

Form F68A—Application for consent of the General Manager to alter an organisation's eligibility rules

Fair Work (Registered Organisations) Act 2009, s. 158A

Fair Work (Registered Organisations) Regulations 2009, reg. 125B

This is an application for consent to alter the eligibility rules of an organisation lodged with the Fair Work Commission in accordance with s.158A of the *Fair Work (Registered Organisations) Act 2009* and reg. 125B of the *Fair Work (Registered Organisations) Regulations 2009*.

The Applicant



These are the details of the organisation making an application for consent to alter its eligibility rules.

| | | | |
|-------------------------------------|---|-------------------|--------------|
| Legal name of organisation | Independent Education Union of Australia (IEUA) | | |
| Trading name of organisation | Independent Education Union of Australia (IEUA) | | |
| ABN/ACN | ABN 44401438657 | | |
| Contact person | John Spriggs | | |
| Postal address | Unit 10, 40 Brisbane Avenue | | |
| Suburb | Barton | | |
| State or territory | ACT | Postcode | 2600 |
| Phone number | 07 3839 7020 | Fax number | 07 3839 7021 |
| Email address | jspriggs@qieu.asn.au | | |

Note: If you provide a mobile number the Commission may send reminders to you via SMS.



If an application is not made in accordance with the requirements of reg. 125B, the General Manager of the Commission must tell an applicant how the application fails to comply with this regulation (see reg125B(3)).

How would you prefer us to communicate with you?

- ☒ [X] Email (you will need to make sure you check your email account regularly)
- ☐ [] Post

Does the Applicant need an interpreter?



If you require an interpreter (other than a friend or family member) in order to participate in conciliation, conference or hearing, the Commission will provide an interpreter at no cost.

- ☐ [] Yes—Specify language
- ☒ [X] No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

[] Yes—Please specify the assistance required

[X] No

Does the Applicant have a representative?

A representative is a person or business who is representing the Applicant. This might be a lawyer, a representative from your employer organisation or union who will speak on behalf of you. There is no requirement to have a representative.

[] Yes—Provide representative's details below

[] No

Applicant's representative

These are the details of the person or business who is representing the Applicant.

Name of person**Firm, union or company****Postal address****Suburb****State or territory****Postcode****Phone number****Fax number****Email address****1. Proposed alteration to the organisation's eligibility rules**

1.1 This application is to extend your eligibility rules to persons within the eligibility rules of an association of employers or employees that is registered under a State or Territory industrial law. State:

- the name of the association of employers or employees,
- whether it is an association of employers or employees, and
- whether it is registered under a State or Territory industrial law, and if so which law.

- (a) The name of the Association is the Queensland Independent Education Union of Employees (QIEU);
- (b) The above entity is an association of employees;
- (c) The above entity is registered under a State industrial law as a State Industrial Organisation for the purposes of Chapter 12 of the Industrial Relations Act 1999 of Queensland;
- (d) A copy of the certificate of registration of the QIEU as a State Industrial Organisation in the State of Queensland is attached to this application and marked **Attachment 1**.
- (e) A copy of the Transitional Registration of the QIEU is attached to this application and marked **Attachment 2A**.
- (f) The Transitional Registration of the QIEU was extended until 1 January 2018. Please see **Attachment 2B**.

1.2 Set out:

- **the proposed alteration to the organisation's eligibility rules,**
- **the reason for the proposed alteration, and**
- **the effect of that alteration.**



You must provide sufficient detail so that the General Manager can be satisfied of the matters in paragraph 158A(1)(a) to (d) of the RO Act and reg. 125A of the RO Regulations.

In setting out the alteration you may include the complete text of the eligibility rules of the association or as much of the text of the eligibility rules as deals with the extended coverage.

