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Member Rights and Obligations Information Pack

A guide for members of registered organisations

Guidance Note



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Introduction and purpose

This information pack has been provided by the Fair Work Commission (the Commission) for use by members of registered organisations. It is intended to assist members in understanding their rights and obligations under the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

While the Commission focuses on the regulation of registered organisations and their officers, we frequently receive questions from members who are interested in participating in the organisations they belong to. We recognise that members of registered organisations come from a diverse range of backgrounds and industries. The purpose of this information pack is to provide a starting point for members to understand their rights and obligations under the RO Act and provide answers to some frequently asked questions.

This information pack is structured into two main sections. The first section covers a member's rights. The second section covers a member's obligations. Each section starts with an overview of the relevant information, and some are followed with a section including examples and/or frequently asked questions (FAQs).

If you are involved in the compliance activities of your registered organisation as a practitioner or an office holder, please see our [Compliance Practitioners Induction Kit](#) and [Officer Induction Kit](#) for a guide to your responsibilities.



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Member rights

Eligibility for membership

An organisation's rules must set out the conditions of eligibility for membership. That is, the criteria that a person must meet to apply to become and remain a member.

Eligibility rules may cover the:

- occupation (e.g. teacher, engineer, paramedic)
- industry (e.g. education, aviation, healthcare)
- enterprise (e.g. ABC School, XYZ Airlines, 123 Hospital of NSW)

that a member must be employed in.



An organisation may enter agreements with their state-based counterpart to allow members that are otherwise ineligible to become a member of the organisation.¹

The National Aviation Union might have a rule stating that a person needs to have been employed in the aviation industry over 12 months to be eligible to apply for membership. The NAU's state-based counterpart, the Aviation Union of NSW (AUNSW) does not have any requirements on length of service within the industry.

The NAU enters an agreement with AUNSW so that all AUNSW members are eligible to become NAU members.

Peter, who started working as a flight attendant three months ago, is a member of the AUNSW. Due to his AUNSW membership and this agreement between the organisations, Peter is now eligible to apply and become a NAU member.

¹ RO Act section 151(1).



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Any eligibility criteria cannot discriminate between applicants or members on the basis of protected attributes, such as race, age, sex or religion.²

Eligibility rules must not impose oppressive, unreasonable, or unjust conditions.³ What is considered oppressive, unreasonable, or unjust will be decided on a case-by-case basis. For example, the Federal Court has found that disciplinary rules that are vague and uncertain as to the offence will generally be oppressive and unjust.⁴

Frequently asked questions (FAQs)



Which organisation should I join?

All employees or employers are free to choose whether they join or not join a union or employer association.

Often there will only be one organisation that covers your occupation, workplace, or industry. There are resources available that can help you determine if you are eligible to join a particular organisation.

The Australian Council of Trade Unions (ACTU) has an online tool that confirms which union(s) cover your occupation, workplace, or industry.

You can also look through the [list of current registered organisations](#) on the Commission's website and find each organisation's eligibility rules in their rule book.



What do I need to pay to join an organisation?

There are often two fees payable when joining an organisation: an application fee and membership fee.

² RO Act section 142(1)(d).

³ RO Act section 142(1)(c).

⁴ *Wiseman v Professional Radio and Electronics Institute of A/Asia* (1978) 35 FLR 24; – *Kenney v Operative Painters and Decorators Union of Australia* (1955) 81 CAR 166, also *Hardiman v TWU* (1954) 80 CAR 232, *Maxwell v Boilermakers Society of Australia* (1964) 7 FLR 155, *Re John Buchanek and Jones and Ors* (1989) FCA 134, *MacKenzie v ACOA* (1962), *Wishart v Australian Builders Labourers' Federation* (1960) 2 FLR 298.



An application fee is usually a one-off charge for a new membership. Membership fees are usually ongoing, and payable on a recurring basis (i.e. fortnightly, monthly, annually).

Some organisations may also require members pay a levy to fund legal fees.

Check the organisation's website or ask them directly if you are unsure.



What is the difference between a financial and a non-financial member?

Only financial members have the right to vote during elections (that use a direct voting system) for new office holders, or for voting on amalgamation with another organisation or the withdrawal from amalgamated organisations.⁵



Why am I being denied membership?

Check that you meet the organisation's eligibility rules and have paid any applicable application and membership fees.



I used to be a member, why won't the organisation let me re-join?

As above, check that you still meet the organisation's eligibility rules.

