

# Draft Rules for a New AMWU



## 10 – RIGHTS OF OFFICIALS AND MEMBERS



## 10A – CHARGES AGAINST ELECTED OFFICE HOLDERS

### New Rule

1. No person elected to an office within the Union shall be removed from that office except in accordance with this rule.
2. Any member may lay a charge against a person elected to an office (an “office holder”) that the office holder:
  - (a) is guilty of:
    - (i) misappropriation of the funds of the organisation; or
    - (ii) a substantial breach of the rules of the organisation; or
    - (iii) gross misbehaviour; or
    - (iv) gross neglect of duty, or
  - (b) has ceased to be eligible to hold the office.
3. A charge laid under subrule 10A.2 must:
  - (a) Be provided to the National Secretary in writing;
  - (b) State what element or elements of subrule 10A.2 the office holder is alleged to have contravened;
  - (c) Set out the facts and circumstances alleged to contravene the relevant element or elements of subrule 10A.2;
  - (d) State what outcome is sought by the member laying the charge and why that remedy is justified.
4. The possible outcomes of an office holder being found guilty of a charge laid in accordance with subrule 10A.3 are that the office holder be:
  - (a) Removed from office;
  - (b) Suspended from office for a period not exceeding 12 months;
  - (c) Expelled from membership, with a consequence of removal from office;
  - (d) Directed to attend any conference, meeting, mediation or training;
  - (e) Rebuked;
  - (f) Cautioned;
  - (g) Warned;
  - (h) Reprimanded;
  - (i) Not subject to any further outcome.
5. Upon receipt of a charge, the National Secretary:
  - (a) may advise the member laying the charge whether, in the opinion of the National Secretary, the charge meets the requirements of subrule 10A.3.

- (b) may, where in the opinion of the National Secretary, the charge does not meet the requirements of subrule 10A.3, request the member laying the charge to address the requirements of subrule 10A.3;
  - (c) may delegate a person or persons to investigate the charge and provide a report to the National Secretary on the merits of the charge and any recommendations for dealing with the charge;
  - (d) must advise in writing any office holder the subject of the charge of the receipt of the charge and any steps taken under paragraphs (b) or (c) of subrule 10A.5.
  - (e) may invite any office holder the subject of a charge to respond to the charge by admitting it, denying it or making any other comment on it;
  - (f) must advise the next ordinary or special meeting of National Council of the receipt of the charge, any response and any steps taken under paragraphs (b), (c) or (e) of subrule 10A.5.
6. The next ordinary or special meeting of National Council shall consider the charge, any response, any report received under paragraph 10A.5(c), and any other steps taken under subrule 10A.5 and may resolve:
- (a) To dismiss the charge;
  - (b) To defer consideration of the charge in part or in whole to another meeting of National Council;
  - (c) To direct the member laying the charge to meet the requirements of subrule 10A.3;
  - (d) To delegate a person or persons to investigate the charge and provide a report to the National Council on the merits of the charge and any recommendations for dealing with the charge;
  - (e) To direct that the charge be dealt with as a suspected or alleged breach of rules allegation under rule 10B;
  - (f) To suspend the office holder charged from office, until the charge is determined or otherwise dealt with;
  - (g) That the person charged be called upon to show cause to one of the following union bodies why he or she should not be removed from office:
    - (i) National Conference;
    - (ii) National Council; or
    - (iii) where the office holder the subject of the charge holds office in a State Branch of the Union , the State Council in the State in which the office holder holds office,.
  - (h) That where the office holder the subject of the charge holds office in a State Branch of the Union, to direct that the State Council of the State in which the office holder the subject of the charge holds office deal with the charge as a suspected or alleged breach of rules allegation under rule 10B.
7. Where an office holder has been called upon to show cause, the union body hearing the charge:
- (a) Shall not meet to hear the charge until 21 days after the office holder charged has received a written copy of the charge including the particulars required under subrule 10A.3;

(b) shall adopt the model procedures set out in subrule 10A.8 below, but may vary those procedures where consistent with procedural fairness.

