

FORM R67

(regulation 121 (RAO Regulations))

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**Application for Consent to the Alteration of Eligibility Rules
of an Organisation**

Application is made by *the Australian Education Union* for consent to the alteration of the rules of the organisation by the addition of a new definition in Rule 2 – Definitions, as follows:

2 – DEFINITIONS

...

“Technical college” shall mean an institution established under Commonwealth legislation or funded in whole or in part by the Commonwealth Government to, inter alia, provide academic and/or vocational education for students in Years 11 and 12.

...

and for consent to the alteration of the eligibility rules of the organisation to the following:

3 - INDUSTRY

The Union is formed in or in connection with the industry of Education.

...

5 - CONSTITUTION

The Union shall consist of an unlimited number of persons employed or usually employed in the following categories:

- (1) (a) Teachers of at least two years' trained status employed by the Education Department or another Department of the Government of Queensland in a State Pre-school, a State Kindergarten, a State Primary school, a State Secondary school or a State Special School by the Special Education Division of the Queensland Education Department.
- (b) Teachers employed in the teaching and/or the training of handicapped children in Queensland schools or in any other Queensland establishment for the teaching and or training of handicapped children.

- (c) Academic staff who are teachers of at least two year trained status appointed to the teaching staff of a Queensland College of Advanced Education or an institution for the training of teachers or a successor thereto.
 - (d) Teachers of at least two years' trained status who are teachers of commercial subjects in a technical college or a technical and further education institution in Queensland.
 - (e) Persons employed as Assistant Teachers in any institution or position referred to in paragraphs (a), (b), (c) and (d) of this sub-rule who have obtained a qualification to be an assistant teacher from a technical and further education institution or a tertiary institution.
 - (f) Teachers of the kind specified in paragraphs (a), (b), (c), (d) and (e), of this sub-rule who have been appointed, seconded or transferred to professional duties requiring teaching qualifications within the Queensland Education Department or to another Department of the Queensland State Government, a Queensland Crown instrumentality or corporation, a Queensland Minister of the Crown or to any Queensland State Board or Council.
 - (g) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
 - (h) Any person whom the State Council of the Queensland Teachers Union of Employees elects or appoints to an office in that Union.
- (2)
- (a) Teachers employed by the Education Department of Western Australia or by any institution providing technical and further education in Western Australia and teachers employed in Government pre-school centres in Western Australia provided that such teachers hold or are enrolled for the purpose of obtaining a teaching academic qualification.
 - (b) Any person employed by any of the employers or in any of the places referred to in paragraph (a) of this sub-rule who is employed as an education officer, guidance officer, counsellor or demonstrator.
 - (c) Teachers employed in a temporary capacity by a technical and further education institution.
 - (d) Teachers employed by and in a Community College in Western Australia.
 - (e) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
 - (f) Any person elected or appointed to the position of General Secretary, Industrial Advocate, Industrial Organiser, Librarian, Industrial Research Officer, Women's Officer, TAFE Organiser, Aboriginal Education Officer, Occupational Health and Safety Organiser or Organiser of the State School Teachers Union of Western Australia.

- (3)
 - (a) In South Australia teachers employed in any Government school, pre- school, child parent centre or technical and further education institution and any person employed in a technical and further education institution and responsible for the co-ordination of teaching therein.
 - (b) Persons employed in South Australia as school services officers or early childhood workers in Government schools and Government pre-school and child parent centres.
 - (c) Persons employed as Aboriginal Education Workers in South Australia.
 - (d) Persons who at the time they are eligible for membership pursuant to paragraphs (a), (b) and (c) and this paragraph of this sub-rule are seconded by their employer to professional duties requiring teaching qualifications or are appointed by the Minister of Education to any Board, Committee or Statutory Authority.
 - (e) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
 - (f) Any person elected or appointed to full time office in the South Australian Institute of Teachers.
- (4)
 - (a) All persons employed as teachers, lecturers, instructors, librarians, language assistants or instrumental musicians in or in connection with the Teaching Service of the State of Victoria but not including persons employed as sign language interpreters, or the Adult Multicultural Education Service (howsoever called) in the State of Victoria.
 - (b) In the State of Victoria:
 - (A) All persons employed or seeking employment in or in connection with the vocational and/or technical and further education and training industries or by, in or in connection with institutions which provide vocational and/or technical and further education, howsoever named, to deliver or assess in, or to prepare vocational and/or technical or further education or training programmes or who (holding a relevant teaching qualification) directly co-ordinate or manage other teachers, including:
 - i. such employees who are employed by, in or in connection with TAFE Institutes (being education providers whose primary or exclusive business is the provision of vocational and/or technical and further education or training other than Universities), and
 - ii. such employees who are employed by other education providers whose primary or exclusive business is the provision of vocational and/or technical and further education or training, and
 - iii. such employees who are employed by Universities for the provision of vocational and/or technical and further education or training;