An organisation is not permitted to charge you an application fee again if you re-join an organisation within six months of the termination of your membership. You will still have to pay any applicable membership fees.

In addition, check if you have arrears in membership fees. You may need to pay any outstanding unpaid membership fees before you can join an organisation again.



Can I stay a member if I no longer work in the relevant industry or occupation?

It depends.

⁵ RO Act section 101.



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You must be working or looking for work in a particular industry to be eligible for membership.⁶ This means that you may not be able to stay a member if you are not looking for work, or if you are retired.

There are two exceptions – retired and life members.

Some organisations have a separate category of membership for retired members. Retired members usually will not have the right to vote in elections.

Some organisations have a separate category of membership for life members. Life members (who are usually given this status in recognition of service) often have the same rights as financial members, i.e. the right to vote in elections – provided they remain otherwise eligible to be a member.



Can I get a statement of membership?

Organisations are not required to provide a statement of membership automatically. However, if you make a request for a statement of membership, an organisation must provide one within 28 days.

Participate in the organisation's governance

Democratic control is important to the system of registered organisations. It ensures the organisation is representative of, and accountable to, their members.

You may participate in your organisation's governance by:

- voting in elections for officers
- running for election as an officer
- attending the Annual General Meeting (AGM) and other General Meetings/Members' Meeting, as well as participating in any plebiscites
- reporting any concerning conduct internally to the organisation

⁶ RO Act section 166(3).



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- requesting the investigation of the finances and financial administration of the organisation. The General Manager of the Commission must investigate this when the request is received from a certain proportion of members.⁷

Elections and voting

Organisations are governed by elected officers. Officers must be elected by and from the members of the organisation in accordance with the RO Act and the organisation's own rule book.

Elected officers on the committee of management are the leaders of the organisation. They have important duties regarding financial management and decision-making of the organisation.

An organisation may use one of two methods of election to elect officers – a direct voting system or a collegiate electoral system.⁸ A direct voting system is where all financial members are eligible to vote. A collegiate electoral system is where the members eligible to vote are those previously elected to office by a direct voting system.

In addition, an organisation's rules must cover:

- how someone can become a candidate for election⁹
- how the results will be declared¹⁰
- when the roll of voters will close¹¹
- the way to cast a secret postal ballot or an absentee ballot¹²

An organisation's rules may also set out how casual vacancies are filled. Depending on the organisation's rules, sometimes casual vacancies can be filled by appointment rather than election, but there are limitations on this, which are set out in section 146 of the RO Act.

⁷ RO Act section 333(2).

⁸ RO Act section 143(1)(a).

⁹ RO Act section 143(1)(d).

¹⁰ Ibid.

¹¹ RO Act section 143(3).

¹² RO Act section 143(1)(e).



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An organisation may use both methods of election to elect officers.

The National Aviation Union (NAU) has 15 members of the Federal Conference. The rules of NAU outline that the members of the Federal Conference are to be elected by and from all financial members of the union. This means that members of the Federal Conference are elected by a direct voting system.

The NAU also has four Federal Officers – the President, Secretary, Deputy President, and Deputy Secretary. The rules of the NAU outline that the Federal Officers are to be elected by and from the Federal Conference. This means that Federal Officers are elected by a collegiate electoral system.

The RO Act, particularly in Chapter 7, sets out requirements about conduct during an election. The default position is that each organisation has all of its elections for officers conducted by the Australian Electoral Commission (AEC), unless granted an exemption from AEC-conducted elections.

Section 190 of the RO Act prohibits the property and resources of an organisation or branch being used to favour one candidate over another. For example, an incumbent candidate cannot use the organisation's office printer to print flyers for their election campaign.

In addition, section 195 of the RO Act makes it a criminal offence to do things that interfere with the voting process, such as interfering with ballot papers or the return of ballot papers or taking steps to influence whether someone nominates or the way that a person votes.

An organisation's rules relating to elections may provide for a compulsory voting for the election of officers. If this is the case in your organisation, then as a member you have the obligation to vote in these elections.¹³

If you are a member of an organisation who is elected to hold an office in your organisation, you will have additional responsibilities. See our guidance note on [Duties of Officers](#) for more information.

¹³ RO Act section 143(2).



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Meetings and decision-making

An organisation's meetings are an important place for sharing information and decision-making.

Many key decisions of the organisation must be made at meetings through passing of a resolution. An organisation has requirements to record these resolutions in minutes.