- (a) The alteration to the eligibility rules of the IEUA for which consent is sought is that the rules of the IEUA be altered by inserting in Rule 2 Constitution, new sub-rules (i) and (j) (hereafter referred to as "Organisation Rules (i) and (j)"), as follows:
- (i) (This rule (rule (i) only applies in the State of Queensland).
Persons employed in any capacity in Nongovernmental Schools, and Nongovernmental Preschools and Kindergartens, or other like establishments which are affiliated to the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that that institution or association provides approval or accreditation for educational programmes) or other like establishments which provide an educational programme but are not Child Care Centres (other than services for unemployed people funded pursuant to the Australian Government's Skillshare Programme or any programme(s) which replace it other than ITEC's) who are not teachers, and who are designated as teacher aides, kindergarten assistants, librarians, library aides, laboratory assistants, audio-visual aides, scientific personnel and other such nonteaching employees, and excluding for the purposes of this Clause persons who may be described as School Secretaries, School Assistants, School Officers, and further excluding the following employees: persons employed as: a nurse, a cleaner, a licensed and/or registered plumber; and excluding persons employed by any cleaning, catering, security, laundry, gardening, building and/or domestic services contractor engaged to provide such services; and persons employed by an employer who employs that person as part of their business as a contractor in the building, building maintenance and construction industries; and a Bursar/Business Manager (however titled) employed in a senior managerial (or executive) position who has managerial responsibilities including the delegated authority to act for the employer from time to time in the recruitment and termination of staff; persons primarily engaged in social welfare work, and excluding also those employees employed at Nongovernmental Preschools and Kindergartens not affiliated to the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that the institution or association provides approval or accreditation for educational programmes) and excluding like establishments which do provide an educational programme but are Child Care Centres and excluding persons employed outside the Southern Division, Eastern District and who are eligible for membership of The Australian Workers' Union of Employees, Queensland
- (j) (This rule (rule (j) only applies in the State of Queensland)
Persons employed in any capacity in Nongovernmental Schools, Nongovernmental Preschools and Kindergartens, which are affiliated to the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that that institution or association provides approval or accreditation for educational programmes) or other like establishments which provide an educational programme but are not Child Care Centres, (other than services for unemployed people funded pursuant to the Australian Government's Skillshare Programme or any programme(s) which replace it other than ITEC's), who are not teachers and excluding for the purposes of this Clause persons who are designated as teacher aides, librarians, library aides, laboratory assistants, audio-visual aides, scientific personnel and other such non-teaching employees but including for the purposes of this Clause persons who may be described as School Secretaries, School Assistants, School Officers whose duties involve work

partly clerical in nature but who are ancillary to and/or involved in the education process and excluding also the following employees: persons employed as: a nurse, a cleaner, a licensed and/or registered plumber; and excluding persons employed by any cleaning, catering, security, laundry, gardening, building and/or domestic services contractor engaged to provide such services; and persons employed by an employer who employs that person as part of their business as a contractor in the building, building maintenance and construction industries; and persons employed in South East Queensland at Fairholme College, in an Anglican School or in a Grammar school as a housekeeper, janitor, caretaker, handyperson, groundsperson, gardener, greenkeeper, security employee, laundry employee, domestic employee, catering employee (including employment as a cook, chef, kitchen hand, or waiter), or canteen assistant; and a Bursar/Business Manager (however titled) employed in a senior managerial (or executive) position who has managerial responsibilities including the delegated authority to act for the employer from time to time in the recruitment and termination of staff; and persons who are wholly or principally involved in work of a clerical nature and excluding also those employees employed in nongovernment preschools and kindergartens not affiliated with the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that that institution or association provides approval or accreditation for educational programmes) and excluding like establishments which do provide an education programme but are Child Care Centres who also shall not be eligible for membership and excluding persons employed outside the Southern Division, Eastern District and who are eligible for membership of The Australian Workers' Union of Employees, Queensland.

- (b) The Independent Education Union of Australia (IEUA) applies, pursuant to s.158A of the Fair Work (Registered Organisations) Act 2009 (FW (RO) Act), for consent to the alteration of its eligibility rules to extend them to apply to persons who are within the eligibility rules of an association of employees (the QIEU) that is registered under a State or Territory industrial law.
- (c) The Workplace Relations Amendment (Work Choices) Act 2005, and subsequently the Fair Work Act 2009, caused many employers and employees in the State of Queensland to be covered by federal workplace relations laws to the exclusion of the Queensland state industrial relations laws.
- (d) A system of transitional recognition was established to allow the state registered industrial associations, including the QIEU, which had enrolled as members and represented many employees formerly in the state system, to represent those members and employees in the federal system. By reason of numerous similarities between the eligibility rules of the QIEU, the transitional recognition of the QIEU has resulted in many employees being eligible to be enrolled in, and represented in the federal system by, both the QIEU and IEUA.
- (e) This application is for consent for the transition of a part of the QIEU Rule 3 into the eligibility Rules of the IEUA, with the intent that thereafter the IEUA will be entitled to enroll and represent employees in the federal system who were previously entitled to be enrolled in, and represented by the QIEU, and that the IEUA has that right to the ultimate exclusion of the QIEU.
- (f) This application is made in contemplation of the ending of the transitional recognition of the QIEU.
- (g) The Constitution rule of the IEUA, as amended to include Organisation Rules (i) and (j), is attached to this Application and is marked **Attachment 3**.
- (h) Organisation Rules (i) and (j) consists of:
 - (i) Some introductory words preceding the included text of Organisation Rules (i) and (j) limiting the rules to the State of Queensland; and
 - (ii) Two extracts from text of Rule 3 (Membership) of the QIEU.

1.3 Have you attached a copy of the rules of the organisation and a copy of the rules of the association?

You must also lodge with the application a copy of the rules of the organisation and the rules of the association to which the organisation is the Federal counterpart (RO Regulations, reg. 125B(1)(b)).

