

WORKERS' EDUCATIONAL ASSOCIATION OF SOUTH AUSTRALIA
INCORPORATED

INFORMATION MEMORANDUM

REVISING THE CONSTITUTION

BACKGROUND

The Board held a strategic planning session in early 2017 which developed a strategic plan for the following three years. This plan included a vision and mission statement as well as a statement of objects, principles and purposes which were seen by Board members as reflecting both current and planned future activities of the Association over the planning period.

Following this planning session the Governance Committee of the Board undertook a review of the Association's Constitution with a view to aligning it with the Board's current view of the role and activities of the Association. The Committee produced a number of drafts for consideration of the Board.

At its meeting held on 24 April 2018 the Board resolved to convene a special general meeting to be held at 6.00pm on Tuesday 29 May 2018 and to recommend to the special general meeting the adoption of the revised constitution which is Attachment 1 to this information memorandum.

OVERVIEW

The key changes in the revised constitution are:

Objects: The previous, more detailed, description has been replaced with a succinct yet comprehensive statement of the Association's current role.

Powers: The power to conduct activities accessible outside the State has been added to allow for internet and telecommunications based activities.

Board numbers: The number of elected board members has been reduced from 12 to 7 in line with modern board practice. There is no longer an employee elected member. The board may appoint up to 2 board members to fill identified skill or knowledge gaps in its membership.

Board Honorarium: The payment of an honorarium to board members may be approved by the members at a general meeting. All board members are currently paid an honorarium of \$50 per meeting attended. The current constitution only deals with payments to the elected President and two Vice Presidents.

Board meetings: A provision has been added to allow the meeting to be conducted electronically, for example by telephone or email. Decisions may be made outside a convened meeting of the board by following a procedure approved by the board.

Notifications: Notice of a general meeting and the call for persons to nominate for election as a board member may be given in such manner as the board sees fit. Currently notices have to be published in a newspaper circulating in Adelaide.

Layout: The order in which various rules appear has been changed so that provisions dealing with similar topics are grouped together. Rules that duplicate each other have been rationalized by deleting one of them.

PROCEDURE

The revised constitution can only be adopted by a special resolution passed at a general meeting of members.¹ The board has called a special general meeting² for 6pm on Tuesday 29 May 2018. As the meeting is to consider making a special resolution at least 21 days notice of the special general meeting has been given³.

25 or more adult persons domiciled in South Australia present at the meeting constitute a quorum.⁴ For the resolution adopting the revised constitution to be passed as a special resolution it will need to be passed by a majority of not less than three quarters of the members voting on the resolution.⁵ As the constitution does not provide for proxy or absentee voting, members who wish to vote on the resolution will need to attend the special general meeting and personally cast their vote at the meeting.

The resolution may be decided on a show of hands.⁶ If the Chairperson of the meeting or 5 or more persons present at the meeting require a poll, a poll shall be taken in such manner as the Chairperson directs.⁷

If the proposed resolution for adoption of the revised constitution is passed by a three quarters majority it will need to be registered with the Corporate Affairs Commission (Consumer and Business Services) within one month⁸. The resolution will take effect once it has been registered.

Irrespective of whether or not the special resolution is passed, the board will seek to fill 4 board positions in 2018 in accordance with the existing constitution.

¹ Section 24 (1) *Associations Incorporation Act 1985*; Constitution Rule 11 a.

² Rule 13 a of the constitution authorises the board to call a special general meeting at any time.

³Section 3 (1) *Associations Incorporation Act 1985*, the definition of “special resolution” and Rule 13 d of the constitution require that at least 21 days notice of a general meeting be given when a special resolution is to be proposed.

⁴ Rule 14 a of the constitution.

⁵ Section 3 (1) *Associations Incorporation Act 1985*, definition of “special resolution”.

⁶ Rule 14 g of the constitution.

⁷ Rule 14 h of the constitution.

⁸ Section 24 (2) *Associations Incorporation Act 1985*.

