



RO POD episode 48 – Altering your organisation’s rules

Speaker Key

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AN: Welcome to RO pod: talking about governance of registered organisations with the Registered Organisations Services Branch at the Fair Work Commission. The official podcast about the regulation of unions and employer associations. In this podcast we’ll share essential information, uncover handy hints and tips and reveal our best tools for proactive compliance with the complex legislative requirements. Don’t forget to subscribe and see how RO pod can help you and your organisation.



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JE: Hello and welcome to RO pod. My name is Jack Erickson and I’m an Assistant Adviser in the Rules Team of the Registered Organisations Services Branch at the Fair Work Commission. Today’s episode is about how to successfully alter your organisation’s rules, complying with all requirements.

All registered organisations as well as their branches are governed by rules contained in their rule books. Rule books essentially deal with how organisations and branches are run, including the powers



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and duties of officers, how money is managed, who is eligible for membership and also the process for altering rules.

Today we'll be talking about the steps you must take to alter your organisations' rules, what we've observed when organisations have changed their rules, and how you can make your rule altering procedure as easy as possible while still ensuring compliance.

With me today is Mark Elliott, who is a Senior Adviser in the Rules Team of the Registered Organisations Services Branch.

Welcome, Mark.

ME: Thanks Jack, happy to be here.



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JE: Now Mark, you have been with the Commission a while and have a wealth of wisdom and experience relating to rule alterations. When it comes to changing an organisation's rules, where do we begin?

ME: Well Jack, the *Fair Work (Registered Organisations) Act 2009*, which we commonly refer to as the 'RO Act', requires each organisation's rules to provide for the manner of their alteration. This can change from one rule book to the next. I think the starting point is identifying the appropriate body empowered under the rules to make those changes. This could be a Committee of Management, a Council or it could be a meeting of all of the members of the organisation. Some organisations may have rules that provide for a different body to alter the rules or even require more than one body to make the alterations.



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JE: That's a good place to start, and where do we go after that?

ME: Yeah, good question Jack. The next step is to look for what's required to begin the rule altering process. Many organisations have a specific rule, often titled something along the lines of 'Rule altering procedure' or 'Alteration of Rules', and that's a great signpost where you can find the details outlining the beginning of the process. An example of the starting point for some processes may be



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that a person, such as a member or an office holder, must provide the proposed amendments to the Committee of Management. There may also be limitations on who is able to put forward proposed alterations.

From here, there might be rules requiring feedback to be sought from an advisory body or the members as a whole. The next step is to determine if a meeting is required to pass the alterations – and this may need to be held either personally or perhaps electronically.



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JE: Does a meeting always need to be held for an organisation to change its rules?

ME: That's entirely dependent on each organisations' particular rules, but there is nothing in the RO Act that requires a meeting to take place to alter the rules.



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JE: We know remote working has become a lot more common over the last few years, and that for certain industries in-person meetings can be really difficult at the best of times to organise. Do you have any suggestions for those organisations with rule books that only have in-person meetings or voting to change their rules?

ME: Yeah, that's a good point Jack, and has been increasingly important over the years, as you will be aware. An organisation might want to consider a process that allows for virtual or alternative mechanisms for changing their rules. There are several ways that can be achieved, and the alternatives will depend on what the organisation's desired outcome is.

One way is to change the rules so that you can fast-track certain types of alterations in the future. The most common example of that is when the legislation changes and the rules need to be altered to bring them into conformity with the new legislation.

Another option is to allow relevant bodies to deal with urgent matters in a way that doesn't require in-person attendance and allows for attendance via telephone or video link. This provides a flexible way for organisations to make any urgent changes without subverting the democratic process.



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JE: These changes don't really need to be specific to future rule changes either, you can allow bodies to meet electronically for normal business too. So those are some good solutions that allow for organisations to be responsive to changing times. But have you come across any examples of rules that allow for rule alterations and business in general to be transacted even without providing for attendance using technology?

ME: I think what you are referring to there Jack is conducting business out-of-session. I have come across a number of rules that allow for this, using mechanisms such as postal or electronic voting, or a flying minute.



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JE: One thing I've seen a lot of when it comes to rule altering procedures is a less-than-strict adherence to notice requirements. Which can cause problems. Is this a common issue?

ME: Unfortunately it is Jack. This is an area where we do see a bit of confusion, especially where there are different notice requirements for one part of the process or another. For example there might be different notice requirements for the meeting itself and when the alterations are required to be given to the participants or the agenda for the meeting itself.

For instance, if the organisation's rules say that only a Special Meeting of the Committee of Management can change the rules and that meeting needs 21 days' notice. But another rule says the alterations must be provided to members of that Committee at least a month prior to the meeting at which the alterations will be considered. In this situation, if the alterations are sent along with the notice of the meeting the notice requirements for the alterations will not have been met because of the longer period involved.

JE: So that's definitely a potential pitfall, and while we in the rules team spend a lot of time assessing rule alterations, the ultimate decision to certify them rests with the General Manager of the Fair Work Commission, or their Delegate. Mark, if an organisation's notice requirements were not strictly



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adhered to and the alteration was then subsequently passed by the Committee and lodged with the Commission, would the rule change be certified?

ME: Well, there's a risk that it might not be. And that's a risk that could have been avoided if the notice requirements had been properly adhered to. In this scenario, it's possible that this missed step could be detrimental to the application. It might invalidate the Committee's decision to alter the rules. Ultimately Jack though, as you pointed out, that's a consideration for the General Manager or their Delegate to weigh up, about whether the failure to strictly adhere to the rule altering procedure invalidated the Committee's decision to alter the rules.



