

September 2008

Mr Larry Powell
Australian Industrial Registry

Dear Mr Powell

ASMOF RULE CHANGE

The purpose of this letter is to inform the registry, in accordance with regulation 126, of a change to the rules of the Australian Salaried Medical Officers' Federation.

That regulation states that the Federation must, within 35 days after the alterations are made:

- Lodge a notice in the Industrial Registry setting out the particulars of the alteration; and
- Publish a notice on our website that the above notice has been lodged

The notice must contain a declaration, signed by an authorised officer, stating:

- That the alteration was made in accordance with the rules of the organisation; and
- The action taken under those rules to make the alteration.

The following demonstrates how we have complied with all necessary obligations.

The authority to amend or rescind rules

Rule 23(a) of the current ASMOF Federal rules authorises the Federal Council to make or rescind rules of the Federation and rule 68 elaborates on this.

Rule 68 states that:

- A proposal to make or rescind rules may be made by the Federal Executive;

- That proposal must be in writing and set out the proposed additions or changes;
- Notice must be given in accordance with rule 25(7) or rule 33(3), and;
- An affirmative vote by at least three quarters of the Federal Council is required to make or rescind a rule.

For the rule changes in question, rule 68 was complied with, because:

- The Federal Executive proposed a change of rules;
- These proposed changes were set out in writing;
- Notice was given in accordance with r 33(3) – see below; and
- Nine of the twelve eligible voters voted. All votes were in favour of the proposed change, so therefore three quarters of the Federal Council voted in favour of the changes.

The rule change process

Rule 33 of the ASMOF Federal rules governs the manner in which the Federal Council may make a decision without meeting.

Rule 33 states that:

- A facsimile or post ballot is permitted to be held in place of a meeting;
- Each member of the Federal Council shall be notified by facsimile or post of the matter to be voted on, and the means by which to do so;
- When the matter to be voted on requires the exercise of the Council's powers under rule 23(a) of the rules, that 30 days notice will be given;
- For a vote to be effective, the delegates voting must include delegates from the majority of branches;
- When a vote is made by facsimile, the original, signed by the member, must be forwarded to the Federal Secretary no later than 24 hours thereafter by prepaid post, or by courier, or delivered to the Federal Secretary in person;
- Notice must be given to council and executive within 7 days of the conclusion of the vote, and;
- Application of this rule is tempered by the terms of rule 33(7).

For the rule change in question, rule 33 was complied with because:

- A facsimile vote was called;
- Each member of the council was informed by fax and post of the matter to be voted on, and the means by which to do so;
- Notice was given on 25 July 2008 that the ballot would conclude on 25 August 2008.

- The delegates who voted included delegates from a majority of branches;
- The facsimile votes were accompanied by a postal vote, and;
- Written notice was given to council and executive on 28 August that the vote had been successful.

Receipt of facsimile votes

I note that when a vote is made by facsimile, the original, signed by the member, must be forwarded to the Federal Secretary no later than 24 hours thereafter by prepaid post, or by courier, or delivered to the Federal Secretary in person.

Originals of the facsimile votes were received. ASMOF cannot declare that all the originals were forwarded within 24 hours. Our best estimate is the originals arrived in all instances, no later than 96 hours after the vote. Given the geographical locations of some voters (some were interstate) we hold a reasonable view that this element of rule 33 was complied with.

I note that Rule 33(7) of the ASMOF rules states:

This rule shall be construed liberally so as to facilitate its operation as a means for obtaining prompt decisions of the Federal Council and the Federal Executive in matters in which it is or may be thought desirable to obtain decisions expeditiously, as a means of ensuring the effective ongoing management of the Federation and in matters in which a substantial degree of consensus is known or believed to exist among members of the Federal Council and or the Federal Executive.

The new rules voted upon were constructed in direct consultation with the Industrial Registry to correct an anomaly identified in our existing rules. The context is this: In 2006, Branch Council elections were held for the Tasmanian Branch of ASMOF, however no nominations were received. ASMOF attempted to remedy this in 2007, by asking the Industrial Registry to approve a further election. The Registry would not allow this as in their view, the ASMOF rules did not permit an election to be held in such circumstances. Therefore, the Tasmanian Branch of ASMOF is effectively devoid of office holders and consequently inoperative. Further, this means that the Tasmanian Branch has no delegate representation on Federal Council.

In order to 'resuscitate' the Tasmanian Branch and ensure that its obligations under the WRA, especially in regard to financial reporting, are fulfilled, these

new rules are necessary. Further, I note that the amendments voted upon regarding the filling of casual or extraordinary vacancies were requested by the Registry.

There is a need to expeditiously deal with the Tasmanian situation so as to ensure the effective ongoing management of the Federation. Further, I believe that there is a substantial degree of consensus about these uncontroversial changes as evidenced by the lack of dissenting votes. In light of this, I submit to you that rule 33(7) should permit the rules to be approved, notwithstanding the potential for a slight and essentially inconsequential inconsistency with required process in that we cannot declare in good faith that originals of facsimile votes were forwarded within 24 hours.

Notice to members

A notice was placed on our website to inform members that this notice was lodged on 9 September 2008.

