



# DECISION

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

## Mining and Energy Union

(R2024/22)

CHRIS ENRIGHT

MELBOURNE, 22 MARCH 2024

*Alteration of other rules of organisation.*

[1] On 13 February 2024 the South Western District Branch (the District Branch) of the Mining and Energy Union (the Union) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its District Branch Rules. Further materials in support of the alterations were lodged on 13 and 14 February 2024.

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

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

[3] The particulars set out alterations to District Branch Rules 7, 8, and 9. In addition, the particulars set out the insertion of new District Branch Rules 7A and 8A.

The proposed alterations:

- partially restructure the District Branch’s Board of Management<sup>1</sup> (BoM) and District Branch Executive.<sup>2</sup> In particular the alterations:
  - merge all metalliferous mining members of the District Branch into one of the three existing regional membership cohorts. Currently the metalliferous mining members are distributed across the regions based on the location of their workplace,
  - reduce the number of full-time Vice-Presidential offices from three to two. The third office of Vice-President remains, however it is converted to an honorary office. The representation of the relevant members’ industrial interests is now in the hands of a full-time organiser employed by the Union,<sup>3</sup>
  - allow all members attached to the District Branch to nominate for the Offices of President, Secretary and the two full-time Vice-President offices. Currently nomination for those offices is restricted to members allocated to one or another of the regions. If a ballot is required the electorate is and will continue to be the whole of the membership of the District Branch,<sup>4</sup>

- allow the BoM to determine the location of the two full-time Vice-Presidents every four years, taking into account the operational needs and financial position of the District Branch in the calendar year before the General Election,
- allow the BoM to determine from time to time whether an additional full-time Vice President is required and if so, the location of that office taking into account the operational needs and financial position of the District Branch,
- set out the powers, duties, term of office and manner of election of the third full-time Vice-President in the event the BoM decides that office is necessary for the time being, and
- ensure that where both the District Branch Secretary and District Branch President are unable to carry out their duties, one Vice-President will not be able to act in both roles;
- clarify the powers and duties of various branch offices;
- put in place transitional provisions which operate from the date the alterations are certified until 1 July 2024 when the next elected officers take up office. Other than allowing the next scheduled election to take place under the proposed District Branch structure,<sup>5</sup> the transitional provisions generally preserve the status quo until the current officers' successors take up office. Nominations in the next scheduled elections open shortly;
- make it plain on the face of the District Branch Rules that persons elected at the scheduled quadrennial elections take up office on 1 July in the year of their election;<sup>6</sup>
- give the BoM discretion to leave a casual vacancy in an office unfilled;
- make minor corrections to syntax and grammar; and
- consequentially renumber various sub-rules.

**[4]** Changing an office from Full-time paid to honorary effectively abolishes the exiting office and creates a new office in its stead.<sup>7</sup>

**[5]** 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.<sup>8</sup> Authorities also suggest that an elected office may be abolished if the abolition is effected in accordance with the rules, is bona fide,<sup>9</sup> and is not oppressive, unreasonable or unjust within the meaning of the Act.<sup>10</sup> 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.<sup>11</sup> For the sake of brevity, I refer to this requirement as 'rules must not be oppressive, unreasonable or unjust'.

**[6]** Converting the third Vice-President from full time to honorary 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 provisions of the District Rules must be changed to achieve the desired end. I have already found that the alterations were made under the rules of the organisation.

There is nothing before me to suggest the abolition is not bona fide. District Branch Secretary Andrew Davey supplied a statement in support of the proposed alterations. Among other things the statement said:

“[T]he Vice President Metalliferous position located in the Far Western Region is maintained with the only change being that the role becomes an honorary position rather than a full-time official. The reason for the change was based on the present number of

members in the Far Western Region. Following consideration of the membership numbers in the Far West Region and the engagement of a full-time organiser by the MEU and in discussions with Mr Braes who is the Vice President Metalliferous, the Executive agreed there was no organisational need for a full-time role. The full-time organiser employed by the MEU at the Broken Hill office in the Far West Region provides ongoing representation of members. The allocation of a dedicated full-time organiser to the Far Western Region is not affected by the proposed Rules change. Members of the MEU in the Far West Region will continue to have access to effective union representation.”<sup>12</sup>

[7] There is nothing before me to contradict Mr Davey’s statement. I accept it.