☒ [X] Yes – Please see **Attachments 4 and 5**.

☐ [] No

- (a) A Copy of the current certified rules of the IEUA is attached to this application and marked **Attachment 4**.
- (b) A copy of the Rules of the QIEU is attached to this application and marked **Attachment 5**. Eligibility for membership of the QIEU is set out in Rule 3 (Membership) of Attachment 5.

1.4 Was the proposed alteration made in accordance with the rules of the organisation?

You must attach a declaration that (RO Regulations, reg. 125B (1)(d)):

- specifies if the alteration was made in accordance with the organisation's rules;
- states what action was taken under those rules to make the alteration; and
- verifies the facts stated in the application.

☐ [] Yes—Attach the declaration

☐ [] No

- (a) Attached to this application and marked **Attachment 6** is the Statutory Declaration of Chris Watt, a member of the Committee of Management (National Executive) of the IEUA and who is authorised to make the declaration in support of the application under the Rules of the IEUA.
- (b) The alteration has been made under the rules of the IEUA. The alteration was unanimously approved by the Federal Executive of the IEUA on 16 November 2017 and the actions taken to make the alteration are set out in the Declaration of Chris Watt.
- (c) Attached to the Declaration of Chris Watt is a Declaration by John Spriggs which verifies the facts stated in this Application.

1.5 Is the organisation a federal counterpart of the association? If so, please provide evidence.

- (a) Pursuant to Regulation 8A of the Fair Work (Registered Organisations) Regulations 2009 (the Regulations), an organisation mentioned in column three of an item in Schedule 1A is prescribed as the federal counterpart of an association of employees, registered under a State industrial law, which is listed as the association in column two of the item.
- (b) At Item 228 of Schedule 1A of the Regulations, the Queensland Independent Education Union of Employees (QIEU) is listed in column two, and the IEUA is listed in column three in that Item as the organisation which is the federal counterpart of the Association.

1.6 Confirm that the proposed alteration will *not* extend the eligibility rules beyond those of the association.

Using numbered paragraphs, set out your response.

- (a) The alteration will not extend the eligibility rules of the IEUA beyond that of the QIEU.
- (b) **Attachment 7** is a copy of the existing eligibility rules of the QIEU, which has been marked (by underlining) to show that part which is proposed to be inserted into the rules of the IEUA. This attachment demonstrates that the proposed alteration is consistent with the existing coverage of the QIEU.
- (c) Should any concern be raised in this regard the IEUA will give clear and unambiguous undertakings that it will not seek to extend the existing coverage.

1.7 Confirm that the proposed alteration to the eligibility rules will not apply outside the limits of the State or Territory in which the association is registered.



You must attach a statement that specifies this is the case (RO Regulations, reg. 125B(2)(b)).

☒ [X] Yes — please see point 6 of Attachment 6.

☐ [] No

- (a) Words limiting the application of the Organisation Rules (i) and (j) have been included to restrict the application of Organisation Rules (i) and (j) to the State of Queensland.
- (b) The Statutory Declaration by Chris Watt, at point 6, attests to this fact.

1.8 Does the state registered association actively represent the class or classes of employees or employers to which the extension of the eligibility rules will apply? If so, please provide evidence.



An employee association is taken not to actively represent a class of employees if the association is subject to a representation order, a State demarcation order or a demarcation undertaking or agreement in relation to that class of employees, in favour of another organisation.

See reg. 125A of the RO Regulations for the meaning of actively represent.

- (a) Regulation 125A (Matter prescribed for alteration of eligibility rules (s 158A)) contains the following:
 - (1) For paragraph 158A (1) (e) of the Act, the matter that is prescribed is that the association of employers or employees actively represents the class or classes of employers or employees to which the extension of eligibility rules will apply.
 -
 - (3) An employee association is taken to actively represent a class of employees only if:
 - (a) the association is **engaged in at least one** of the following activities in relation to the class of employees:
 - (i) organising and recruitment activity;
 - (ii) representing employees in negotiations with employers;
 - (iii) representing employees in industrial bodies;
 - (iv) obtaining and maintaining award conditions;
 - (v) collective bargaining; and
 - (b) the class of employees is covered by the association's eligibility rules.
- (emphasis added)
- (b) The QIEU actively represents all of the classes of employees to which the extension of the eligibility rules will apply, within the meaning of the Regulation 125A(3) of the Regulations, in that the QIEU is **engaged in at least one** of the following activities in relation to each such class

of employees –

- (i) organising and recruitment activity;
- (ii) representing employees in negotiations with employers;
- (iii) representing employees in industrial bodies;
- (iv) obtaining and maintaining award conditions;
- (v) collective bargaining;

These are colloquially called the “activity tests”.