**8. Model procedures:**

(a) The officer holder charged and the member laying the charge shall receive no less than 7 days' notice of the date and location of the hearing;

(b) At the hearing:

(i) The member laying the charge presents his/her case;

(ii) The office holder charged can seek clarification through questions and further information or access to documents from the member laying the charge;

(iii) The member laying the charge can call witnesses;

(iv) The office holder charged can ask questions of the witnesses called by the member laying the charge

(v) The office holder charged can call witnesses, give evidence and make such submissions as he/she desires;

(vi) Members of the union body may ask questions of the member laying the charge, office holder charged, or any witness at any time;

(vii) The union body shall, if it is satisfied on the balance of probabilities that the charge is made out, find the office holder guilty of the charge, but shall otherwise dismiss the charge;

(viii) If the union body finds the office holder guilty of a charge, it shall give the office holder charged the opportunity to be heard as to penalty;

(ix) Penalties set out at paragraphs (a), (b) or (c) of subrule 10A.4 are only available where the office holder is found guilty of a charge under this rule by two-thirds of the votes cast at the hearing of the relevant union body.

(c) Notwithstanding the above, the union body in hearing the charge, and in considering any penalty, in its discretion:

(i) may allow the member laying the charge or the office holder charged to be heard through another person, or in writing or both;

(ii) need not give the member laying the charge an opportunity to be heard in person so long as the opportunity to be heard is given by permitting the member laying the charge the opportunity to provide written submissions **and evidence**;

(iii) need not give the office holder charged an opportunity to be heard in person so long as the opportunity to be heard is given by permitting the office holder charged the opportunity to provide written submissions **and evidence**;

(iv) may determine the charge in the absence of the member laying the charge or the office holder charged provided those persons were properly notified of the hearing.

9. Except as specified in this rule, or as otherwise consistent with procedural fairness, the member laying the charge, or any other member of a relevant union body who is invincibly biased, the office holder charged shall not be entitled to participate in any consideration or resolution under subrule 10A.6, any hearing of the charge, any determination of the charge or any determination of the penalty.
10. Where an office holder is removed from office under this rule, a casual vacancy is created which may be filled in accordance with these rules.
11. A member removed or suspended from office or expelled from membership under this rule may make application within 14 days of the determination of penalty to the External Review Board for review of the determination of the relevant union body on any of the following grounds of error, that the union body
  - (a) acted upon wrong principle;
  - (b) allowed extraneous or irrelevant matters to guide or affect it;
  - (c) has mistaken the facts,
  - (d) did not take into account some material consideration;
  - (e) was affected by actual bias.
12. Following an application made under rule 10A.11, the decision of the External Review Board is subject to endorsement by National Council, provided that:
  - (a) the National Council may refer any decision of the External Review Board to National Conference for final endorsement;
  - (b) the National Council shall refer a decision of the External Review Board to National Conference for final endorsement where the National Council does not endorse the decision of the External Review Board; or
  - (c) Upon application by a member removed or suspended from office within 14 days of the decision of the External Review Board, the National Council shall refer the decision of the External Review Board to National Conference for final endorsement;by means of resolution in session, postal ballot or teleconference in session as the National Council resolves is appropriate in all the circumstances.
13. Except as specified in this rule, or as otherwise consistent with procedural fairness, the member laying the charge and the office holder charged shall not be entitled to participate in any consideration or resolution by the National Conference or National Council under subrule 10A.12.
14. The National Secretary, National Conference, National Council, External Review Board, or State Council may seek legal advice and/or engage legal counsel to assist in the process and guide the discharge of functions under this rule.

