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## SUBMISSIONS ON MOTION 3

### 1 Introduction

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- 1.1 Motion 3 proposed by the Australian Association for Research in Education Inc (**AARE**) Working Party should not be passed at the upcoming Annual General Meeting (**AGM**). If passed, Motion 3 would allow motions in future to be put forward at general meetings without 21 days' prior written notice. It is fundamental to the integrity of the members' meetings of AARE that both the Executive Committee and the membership of AARE have at least 21 days' notice to consider any resolutions proposed at a meeting of members. Below is an explanation of the main reasons for the necessity of prior notice of motions proposed by members.

### 2 Reasons for rejection of Motion 3

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#### Democratic Process

- 2.1 The key purpose of AARE's members' meetings is to provide a democratic environment to ensure AARE achieves its objects in accordance with the ideals of its membership. At AARE, great value is placed on the democratic process that underpins our members' meetings. It is important to us that members have the ability to vote on matters regarding AARE, but this voting should be informed. This requires members to take the necessary time to consider all arguments for and against proposed motions and conduct their own investigations into these motions where they see fit.
- 2.2 Requiring a member to vote on a motion on the day, without any prior notice or information, eliminates a member's right to make an informed decision. It invites rushed decisions made in an environment where members may feel pressured to vote a certain way based on the votes of other members, or to vote without having access to all relevant information.
- 2.3 Further, the common law (i.e. judge-made law) provides several examples of judges highlighting the importance of providing ample notice of the agenda for members' meetings. Judges have commented that notice is fundamental to:
- (a) ensuring adequate disclosure of facts to members;
  - (b) allowing members ample time to decide how they will vote on a motion;
  - (c) allowing members time to decide what they will say about the motion during the meeting; and
  - (d) considering whether it is necessary for the member to attend the meeting.
- 2.4 Without providing notice of all proposed motions at a members' meeting, the members of AARE are unable to properly satisfy the interests of themselves and of AARE as a whole. In our view, the democratic process of AARE will be violated as AARE's members cannot make informed choices on the motion, as they have not had appropriate time to consider the motion.

**Legal Exposure of AARE**

2.5 Not only does providing advance notice of motions benefit the members of AARE, it is also fundamental to protecting the interests, and ensuring the longevity, of AARE. It is clear that where a resolution is made on a motion that members have not had adequate time in advance to consider, decisions by the membership will be rushed and not properly considered by the membership. This creates a potential for AARE to be placed in a vulnerable legal position, as AARE could be liable for the consequences of the decisions made at the members' meeting.

For example, the membership could propose a motion at the members' meeting which is contrary to the current provisions in AARE's constitution. If the resolution is passed, AARE is exposed to a potential action by a member of AARE for a breach of contract (i.e. breach of a provision in AARE's constitution). As shown by this example, hasty decisions threaten to expose AARE to legal challenges where resolutions are enacted on motions that would have been found to be invalid or damaging to AARE.

2.6 Further, AARE could face legal challenges as to the validity of resolutions passed at a members' meeting without adequate notice being given to AARE's members. The common law (i.e. judge-made law) provides that members summoned to appear at a meeting for one particular purpose cannot proceed to any other matter without ***the unanimous consent of the whole body*** (*that is, all of the members and not just those who are participating in the meeting*). This means that any motions proposed at a members' meeting must first be approved by all members of AARE before they can be put forward as a motion of the meeting. Otherwise the resolution on the proposed motion would be invalid. It will be highly unlikely that all members of AARE will ever attend a members' meeting, meaning that this requirement will rarely be fulfilled.

2.7 There are several cases that have been heard in courts where resolutions are subsequently challenged on the basis that no notice had been given of the subject matter of these resolutions on the agendas for the meetings. Accordingly, the proposed motion creates an unacceptable risk for the Executive Committee, as the resolution on that proposed motion may not be legally valid and may expose AARE to potential legal actions and expensive legal costs.

2.8 Additionally, similar principles and concerns apply to introducing motions at meetings, as they apply to amending motions that members have been notified of (**Notified Motion**), at the actual meetings. The general principle applied by judges in common law is that an amendment to a motion can only occur where the amendment is within the ambit of the Notified Motion.

Consequently, any amendment to a Notified Motion that materially changes the substance of the Notified Motion, will likely be impermissible. Passing a resolution on an amended motion could expose AARE to legal proceedings in relation to the invalid resolution as discussed above. The primary reasons that amendments cannot be made to a Notified Motion include that members cannot properly prepare their arguments or stances on a motion that has changed in substance. Just as a member cannot prepare their stance on a motion that is amended during a meeting, so too can a member not prepare to discuss or vote on a motion that they had no knowledge of prior to the meeting.

**Incorrect Reference in Proposed Motion 3**

- 2.9 The proposed motion refers to the Incorporated Association Rules, and quotes that:

*“at meetings, members should be able to: speak freely; express concerns; [and] vote on motions”.*

The above reference does not appear in the *Associations Incorporation Act 1985* (SA), the *Associations Incorporation Regulations 2008* (SA), nor the South Australian Incorporated Association Model Rules. This incorrect reference to the Incorporated Association Rules and the lack of substantive legal basis for the proposed motion brings into question the legal argument that underpins this motion, and casts doubt upon the validity of the arguments made by the AARE Working Party.

**AARE’s Membership Rights**

- 2.10 AARE acknowledges that there may be instances where urgent matters arise after a notice of meeting has been sent to the membership and, therefore, in light of our arguments above, these matters cannot be considered at the upcoming members’ meeting. However, AARE’s constitution permits members to petition to hold a Special General Meeting. This means that matters not considered at the initial members’ meeting can be considered at a Special General Meeting called by the members. A Special General Meeting can be held where the greater of 20 members or 5% of the membership deems it necessary to hold a Special General Meeting. Accordingly, AARE’s constitution provides a means for matters to be considered and for all members to be heard on matters in relation to AARE in a manner which still protects the members by providing them with sufficient written notice of the matters to be discussed at the meeting.

**Inconsistencies in Constitution and By-Laws**

- 2.11 The proposed motion 3 will create an inconsistency between the constitution and by-laws of AARE. To this end, the proposed motion 3 will mean that the by-laws of AARE will prevail over the constitution of AARE. This is highly unusual.
- 2.12 The constitution is considered to be the main governing document for a not-for-profit entity, and the by-laws is a supplementary governing document. The constitution should always prevail over the by-laws.
- 2.13 The proposed motion exposes AARE to further interpretation issues and inconsistencies with the constitution and by-laws in the future. This is because the by-laws will be interpreted as prevailing over the constitution. The consequences of these inconsistencies and issues will lead to a lack of clarity of the rights and responsibilities of the members and the Executive Committee of AARE.

**3 Conclusion**

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- 3.1 If the proposed motion 3 is passed, any future motions proposed at members’ meetings must first be approved by all members of AARE (that is, not just those who are present) to be put forward as motions. This will need to occur to ensure AARE is compliant with the common law.

- 3.2 Even if the above process is complied with, it is highly discouraged that motion 3 be passed as a resolution at the AGM. This is because:
- (a) The members and Executive Committee will not have sufficient time to prepare for members' meetings, which could lead to poor governance decisions and AARE being legally exposed;
  - (b) There is no legal basis or argument for the proposed motion of the AARE Working Party;
  - (c) There are avenues in AARE's constitution for members to propose motions for discussion at a members' meeting; and
  - (d) The proposed motion will create an inconsistency between the constitution and by-laws, which could lead to further inconsistencies and issues with the interpretation of AARE's governing documents.

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**10 November 2021**