the duties in this model rule on your national conference, then it would have financial management responsibilities and all Conference members would require training.

Features of this model rule

This model rule provides an example of a rule implementing the statutory requirement.

Sub Rule F5.1 confers the responsibility on the organisation's Executive (its committee of management) and provides a non-exhaustive list of examples of the types of matters that might typically be found in any such expenditure policy.

Sub Rule F5.2 also imposes a responsibility on the Executive to keep the development and implementation of the policies under regular review.

The only mandatory component of the model rule is the first two lines of sub Rule F5.1, but it is recommended that an organisation consider including some or all of the other elements of the model rule, so that its relevant governing body is regularly engaging with its responsibility.

F6 FINANCIAL YEAR

F6.1 The financial year of the Organisation shall be on and from 1 July in one year to and including 30 June in the immediately following year.

NOTES TO RULE F6



Recommended rule

- Statutory obligations are imposed on organisations by financial years, particularly in relation to financial reporting to their members and the FWC.¹
- There is no statutory requirement that an organisation have a rule that specifies its financial year. However, if it does not have such a rule, then its financial year will be treated as 1 July in one year to and including 30 June in the next year – the standard Australian financial year.²
- If an organisation wishes to have a different financial year to the standard Australian one, it must have a rule specifying what that year will be.³
- It is recommended that an organisation have a rule specifying its financial year, even if it is the standard one, so that all members, stakeholders and interested persons can easily ascertain the financial year of that organisation.

An organisation can always change its financial year if it wishes, but a change can only be implemented by altering its rules and will result in additional reporting requirements. It is recommended that you seek the advice of the FWC before altering rules that change your financial year.⁴

¹ RO Act section 253.

² RO Act section 6, definition of 'financial year'.

³ Ibid.

⁴ RO Act section 240.

F7 AUDIT OF FINANCIAL REPORT

- F7.1 The Organisation shall ensure that there is a registered auditor of the Organisation at any time when a registered auditor is required for the purposes of the RO Act.
- F7.2 The financial report of the Organisation shall be audited by the Organisation's auditor in accordance with the requirements of the RO Act as soon as possible after the conclusion of each financial year.
- F7.3 Without limiting the rights and powers of the auditor of the Organisation under the RO Act, the auditor:
- F7.3.1 Shall have full and free access at all reasonable times to all records and other documents of the Organisation relating directly or indirectly to the receipt or payment of money or to the acquisition, receipt, custody or disposal of assets by the Organisation;
 - F7.3.2 Shall be entitled to seek from any officer or employee of the Organisation such information and explanations as the auditor wants for the purposes of the audit; and
 - F7.3.3 may place before the Executive any suggestion or recommendation the auditor may desire to make concerning the financial affairs of the Organisation.
- F7.4 The auditor may only be removed from office during the term of their appointment in accordance with the RO Act, as follows:
- F7.4.1 if the auditor was appointed by a general meeting of members: by a resolution at a general meeting by a majority of the members voting at the meeting; or
 - F7.4.2 if the auditor was appointed by the Executive: by a resolution adopted at a meeting of the Executive by an absolute majority of its members;
- and in either case in accordance with the requirements for procedural fairness for the auditor prescribed by the RO Act.
- F7.5 In this Rule:
- F7.5.1 a reference to an auditor means an auditor as defined under the RO Act, and
 - F7.5.2 a reference to 'the financial report' of the Organisation is the general purpose financial report and the operating report the Organisation must prepare each year for the purpose of the audit by the auditor under the RO Act.

NOTE: There are statutory limits on the number of years that a person can play a significant role in the audit of a reporting unit such as the Organisation – see RO Act Section 256A.



Key considerations

- It is mandatory for an organisation to have a rule in its rule book that provides for the yearly or more frequent audit of its accounts.¹ Model Rule F7 is a suggested rule that meets this requirement.
- An organisation's rules can make provision for the audit of its accounts more than once a year. However, organisations usually opt for one audit per financial year.
- Yearly audits accord with modern corporate practice in relation to accounts, and are consistent with the RO Act's obligations concerning the preparation and financial reporting requirements.²

Features of this model rule

Sub Rule F7.2 satisfies the statutory requirement in relation to auditing of accounts for these entities, it is common for rules on this subject to make additional provisions concerning the role and removal of auditors. This model rule includes examples of the types of provisions that might be included.