#### **Effect on employment**

15. Where a full-time office holder is removed from office under this rule, any employment held coextensively with that office is at an end. Where an honorary office holder is separately employed by the Union in a position not coextensive with his or her office, removal from that office under this rule does not automatically bring that employment to an end.
16. Where a full-time office holder is suspended from office under subrule 10A.4, the office holder is stood down without pay from any employment held coextensively with that office for the period of the suspension.
17. Where a full-time office holder is suspended from office under subrule 10A.6, the office holder is stood down with pay from any employment held coextensively with that office for the period of the suspension.
18. Where an office holder is employed by the Union in a position not coextensive with his or her office, nothing in this rule 10A limits the application of any contract of employment or any employment policies, procedures and supervision that apply to that employment, including any decision to terminate that employment.
19. In the event of the upholding of an application for review to the External Review Board under subrule 10A.11 or 10A.12, a full-time office holder shall be reimbursed by a payment of monies that represent the difference between such salary that would have been received had the full-time office holder not been removed or suspended from office and the amount of salary the office holder received during the period that the office holder was removed or suspended from office.

**National Secretary.**

20. Where in the event that a charge is laid against the National Secretary consistent with this Rule, the responsibilities and duties which are ascribed to the National Secretary in this Rule shall be undertaken by the National President.





## 10B - BREACH OF RULES

### New Rule

1. Except where a matter must be dealt with under rule 10A - Charges against elected office holders, the National Conference and/or National Council shall have power to investigate any suspected or alleged breach of these rules and to determine whether any member has committed a breach of these rules.
2. A member is guilty of a breach of these rules who:
  - (a) breaches or fails to comply with any provision of these rules;
  - (b) knowingly fails to obey or comply with any lawful resolution of the Union;
  - (c) gives false or misleading information to the Union on any matter relating to the objects of the Union;
  - (d) fails, without reasonable excuse, to attend, or absents himself or herself from, any meeting or part of a meeting of the Union when summoned by a person or body under the rules with power to require the attendance of the person at that meeting;
  - (e) obstructs the Union, National Conference, National Council, National Administrative and Budget Committee, State Conference, State Council or State Administrative Committee in the performance of the functions of the body concerned pursuant to these rules;
  - (f) obstructs, insults or behaves in an offensive manner towards any officer or employee of the Union acting in the course of his or her duties;
  - (g) behaves in a drunken, disorderly or offensive manner at any meeting of the Union or in any office of the Union;
  - (h) commits an act of sexual harassment, which shall be defined to mean a sexual assault, advance or request for sexual favours, or engagement in unwelcome conduct of a sexual nature with another person, against another member, employee of the Union or other person where that other person reasonably believes that the member charged with sexual harassment is in contact with that other person in the course of acting for, representing or participating in activities for or on behalf of, or as agent of the Union;
  - (i) engages in workplace bullying, which means repeated and unreasonable behaviour directed towards an employee or officer acting in the course of his or her duties that creates a risk to the physical or mental health and/or safety of that employee or officer.
  - (j) wrongfully holds himself or herself out, without reasonable excuse, as occupying any office or position, or as representing the Union;
  - (k) aids or encourages any other member in a breach of these rules.
3. Any member who alleges that another member has breached these rules may bring a charge under this rule. Such charge shall be in written form and shall be forwarded to the National Secretary, who:

- (a) may advise the member laying the charge whether, in the opinion of the National Secretary, sufficient particulars of the charge have been provided.
- (b) may, where in the opinion of the National Secretary, the charge does not meet the requirements of subrule 10B.2, request the member provides further particulars of the charge;
- (c) may delegate a person or persons to investigate the charge and provide a report to the National Secretary on the merits of the charge and any recommendations for dealing with the charge;
- (d) must advise in writing any office holder the subject of the charge of the receipt of the charge and any steps taken under paragraphs (b) or (c) of subrule 10B.3.
- (e) may invite any office holder the subject of a charge to respond to the charge by admitting it, denying it or making any other comment on it;
- (f) must advise the next ordinary or special meeting of National Council of the receipt of the charge, any response and any steps taken under paragraphs (b), (c) or (e) of subrule 10B.3.