If the proposed resolution is adopted and registered, board positions will be filled from 2019 onwards in accordance with the revised constitution. This will mean that in each of the three year cycle positions will be filled on the basis of year 1 - two positions; year 2 - two positions; year 3 - 3 positions. Rule 21 provides the board with the power to transition to the reduced number of board positions having regard to vacancies that may occur.

A staged reduction in numbers is seen by the board to maintain a degree of continuity in board membership while implementing the reduction in numbers contemplated by the revised constitution.

REVISIONS

Rule 1 - Name

No change.

Rule 2 – Definitions

Changes:

- The definition of “meeting” has been deleted as it refers to general meetings and the word “meeting” is also used to refer to meetings of the board. The definition has been replaced with a new definition of “Annual General Meeting”.
- The definition of “Finance Officer” has been deleted as the term is no longer used in the revised constitution.
- The definition of “Regulations” has been updated to refer to the latest regulations.
- The definitions have been put into alphabetical order.
- The word “the” has been removed from the definition of the “Act”.

Rule 3 – Objects

Changes:

- Existing paragraphs a to i have been deleted and replaced with a single paragraph describing the objects of the Association.

Rule 4 –Powers

Changes:

- Existing paragraphs d to g of Rule 4 have been deleted on the basis that Rule 4 deals with the powers of the Association but a number of existing paragraphs in Rule 4 describe powers of the board which are the subject of Rule 6. Accordingly –

- The power to appoint committees in Rule 4 d has been deleted but the power is maintained in new Rule 6 c.
 - The appointment of the Chief Executive Officer as the public officer in Rule 4 e has been deleted. New Rule 6 e requires the board to appoint a public officer who may be the Chief Executive Officer or another person.
 - Rule 4 f has been deleted. New Rule 6 e requires the board to appoint a Chief Executive Officer but is silent as to the specific duties of the Chief Executive Officer. The deletion of Rule 4 f leaves it for the board to determine from time to time the duties of the Chief Executive Officer.
 - The power to appoint employees in Rule 4 g has been deleted but is maintained in new Rule 6 b.
- Rule 4 a has been amended to allow the Association to provide services accessible from outside the State. This will enable the delivery of services by internet and social media.
 - Rule 4 b has been amended –
 - Board meetings are required to be conducted in accordance with Rule 8 which now allows for meetings to be conducted electronically, for example by telephone or email exchange.
 - The “President” is now referred to as “Chairperson” and “Vice President” as “Deputy Chairperson “.
 - In the absence of the Chairperson, the Board shall delegate the Chairperson’s powers to the Deputy Chairperson or another board member.
 - New Rule 4 c has been inserted to enable the Association to partner with other organisations in order to fulfil its objects.
 - New Rule 4 d has been inserted to enable the Association to maintain and hire out facilities for study, training and community events.
 - New Rule 4 e has been inserted to specifically authorise the board to invest funds not immediately required for current operations.
 - Existing Rule 4 e has been redesignated 4 g and has been amended to reflect the change from President and two Vice Presidents to Chairperson and Deputy Chairperson.

- New Rule 4 h has been inserted to authorise the Association in general meeting to approve an honorarium for board members other than the Chairperson and Deputy Chairperson.

Rule 5 – Membership

No change.

Rule 6 – The Board

Changes:

- Rule 6 b has been amended –
 - The requirement to appoint a Chief Executive Officer and public officer are now in new Rule 6 e.
 - The power to appoint employees has been extended to enable the engagement of professional advisers and other persons in order to carry out its objects.
- New Rule 6 c has been inserted. Committees are subject to control and direction by the board and –
 - Must report to the board periodically and comply with directions of the board.
 - May be appointed solely from the board or include other members.
 - The Chairperson is an *ex officio* member of all committees.
- New Rule 6 d has been inserted to require the board to implement resolutions of general meetings.
- New Rule 6 e has been inserted to require the board to appoint a Chief Executive Officer and public officer.
- New Rule 6 f has been inserted to authorise the board to delegate any of its powers (except the power to delegate). A delegation –
 - Must be by resolution of the board and communicated in writing signed by the Chairperson.
 - May be conditional or unconditional.
 - Does not restrict the powers of the board to act itself on any matter.