- (c) There are a number of annexures to this Application, which are marked **Attachments 8 to 12** respectively. These documents set out the manner and means by which the QIEU has complied with the requirements of sub-Regulation 125A(3) of the Regulations, in relation to each of the respective classes of employees which are included within QIEU Rule 3.
- (d) The documents contain examples of relevant activity by the QIEU with the aim of meeting the requirements of sub-Regulation 125A(3). The documents do not purport to be exhaustive statements concerning all the activities of the QIEU over the many decades of its existence. Rather, the documents concentrate on the period following the transitional registration of the QIEU subsequent upon the consolidation of the federal jurisdiction as the dominant industrial jurisdiction in Australia as a result of *Fair Work Act 2009* in order to demonstrate the continuing active role of the QIEU in representing employees within its constitutional coverage.

The Five “activity tests”

Organising/Recruitment Activity - Attachment 8

- (e) Attachment 8 contains details of Organising activity as demonstrated by visits to work sites. It also identifies numbers of employees who have been recruited as members.

Representing Employees in Negotiations with Employers - Attachment 9

- (f) Attachment 9 contains details of representational activity on behalf of employees. This representation has included matters such as:
 - (i) Reinstatement matters;
 - (ii) Enterprise bargaining negotiations;
 - (iii) Industrial instrument interpretation matters;
 - (iv) Dispute notifications;
 - (v) Underpayment of wages matters;
 - (vi) Workplace health and safety;
 - (vii) WorkCover matters on behalf of injured QIEU members;
 - (viii) Federal and State award review matters;
 - (ix) Grievance and dispute handling for particular members with their employers;
 - (x) Occupational superannuation;
 - (xi) Representations on superannuation boards;
 - (xii) Representations on industry (or sectors of industry) standing committees;
 - (xiii) Representations to government forums;
 - (xiv) Parliamentary or government inquiries and royal commissions; and
 - (xv) Representations to all levels of government regarding funding for early childhood education.
- (g) The QIEU has, for many decades, been involved in representing employees in negotiations with employers over a range of industrial matters. Officers and employees of the QIEU have, over an extended period, also physically met with employers and represented employees in direct negotiations with employers over a range of matters. Negotiations with employers have also occurred prior to proceedings involving employers in various industrial bodies and tribunals.

Form F68A—Application for consent of the General Manager to alter an organisation's eligibility rules

- (h) The QIEU has been maintaining regular and important lines of communication and negotiation with employers and other principle stakeholders in the early childhood education sector in which the classes of employees referred to in QIEU Rule 3 are employed.
- (i) The QIEU's participation in negotiations with employers in some instances also satisfies another requirement set out in Regulation 125A(3)(a), namely, the active representation by the QIEU in representing employees in industrial bodies (R125A(3)(a)(iii)).

Representing Employees in Industrial Bodies

- (j) Attachment 9 also provides examples of matters in which the QIEU, either alone or in conjunction with the IEUA, has represented the subject classes of employees in industrial bodies.
- (k) In industrial matters, it is not unusual for negotiations with employers to take place through the encouragement and/or facilitation of the industrial body prior to the determination of the application. The QIEU conducts such negotiations on a very regular basis.

Obtaining and Maintaining Award Conditions - Attachment 10

- (l) Attachment 10 provides details of the State Award (which subsequently became a NAPSA) obtained and maintained by the QIEU.
- (m) The QIEU has been active in the Queensland Industrial Relations Commission in obtaining the award and ensuring that the award was maintained to the level permitted.

Collective Bargaining - Attachment 11

- (n) Attachment 11 provides details as to the number of collective agreements entered into and/or negotiated by the QIEU in relation to the subject classes of employees.
- (o) The QIEU has been an active organisation in negotiating collective Enterprise Agreements and the representation of employees in such negotiations.

Regulation 125A(4) is not applicable

- (p) The QIEU is not subject to any representation order, State demarcation order, demarcation order, demarcation undertaking or agreement (however described) in relation to that class of employees, in favour of another organisation or association in relation to the subject classes of employees.

Actively represents the class or classes of employees

- (q) In respect of the requirement to "actively represent a class of employees" set out in 125A(3)(a) of the Regulations, the QIEU and the IEUA submit that it has been clearly demonstrated that the requirements of one or more of the alternatives activities have been met on the material provided.

We believe that upon this Application, and the Attachments, the General Manager of the Fair Work Commission can be affirmatively satisfied that the actions and activities of the QIEU satisfy the requirements of s.125(A)(3) of the Regulations.

1.9 Have arrangements been made to publish a notice of this application on the organisation's website?



A notice that the application has been lodged with the Commission must be published on the organisation's website if it has one (RO Regulations, reg. 125B(4)).