However, the powers of the National Conference and National Council under this rule shall not depend upon the laying of a charge by an individual member in accordance with this sub-rule.

4. National Council after consideration of the charge may resolve, subject to rule 10B:

- (a) to remit the power to investigate and determine any such matter to State Council in a State in which the member suspected or alleged of a breach of rules resides or works;
- (b) to delegate a person or persons to investigate the charge and provide a report to the National Council on the merits of the suspected or alleged breach and any recommendations for dealing with the suspected or alleged breach;
- (c) To defer consideration of the charge in part or in whole to another meeting of National Council;
- (d) to proceed to investigate the charge;
- (e) to proceed to determine the charge;
- (f) if the charge is brought against an elected office holder, that the alleged circumstances giving rise to the charge are more appropriate to be dealt with under rule 10A - Charges against elected office holders; or
- (g) to not take any further action in relation to the matter.

5. Where the matter has been remitted to a State Council under subrule 10B.4(a), prior to determining the charge, the State Council may:

- (a) delegate a person or persons to investigate the charge and provide a report to the State Council on the merits of the suspected or alleged breach and any recommendations for dealing with the suspected or alleged breach; and
- (b) defer consideration of the charge in part or in whole to another meeting the State Council;
- (c) to proceed to investigate the charge;
- (d) to proceed to determine the charge;
- (e) to not take any further action in relation to the matter.

6. The National Council shall have power to resolve policies as to procedures and matters that may be observed prior to and during the hearings of charges under this rule.
7. A member shall not be found guilty of a breach of these rules unless he or she has been given notice of the charge made and any written particulars in relation to the charge and has been given a reasonable opportunity to present any defence to the charge.
8. The possible outcomes of a member being found guilty by the relevant union body of a charge laid in accordance with subrule 10B.3 are that the member be:
  - (a) Expelled from membership;
  - (b) Suspended from membership for a period not exceeding 12 months;
  - (c) Directed to attend any conference, meeting, mediation or training;
  - (d) Rebuked;
  - (e) Cautioned;
  - (f) Warned;
  - (g) Reprimanded;
  - (h) Fined an amount not exceeding \$100.
  - (i) Not subject to any further outcome.
9. The outcomes set out at paragraphs (a) and (b) of subrule 10B.8 are only available where the member is found guilty of a charge under this rule by two-thirds of the votes cast at the hearing of the relevant union body. The outcomes set out at paragraphs (a) and (b) of subrule 10B.8 are only available in respect of an office holder where the charge has been dealt with in accordance with rule 10A.
10. A member expelled or suspended from membership under this rule may make application to the External Review Board for review of the determination of the relevant union body within 14 days of the determination of penalty. Such application for review may only be made on any of the following grounds of error, that the union body:
  - (a) acted upon wrong principle;
  - (b) allowed extraneous or irrelevant matters to guide or affect it;
  - (c) has mistaken the facts,
  - (d) did not take into account some material consideration;
  - (e) was affected by actual bias.
11. Following an application made under rule 10B.10, the decision of the External Review Board is subject to endorsement by National Council, provided that:
  - (a) the National Council may refer any decision of the External Review Board to National Conference for final endorsement;