It is however up to an organisation to determine whether any of these additional provisions are included in the relevant rule; the RO Act makes extensive provisions on those matters, and those provisions apply irrespective of what may be found in the rule book.

The advantage of having such additional provisions in the rule book is to assemble the most important requirements in relation to auditors in one place. However, care must be exercised to ensure that whatever is included in the rules in relation to auditors is consistent with the RO Act's requirements on that subject.³

Note concerning sub Rule F7.4.2, removal of auditor by the Executive:

The Executive has the power to remove an auditor by a vote carried by an absolute majority of its members. An 'absolute majority' is one comprised of a majority of all those members of the governing body entitled to vote on a resolution, not just of those who actually vote.

This requirement is a statutory protection for an auditor of an organisation where a vote for their removal is not required by a general meeting of members.



EXAMPLE: If there are 15 members of the Executive, the number of votes for the resolution to pass with an absolute majority is 8 (a majority of the 15). This number does not change depending on the number of members who actually vote. If only 10 people vote on the resolution, 8 votes in favour would still be required to pass the resolution. This is different to a simple majority where only 6 votes are required if there is 10 people voting (a majority of the 10).

¹ RO Act section 141 (1) (b) (x).

² RO Act Chapter 8, Part 3.

³ RO Act Chapter 8, Part 3, Division 4, Subdivisions A and B.

PART G – ALTERATION OF RULES

G1 ALTERATION OF RULES

- G1.1 The Rules of the Organisation may only be made, amended, varied, replaced, rescinded, repealed or deleted in accordance with the requirements of this Rule.
- G1.2 The National Conference may alter the Rules of the Organisation as follows:
- G1.2.1 by resolution adopted in accordance with the Rules, provided that not less than twenty-eight (28) days' notice of any such alteration has been provided to all the members of the National Conference; or
 - G1.2.2 without notice, by special resolution.
- G1.3 Notwithstanding any other provision of these Rules, the Executive may by special resolution alter the Rules to either:
- G1.3.1 ensure that they comply with the requirements of the RO Act; or
 - G1.3.2 ensure that any alteration to the Rules made by the National Conference is capable of obtaining certification under the RO Act, provided that any such alteration made by the Executive for that purpose does not depart from the substance of the alteration made by the National Conference.

NOTE: See definition of 'special resolution' in sub Rule B1.2.

NOTES TO RULE G1



Mandatory rule: suggested text

Key considerations

- It is mandatory for an organisation to have a rule specifying how its rules may be altered.¹
- Rules of an organisation that specify how the rules may be altered are recognised by the courts to be particularly important to the governance of the organisation.²
- While an organisation has a broad discretion as to the contents of the rule, it must take care to ensure that such a rule is consistent with two key objects of the RO Act, 'encourage members to participate in the affairs of the organisation' and 'provide for democratic functioning and control of organisations'.³

¹ RO Act section 141 (1) (b) (xiii).

² RRS Tracey, 'The Legal Approach to Democratic Control of Trade Unions', *MULR*. 177, 1985:203-205. WB Creighton, WJ Ford and RJ Mitchell, *Labour Law – Text and Materials*, Law Book Company, 1993 Chapter 28:955-957.

³ RO Act section 5 (3) (b) and (d).

NOTES TO RULE G1



Mandatory rule: suggested text

- It is permissible for an organisation to have a rule that allows its committee of management to alter any of the rules of the organisation, provided it can be said that in the context of the rules as a whole that such rule is consistent with the 'democratic control' objective for all organisations.⁴
- Organisations should avoid making overly complex alteration rules, as any alteration cannot take effect (i.e. be 'certified') until the General Manager of the FWC or Delegate is satisfied that the Organisation has complied with its own rules in making the alteration. The General Manager or Delegate will closely scrutinise any such application in that regard.⁵

Features of this model rule

As organisations vary greatly, there are many options for organisations to consider when deciding the terms of its alteration rules. The critical issue for the organisation in every case is to ensure that the drafted rule respects the statutory 'standards' of 'encouraging member participation in' and 'democratic control of' the organisation.

The three methods commonly found in organisation rule books are:

- General meetings of members;
- Assembly of member representatives (National Conference); and
- Committee of management (Executive).

It is up to the organisation to decide whether it wishes to use one or more of these possible methods, or another suitable method. Whatever method is chosen, it must comply with the statutory standards referenced above.