Typographical amendments

I note that the proposed rule alternations, as reproduced in Appendix A to this letter, have two typographical amendments. These were brought to the attention of ASMOF by the Industrial Registry. I understand that section 159(2) of schedule 1 states that the Registrar may consent to the amendment of typographical errors. We ask that you do so.

The amendments are:

Rule 64(8) – the reference to "subrule 65(1)(p)" when voted on read "subrule 65(p)".

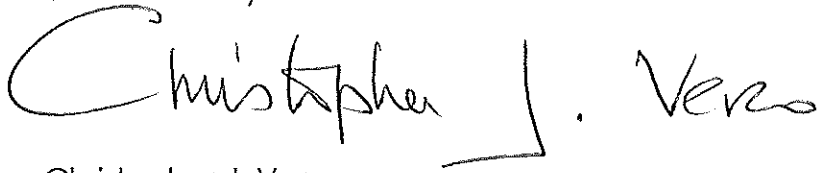
The heading "New Rule 65(1)(p)" when voted on read "New Rule 65(1p)".

Declaration

I declare that the particulars set out in this notice are true and correct to the best of my knowledge and belief.

Please contact Mr Hugh Arjonilla of ASMOF on: (02) 9212 6900 if you have any queries about this matter.

Yours sincerely

A handwritten signature in black ink that reads "Christopher J. Verco". The signature is written in a cursive style with a large initial "C" and a distinct "J" before the last name.

Christopher J. Verco
Federal President

APPENDIX "A"

New rule 64(7) (proceeding sub rules of rule 64 accordingly renumbered)

"In the event that insufficient nominations are received at an election for Branch Council, Branch Council may appoint a current financial member of the Branch to fill the vacancy until an election in accordance with Rule 64, *mutatis mutandis*, can be held. Any such ballot must be held within six months of the vacancy arising. The member elected at the subsequent election will hold office for the unexpired portion of the original term.

If the unexpired portion of the original term is less than three quarters, or 12 months, whichever is the greater, then the Branch Council may appoint a financial member for the remainder of the original term".

New rule 64(8) (proceeding sub rules of rule 64 accordingly renumbered)

"In the event the Branch Council is unable to form a quorum in accordance with Rule 26 and consequently is unable to appoint a current financial member in accordance with subrule 64(7) or a member of Branch Council in accordance with subrule 65(1)(p) then the Federal Council shall have the powers otherwise available to a Branch Council."

New Rule 65(1)(p)

"In the event that insufficient nominations are received at an election for a Branch Delegate to Federal Council, the Branch Council may appoint another member of Branch Council to fill the vacancy until an election is held in accordance with Rule 65, *mutatis mutandis*, can be held. Any such ballot must be held within six months of the vacancy arising. The member elected at the subsequent election will hold office for the unexpired portion of the original term.

If the unexpired portion of the original term is less than three quarters, or 12 months, whichever is the greater, then the Branch Council may appoint a financial member of Branch Council for the remainder of the original term."

Amendment to former Rule 64(7)

Replaced "6 (6) months" with "3 (3) months" so as to read:

"In the event of any casual or extraordinary vacancy occurring among the members of the Branch Council, Branch Council may appoint a current financial member of the Branch to fill the vacancy providing that the member so appointed shall hold office for the unexpired portion of the term of the member he/she is appointed to replace provided further that if such unexpired portion would exceed two years the member of Branch Council appointed by Branch Council to fill the vacancy shall hold office only until an election in accordance with Rule 64 can be held to fill the casual or extraordinary vacancy, any such ballot to be held within **three (3) months** of the vacancy arising, the member then elected to hold office for the unexpired portion of the term attached to that office".

Amendment to former Rule 64(8)

Replaced "6 (6) months" with "3 (3) months" so as to read:

"In the event of any casual or extraordinary vacancy occurring among the members of the Branch Executive, Branch Council may appoint a current financial member of the Branch Council to fill the vacancy providing that the member so appointed shall hold office for the unexpired portion of the term of the member he/she is appointed to replace provided further that if such unexpired portion would exceed two years the member of Branch Council appointed by Branch Council to fill the vacancy shall hold office only until an election in accordance with Rule 64 can be held to fill the casual or extraordinary vacancy, any such ballot to be held within **three (3) months** of the vacancy arising, the member then elected to hold office for the unexpired portion of the term attached to that office."

Amendment to former Rule 66(3)

Replaced "6 (6) months" with "3 (3) months" so as to read:

"In the event of any casual or extraordinary vacancy occurring among the members of the Federal Council, the Branch Council from which the vacancy arose may appoint another member of Branch Council to fill the vacancy providing that the member so appointed shall hold office for the unexpired portion of the term of the member he/she is appointed to replace provided further that if such unexpired

*portion would exceed two (2) years the member of Branch Council appointed by Branch Council to fill the vacancy shall hold office only until an election in accordance with rule 65 by and from the Branch Council from which the vacancy arose can be held to fill the casual or extraordinary vacancy, any such ballot to be held within **three (3) months** of the vacancy arising, the member then elected to hold office for the unexpired portion of the term attached to that office."*