☐ Yes

☐ No

- (a) On the day that this Application is filed with the FWC, a notice that this Application has been filed will be published on the website of the IEUA at www.ieu.asn.au

Signature



If you are completing this form electronically and you do not have an electronic signature that you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature or common seal

Name Chris Watt

Date 15 December 2017

Capacity/Position Secretary
Independent Education Union of Australia



The application lodged with the Commission must be under the common seal of the organisation or signed by a person authorised to sign it (see RO Regulations, reg. 13). Where this form is being completed and signed by a representative of the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

(Form 15.

Industrial Conciliation and Arbitration Act 1961-1980

(Section 55, Regulation 13)

CERTIFICATE OF REGISTRATION OF AN INDUSTRIAL UNION

I hereby certify that on the twenty-third day of July, one thousand nine hundred and eighty, Queensland Association of Teachers in Independent (Non-Governmental) Schools, Union of Employees was, at Brisbane, in the State of Queensland, registered by that name under the Industrial Conciliation and Arbitration Act 1961-1980, as an Industrial Union of Employees.

Dated at Brisbane, in the State of Queensland, this twenty-third day of July, 1980.

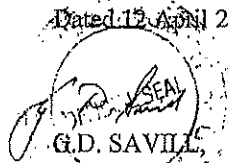
(Sgd.) L.L. MARSDEN,
Assistant Industrial Registrar.

Title altered on 27 August 1997 to - Queensland Independent Education Union of Employees.

(Sgd.) E. EWALD
Industrial Registrar.

I HEREBY CERTIFY that this is a true and correct copy of the Certificate of Registration of the Queensland Independent Education Union of Employees which was registered as an Industrial Union of Employees on the twenty-third day of July, 1980 under the title of Queensland Association of Teachers in Independent (Non-Governmental) Schools, Union of Employees and whose title was altered to Queensland Independent Education Union of Employees on the twenty-seventh day of August 1997 and whose registration is continued under the Industrial Relations Act 1999.

Dated 12 April 2013.


G.D. SAVILL
Industrial Registrar

PR544130



CERTIFICATE

Fair Work (Registered Organisations) Act 2009
Schedule 1, Clause 2 - Application for transitional recognition

Queensland Independent Education Union of Employees
(R2013/428)

MR ENRIGHT

MELBOURNE, 7 NOVEMBER 2013

Transitional recognition of a State-Registered Association

[1] On 29 October 2013 an application was made by the Queensland Independent Education Union of Employees (the applicant) for transitional recognition under clause 2 of Schedule 1 (this Schedule) of the *Fair Work (Registered Organisations) Act 2009*.

[2] Being satisfied that the applicant is a State-registered association, that immediately before the commencement of this Schedule, it had at least one member who was an employee whose employment was subject to a State award, a State employment agreement or a State or Territory industrial law and that immediately before the commencement of this Schedule it was entitled to represent the industrial interests of the member in relation to work that was subject to the State award, the State employment agreement or the State or Territory industrial law and that on reform commencement, the employee became bound by, or the employment of the employee became subject to, a preserved State agreement or a notional agreement preserving State award if he or she continued in that employment and that the applicant association is not an organisation, or a branch of an organisation, I hereby grant the application.



DELEGATE OF THE GENERAL MANAGER

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DECISION

Fair Work (Registered Organisations) Act 2009

Sch. 1, Cl. 6(2) RO Act - Application for an extension by a TRA

Queensland Independent Education Union of Employees

(D2016/83)

VICE PRESIDENT HATCHER

SYDNEY, 23 DECEMBER 2016

Application/Notification for an extension by a transitionally recognised association by Queensland Independent Education Union of Employees.

Introduction

[1] On 22 December 2016 the Queensland Independent Education Union of Employees (QIEU), a transitionally recognised association (TRA), lodged an application pursuant to clause 6(2) of Schedule 1 of the *Fair Work (Registered Organisations) Act 2009* (RO Act) seeking an extension of its transitional recognition. The application was signed on the QIEU's behalf by Mr Terence P Burke, its General Secretary. Clause 6(1)(c)(i) of Schedule 1 of the RO Act provides that the transitional recognition of a TRA will end on the fifth anniversary of the earliest day on which an organisation can make an application in accordance with s.158A(2) of the RO Act unless an extension has been granted by the Commission. Section 158A(2) of the RO Act provides that an application cannot be made under that section before 1 January 2011 or such later day as the Minister declares in writing. On 13 December 2013 the then Minister declared 1 January 2012 as the earliest date under s.158A(2) of the RO Act upon which an application under s.158A(1) of the RO Act may be made (*Fair Work (Registered Organisations) Declaration 2010*). In an absence of an extension being granted, the transitional recognition of the QIEU will therefore cease on 1 January 2017.