The model rule provides for the National Conference to alter any of the rules as it wishes, while also permitting the Executive to have a limited power to ensure that the rules or alterations to the rules are compliant with the RO Act.

This approach is taken in the model rule because:

- (1) it accords with the principle of democratic control of the organisation by the members, by providing that the normal way the rules are altered is by decision of a large representative body of members within the organisation;
- (2) it supports another standard or object of the RO Act, namely 'efficient management of the organisation'⁶ by allowing the Executive, a democratically elected body that can meet quickly if needed to alter the rules to ensure compliance with the RO Act.

In keeping with the importance of the rule alteration process, the model rule also requires a special resolution to be carried for an alteration if notice of the alteration was not given.

⁴ *McLeish v Kane* (No.2) (1979) 41 FLR 152; *Cook v Crawford* (1982) 43 ALR 83; *Wright v McLeod* (1983) 51 ALR 483.

⁵ See *Model Rules Guidance Note* (to be published at a later date).

⁶ RO Act section 5 (3) (c).

PART H – OTHER MATTERS

H1 CASUAL VACANCIES IN OFFICE

- H1.1 If a vacancy should occur in an office on the Executive or on the National Conference after it has been filled by election but before the term of that office expires ('the casual vacancy'), the casual vacancy may be filled in accordance with this Rule.
- H1.2 The casual vacancy shall be filled by an election conducted in accordance with [Appendix B](#) of these Rules if when the vacancy occurs the unexpired portion of the term of the office exceeds three quarters of that term, or 12 months, whichever is the greater. The successful candidate shall hold office for the remainder of the term of the person last elected to that office.
- H1.3 If sub Rule H1.2 does not apply to the casual vacancy, then it may be filled by appointment by the Executive of a member eligible to be elected to that office. Such appointee shall hold office for the remainder of the term of the person last elected to that office.

NOTES TO RULE H1



Recommended rule– recommended wording

Key considerations

- A casual vacancy in an office is a vacancy that occurs after the office has been filled by election and before the term of that office expires. It does not include a situation where no one has been elected to the office in the last election (where an office has not been filled due to no or insufficient nominations for that office at the time of the election for it).¹
- An organisation is not required to have a rule to deal with the filling of casual vacancies, but it is recommended that such a rule be included as a matter of good governance, and to ensure ongoing adherence to the RO Act's standard of democratic control of an organisation.

If you choose to include a rule dealing with casual vacancies, you must meet the requirements of section 146 of the RO Act (see below).

Statutory requirements

- Section 146 requires that if a vacancy occurs in an office early in the term of that office (i.e. where unexpired portion of the term of office exceeds three quarters of that term, or 12 months, whichever is the greater) such a vacancy must be filled by ordinary election (often a secret postal ballot of the relevant electorate within the organisation);

¹ As to the meaning of 'casual' or 'extraordinary' vacancy: *Grove v Cameron* (1972) 21 FLR 59 at 68 (per Joske J, citing the High Court's decision in *Vardon v O'Loughlin* (1907) 5 CLR 201, concerning Senate vacancies).



- Otherwise, the vacancy may be filled by the organisation in any manner as it sees fit – e.g. by way of appointment by the committee of management (the Executive in these model rules), or any other mechanism consistent with the RO Act.²

It is important to note that the Executive has some discretion under the model rule to leave a vacancy unfilled – for example, if the term of office is soon to expire, or the office is one out of a significant number of offices that remain filled (e.g. Conference delegates from a particular Branch).

Examples of application of Section 146 to casual vacancies

All examples use a term office of two years which commences on 1 July 2025 and is due to end on 30 June 2027.

- When the election is declared, no one has nominated. This is not a casual vacancy. An election must be held to fill the office.
- The incumbent resigns with effect from 1 August 2025. They have been in office for 1 month. Twenty-three months remain of the term. Three quarters of the term would be 18 months. As there is more than three quarters of the term remaining, the office must be filled through an election.
- The incumbent resigns with effect from 31 January 2026. They have been in office 7 months. Seventeen months remain of the term. Three quarters of the term would be 18 months. As there is less than three quarters of the term remaining, the office may be filled by the Executive under Rule H.1.3 above by appointment of an eligible member.
- The incumbent resigns on 24 December 2025. Because of the time of year, the Organisation does not consider what to do about the vacancy until 9 January 2026, when its office reopens after the Christmas/New Year break. On 9 January 2026 there is less than three quarters of the term of the office remaining, but the vacancy actually occurred on a date when there was more than three quarters of the term remaining. Hence, the vacancy must be filled by an election under Rule H1.2; it cannot be filled by the Executive under sub Rule H1.3.

