



Online Workshop

Making your rules work for you –
observations on the rules of registered
organisations

March 2021



Session Outline



Rules requirements under the RO Act



What we have seen with rules



Rule change processes



Where can I find my organisation's rules?

- Rules are certified by the Fair Work Commission (**FWC**)
- Current rulebooks can be found by going to the [‘Find a registered organisation’](#) page of the FWC website and clicking on the name of the organisation.
- At that location you can also find:
 - FWC rule alteration decisions; and
 - previous versions of rules going back several years.



Rules requirements under the *Fair Work (Registered Organisations) Act 2009* (the RO Act)

- Every registered organisation must have rules – s.140
- What the rules **must** deal with – s.141
- General requirements for rules – s.142
- Rules relating to elections – ss.143 to 147
- Rules about loans, grants and donations – s.149



Rules must deal with: the items in s.141(1)(a), (b), (ca) and (d)

Purpose of the organisation, conditions of eligibility for membership and the financial obligations of it – s.141(1)(a) and (d)

How the organisation is run, such as:

- powers and duties of committees and officers – s.141(1)(b)(i)
- the keeping of minute books to record proceedings and resolutions of CoM meetings – s.141(1)(b)(iia)
- when persons become or cease to be members – s.141(1)(b)(vii)
- how property / funds are controlled – s.141(1)(b)(ix)
- auditing of accounts – s.141(1)(b)(x)
- the conditions under which funds may be spent – s.141(1)(b)(xi)



Rules must also:

- provide for the keeping of a register of members – s.141(1)(b)(xii)
- set out how the rules can be altered – s.141(1)(b)(xiii)
- require the organisation and its branches to develop and implement policies about expenditure – s.141(1)(ca)



General requirements for rules – s.142

(simple sounding heading, but really important)

Rules **must not**:

- be contrary to the RO Act, the FW Act, a modern award, enterprise agreement, or otherwise be contrary to law – s.142(1)(a)
- prevent members from observing the law, or the provisions of an award, enterprise agreement or an order of the FWC – s.142(1)(b)
- Impose conditions on members or applicants for membership that are unreasonable, unjust or oppressive – s.142(1)(c)
- discriminate between members or applicants on the basis of a prohibited reason (including political opinion) – s.142(1)(d)



(Some) Rules relating to elections

- Voting for each office holder must be by either:
 - a Direct Voting System, i.e. directly from members; or
 - a collegiate electoral system, i.e. elected by and from officers (s.143(1)(a))
- Returning Officer can't be an officer or employee of the Org. s.143(1)(b). (It's usually the AEC anyway: s.182)
- Must be a secret ballot (s.143)(1)(e)
- Postal voting for direct elections, unless exempted (s.144)
- Must specify terms of office. Maximum of 4 years* (s.145)
- May provide for filling casual vacancies (some limits)* – s.146



(Some) Rules relating to elections

Rules must also deal with:

- how a person becomes a candidate;
- defective nominations and the opportunity to remedy them;
- the returning officer's duties,
- the declaration of results,
- when the roll of voters closes (7 to 30 days before nominations open), and
- how the ballot is to be conducted.

s.143(1)(c), (d), (e)



Other rules

Every organisation's rules must specify that loans, grants or donations over \$1000 can only be made if the committee of management has:

- satisfied itself that:
 - making it would be in accordance with the organisation's other rules; and
 - for a loan, the repayment arrangements and the security offered for the loan are adequate.
- approved the making of the loan, grant, donation. (s.149(1))

Rules can allow hardship payments to members up to \$3000, provided that the committee can ask for repayment (s.149(2))

Rules can allow Branches to control their own affairs (s.154A) and their own funds (s.154B)



What we have seen with rules (1)

Rules that can be difficult to interpret or apply / otherwise challenging include:

- Rules that seem internally inconsistent without further explanation (e.g. two year term but annual elections);
- Rules that require the happening of a future event (e.g. the number of officers to be elected not even being determined until after the close of the roll of voters).
- Two rules (far apart in the rule book) specifying who is on the one body.
- Rules using terms that are outdated and may not clearly signify modern requirements or the organisation's current intention e.g. referring to a duty to prepare and submit the "Annual Balance Sheet" rather than the "Financial Report": two very different things.
- Rules that don't align with how the organisation actually operates, e.g. rules saying one thing, organisation doing something else in practice.



What we have seen with rules (2)

Rules that can be difficult to interpret or apply / otherwise confusing or challenging include:

- Rules calling an officer or a Branch/Division one name, and the organisation calling it another – or it being called two different things *within* the rules (e.g. Deputy President and Vice President to refer to the same office).
- Calling someone an officer when the rules indicate they aren't.
- Referring to offices that, in fact, no longer exist (having been abolished).
- Rules that mix different terms or ideas used in the rules, e.g. referring to “General Meeting” and “Committee”, and elsewhere “The Committee in General Meeting may ...”.
- Very restrictive rules (e.g. no decision making other than meeting in person; telephone or online meetings allowed but only in ‘exceptional circumstances’ for ‘urgent matters that must be dealt with before the next meeting’ – assumes meeting must otherwise be in person .



Process for changing rules: Your organisation

- Use the process set out in your rules for making amendments.
- Look at the entire rule book, rather than just one rule in isolation
 - helps to ensure no contradictions and that references are updated (e.g. no longer refer to the *Workplace Relations Act*)
- Under your rules:
 - Does the committee have the sole power to vote to make the rule change or does it need to go to a vote of members;
 - What notice period is required;
 - Does the proposed rule change need to be published (before or after it is voted on)?
- Once you have complied with these processes, lodge the rule change application with the FWC within 35 days of it being voted on.
- The FWC [Fact Sheet on altering rules](#), explains the process in detail.



Process for changing rules: The FWC

- Different requirements depending on what sort of rule alteration it is.
- Some (e.g. changes to the name or eligibility rules) require:
 - a notice to be published about the proposed change;
 - an opportunity for objections to be lodged; and
 - a hearing to be conducted.
- Where the change **does not** seek to change the name or eligibility rules, the process is often much simpler.
- The FWC [Fact Sheet on altering rules](#), explains the requirements.
- It has also published a [checklist](#) of how it assesses applications.
- Both are available on the [FWC website](#).



Some limits on rule alterations

- Rule alterations can't be contrary to the requirements in the RO Act, including s.141 (what must be in rules), s.142 (what rules must not allow), ss.143 to 145 (requirements for elections and terms of office).

Also:

- The FWC must not allow a name change if it the new name is the same as another registered organisation or so similar that it would cause confusion (s.158(3))
- The FWC must not agree to a change of eligibility rules if the altered rules would allow membership to persons who could more conveniently belong to another organisation that would more effectively represent their interests (s.158(4))



For more information or to contact us



ROC website

www.roc.gov.au



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(service operates between
9.00am and 5.00pm
Monday to Friday)