The way that meetings work at each organisation will be outlined in the organisation's rules. The rules will cover:

- how meetings will be called
- how and when notice of meetings will be provided
- what information will be outlined in the notice
- who is responsible for taking minutes and circulating them
- whether the organisation has a '5% rule'.

Frequently asked questions (FAQs)



Am I allowed to attend all of the organisation's meetings?

All members are entitled to attend meetings of members such as the Annual General Meeting and other General Meetings, such as meetings to vote on special resolutions.

Each member of a committee or board must be permitted to attend its meetings, unless lawfully excluded for a valid reason.

People who are not members of a committee may attend subject to the agreement of that committee.



Can I get a copy of the organisation's meeting minutes?

A person is entitled to receive a copy of the minutes of any committee that they belong to. For example, Board members are entitled to Board meeting minutes.

Any member is entitled to a copy of the minutes of the Annual General Meeting and any other General Meetings, as well as a copy of the audited annual Financial Report.



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Ordinarily, each committee or body determines if its minutes can be released beyond the members of that body.



What if I'm unhappy with what the organisation is spending on?

Each organisation should have an expenditure policy that makes it clear who (i.e. which office holder) has the power to approve expenditures.

Organisations must keep financial records that correctly record and explain their transactions and financial position, and retain these for 7 years after the transaction.

You should start by raising the concern directly with the organisation. If your concern is not resolved by the organisation's response, contact the Commission with your concerns.

Financial report

Organisations have requirements to lodge a financial report with the Commission every year.

The full report includes the:

- operating report
- general purpose financial report
- auditor's report

All statements and documents within the full report must be signed and dated before they are provided to members.

The timing of when members are provided with the financial report depends on whether the organisation has a '5% rule'.

If your organisation does not have a 5% rule, your organisation must present a copy of the audited financial report to a General Meeting within six months of the end of the financial year. You must receive a copy of the full report at least 21 days before this General Meeting. At the meeting, the auditor can be present, so that difficult concepts or significant changes can be explained.



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If your organisation has a 5% rule, your organisation can present a copy of the audited financial report to a committee of management meeting instead. You must receive a copy of the full report within 5 months of the end of the financial year.¹⁴



What is a 5% rule?

EFG registered organisation is a reporting unit. Its rules contain the following provision:

The Secretary shall convene a meeting of the members of the organisation within 28 days upon receipt of a written request signed by no less than 5% of the membership calling for a General Meeting for the purposes of considering the auditor's report, the general purpose financial report and the operating report.

This rule allows EFG reporting unit to present the full report to a committee of management meeting instead of a general meeting of members.

Other records

Some of the records kept by an organisation must be lodged with the Commission. For example, the annual return of information lodged by each organisation, which contains the names, addresses and occupations of officers, is published on the Commission's website.¹⁵

Statements of loans, grants and donations (LGD) must also be lodged by each organisation. These are not published on the Commission's website, but may be inspected by a member on application to the Commission.¹⁶

Some other records, such as the register of members, are required to be kept by the organisation but not lodged with the Commission. The RO Act specifies that a copy of the register must be kept as at certain date – specifically, 31 December each year and the date on which the roll of voters closes for an election in the organisation.

¹⁴ RO Act section 266(3).

¹⁵ RO Act section 230(1).

¹⁶ Regulation 20, *Fair Work (Registered Organisations) Regulations 2009*



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Access to documents does not automatically include the right to take copies.¹⁷ This must be specifically requested and it's possible that an organisation may refuse a member's request to make copies of any records inspected.

If you wish to inspect an organisation's records, including the register of members, you should first ask the organisation directly for those records.

If you are unable to obtain the requested records, you have the right to make an application for the General Manager of the Commission to direct the organisation to deliver a copy of the records.¹⁸ The General Manager's power to make such an order is discretionary.

Assistance

Many organisations provide some advice, support, and representation for members regarding employment issues. This may include issues relating to:

- pay, conditions, and entitlements
- enterprise agreements
- health and safety issues
- workers' compensation
- termination of employment
- business improvement

Complaints and whistleblowing

Members have a right to participate fully in the organisation's affairs, including reasonable criticism of the organisation's officers or policies.¹⁹ This right should not be restricted by an organisation's rules.²⁰

Members may have complaints regarding:

- level or quality of service by the organisation

¹⁷ *Australian Liquor, Hospitality and Miscellaneous Workers Union* [2002] AIRC 403 at [43].

¹⁸ RO Act section 236.