and

- (B) Employees employed in those classes of work known at 1 June 2000 as “TAFE Industrial Skills Instructors”, “TAFE Vocational Skills Instructors”, “TAFE Teacher-Librarians”, “Trainee Teachers in TAFE”, “TAFE Directors” and “Workplace Trainers and Assessors”;

and

- (C) Persons who were members and eligible to be members of the union on 30 September 2001 by virtue of eligibility arising under the then sub-rule 4(b).

- (D) Nothing in paragraphs (A) and (B) shall be construed as conferring eligibility for membership of the union on:

- i. persons, in respect of work performed as a member of academic staff employed in or in connection with higher education; or
- ii. persons employed in any class of work, to which, as at 1 June 2000, the following awards applied:

Higher Education Workers Victoria (Interim) Award, 1993

Universities and Post Compulsory Academic Conditions Award 1999

Teachers (English Language Centres of Australian Universities) Conditions of Employment Award 1998.

- (E) Provided that for the purpose of this subrule the term “vocational and/or technical and further education or training” includes workplace-based training and assessment, but excludes higher education.

- (c) Persons who are employed by the Victorian Curriculum and Assessment Board or the Victorian State Board of Education provided that those persons are registered by the Teachers' Registration Board as teachers and perform professional duties requiring teaching qualifications.
- (d) Persons, who at the time that they are eligible for membership pursuant to paragraphs (a) or (b) of this sub-rule commence to be employed elsewhere in the Victorian Ministry of Education or the State Training Board to perform professional duties requiring teaching qualifications or are seconded by their employer to perform any professional duties requiring teaching qualifications.
- (e) All persons employed as student teachers by the Victorian Ministry of Education in Technical and Further Education Institutions or in the Technical and Further Education Teaching Service or by a Technical and Further Education Institution.
- (f) Persons who are:

- (i) employed to teach and/or supervise teaching in or by registered non-residential services including day training centres, adult units, open employment agencies, supported employment and/or sheltered employment settings;
 - (ii) employed to teach and/or supervise teaching in early intervention programmes for the disabled;

and who are employed in Victoria and responsible for the instruction and/or training of disabled persons;
 - (iii) employed in Victoria to teach and/or supervise teaching of people with social, physical, sensory, educational and intellectual disabilities.
- (g) Members of the Victorian Teaching Service employed in non-school positions to perform professional duties requiring teaching qualifications provided that such persons are registered or are eligible for registration as teachers by the Teachers' Registration Board.
 - (h) Persons employed as teachers or instructors in the Victorian School of Languages.
 - (i) Persons employed by the Institute of Educational Administration pursuant to the Institute of Educational Administration Act 1980 to perform professional duties requiring teaching qualifications.
 - (j) School teachers who are employed on a part-time (non fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the union in accordance with one of the preceding paragraphs of this sub-rule.
 - (k) Any person elected or appointed to an office in the Federated Teachers' Union of Victoria.
 - (l) Any person elected or appointed to an office in the Victorian Secondary Teachers' Association.
 - (m) Subrule to reflect order made under section 118A of Workplace Relations Act 1996 recorded in Print N8687

For the purpose of giving effect to the section 118A order made on 6 February 1997 in C No. 33163 of 1993 recorded in Print N8687 and subject to further order of the Commission in C No. 33163 of 1993 to vary or set aside the section 118A order, with effect from 9 May 1997 the following persons or employees shall be eligible to be members of the AEU:

Allied staff employed in government primary and secondary schools and government pre-school centres, (howsoever titled and collectively described herein as Victorian government schools), in the State of Victoria, who for the purpose of this rule shall include all persons employed in or by the Department of Education in Victoria, or by any successor of that body, or by a body employing staff in Victorian government schools for the purpose of delivering educational services,

who are employed as, or who perform the functions of, teacher aides, koori educators, manager - administration, registrars, assistant registrars, bursars, clerical assistants, clerical officers, typists, word processor operators, library technicians, library assistants, laboratory technicians, technical assistants, school community officers, job skills trainees, domestic arts assistants, literacy enhancement officers, school services officers and school technical officers, in Victorian government schools or who are based in any such school for the purpose of performing work.

(5) Deleted.