- (b) the National Council shall refer a decision of the External Review Board to National Conference for final endorsement where the National Council does not endorse the decision of the External Review Board; or
  - (c) Upon application in writing by a person removed or suspended from membership, within 14 days of the decision of the External Review Board, the National Council shall refer a decision of the External Review Board to National Conference for final endorsement;  
by means of resolution in session, postal ballot or teleconference in session as the National Council resolves is appropriate in all the circumstances.
12. Except as specified in this rule, or as otherwise consistent with procedural fairness, the member laying the charge, the office holder charged or any other member of a relevant union body who is invincibly biased, shall not be entitled to participate in any consideration or resolution by the National Conference or National Council under subrule 10B.11.
13. No member charged with a breach of these rules shall be dealt with more than once for the same alleged breach of the rules, except that:
- (a) in respect of any member who is employed by the Union, except where a matter must be dealt with under rule 10A for an elected office holder, nothing in rule 10B limits the application of any contract of employment or any employment policies, procedures and supervision that apply to that employment;
  - (b) National Council may direct that a matter that arises under rule 10A be dealt with under rule 10B and a matter that arises under rule 10B be dealt with under rule 10A where a charge has been laid against an elected official.
14. A charge brought under this rule may be withdrawn or not proceeded with at any time prior to a decision on the charge by the union body first hearing that charge.
15. The National Secretary, National Conference, National Council, External Review Board, or State Council may seek legal advice and/or engage legal counsel to assist in the process and guide the discharge of functions under this rule.

## 10C - EXTERNAL REVIEW BOARD

### 1 *Purpose and Function*

The purpose and function of the External Review Board is to be an independent review body that safeguards ethical standards within the Union and strengthens the Unions' existing democratic processes and procedures including the handling of appeals against decisions made by officials and decision-making bodies in the Union.

### 2 *Composition*

The External Review Board shall consist of a Chairperson and a Panel of two other Members. All Members of the External Review Board must be of good repute and must not be officers or employees of the Union or otherwise eligible to be members of the Union.

### 3 *Appointment*

- (a) The Chairperson and the Panel of Members shall hold their appointments for the period until the conclusion of the second ~~triennial~~ biennial National Conference after their appointment.
- (b) The National Secretary shall call for nominations of the Chairperson and persons who will comprise the Panel of Members by notice distributed to members of the National Conference. National Conference will determine by majority vote of the members of National Conference voting whether to accept or reject the nomination of persons nominated as Panel Members. In the event that more than one person is nominated for Chairperson or more than 2 persons are nominated as Panel Members and those nominations are accepted by National Conference, National Conference will determine the selection of Chairperson and/or Panel Members by majority vote of the members of National Conference voting.
- (c) In the event that a vacancy occurs on the External Review Board, including in the position of Chairperson, National Council may fill the vacancy from a list of names of person submitted by the remaining Members of the External Review Board. In the event that there is a vacancy in the position of Chairperson the remaining Members may nominate one of their number.
- (d) National Council shall establish a schedule of sitting fees for the Members of the External Review Board.
- (e) National Council will provide funds, consistent with the budget and accounting practices determined by National Council, to ensure that the External Review Board is able to make arrangements for independent administrative support in its work and to pay for sitting fees, and such travel, accommodation and other expenses it incurs.

### 4 *Referrals*

- (a) A member of the union, including a member who is an elected office holder, may apply to the External Review Board for the independent review of decisions dealing with matter specified in sub-rules 10C.5 or 10C.6, that have been made under rule 10A, or rule 10B.

- (b) The National Council may determine to refer an appeal, dealing with matters specified in 10C.5(a) to the External Review Board for its determination notwithstanding that the appeals procedure set out in rule 10A or 10B has not commenced.