- Is revocable at will by the board.
- Existing Rule 6 e has been redesignated as Rule 6 g and amended –
 - The number of board members is reduced from 13 to 9 of whom 7 are elected.
 - There is no longer an employee representative on the board.
 - The term “casual vacancy” has been replaced with “mid - term” vacancy for the sake of consistency and to provide clarity.
 - New Rule 6 g iii has been inserted to enable the board to appoint a person to fill a mid-term vacancy where a sitting board member is granted leave of absence for more than 3 consecutive meetings of the Board. The person so appointed holds office until the sitting member returns from leave.
 - Existing Rule 6 g iv has been amended to reflect the reduction in elected board members from 9 to 7.
 - New Rule 6 g v has been inserted to require board members to step down after 3 consecutive terms.
 - New Rule 6 g vi has been inserted to provide that board decisions are valid despite any vacancy in membership or informality in the appointment of a board member.
 - New Rule 6 g vii has been inserted to enable the board to appoint up to 2 additional persons to the board. The manner and terms of appointment may be varied by the board from time to time.
- Existing Rule 6 d has been redesignated as Rule 6 h and amended –
 - To reflect the change in terminology from “President” to “Chairperson” and “Vice President” to “Deputy Chairperson”.
 - So that instead of a President and two Vice Presidents, a Chairperson and one Deputy Chairperson are to be elected.
 - To provide that the Chairperson and Deputy Chairperson form the Executive Committee of the board.
- Existing Rule 6 e has been redesignated as Rule 6 i and amended –
 - The requirement that calls for board nominations be made by notice in a newspaper circulating in Adelaide has been deleted and replaced by a requirement that notice must be given by a written communication or promotion as the board decides is appropriate.

- Existing Rule 6 f has been redesignated as Rule 6 j and otherwise has not been amended.
- Existing Rule 6 g has been redesignated as Rule 6 k and otherwise has not been amended.
- Existing Rule 6 h has been redesignated as Rule 6 l and otherwise has not been amended.

Rule 7 – Disqualification of Board Members

Changes:

- Rule 7 has been restructured into two paragraphs, a and b.
- Existing Rule 7 a, b and c are now subparagraphs i, ii and iii respectively of Rule 7 a.
- Rule 7 a i has been amended to extend the grounds for disqualification by the addition of “otherwise incapable to act”.
- New Rule 7 a iii has been inserted to extend the grounds for disqualification to include acting unethically, failing to act in good faith and in the best interests of the Association and failing to act in accordance with any code of ethics approved by the board.

Rule 8 – Proceedings of Board

Changes:

- New Rule 8 d has been inserted to enable the board to conduct meetings by telephone, for example by telephone or other electronic means.
- New Rule 8 e has been inserted to enable the board to make decisions outside its convened meetings. To be effective as a decision of the board–
 - Notice of the proposed resolution must be given in accordance with a procedure previously decided upon by the board.
 - A majority of board members must express their concurrence to the resolution by a written communication that sets out the terms of the resolution.

Rule 9 – Seal

Changes:

- Existing Rule 9 - Financial Year has been moved to become new Rule 15 a.
- Existing Rule 12 – Seal has been moved without amendment to become the new Rule 9.

Rule 10 – General Meetings

Changes:

- Existing Rule 10 – Borrowing Powers has been moved to become new Rule 14 with an amendment.
- Existing Rule 13 – Meetings has been moved to become the new Rule 10 with an amendment. The word “General” has been added to the heading of the Rule to identify that general meetings and not board meetings are the subject of the new Rule 10.
- New Rule 10 e (Existing Rule 13 e) has been amended to clarify that in addition to the general notice of an Annual General Meeting, notice is to be given specifically to board members and persons who have responded to a call by the board for nominations for election as board members made in accordance with Rule 6 i.

Rule 11 – Proceedings At General Meetings

Changes:

- Existing Rule 11 – Rules has been moved to become the new Rule 20 without any amendment.
- Existing Rule 14 – Proceedings At Meetings has been moved to become the new Rule 11 with 4 amendments.
- In each of new Rules 11 e, 11 f, 11 h and 11 i the word “general” has been inserted to clarify that the sub-rule is dealing with general meetings and to be consistent with other sub-rules in Rule 11.