(6) Deleted.

(6A) (a) Any person employed in Victoria -

- (i) In a position requiring the occupant to be a qualified kindergarten teacher other than a person employed in a post-secondary education institution as a tutor or lecturer or employed in an administrative capacity by Community Services Victoria;
- (ii) As a pre-school play leader in a pre-school subsidized by the Victorian Government;
- (iii) In Early Childhood Services provided that the person has a primary or secondary teaching qualification recognised in Victoria, performs professional duties requiring teaching qualifications and is not employed as an officer or employee pursuant to the provisions of the Public Service Act 1974 (Vic.) or any successor thereto; or
- (iv) In a Montessori early childhood centre including a pre-school or kindergarten as a qualified teacher.
- (v) *as a pre-school assistant, a kindergarten assistant, an additional assistant (special needs) or a co-ordinator in a preschool or kindergarten or in a Montessori early childhood centre including a preschool or kindergarten with the exception of:*
 - *Persons employed in registered non-government schools registered with the Registered Schools Board (Victoria) or any successor thereto; and*
 - *employees of Local Government unless the main function of their work is the delivery of, or support for the delivery of, a preschool education program in conjunction with a preschool/kindergarten teacher.*

(b) Any person elected or appointed to a full-time or part-time paid office in the Kindergarten Teachers' Association of Victoria.

(7) (a) Teachers, supervisors, counsellors, lecturers, educational officers engaged in pre-school infants, primary or secondary public education controlled by the

Government of New South Wales in New South Wales or employed by the Education Commission of New South Wales;

- (b) Teachers, supervisors, counsellors, academic staff, educational officers, and trainee-teacher advisors engaged in technical and further education, tertiary education (including Universities, Colleges of Advanced Education and Community Colleges), adult migrant education or employed in Evening Colleges within New South Wales provided that eligibility for membership for academics at Universities shall be limited to persons who were employed at Universities and were members of the New South Wales Teachers Federation on the 30th May 1985.
 - (c) Education officers and teachers working in the New South Wales State Department of Corrective Services;
 - (d) Teachers and educational officers seconded as officers or permanently employed as officers of the research and guidance branch of the Education Department;
 - (e) Persons who are members pursuant to this sub-rule who are elected to Parliament and who wish to retain membership of the Union;
 - (f) Persons who have been elected as full-time members of any statutory body established to administer the provision of educational facilities in New South Wales, or to the New South Wales Superannuation Board, who have by reason of such election ceased to be employed in one of the categories set out in paragraphs (a), (b), (c) or (d) of this sub-rule.
 - (g) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
 - (h) Any person elected or appointed to an office in the New South Wales Teachers Federation.
- (8)
- (a) Teachers, (including teacher-librarians, student counsellors, supervisors and educational officers or any such other classification of employment incidental to education) engaged in kindergartens, and pre-school, infant, primary, secondary, senior secondary and technical and technical and further education under the control of the Government of Tasmania and such teachers seconded as officers or permanently employed as officers of the Service and Guidance Services Branches of the Education Department of Tasmania.
 - (b) Professional officers employed by the Government of Tasmania in the Education Department to perform professional duties requiring teaching qualifications.
 - (c) Recreation Officers and laboratory technicians employed by the Government of Tasmania in the Education Department.
 - (d) Part-time and/or temporary relieving teachers employed by the Government of Tasmania.
 - (e) Teachers in training on Tasmanian Government student-ships.

- (f) Persons who have been elected or appointed full-time members of any Tasmanian statutory body established to administer the provisions of educational facilities who have by reason of such election ceased to be employed in one of the categories in the preceding paragraphs of this sub-rule.
 - (g) Persons who at the time they are eligible for membership pursuant to the preceding paragraphs of this sub-rule are seconded by their employer to perform professional duties requiring teaching qualifications.
 - (h) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
- (9)
- (a) Persons employed under the ACT Teaching Service Act 1989;
 - (b) Persons employed in schools, secondary colleges and TAFE institutions operated directly or indirectly by the Commonwealth of Australia or, in a Territory by the administration or Government of that Territory, or by a prescribed institution in that Territory. Provided that nothing in this paragraph shall confer eligibility for membership on persons employed or usually employed as ancillary staff or clerical staff in schools, secondary colleges and TAFE institutions.
 - (c) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
- (10)
- (a) Persons who are employed or usually employed under the Northern Territory Public Sector Employment and Management Act and whose current employment would have otherwise been subject to the Northern Territory Teaching Service Act had that Act not been repealed, including, for example, teachers, assistant teachers, superintendents, directors, education officers and lecturers;
 - (b) Persons who are employed or usually employed in a teaching capacity in schools operated directly or indirectly by the Government in the Northern Territory;
 - (c) Teachers employed by the Northern Territory Commissioner for Public Employment in an administrative, supervisory or advisory capacity in the Northern Territory Department of Education and TAFE Managers employed by the Northern Territory Employment and Training Authority;
 - (d) Subrule to reflect orders made under section 118A of Workplace Relations Act 1996 recorded in Prints PR923929 and PR923924