[2] Clause 6(2) of Schedule 1 of the RO Act read in conjunction with cl.6(1)(c)(ii) provides that the Commission may, on application, grant a TRA an extension of its recognition until 1 January 2018 in prescribed circumstances. Clause 6(1)(c)(ii) provides that the recognition of a TRA will end on the sixth anniversary of the earliest date on which a s.158A(1) application may be made if an extension is granted under clause 6(2). Clause 6(2) provides:

(2) The FWC may, on application by a transitionally recognised association, grant the association an extension for the purposes of subparagraph (1)(c)(ii) or (1A)(c)(ii) if the FWC is satisfied that the association has made progress towards:

- (a) becoming an organisation; or
- (b) rationalising its internal affairs with those of its federal counterpart.

[3] The QIEU cannot satisfy the first condition in paragraph (a) of cl.6(2) because s.19(5) of the RO Act prohibits the Commission from registering an association registered under a State or Territory industrial law if the association has a federal counterpart. The QIEU is registered as an organisation of employees under the *Fair Work (Registered Organisations) Regulations 2009* (RO Regulations). It also has a federal counterpart. The term “*federal counterpart*” is defined in s.9A(1) of the RO Act to mean an organisation prescribed to be a federal counterpart of a particular association by the RO Regulations. Schedule 1A of the RO Regulations prescribes the Independent Education Union of Australia (IEUA) as the federal counterpart of the QIEU (see reg. 8A and item 228 of Schedule 1A).

[4] Accordingly the QIEU’s application may only be granted on the basis that it satisfies the second condition in paragraph (b) of cl.6(2) - that is, it has made progress towards rationalising its internal affairs with those of its federal counterpart.

Evidence

[1] In support of its application, the QIEU relied on a statutory declaration made by Mr Burke on 22 December 2016. In that declaration Mr Burke stated that the QIEU had taken steps to rationalise its internal affairs with the IEUA as follows:

- *Membership:* Up until 30 June 2015, each member of the QIEU was entitled to be, and became a member of the Queensland and Northern Territory Branch of the IEUA (Branch). Between 1 July 2015 and 31 December 2015 membership was transitioned from QIEU being the primary entity to the Branch being the primary entity. Subsequent to 1 January 2016, members applied for membership of (or renewed their membership of) the Branch. Such members are entitled to be, and are, members of the QIEU.
- *Meetings:* At each meeting of the Branch’s Executive and Committee of Management, and at each meeting of the QIEU Council and Executive, the collaborative relationship between the two unions is noted and the provision of facilities and support by one to the other on an agreed basis is endorsed.
- *Employees:* Prior to 1 July 2015, all employed organisers and administrative staff were employed by the QIEU. At 1 July 2015, all employees became employed by the Branch. Appropriate protections were put in place to recognise service for all purposes and all conditions of employment remained the same. Similarly, paid elected officials were paid by the QIEU prior to 1 July 2015 and from that point on were paid by the Branch.
- *Right of entry permits:* Prior to the introduction of the *Fair Work Act 2009*, elected officials, organisers and industrial staff held right of entry permits from the Queensland State jurisdiction. The possession of right of entry permits transitioned from the State jurisdiction, through the TRA status and now such permits are applied for under the auspices of the Branch under the *Fair Work Act*.
- *Property:* The QIEU owns real property. Subsequent to 1 July 2015, new assets (other than real property) such as vehicles have been obtained by, and owned by the Branch.

- *Finances*: The financial relationship between the QIEU and the Branch is a matter of on-going consideration.
- *Coverage*: The Branch has about 16,700 members while the QIEU has about 16,000 members. The difference in membership numbers is primarily because of the coverage of the Branch in the Northern Territory. It is intended that an application to be made to better align the coverage of the Branch with that of the QIEU
- *Enterprise Agreements*: The Branch represents members in schools and colleges whose wages and conditions are governed by over 130 Enterprise Agreements. Further, the Branch represents members in community kindergartens whose wages and conditions are governed by over 300 Enterprise Agreements. The QIEU represents only members who are employed by three employers who are still subject to the State jurisdiction and the *Queensland Local Government Industry Award 2004*. Hence the Branch is the dominant representative of members.

Conclusion

[2] I am satisfied, on the basis of the materials submitted by the QIEU, that it has made progress towards rationalising its internal affairs with those of its federal counterpart, the IEUA. Accordingly, the jurisdictional precondition in cl.6(2)(b) of Schedule 1 of the RO Act is satisfied, and I consider it appropriate to exercise my discretion in favour of granting an extension of the QIEU's transitional recognition until 1 January 2018.

[3] I therefore order as follows:

Pursuant to clause 6(2) of Schedule 1 of the *Fair Work (Registered Organisations) Act 2009*, the transitional recognition of the Queensland Independent Education Union of Employees is extended until 1 January 2018.