Rule 12 – Minutes

Changes:

- Existing Rule 12 – Seal has been moved to become the new Rule 9 without any amendment.
- Existing Rule 15 – Minutes has been moved to become the new Rule 12 without any amendment.

Rule 13 – Voting Rights

Changes:

- Existing Rule 13 – Meetings has been moved to become new Rule 10 with the amendment to Rule 10 e (existing Rule 13 e) described previously.
- Existing Rule 16 – Voting Rights has been moved to become the new Rule 13 with one amendment.
- New Rule 13 has been amended to change the reference to existing Rule 6 g to a reference to the new Rule 6 k.

Rule 14 – Borrowing Powers

Changes:

- Existing Rule 14 – Proceedings At Meetings has been moved to become the new Rule 11 with the three amendments previously described.
- Existing Rule 10 – Borrowing Powers has been moved to become the new Rule 14 with one amendment.
- New Rule 10 a has been amended by deleting “Subject to this rule”. Rule 10 a and Rule 10 b are dealing with separate subjects and so Rule 10 b does not qualify Rule 10 a.

Rule 15 – Financial Reporting

Changes:

- Existing Rule 15 – Minutes has been moved to become the new Rule 12 without any amendment.
- Existing Rule 9 – Financial Year has been moved to become the new Rule 15 a without any amendment.
- Existing Rule 17 – Accounts has been incorporated into the new Rule 15.
 - Existing Rule 17 a has been moved to become the new Rule 15 b without any amendment.
 - Existing Rule 17 b without amendment forms the opening statement in new Rule 15 e.

- New Rule 15 c has been inserted to require the accounts, auditor's report on the accounts, the board's statement and report to be laid before the annual general meeting.
- New Rule 15 d has been inserted to require the annual return, the accounts, auditor's report and the board's statement and report to be lodged at the Corporate Affairs Commission within 6 months of the end of the financial year.
- New Rule 15 e incorporates existing Rule 17 b and provides that the appointed auditor holds office until the next annual general meeting and is eligible for reappointment. If no appointment is made at an annual general meeting the board may appoint an auditor for the current financial year.

Rule 16 – Prohibition Against Securing Profits For Members

Changes:

- Rule 16 is completely new. The new Rule 16 requires funds to be applied to the objects of the Association and prohibits the application of Association funds for the benefit of board members, employees and others other than by way of payment for services rendered.

Rule 17 – Winding Up

Changes;

- Existing Rule 17 – Accounts has been incorporated into the new Rule 15 as previously described.
- Existing Rule 18 – Winding Up has been moved to become the new Rule 17 without any amendment.

Rule 18 – Application Of Surplus Assets

Changes:

- Existing Rule 18 – Winding Up has been moved to become the new Rule 17 without any amendment.
- Existing Rule 19 – Application Of Surplus Assets has been moved to become the new Rule 18 without any amendment.

Rule 19 – Liability

Changes:

- Existing Rule 19 – Application Of Surplus Assets has been moved to become the new Rule 18 without any amendment.
- Existing Rule 20 - Liability has been moved to become the new Rule 19.
- New Rule 19 has been amended –
 - The obligation to comply with the Act has been removed as this obligation arises from the Act itself and does not need to be restated in the constitution.
 - The new Rule indemnifies members of the board and board committees from liability arising from actions taken by them in good faith in the discharge of their duties. Losses resulting from a board or committee member’s dishonesty, culpable negligence or acts or omissions not done in good faith are excluded from the indemnity.

Rule 20 – Rules

Changes:

- Existing Rule 20 - Liability has been moved to become the new Rule 19 with the amendments previously described.
- Existing Rule 11 - Rules has been moved to become the new Rule 20 without any amendment.

Rule 21 – Transition

Changes:

- New Rule 21 has been inserted to enable the board to reduce the number of elected board members from 12 to 7 in a manner that maintains a degree of continuity of board membership.