



DECISION

Fair Work (Registered Organisations) Act 2009
s.159—Alteration of other rules of organisation

Mining and Energy Union (R2024/28)

CHRIS ENRIGHT

MELBOURNE, 22 MARCH 2024

Alteration of other rules of organisation.

[1] On 26 February 2024 the Northern Mining and NSW Energy District Branch of the Mining and Energy Union (the District Branch) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its rules.

The District Branch seeks certification of the alterations under s.159 of the *Fair Work (Registered Organisations) Act 2009* (the Act).

[2] The particulars set out alterations to District Branch Rules 8 and 10.

[3] On the information contained in the notice and declaration, I am satisfied the alterations have been made under the rules of the organisation.

[4] The alterations abolish the office of District Vice-President (E). The do so by deleting references to the office throughout the District Branch Rules.

[5] The District Branch Rules currently provide for five Vice-Presidents.¹ The District Vice-President (E) is one of nine members of the District Executive.² That body has the care, control, custody and superintendence, management and administration of the District Branch,³ subject to review by the District Branch’s committee of management.⁴ The District Vice-President (E) is also a member of the District Branch Committee of Management⁵ The office is a full-time office.⁶ The term of office is four years.⁷ Nominations in the next scheduled elections are due to open shortly.

[6] The office of District Vice-President (E) fell vacant when its holder resigned on 16 December 2022.⁸ According to the declaration lodged with the notice of particulars by the District Branch, the casual vacancy arising from the resignation was not filled and the office remains vacant.⁹

[7] When the last holder of District Vice-President E foreshadowed their intention to resign “[t]he District Executive agreed that the Northern District would most likely not replace the Vice President (E) position at the next General Election.”¹⁰

[8] The declaration goes on to state:

“At the meeting [where]... District Vice President (E) advised the Executive that he would be retiring on 16 December 2022. The District Executive agreed that the Northern District would most likely not replace the Vice President E position at the next General Election.

...

On 1 February 2024, in accordance with Rule 10(iii) of the Northern District Rules, the District Executive met and endorsed that the Northern District take steps to not fill the office of Vice-President (E) in the up-coming 2024 General Elections on the basis of the reported financial position and the organisational structure of the Northern District.”¹¹

[9] The current alterations give effect to the District Executive’s 1 February 2024 endorsement.

[10] If I certify the proposed alterations, they take effect on the day of certification – see s.159(3) of the Act.

[11] Section 159(3) of the Act was considered by a Full Bench of the Commission in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Registered Organisations Commission (ROC)*.¹²

[12] The Full Bench observed:

“Section 159(3) provides that a rules alteration takes effect on the day of certification. However that only means that a rules alteration takes effect according to its terms on that day, not necessarily that it has an operational effect from that day.”

Given the terms of the proposed alterations, the office will be abolished on and from the date of certification.

[13] An organisation has the right to mould its internal structures as it sees fit, provided it complies with the requirements of the legislation and its rules.¹³ Authorities also suggest that an elected office may be abolished if the abolition is effected in accordance with the rules, is bona fide,¹⁴ and is not oppressive, unreasonable or unjust within the meaning of the Act.¹⁵ Subsection 142(1)(c) of the Act stipulates that rules must not impose conditions, obligations or restrictions that, having regard to, among other things, Parliament’s intentions and the objects of the Act, are oppressive, unreasonable or unjust.¹⁶ For the sake of brevity, I refer to this requirement as ‘rules must not be oppressive, unreasonable or unjust’.

[14] The abolition of the office of District Vice-President (E) has been effected in accordance with the rules. The District Rules do not specify a process to be followed to abolish an office. Instead, the office is abolished by removing the references to it throughout the rules. I have already found that the alterations which remove references to District Vice-President (E) were made under the rules of the organisation.

[15] There is nothing before me to suggest the abolition is not bona fide. It is not directed towards any individual; the office is vacant. On the contrary, the office is abolished having regard to financial and structural considerations.

[16] Turning to s.142(1)(c), I have considered whether abolishing the office might restrict, to some degree, members' ability to participate in the affairs of the District Branch,¹⁷ or place a restriction on the democratic functioning of District Branch.¹⁸ Members attached to the District Branch have one fewer full-time office to aspire to and to represent them. On the other hand, the stated aims for abolishing the office go directly to the effective operation and efficient management of the District Branch, consistent with Parliamentary intentions that underpin the Act.¹⁹ To the extent that the alterations impose conditions, obligations or restrictions on members of the District Branch, they are not of a magnitude that could be described as oppressive, unreasonable or unjust. Section 142(1)(c) is not engaged by the alterations.

[17] In my opinion, the alterations comply with and are not contrary to the Act, the *Fair Work Act 2009*, modern awards and enterprise agreements, are not otherwise contrary to law and were made under the rules of the organisation. I certify accordingly under subsection 159(1) of the Act.



DELEGATE OF THE GENERAL MANAGER

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¹ See District Rule 10(i)(a).

² Ibid.

³ See District Branch Rule 10(iv).

⁴ Ibid. See also District Rule 8(i)(a).

⁵ See District Branch Rules 8(i)(b) and 10(i)(a).

⁶ See District Branch Rule 10(i)(a).

⁷ See District Branch Rule 10(i)(b).

⁸ See AR2022/2 at page 46.

⁹ See District Branch Secretary Shane Thompson's 26 February 2024 declaration at paragraph 5(d). I note the Union Rule 9(i)(f) and District Branch Rule 8(i)(i) allow a vacancy occurring in the last $\frac{3}{4}$ of a term of office to remain unfilled.

¹⁰ See District Branch Secretary Shane Thompson's 26 February 2024 declaration at paragraph 5(c).

¹¹ See District Branch Secretary Shane Thompson's 26 February 2024 declaration at paragraphs 5(c) & (e).

¹² [2018] FWCFB 16 at [24].

¹³ *Imlach v Daley* (1985) 7 FCR 457 at 462

¹⁴ See *Saint v Australian Postal and Telecommunications Union* (1977) 30 FLR 385 at 393.

¹⁵ *Roughan v Australasian Meat Industry Employees' Union* (1992) 36 FCR 536 at 539-541.

¹⁶ Subsection 142(1)(c) provides that rules:

must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to Parliament's intention in enacting this Act (see section 5) and the objects of this Act and the Fair Work Act, are oppressive, unreasonable or unjust

¹⁷ See s.5(3)(b) of the Act.

¹⁸ See s.5(3)(d) of the Act.

¹⁹ See s.5(3)(a) & (c) of the Act.