## **5 Powers and duties**

- (a) The External Review Board may hear and determine the following matters:
- (i) alleged violations of the AMWU Ethical Practices Code;
  - (ii) appeals against decisions of a superior body in the Union which may result in the re-organisation or abolition of a subordinate body;
  - (iii) any decisions made in accordance with rule 10A;
  - (iv) any decisions made in accordance with rule 10B; and
- (b) The External Review Board shall not hear and determine matters in which the principal issue is:-
- (i) the enterprise, corporation or industry bargaining policy of the Union;
  - (ii) the handling of a grievance or other issue involving a collective bargaining agreement except where the member appealing has alleged to the National Council that the matter was handled improperly because of fraud, discrimination or collusion with management or that the decision had no rational basis;
  - (iii) a ruling by National Council or National Conference, as the case may be about:-
    - A. the interpretation of rules; or
    - B. the procedural rulings by the Chair of a meeting; or
    - C. the credentials or procedures at the National Conference.
  - (iv) issues relating to the appointment, dismissal, management or employment conditions of employees of the AMWU, including office holders, except where the matter also involves an allegation of bullying, violence, harassment or gross misconduct, or where a matter has been dealt with under rule 10A or rule 10B; or
  - (v) resource allocation decisions determined as part of the budget process provided that such a decision has been determined consistent with the rules and union policy.
- (c) The External Review Board may direct any employee or Official of the Union to appear before it or to respond to any written requests. Failure to do so without reasonable cause is a serious breach of these rules.
- (d) All employees, officials and decision-making bodies of the Union who are aware that a matter is before the External Review Board are obliged to provide the External Review Board upon request all information, documentary or otherwise, that pertains to a matter being considered by it.
- (e) The decisions of the External Review Board are subject to confirmation by National Conference or National Council provided that any decisions which are rejected by National Council shall be referred to National Conference for final decision.

## **6 Procedures**

- (a) All matters in which application is made or which are referred for review by the External Review Board shall be referred directly to the Chairperson.
- (b) The Chairperson may dismiss a matter if he or she is satisfied that:
  - (i) the allegations are insufficient or otherwise fail to justify the convening of a hearing of the External Review Board; or
  - (ii) there is no reasonable possibility for credible evidence to be produced in support of a allegations.
- (c) The Chairperson shall allocate matters that have been referred to the External Review Board to such number of Members of the Panel, including a single Member, as the Chairperson deems appropriate for the hearing and determination of the matter.
- (d) The Chairperson shall determine the location of the hearing of any matter taking into account the capacity of the Member(s) allocated to hear and determine the matter and the location of the person seeking the review and any other persons who may be of assistance to the External Review Board in its consideration of that matter.
- (e) The External Review Board as constituted for hearing a matter shall determine its own practices and procedures consistent with the principles of natural justice and any practices and procedures that are established by the Chairperson.
- (f) The External Review Board shall issue its decisions in writing to the National Council and the person or persons appealing or complaining. The External Review Board may, where it deems it necessary, restrict the further publication of its reasons for decision or may require that the further publication of its reasons for decision be modified in order to protect the anonymity of persons named in those reasons.
- (g) At the conclusion of a matter, the External Review Board shall advise in writing the National Secretary of the outcome of the matter and highlight any policy or procedures of the Union which in its opinion require revision.





## 10D – GENERAL PROVISIONS

### New Rule

~~1. A member must take all reasonable steps to exhaust the internal appeal procedures prescribed by Rule 10 before commencing proceedings to challenge any decision made pursuant to these rules in a court or tribunal.~~

2.1. For the avoidance of doubt, where an office is abolished for bona fide purposes in accordance with these Rules, it is not a requirement that the holder of that office to be found guilty of a charge under rule 10A for that office to be so abolished, notwithstanding that the abolition of the office may result in the termination of employment that is coextensive with that office.

3.2. Where a person is delegated to investigate a charge under rule 10A or 10B, that person may direct any employee or official of the Union to meet with that person or to respond to any written requests. Failure to do so without reasonable cause ~~is a serious~~ may constitute a breach of these rules.

4.3. All employees, officials and decision-making bodies of the Union who are aware that a matter is being investigated by a person pursuant to rule 10A or 10B are obliged to provide that person upon request all information, documentary or otherwise, that pertains to a matter being investigated by that person.

5.4. A member who:

- (a) makes false charges or makes charges with malicious intent and/or
- (b) is named as a witness but without good reason fails to attend when summoned to a union body meeting, or an investigation conducted, under rule 10A or 10B as the case may be; and/or
- (c) deliberately withholds information to prejudice the outcome of a charge or complaint;

~~is guilty of a~~ may be in breach of these rules and may be charged under rule 10B.