² RO section 146.

H2 EXECUTION OF DOCUMENTS

- H2.1 Any document not required to be under seal shall be signed or executed for and on behalf of the Organisation by:
- H2.1.1 any two of the Office Bearers;
 - H2.1.2 any office holder or employee authorised by the Executive to sign or execute either a particular document or a specified class of documents; or
 - H2.1.3 the Secretary for any document or declaration required under the RO Act to be signed or made by the prescribed officer or the designated officer.
- H2.2 Any document required to be under seal shall have the seal affixed by the Secretary on the authority of a resolution of the Executive in the presence of any one of the other Office Bearers of the Organisation.
- H2.3 The Secretary shall have the duty to keep safe custody of the seal of the Organisation.

NOTES TO RULE H2



Mandatory rule: suggested text

An organisation must have a rule dealing with the execution of documents for the Organisation. Model Rule H2 is a suggested rule that meets this requirement.¹

The model rule adopts a form of wording similar to those found in the rule books of organisations.

¹ RO Act section 141 (1) (b) (v).

H3 NOTIFICATION OF INDUSTRIAL DISPUTES

- H3.1 The Secretary may notify the FWC of any industrial dispute to which the Organisation or any group of its members may be a party, or notify such dispute to any other applicable tribunal or agency. When the Secretary notifies a dispute, they shall advise the Executive that they have done so.
- H3.2 When directed by the Executive to do so, the Secretary shall notify the FWC of any industrial dispute to which the organisation or any group of its members are a party or notify such dispute to any other applicable tribunal or agency.

NOTES TO RULE H3



Mandatory rule: suggested text

Key considerations

- It is mandatory for an organisation to have a rule that deals with the manner of notification of industrial disputes.¹ Model Rule H3 is a suggested rule that meets this requirement.
- There is no definition of 'industrial dispute' in the RO Act or the *Fair Work Act 2009* (Cth).
- Due to legislative changes in relation to the Federal industrial relations regulations in 2006, this statutory requirement has much more limited application now. However, notification of disputes of an 'industrial' character by organisations can still occur occasionally under the current legislative regime.

¹ RO Act section 141 (1) (b) (vi).

H4 INTERNAL COMPLAINTS

- H4.1 The Executive shall develop and implement policies and procedures to deal with complaints by members against the Organisation or any of its officers or employees ('complaints policy'). The complaints policy may include alternative disputes resolution ('ADR') processes within the Organisation ('complaints policy').
- H4.2 In carrying out its duty under sub Rule H4.1, the Executive may take advice and guidance from relevant external agencies including from reputable ADR providers.
- H4.3 The Executive shall review the complaints policy every three years after its making, for the purposes of:
- H4.3.1 assessing whether and the extent to which the complaints policy has been implemented within the Organisation in the period under review;
 - H4.3.2 making any changes to the complaints policy that are necessary to maintain and/or enhance its implementation; and
 - H4.3.3 giving such directions as necessary to ensure the complaints policy is implemented or continues to be implemented.
- H4.4 Nothing in this Rule shall prevent or impede a member from:
- H4.4.1 making any report or complaint as may be available by law to that member to an external agency about the Organisation or any of its officers or employees, or
 - H4.4.2 bringing any legal proceedings that the member is entitled to bring against the Organisation or any of its officers or employees.

NOTES TO RULE H4



Optional rule

Key considerations

- An organisation is not required to have a rule specifically providing a procedure for dealing with complaints or grievances within the organisation. It can have internal policies and/or procedures to deal with that subject without having those matters in the rule book.
- Whether or not this subject is dealt with in the organisation's rule book, you should seriously consider having formal procedures to deal with complaints and grievances by members. It is in the interests of organisations and their members that transparent methods exist for 'alternative dispute resolution' (see below) within the organisation.
- The model rule provides a suggested approach to the content of such a rule. That approach requires the Executive to develop and implement policies and procedures to deal with such complaints with the assistance of expert agencies and advisors.