[8] A statutory declaration from the Vice-President Metalliferous of the District Branch, Greg Braes was also lodged. Mr Braes stated, among other things:

“I am aware that it is the intention of the South Western District to apply for a Rules change to... change in the structure of the District Executive. In particular, the Vice President Metalliferous position will become an honorary position elected to the South Western District Executive rather than a full-time elected official.

... I support the changes in the structure of the District Executive including the Vice President Metalliferous position becoming an elected honorary position rather than an elected full-time official.

The proposed Rules change will benefit the membership of the MEU and SW District. I have no objection to the proposed changes to the Rules and I am in favour of the changes.”<sup>13</sup>

[9] Abolishing the third full-time office of Vice-President is not oppressive, unreasonable or unjust. Access to the Union’s organiser offers continuing representation and support to members in the relevant region. The number of District Branch leadership roles sourced from the relevant region are unchanged, as is the right of members to nominate and vote for the offices. If circumstances change, the role may be converted back to a part-time or full-time office.<sup>14</sup>

[10] Nor are the remaining alterations oppressive, unreasonable or unjust.

[11] As Mr Davey’s a statement in support of the proposed alterations points out:

“13. The proposed Rule changes ensure that the current number of leadership roles of members elected from the membership of the Western Region (currently two positions) and Far Western Region (currently one position) of the SW District is unchanged. Members from the Western Regions of the SW District continue to be able to participate in elections for the same number of leadership roles as under the current Rules and can nominate for election to those leadership roles during the MEU General Election.

14. In addition, the proposed Rules change provides an opportunity for members from the Southern Region to nominate for election to the District President role and members from the Western Region to nominate for the District Secretary role which is not permitted under the current SW District Rules.

15. The proposed Rules change also allows for the addition of a Vice President (C) role if required as determined by the SW District BOM. This provides further opportunities in the future for members from the SW District to be elected to leadership roles, and to meet the needs of the SW District membership as required.”<sup>15</sup>

[12] I accept these statements. In my view there is nothing in the proposed alterations which engages s.142(1)(c) of the Act. Nor is there anything in the proposed alterations that result in them not complying with—or being contrary to—any other provision of the Act.

[13] 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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<sup>1</sup> The Board of Management is the committee of management of the District Branch – see District Branch Rule 7(a)(i).

<sup>2</sup> The District Branch Executive manages the affairs of the District Branch on a day-to-day basis, subject to review by the Board of Management – see district Branch Rule 8(iv).

<sup>3</sup> See the 13 February 2024 statement of District Branch Secretary Andrew Davey at paragraphs 11. I note that the BoM retains the power to convert the honorary office to part-time or full-time paid position in certain, specified circumstances – see proposed District Branch Rule 8(i)(j).

<sup>4</sup> See District Branch Rule 8(i)(d).

<sup>5</sup> With minor modification – see proposed District Branch Rule 7(v)(j).

<sup>6</sup> See District Branch Rules 7(1)(b), 8(i)(a) and 8(1)(c). Currently, to ascertain the date on which a person takes up office, members would need to look at both the District Branch Rules and at Rule 17 if the Union Rules a.k.a the National rules.

<sup>7</sup> *Ludwig & Ors v Copeland & Ors* (1995) 62 IR 356

<sup>8</sup> *Imlach v Daley* (1985) 7 FCR 457 at 462

<sup>9</sup> See *Saint v Australian Postal and Telecommunications Union* (1977) 30 FLR 385 at 393.

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<sup>10</sup> *Roughan v Australasian Meat Industry Employees' Union* (1992) 36 FCR 536 at 539-541.

<sup>11</sup> 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

<sup>12</sup> See the 13 February 2024 statement of District Branch Secretary Andrew Davey at paragraph 11

<sup>13</sup> See the 17 February 2024 statutory declaration of Greg Braes at paragraphs 4 – 6.

<sup>14</sup> See proposed District Branch Rule 8(i)(j).

<sup>15</sup> See the 13 February 2024 statement of District Branch Secretary Andrew Davey at paragraphs 13 – 15.