Persons employed or usually employed in schools operated directly or indirectly by the Government in the Northern Territory: as assistant teachers, Aboriginal and Islander Education Workers, Aboriginal Resource Officers, Inclusion Support Assistants, Part time instructors (being persons engaged primarily to provide educational instruction to students); or as Teaching Support Officers (encompassing all categories of allied staff employees whose primary functions

involve the provision of education services – but not primarily administrative services – to students);

- (e) Persons employed at the Northern Territory University as Lecturers Categories I to IV.
 - (f) School teachers who are employed on a part-time (non-fractional) basis in the supervision and/or co-ordination of student teachers during their periods of practice teaching in schools provided they are eligible for membership of the Union in accordance with one of the preceding paragraphs of this sub-rule.
 - (g) Persons who are members pursuant to this sub-rule who are elected to Parliament and who wish to retain membership of the Union.
 - (h) Without limiting the generality of paragraphs (a) - (g) above, or being limited thereby, teachers and/or lecturers employed in or by colleges and/or TAFE institutions, including Batchelor College, Centralian College and the Northern Territory Rural College, and teachers and/or lecturers employed in or by the Alice Springs Correctional Centre and/or the Darwin Correctional Centre.
- (11) With the exception of Queensland establishments for the teaching and/or training of handicapped children referred to in paragraph 5(1)(b), Day Training Centres referred to in sub-rule 5(f), institutions employing persons referred to in sub-rule 5(6A) and Colleges of Advanced Education referred to in paragraph 5(7)(b) nothing in this rule shall be construed as conferring eligibility for membership of the Union on persons employed or usually employed in non-government educational institutions.
- (12) Nothing in paragraphs 5(3)(d) or 5(4)(d) shall be taken as conferring eligibility for membership on persons after the expiration of three months from the date of final registration.
- (13) Persons who are qualified to be and desire to be employed in any of the categories of persons specified in the preceding sub-rules of this rule.
- (14) Notwithstanding the foregoing sub-rules of this rule, any other person whether employed in the industry of the Union or not who has been or is hereafter elected or appointed to a position of Federal Officer, Federal Professional Officer, Branch Officer or Branch Professional Officer or, in relation to the Tasmanian Branch, the General Manager.
- (15) Without limiting the generality of the other parts of this rule or being limited thereby, independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be eligible for membership of the Union.
- (16) (a) *Without limiting the generality of the other parts of this rule or being limited thereby, in South Australia, Victoria, Tasmania, the Northern Territory and the Australian Capital Territory, all persons employed by or in or in connection with public schools, or by Commonwealth, State or Territory governments to work in public schools in those States and Territories, excluding cleaners, janitors, caretakers, gardeners, swimming pool attendants and canteen workers employed by, in or for schools.*

For the purposes of this sub rule 16 (a), the term “in connection with public schools” shall include:

- (i) all persons whose primary work location is at a public school or other educational facility operated primarily for the delivery of education to school students (e.g. campsites);*
- (ii) such persons whose primary work location is not at a public school or other educational facility operated primarily for the delivery of education to school students, who have some contact with school students in schools or other educational facilities operated primarily for the delivery of education to school students, and who perform duties directly related to the education of students; and*
- (iii) In the State of Victoria, all persons employed as teachers, lecturers, instructors, teacher librarians, language assistants, or instrumental musicians, in positions funded or partly funded by the Department of Education and Training through its Strategic Partnerships Program, or any successor program, including those undertaking curriculum development and professional development activities (note for the purposes of this sub-clause, "Strategic Partnerships Program" refers to a specific Program created by the Victorian Government whereby the Government provides funding to cultural and scientific organisations and professional teaching associations to facilitate partnerships with school communities);*

For the purposes of this sub-rule 16 (a) the term “in connection with public schools” shall not include:

- (A) Save for those persons who have eligibility conferred outside of this sub-rule (5)(16) all other persons employed in a Departmental Office in a professional, administrative, clerical or technical classification who have no contact with school students in schools or other educational facilities operated primarily for the delivery of education to school students;*
 - (B) In the State of Victoria, persons employed as Student Support Services Officers such as psychologists, speech therapists, speech pathologists, social workers and guidance officers;*
 - (C) In the State of South Australia, persons employed as speech pathologists, guidance officers, social workers, student attendance officers or psychologists;*
 - (D) In the State of Tasmania, persons employed in solely clerical, administrative, finance, network support or network management positions at a public school or other educational facility operated primarily for the delivery of education to school students; and*
 - (E) In the Australian Capital Territory and the Northern Territory, persons employed in solely clerical, administrative, or finance positions at a public school or other educational facility operated primarily for the delivery of education to school students.*
- (b) Without limiting the generality of the other parts of this rule or being limited thereby, all persons in the State of Western Australia employed by, in or in connection with*

public schools, or by commonwealth, state or territory governments to work in public schools in Western Australia, in the classification of Indigenous Tutorial Assistance Scheme (ITAS) Tutor (howsoever named).

(17) Without limiting the generality of the other parts of this rule, persons employed in a technical college.

6 - INTERPRETATION

In interpreting the various sub-rules of Rule 5, the meaning of each sub rule shall be determined independently of the meaning of any other sub rule of that rule.

Notes:

There are no deletions proposed.

The proposed new definition and new clause 5(17), which are the subject of this application, are highlighted using ***bold, italics and underlining***.

The words indicated using ***bold and italics*** at clauses 5(6A) and 5(16) are the subject of a rule change application D2003/40. They have been included in the version of the AEU eligibility rule set out in this application simply to make it clear that there is no intention in this application to delete or otherwise alter the outcome of D2003/40 by virtue of any chronological overlap between the two applications.

ACCOMPANYING DECLARATION

I, Susan Hopgood, of 14 Hillside Parade, Box Hill in the State of Victoria, declare:

1. I am the Acting Federal Secretary of the Australian Education Union, (“AEU”), an organisation registered under the Workplace Relations Act 1996, and am authorised to make this application on behalf of the said organisation.

THE PARTICULARS OF THE PROPOSED ALTERATION

2. It is proposed to alter the eligibility rules of the Australian Education Union by addition of the following subclause at the end of rule 5 – Constitution:

(17) Without limiting the generality of the other parts of this rule, persons employed in a technical college.

and by inserting a new definition in rule 2 – Definitions, as follows:

“Technical college” shall mean an institution established under Commonwealth legislation or funded in whole or in part by the Commonwealth Government to, inter alia, provide academic and/or vocational education for students in Years 11 and 12.

THE REASONS FOR THE PROPOSED ALTERATION.

3. The Federal Government has established a new category of educational institution known as an Australian Technical College. In some cases these institutions will directly engage staff independently of state and territory education departments.
4. The eligibility rule change is intended to supplement the existing eligibility rule to ensure that the AEU has the capacity to recruit and organise staff of Australian Technical Colleges in all states and territories.
5. The inclusion of a new definition for “technical college” will provide greater certainty to the meaning of those words in the proposed amended eligibility rule.
6. Employees of Australian Technical Colleges can more conveniently belong to, and would more effectively be represented by the AEU.
7. All employees in public education would be more effectively represented if the AEU is able to represent the relevant employees.
8. The effective industrial representation of the relevant employees can be more conveniently provided if the relevant employees are eligible for membership the AEU.

THE EFFECT OF THE PROPOSED ALTERATION.

9. The effect of the proposed alteration is to extend the existing coverage of the Australian Education Union to include all persons employed by Australian Technical Colleges.

COMPLIANCE WITH THE RULES OF THE AUSTRALIAN EDUCATION UNION

10. The alterations subject to this application were made in accordance with the rules of the AEU. The particulars of the alterations are as follows:
11. A motion to amend the definitions rule and the eligibility rule was proposed in accordance with Rule 28(3), and was received by the Federal Secretary on 23 November 2004, as required by Rule 68(3)(b)(ii).
12. On 15 January 2005, the motion was carried by a vote of a duly convened Special Federal Conference, in accordance with Rule 68(1).
13. The chair of the meeting declared the motion carried by the requisite majority.
14. The Australian Education Union has a website <http://www.aefederal.org.au> and has published on its web site a notice that it has lodged this application to amend the rules of the organisation.
15. The facts and particulars set out in this Application are, to the best of my knowledge and belief, true and correct and in accordance with the Rules of the Australian Education Union.

Dated: 12 August 2005



Susan Hopgood
AEU Acting Federal Secretary