Relevant to disputes over organisation rules



The model rule facilitates the development of internal procedures to deal with many types of complaints. In particular, it could establish a transparent mechanism for internal resolution of disputes within an organisation over its rules. That could be valuable to the organisation because the Federal Court can decline to deal with disputes over rules matters until attempts have been made to resolve such a dispute within the organisation.¹

Alternative Dispute Resolution

In modern times courts and legislatures have been strongly encouraging parties in dispute to use 'alternative dispute resolution' ('ADR'). 'ADR' is now a very common feature of court and tribunal procedures. In essence, ADR is a process where disputes are discussed and settled between the parties without going to a court for adjudication, often with the assistance of an independent third party mediator. The object of ADR is to help the parties reach a mutually satisfactory resolution without the need for costly, lengthy and uncertain court proceedings.

¹ RO Act section 164 (3).

H5 WORKPLACE DELEGATES

For **employee** organisations

- H5.1 The Executive shall develop and implement a policy for the appointment or election of workplace delegates, and revise its terms as and when that is required.
- H5.2 The Executive shall review such policy every three (3) years to identify any deficiencies or shortcomings in the policy that may have risen, and make such alterations to the policy as it considers are required to ensure that the policy is and remains effective.

NOTES TO RULE H5



Recommended rule for employee organisations

Key Considerations

- Workplace delegates, appointed or elected pursuant to the rules of an employee organisation, are provided with certain rights in relation to communication with and representation of the industrial interests of the members they represent in particular workplaces.¹
- Workplace delegates are usually not, by virtue of their positions, the holders of office in an organisation.² Hence they do not have to be elected by the processes required under the RO Act; the employee organisation may choose its own methods for electing or appointing such delegates.
- Model Rule H5 empowers the Executive of the employee organisation to establish, implement and alter a policy in relation to the appointment or election of workplace delegates.
- This facilitative approach to this subject reflects the fact that there are different methods and practices that organisations utilise in relation to the appointment or election of their workplace delegates, and that they may wish to change or amend their arrangements as circumstances require. By this facilitative approach the organisation is not required to specify an appointment or election process in a rule itself.

¹ Fair Work Act section 350C.

² RO Act section 9.

H6 DISSOLUTION

- H6.1 The members of the Organisation may resolve to dissolve the Organisation in accordance with this Rule, and not otherwise.
- H6.2 The registration of the Organisation under the RO Act must be cancelled in accordance with the requirements of that Act prior to the members taking action under this Rule to dissolve the Organisation.
- H6.3 After the registration of the Organisation has been cancelled under the RO Act, the members in a general meeting called and conducted in accordance with Rule D2 and Part E of these Rules may resolve by special resolution that the Organisation be dissolved on terms that make such provisions as are necessary for:
- H6.3.1 the winding up of its affairs; and
 - H6.3.2 the distribution of its assets and funds, after payment of all outstanding debts and liabilities, to another named association or organisation with like objects to the Organisation.

NOTES TO RULE H6



Recommended rule

An organisation is not required to have a rule dealing with how and on what conditions it may be dissolved. However, many organisations do have a rule about this subject.

The model rule provides suggested wording. However, it is a matter for an organisation to determine whether to have such a rule and if so, what it will provide in relation to such matters as e.g. size of majority vote required.

However, it is important that the organisation be aware that it cannot undertake this step effectively unless the organisation has its registration under the RO Act cancelled first.¹ Upon cancellation of its registration an organisation ceases to be a body corporate but does not by that reason cease to be an association.

¹ RO Act section 32 (a).

APPENDIX A

CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP



NOTE: There is an **employee** and **employer** version provided. Check the box to help you mark the version to use.

☐ **EMPLOYEE ORGANISATION**

The following categories of persons are eligible for membership of the Organisation:

- (a) An unlimited number of persons who are employed or usually employed in the following occupations or industries:
 - i.
 - ii.
 - iii.
 - iv.
 - v.
- (b) **[Optional]** Any person who is not an employee but who is eligible for membership of an organisation of employees registered under the *Industrial Relations Act 1996* (NSW) and who would be eligible for membership under Paragraph (a) if they were an employee.
- (c) **[Optional]** Any person who is not an employee but who is an employee for the purposes of the following State Acts, and who would be eligible for membership under Paragraph (a) if they were an employee:
 - a. Industrial Relations Act 1979 (Qld);
 - b. *Industrial Relations Act 1979* (WA); or
 - c. *Employee Relations Act 1994* (SA).
- (d) **[Optional]** Any independent contractor who, if they were an employee performing work of the kind which they usually perform as an independent contractor, would be an employee eligible for membership under Paragraph (a).
- (e) **[Optional]** Any person who is an officer of the Organisation.