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JE: So, it's really important to know all your rules when it comes to changing the rules. And that's something we are happy to help you with here. If you're uncertain about the process to take or the best way to write the rule change, ask us and we will help you navigate the process.

ME: That's a good point Jack, we frequently help organisations of all sizes with their rule alterations. So I'd emphasise don't hesitate to get in touch with us about either the rule altering process or about the best form of rules.



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JE: Ok, another issue for you, what would happen if a person did not attend the meeting where the proposed rule change was voted on?

ME: Once more, it really depends. Each rule book has different rules governing when a meeting achieves 'quorum.' Quorum is the minimum requirement of participants required for the meeting to come to order and transact business. For instance, it could be that a quorum is half the number of members of a Committee of Management or a Council plus one. On the other hand, where it's a general meeting of the members, it might be 5% of the members entitled to attend the meeting and vote.



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- JE:** Speaking of voting, does the RO Act place any limitations on voting when it comes to an organisation's rules, or prescribe a certain threshold that must be met?
- ME:** Not in the context of meetings to alter the rules. There are a number of provisions in the RO Act regarding voting for elections for instance, but that's a discussion for another day.
- JE:** Ok, so just to be clear Mark, there's no extra onus such as requiring a special two-thirds majority for example, to change an organisation's rules?
- ME:** Ah, when you put it like that, the answer definitely could be yes, but again, only if it's set out in the organisations' rules. It is not mandated by the RO Act and is up to each organisation to decide whether they wish to impose a threshold of that type.



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- JE:** When an organisation alters its rules, what's something you find can often be missed?
- ME:** This goes more to the substance of the rules themselves rather than the alteration procedure. One common pitfall is missing consequential amendments and this can be especially problematic in very old rules or where there are organisations that have divisions and branches, and those divisions or branch have their own rules which are designed to be read in conjunction with the national rules.
- JE:** So in that situation it's really important to consider what effect the changes you're making have on other parts of your rules, even if they are only changes to terminology, such as the re-naming of an office.
- ME:** Yes absolutely.



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- JE:** I know one other issue that arises quite frequently is when an organisation wants its rules to be altered in time for an election to take place. An organisation's rules are effectively 'locked in' on the day when nominations for an election open.
- ME:** Yes, if the changes are approved after nominations open, they likely can't affect this election. This delay means the rules may not come into effect until the next election cycle, which depending on the organisations' terms of office could be as long as four years away.
- JE:** Right, so that really highlights the importance of letting us know if there are any rule alterations in the works when an organisation is lodging their prescribed information.
- ME:** Yes, it can definitely have some significant consequences for the organisation. Election rules aren't the only thing to look out for, eligibility rules, or those rules that control who is able to join an organisation, can be more complicated to change. Jack, why don't you explain to us the alteration process if an organisation wants to change its eligibility rules?



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- JE:** I'd be happy to Mark. When it comes to changing eligibility rules, the procedure set out in the organisations' rule book is likely to be the same, unless there are specific rules relating to a change of the eligibility rules. However, when it comes to lodging these changes with the Commission, the process differs slightly as it is the tribunal, rather than the General Manager or their Delegate that approves the alterations.
- ME:** In what way?
- JE:** Well, the organisation applies to the Commission's Tribunal for consent to change its rules. Once lodged, a notice of those alterations is published in the Commonwealth Government Gazette, and objections to the change may be lodged by an organisation or person with interest or standing. After this is complete, a hearing is then held by a Presidential Member of the Commission to determine the matter.



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ME: So it's a completely different process.

JE: Yes, eligibility rules are very special in that way.



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ME: Jack, if there's one point you'd like listeners to take away from our discussion today what would it be?

JE: Without a doubt it would just be to talk to us before beginning the process. Speaking to us and providing drafts of the alterations and the proposed steps to be taken can really reduce the chances of running into any issues with your alterations. Being able to identify anything problematic prior to lodging the alterations with us will not only save the organisation time, but also mitigates the risk when it comes to the alterations being certified or not.



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ME: Do we have materials that can assist an organisation when it comes to make a rule change?

JE: Certainly, over the years we've developed rule altering checklists that we use to assess alterations to rules. These checklists are specific to each organisation, and they help turn around matters faster because we don't need to learn each organisation's rules from scratch each time. This also provides consistency in assessing the rule changes.

ME: And are those checklists "internal use only", or can organisations access them when the time comes to embark on the process to alter their rules?

JE: Of course, we are more than happy to share these with organisations and discuss any steps that the organisation may have a different interpretation of. This is another reason why we encourage all organisations to speak with us at the outset and certainly well before they formally lodge the alterations with us. We are also looking into the feasibility of developing a set of model rules to be available for organisations, and we will provide further detail about this in the coming months.

ME: Yes, I just want to pick up on that Jack and re-iterate that we are always here to assist organisations with their rules or any other issue arising from our administration of the RO Act.



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- JE:** On that note, a friendly reminder that alterations to rules must be lodged with us within 35 days of the resolution being passed.
- ME:** Good point Jack, and also remember that an organisation must publish on its website a notice that the application has been lodged with us. It's also worth mentioning that the declaration that accompanies the rule changes must be signed by an officer of the organisation, authorised under the rules to do so, and not signed by an employee.
- JE:** That is correct Mark, so our email address where you can lodge alterations, or seek advice, is regorgs@fwc.gov.au.
- ME:** And if you have a question about rule alterations or any of the other matters we deal with, give us a call on 1300 341 665.
- JE:** Alright, so, thank you so much for your time today, Mark, and for sharing your great knowledge of rules with us.
- ME:** Pleasure, Jack.
- JE:** Please tune in to our next episode of RO pod, where will be talking to the General Manager of the Commission about developments in the registered organisations space.
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