¹⁹ *Wiseman v Professional Radio and Electronics Institute* (1978) 35 FLR 24 at [17].

²⁰ *Ibid.*



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- leadership and policies of the organisation
- breach of internal rules and processes
- alleged misconduct of the organisation or officer(s) where it meets the standard of ‘disclosable conduct’

In most cases, you should make your complaint to the organisation as a first step. Attempting to report a general complaint to the Commission that does not contain ‘disclosable conduct’ externally may cause unnecessary delay in resolving the complaint.

The Commission can deal with complaints involving a report of ‘disclosable conduct’. There is information available on our website on whistleblowing, including whether the Commission has the jurisdiction to deal with your complaint and the protections from reprisal for a whistleblower.



Making a complaint

John is a member of the National Aviation Union (NAU). He works as a commercial pilot.

John believes that he has been unfairly dismissed by his employer and wishes to make an application to the Commission. A legal officer at the NAU provides John with an initial consultation and advice. After reviewing John’s case, the NAU informs John that they are unable to assist him with an unfair dismissal application as they do not believe he has reasonable prospects of success.

Under the NAU’s rules, the minutes of Federal Conference meetings are circulated to members for transparency. John notices that the Federal Conference has voted unanimously in favour of a resolution that the organisation will make donations to ABC charity. John is concerned about this as he has heard that niece of Mary, the Branch Secretary, works at ABC charity, and there is no mention of this being mentioned or declared by Mary.

On the weekend, John runs into Mary at his local bowling club and felt that Mary spoke to him about his game in a rude and abrasive manner.



What can John do?

John may wish to check if a community legal centre or a private lawyer can assist him with the unfair dismissal application, or lodge it himself. The Commission cannot compel the NAU to assist John with his unfair dismissal application.

John can complain to the organisation about Mary's conduct at the NAU meeting of Federal Conference and at the bowling club.

If John is not satisfied with the organisation's response, he can also make a report to the Commission about Mary's alleged conduct at the meeting of Federal Conference. His report contains 'disclosable conduct', as officers must take steps to avoid actual, potential, or perceived conflicts of interest. The Commission cannot deal with John's complaint about Mary's alleged conduct at the bowling club as it does not appear to be 'disclosable conduct' and does not relate to the NAU.

Frequently asked questions (FAQs)



Is my organisation obliged to support me with all legal matters?

No. Each organisation has its own arrangements about what support it provides to its members, and under what circumstances. Decisions of this nature are internal and not eligible for review. The organisation's rules may include details of whether such assistance is discretionary or subject to certain approvals.



What can I do if I'm unhappy with the service provided by my organisation?

We recommend that you raise your concerns with the organisation internally. The Commission does not have the jurisdiction to deal with complaints about the level or quality of service provided by an organisation to a member.



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Disputes between members and the organisation

Disputes between an organisation and any member will be decided under the organisation's rules.²¹

If a member believes that an organisation is not complying with its own rules, the RO Act allows members to make an application to the Federal Court for performance or enforcement of rules. Section 164 and 164A of the RO Act provide further details.

Termination of membership

There are several reasons that you may cease to be a member of an organisation, including where:

- you resign from the organisation in writing;
- your employment changes and you no longer meet the eligibility requirements;
- you fall behind paying your membership fee and become a non-financial member²²; or
- you fail to comply with the organisation's rules.

Non-financial members must be removed from the membership register within a certain timeframe.²³

²¹ RO Act section 177(1).

²² RO Act section 172(1).

²³ RO Act section 172.



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Member obligations

Pay membership fees

The main obligation for members is financial. That is, to pay any applicable membership fees.

Membership fees are usually ongoing, and payable on a recurring basis (i.e. fortnightly, monthly, annually).

An organisation must notify applicants of the financial obligations of membership in writing.²⁴

An organisation may be able to recover unpaid fees from you for periods when you have been a member.

You may be able to seek fee relief from your organisation, including for grounds such as hardship or periods of unemployment. This is a decision for the organisation.

Follow the organisation's rules and standards

Most organisations will have rules about the conduct expected from members. This may be expressed as a code of conduct.

Common standards for members included in a code of conduct are:

- following the organisation's rules
- treating other members with respect and courtesy
- following the direction of the committee of management or other officers
- following the terms of any applicable Industrial Award or Agreement

Organisations may have rules outlining the applicable disciplinary procedure and penalties for members if these standards are breached. Potential outcomes may include a decision to fine, suspend, or remove a member.

²⁴ RO Act section 141(1)(d).