☐ EMPLOYER ORGANISATION

The following categories of persons are eligible for membership of the Organisation:

- (a) An unlimited number of employers in one or more of the following industries or businesses:
 - d.
 - e.
 - f.
 - g.
 - h.
- (b) **[Optional]** A person who carries on business in any one or more of the categories of business specified in Sub Paragraphs (a.) to (e.) of Paragraph (a).
- (c) **[Optional]** An officer of the Organisation.

NOTES TO APPENDIX A



Mandatory rule: suggested text

Key considerations

- It is mandatory for an organisation to have a rule which specifies its conditions of eligibility.¹ This Appendix sets out a framework for an eligibility rule.
- The terms of an organisation's 'eligibility rule' (which may be called 'conditions of eligibility' or 'membership eligibility' etc.) are fundamental to who may lawfully enrol as members², whether it be an employee organisation or an employer organisation.
- While the RO Act permits an organisation to enrol some limited categories of persons who are not employees (in the case of an employee organisation) or employers (in the case of employer organisation), the critical consideration in drafting an eligibility rule for an organisation is clearly defining the types or categories of employees or employers that the organisation can accept as members.
- Changes to your eligibility rule can attract objections and result in a hearing.

Important context for eligibility rules

- A registered organisation has the right to object to another organisation being registered with an eligibility rule that allows it to enrol any of the classes of persons that they may enrol under its eligibility rule, based on the argument that the class of person in question:
 - could 'more conveniently belong' to; and

¹ RO Act section 141 (1) (a).

² *R v Dunlop Rubber Australia Limited; Ex parte FMWU* (1957) 97 CLR 71.



- would be more effectively represented by -
the already registered organisation.³
- The same objection may be made by a registered organisation if another registered organisation applies to amend its eligibility rule in such a way as to extend its potential membership enrolment coverage.⁴
- Since its foundation in 1904 the Federal system for the registration of organisations of employees and employers has given special status to an organisation's eligibility rule. For most of the 20th century, an organisation registered in the Federal industrial system had a virtual monopoly over the enrolment of employees or employers within the scope of its eligibility rule. That original level of monopoly over enrolment rights has been diluted somewhat since the 1990s, but it is still a very substantial benefit of registration as an organisation.
- Disputes over such matters are adjudicated upon in the first instance by the FWC,⁵ but can extend to superior court (even High Court) proceedings depending on the significance and/or complexity of the issues involved in the dispute.
- Disputes between organisations and purported organisations over the right of enrolment of classes of persons by multiple organisations have been very common in the Federal industrial system since its foundation, and still occur. Such disputes can be extremely costly to the organisations concerned and can take a long time (even years) to resolve.

It is thus vital that an organisation take great care when drafting or seeking to amend its eligibility rule, as it is likely to attract attention and possible objection from other organisations that might believe or suspect that their area of membership may be affected.

Features of the model rule

- The model rule is drafted as employee and employer organisation alternatives.
- The model rule commences by focusing on the critical element of any eligibility rule, namely the category or categories of employees or employers that the organisation can enrol as members. The model rule then leaves it to the organisation itself to define the class or classes, depending on its circumstances.
- Both alternative forms of the model rule incorporate options to include other categories of persons that an organisation is permitted to include in its conditions of eligibility (e.g. certain types of independent contractors). These can be included or excluded depending on whether any such option is available or suitable to that organisation.
- The model rule also allows the organisation to enrol its officers as members at its discretion. This is a common element in the eligibility of many organisations, particularly employee organisations. This class of membership is very limited, as only persons who are officers of the organisation may use it.⁶

Important considerations for drafting or amending an eligibility rule

- When you are considering what ought to be the content of your organisation's eligibility rule, or considering a change to your existing rule, remember that what you propose to do is likely to attract

³ RO Act section 19(1)(j), and 19(2), (3) and (4).

⁴ RO Act section 158 (4), (5), (6), (7) and (8).

⁵ See references [3] and [4].

⁶ RO Act section 9 (definition of 'office').



scrutiny by other registered organisations when your intentions become public. The FWC will advertise your changes to other organisations and interested parties.