VICE PRESIDENT

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2 – CONSTITUTION

The Union shall consist of an unlimited number of persons howsoever described who are employed, usually employed or qualified to be and desirous of being employed or seeking to be employed in or in connection with the industry or industries, and/or occupation, and/or calling, and/or vocations, and/or industrial pursuits of:

- (a) teachers, teacher-librarians and librarians including Principals and others exercising supervisory and/or counselling and/or advisory functions at schools and colleges conducted anywhere in Australia, its Territories and States by any person, body, corporation, religious institution, or group or combination of persons other than schools and colleges conducted by the Government of a State or Territory or by the Government of the Commonwealth of Australia or conducted by a public body established by a Government of a State or Territory or the Commonwealth;
- (b) without limiting the generality of the foregoing, any person engaged in any clerical or administrative capacity in any school, secondary college or post secondary college within the terms of paragraph (a) above and any person acting in any capacity as an assistant, aide or helper to any person described in paragraph (a) herein;
- (c) any person employed in any clerical capacity or administrative capacity or as an advisor, supervisor or educational officer by any Authority responsible for the conduct or supervision of a non-government school or any group of such schools (excluding, however, all employees of the Government of any State, Territory or of the Commonwealth, and any Public or Statutory Authority, Board or Commission established by such Governments);
- (d) any persons (other than teachers, teacher-librarians, librarians, Principals and others exercising supervisory, counselling or advisory functions, or assistants, aides or helpers to them) employed to provide, or to assist in providing, educational instruction or employed in any other capacity in non-government schools or educational institutions;
- (e) teachers in non-government pre-schools and/or centres in which Early Childhood Services are provided in New South Wales, the Australian Capital Territory and Queensland only (but excluding any teacher employed by any municipal or Shire Council in New South Wales), and teachers employed in or by any non-government social or community organization, or any non-government educational institution or body;
- (f) any person employed or appointed as an officer or elected as an official of the Union;
- (g) 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, shall be eligible for membership of the Union;
- (h) all persons employed or principally employed as teachers, instructors, recreational specialists, howsoever called, employed in private correctional institutions, and counsellors and case managers in the Junee Correctional Centre, but excluding all persons employed as clerical staff, cleaners, maintenance staff, correctional officers, nurses, senior managerial staff, industrial staff, cooks, chefs and catering staff.
- (i) (This rule (rule (i) only applies in the State of Queensland).
Persons employed in any capacity in Nongovernmental Schools, and Nongovernmental Preschools and Kindergartens, or other like establishments which are affiliated to the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that that institution or association provides approval or accreditation for

educational programmes) or other like establishments which provide an educational programme but are not Child Care Centres (other than services for unemployed people funded pursuant to the Australian Government's Skillshare Programme or any programme(s) which replace it other than ITEC's) who are not teachers, and who are designated as teacher aides, kindergarten assistants, librarians, library aides, laboratory assistants, audio-visual aides, scientific personnel and other such nonteaching employees, and excluding for the purposes of this Clause persons who may be described as School Secretaries, School Assistants, School Officers, and further excluding the following employees: persons employed as: a nurse, a cleaner, a licensed and/or registered plumber; and excluding persons employed by any cleaning, catering, security, laundry, gardening, building and/or domestic services contractor engaged to provide such services; and persons employed by an employer who employs that person as part of their business as a contractor in the building, building maintenance and construction industries; and a Bursar/Business Manager (however titled) employed in a senior managerial (or executive) position who has managerial responsibilities including the delegated authority to act for the employer from time to time in the recruitment and termination of staff; persons primarily engaged in social welfare work, and excluding also those employees employed at Nongovernmental Preschools and Kindergartens not affiliated to the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that the institution or association provides approval or accreditation for educational programmes) and excluding like establishments which do provide an educational programme but are Child Care Centres and excluding persons employed outside the Southern Division, Eastern District and who are eligible for membership of The Australian Workers' Union of Employees, Queensland

(j) (This rule (rule (j)) only applies in the State of Queensland)

Persons employed in any capacity in Nongovernmental Schools, Nongovernmental Preschools and Kindergartens, which are affiliated to the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that that institution or association provides approval or accreditation for educational programmes) or other like establishments which provide an educational programme but are not Child Care Centres, (other than services for unemployed people funded pursuant to the Australian Government's Skillshare Programme or any programme(s) which replace it other than ITEC's), who are not teachers and excluding for the purposes of this Clause persons who are designated as teacher aides, librarians, library aides, laboratory assistants, audio-visual aides, scientific personnel and other such non-teaching employees but including for the purposes of this Clause persons who may be described as School Secretaries, School Assistants, School Officers whose duties involve work partly clerical in nature but who are ancillary to and/or involved in the education process and excluding also the following employees: persons employed as: a nurse, a cleaner, a licensed and/or registered plumber; and excluding persons employed by any cleaning, catering, security, laundry, gardening, building and/or domestic services contractor engaged to provide such services; and persons employed by an employer who employs that person as part of their business as a contractor in the building, building maintenance and construction industries; and persons employed in South East Queensland at Fairholme College, in an Anglican School or in a Grammar school as a housekeeper, janitor, caretaker, handyperson, groundsperson, gardener, greenkeeper, security employee, laundry employee, domestic employee, catering employee (including employment as a cook, chef, kitchen hand, or waiter), or canteen assistant; and a Bursar/Business Manager (however titled) employed in a senior managerial (or executive) position who has managerial responsibilities including the delegated authority to act for the employer from time to time in the recruitment and termination of staff; and persons who are wholly or principally involved in work of a clerical nature and excluding also those employees employed in nongovernment preschools and kindergartens not affiliated with the Creche and Kindergarten Association Inc. (or any successor or replacement institution or association to the extent that that institution or association provides approval or accreditation for educational programmes) and excluding like establishments which do provide an education programme but are Child Care Centres who also shall not be eligible for