- If you are drafting or amending an eligibility rule and are thinking about what that rule might contain, you should investigate and consider the existing 'landscape' of organisational coverage into which that eligibility rule might travel. That is, you need to look at the content of the eligibility rules of already existing organisations that might be competitors with your organisation.
- If you receive an objection by another organisation to what you wish to do, you may have to negotiate your intended rule, for example, including an exclusion for some intended categories of employees or employers.
- This partly explains why it is quite common for the eligibility rules of an organisation to not only set out what categories they cover, but also what categories are excluded or not covered.

'Industry' rule

An organisation may choose to have an 'industry' rule as well as an 'eligibility' rule.

An 'industry' rule provides a description of the 'industry' in connection with the registered organisation. Here is an example (not an actual rule):

'The Organisation is formed in connection with the industry of micro chip manufacturing.'

Prior to 1 March 1989 it was mandatory for an organisation to have a rule that specified its industry. From that date onwards such a rule, while permissible, was no longer mandatory.⁷

While some organisations still retain an industry rule in their rule books, most organisations no longer do so.

You can choose whether your organisation will have or retain an 'industry' rule in its rule book, but if you choose to have such a rule, it may impact how tribunals and courts interpret your organisation's 'eligibility for membership'. An industry rule may expand or limit, or cause doubt about the scope of your eligibility rule.⁸

Interpretation of eligibility rules

The content of an organisation's eligibility rule is critical to its existence and functioning – it determines who can or cannot be members of that organisation. Such rules are often the subject of extremely detailed consideration and debate, particularly in instances of conflict or dispute between organisations or other parties (e.g. an employer and an employee).

The courts have established a number of principles when interpreting eligibility rules. Shaw⁹ provides a useful overview of important principles for interpretation of eligibility rules, including that:

- The content of the words should be interpreted in a broad sense and applied with their ordinary meaning, rather than a narrow or formal construction;¹⁰

⁷ Conciliation and Arbitration Regulations, Reg.115 (1) (d) (repealed); Industrial Relations Act 1988 (Cth), section 195 (1) (a) (repealed); now see RO Act Section 141 (1) (a).

⁸ P Punch, *Australian Industrial Law*, CCH Australia, 1995, Chapter 17:367-368 (and cases cited therein); WB Creighton, WJ Ford and RJ Mitchell, *Labour Law – Text and Materials*, Law Book Company, 1993:Chapter 28:943-944.

⁹ JW Shaw, 'Interpreting Trade Union Constitution Rules' *The Australian Law Journal*, 1988, vol 62: 690.

¹⁰ R v Cohen; *ex parte Motor Accidents Insurance Board* (1979) 141 CLR 577:587.



- Notwithstanding this, legal principles of construction are applicable.¹¹
- The meaning of words is not static and they should not be confined to the meaning when the rule was first placed into the rule book.¹²

Furthermore, and consistent with these principles, the interpretation of an eligibility rule should have regard to the history and context of that rule – e.g. how its terms have developed over time through amendment and case law decisions, and where the words are located in the rule.

Regard should also be had to the common understanding of terms used in an eligibility rule by persons familiar with the industry or occupation or business referred to in the rule.¹³

The above reinforces that it is vital that an organisation take the greatest care when drafting or amending its eligibility rule.



SPECIAL NOTE: Types of associations and corporations that can be registered

When an association or group of persons want to register as an organisation under the RO Act, the content of the body's eligibility rule is a fundamental consideration. But even more importantly, only certain types of associations and corporations are themselves eligible to be registered as organisations under the RO Act. An explanation of what bodies are eligible to apply for registration is provided in the Guidance Note. You may need to seek advice on whether you are able to seek registration.

Enterprise associations

Usually, employee organisations registered or seeking to be registered under the RO Act have eligibility rules that allow employees from various categories of employers. However, the RO Act also provides an option for an enterprise association to be registered as an organisation. An enterprise association is one where the majority of the membership consists of employees performing work in the one enterprise.¹⁴ These entities are not common but are explained in the Guidance Note.

¹¹ R v Gough; *ex parte Municipal Officers' Association* (1975) 133 CLR 59:69.

¹² *Co Operative Bulk Handling Ltd v Waterside Workers' Federation of Australia* (1980) 49 FLR 355:363

¹³ See Note [12] where the Court interpreted the meaning of the expression 'waterside worker' by having regard, inter alia, to the commonly understand meaning by those involved in the maritime industry.

¹⁴ RO Act section 18C.

APPENDIX B

ELECTION PROCEDURE RULES

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