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membership and excluding persons employed outside the Southern Division, Eastern District and who are eligible for membership of The Australian Workers' Union of Employees, Queensland.

For the purposes of these Rules "a school" shall include a school for the physically and/or mentally handicapped.

Provided that notwithstanding anything contained hereinbefore, no person shall be eligible for membership of the Union who is -

- (i) employed in or by any institution being a College of Advanced Education as defined by the Remuneration Tribunals Act 1973 (as amended) and the Tertiary Education Commission Act 1977 (as amended) or any Act replacing either such Act; or who is employed in or by the Victorian College of Agriculture and Horticulture, the Australian Film and Television School, the Australian Maritime College, the West Australian College of Performing Arts, the Victorian College of the Arts, or McAuley College, other than 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;
- (ii) employed or usually employed in or by any university or university college, other than 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;
- (iii) employed in teaching or supervising teaching in day training centres registered pursuant to the Mental Health Act 1959 (Vic) or any Act in substitution or amendment thereof;
- (iv) employed in houses of religious and clerical formation;
- (v) employed in a non-government school or educational institution:-
 - (i) throughout Australia by any cleaning, catering, security, laundry, gardening, building and/or domestic services contractor engaged to provide such services to any non government school or educational institution;
 - (ii) as a cleaner in New South Wales, Western Australia, Northern Territory, Queensland, and Tasmania and the ACT;
 - (iii) as a catering employee in New South Wales and the ACT (including cooks and chefs, kitchen hands, and waiters) other than canteen assistants;
 - (iv) in boarding schools in New South Wales and the ACT as a housekeeper, security employee, laundry employee or domestic employee;
 - (v) in South East Queensland at Fairholme College, in an Anglican school or in a Grammar school as a housekeeper, janitor, caretaker, handyperson, groundsperson, gardener, greenkeeper, security employee, laundry employee, domestic employee, catering employee (including employment as a cook, chef, kitchen hand, or waiter), or canteen assistant;
 - (vi) in Western Australia and the Northern Territory as a housekeeper, janitor, caretaker, handyperson, groundsperson, gardener, greenkeeper, security employee, laundry employee, domestic employee or catering employee (including cooks, chefs, kitchen hands and waiters), or canteen assistant;
 - (vii) in Tasmania in an independent non-Catholic school as a housekeeper, janitor, caretaker, handyperson, groundsperson, gardener, greenkeeper, security employee,

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laundry employee, domestic employee, catering employee (including employment as a cook, chef, kitchen hand, or waiter), or canteen assistant and in a catholic day-school in Tasmania which has live-in facility during the week as a housekeeper, laundry employee, domestic employee or catering employee (including cook, chefs, kitchen hands and waiters)

- (viii) as a licensed and/or registered plumber;
- (ix) by an employer who employs that person as part of their business as a contractor in the building, building maintenance and construction industries.
- (vi) a Bursar/Business Manager (however titled) employed in a senior managerial (or executive) position in a non-government school who has managerial responsibilities including the delegated authority to act for the employer from time to time in the recruitment and termination of staff; any managerial, industrial or legal staff (other than in a school) employed by any non-government educational authority, person, body, corporation, religious institution or combination thereof including Diocesan Directors of Education and Directors of Catholic Education Offices in Australia, (provided however that this exclusion shall not refer to any Principal of a school, nor any educational consultants, advisors or any educational officers whatsoever);
- (vii) employed in the teaching and/or the training of handicapped children in Queensland in establishments conducted by the Endeavour Foundation or the Autistic Children's Association of Queensland;
- (viii) employed as a teacher, administrator, house parent and/or resident's aide, at a pre-school kindergarten or child-care centre and/or social trainer at a Slow Learning Children's Centre and/or an Aboriginal Education Worker (provided however that this exclusion shall not apply to any teacher or other salaried officer employed at any non-government school) in the State of Western Australia;
- (ix) a Principal or Deputy Principal (howsoever called), who as a condition of employment has or may from time to time have, the autonomous authority and responsibility to employ and dismiss teachers.