



# DECISION

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

## **Mining and Energy Union** (R2024/192)

CHRIS ENRIGHT

MELBOURNE, 12 MARCH 2025

*Alteration of other rules of organisation.*

[1] On 20 December 2024 the Northern Mining and NSW Energy District Branch of the Mining and Energy Union (the MEU) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its Branch rules.

[2] The MEU seeks certification of the alterations under section 159 of the *Fair Work (Registered Organisations) Act 2009* (the Act).

[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 particulars set out alterations to Branch Rule 13 – Lodges.

[5] The changes introduced achieve the following:

- broadening the locations at which new Lodges can be formed (this can now be done at sites such as mines, power stations or other enterprises);
- allowing Lodges to appoint an elected Health and Safety Representative to the Lodge Committee, and requiring the Lodge Secretary to inform the District Secretary of the appointment/election results as soon as is practicable;
- ensuring the election of Lodge officers and the creation of Lodge by-laws are done in accordance with District or Union Policy;
- renumbering of sub-rules as required; and
- adjustment of language, where necessary.

[6] Other proposed alterations to Rule 11 introduce provisions regarding workplace delegates, as defined in sections 350A, 350B and 350C of the *Fair Work Act 2009 (Cth)* (the FW Act).<sup>1</sup> Among other things, I am required to consider whether the alterations comply with and are not contrary to the FW Act.

[7] In three recent decisions I have considered rules regarding workplace delegates and the relevant provisions in the FW Act.<sup>2</sup> In these decisions, I determined that:

- the word “delegate” in a rulebook can have a different meaning to workplace delegate as defined in the FW Act, depending on the context of the rule;<sup>3</sup>

- the meaning and application of the proposed rules regarding delegates must be confined to the relevant statutory scheme;<sup>4</sup>
- rules regarding workplace delegates must not undermine the statutory scheme as set out in the FW Act;<sup>5</sup>
- a workplace delegate, as defined in the FW Act, must be interpreted as a person who works in the enterprise or regulated business;<sup>6</sup>
- rules must not purport to extend workplace delegate rights or obligations to persons who would not be so entitled under the FW Act;<sup>7</sup>
- rights endowed by a union on workplace delegates can only be rights regulating their relationship with the union and cannot extend to parties external to the union.<sup>8</sup>

[8] While keeping these principles in mind, I turn to the proposed alterations.

[9] The changes are put in place to allow for either the election or appointment of workplace delegates from the members of the District Branch, to represent members in relevant locations where a Lodge has not been established.

[10] The alterations set out the requirements for nominating or appointing a workplace delegate, the relevant terms of office or appointment (being no longer than two years), notification requirements and, in the case of an appointed workplace delegate, the ability to be removed from the position at the District Branch Executive's discretion. The amendments also list the duties of a workplace delegate, which include representing eligible members and workers, ensuring compliance with the organisation's rules, and acting in the interests of membership, in accordance with relevant rules and policies. In addition, the changes allow for the Board of Management to fine, suspend or expel a workplace delegate for failing to comply with their obligations.

[11] In my opinion, the alterations comply with and are not contrary to the Act, the FW Act, 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> Sections 350A, 350B and 350C of the FW Act provide as follows:

### **350A Protection for workplace delegates**

- (1) The employer of a workplace delegate must not:
- (a) unreasonably fail or refuse to deal with the workplace delegate; or
  - (b) knowingly or recklessly make a false or misleading representation to the workplace delegate; or
  - (c) unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.

Note: This subsection is a civil remedy provision (see Part 41).

- (2) To avoid doubt, subsection (1) applies only in relation to the workplace delegate acting in that capacity.
- (3) The burden of proving that the conduct of the employer is not unreasonable as mentioned in subsection (1) lies on the employer.

*Exception—conduct required by law*

- (4) Subsection (1) does not apply in relation to conduct required by or under a law of the Commonwealth or a State or a Territory.

### **350B Protection for workplace delegates—regulated workers**

- (1) The associated regulated business for a workplace delegate who is a regulated worker must not:
- (a) unreasonably fail or refuse to deal with the workplace delegate; or
  - (b) knowingly or recklessly make a false or misleading representation to the workplace delegate; or
  - (c) unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.

Note: This subsection is a civil remedy provision (see Part 41).

- (2) To avoid doubt, subsection (1) applies only in relation to the workplace delegate acting in that capacity.

- (3) The burden of proving that the conduct of the associated regulated business is not unreasonable as mentioned in subsection (1) lies on the associated regulated business.

*Exception—conduct required by law*

- (4) Subsection (1) does not apply in relation to conduct required by or under a law of the Commonwealth or a State or a Territory.

*Meaning of associated regulated business*

- (5) The **associated regulated business** for a workplace delegate who is a regulated worker is the regulated business that:
- (a) engaged the workplace delegate under a services contract; or
  - (b) arranged for, or facilitated entry into, the services contract under which the workplace delegate performs work.

### **350C Workplace delegates and their rights**

*Meaning of workplace delegate*

- (1) A **workplace delegate** is a person appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for either or both of the following:
- (a) members of the organisation who work in a particular enterprise;
  - (b) members of the organisation who perform work for, or that has been arranged or facilitated by, a particular regulated business.

*Rights of workplace delegates*

- (2) The workplace delegate is entitled to represent the industrial interests of those members, and any other persons eligible to be such members, including in disputes with the employer or regulated business concerned.

Note: This section does not create any obligation on a person to be represented by a workplace delegate.

- (3) The workplace delegate is entitled to:
- (a) reasonable communication with those members, and any other persons eligible to be such members, in relation to their industrial interests; and
  - (b) for the purpose of representing those interests:
    - (i) in relation to employees—reasonable access to the workplace and workplace facilities where the enterprise concerned is being carried on; and
    - (ii) in relation to regulated workers—reasonable access to the workplace facilities provided by the regulated business concerned; and
    - (iii) if the workplace delegate is an employee—reasonable access to paid time, during normal working hours, for the purposes of related training, unless the workplace delegate is employed by a small business employer.
- (4) The employer of, or associated regulated business for, the workplace delegate is taken to have afforded the workplace delegate the rights mentioned in subsection (3) if the employer or regulated business has complied with the delegates' rights term in the fair work instrument that applies to the workplace delegate.
- (5) Otherwise, in determining what is reasonable for the purposes of subsection (3), regard must be had to the following:
- (a) the size and nature of the enterprise or regulated business;
  - (b) the resources of the employer concerned or the regulated business;
  - (c) the facilities available at the enterprise or provided by the regulated business.

<sup>2</sup> *Re Independent Education Union of Australia* [2024] FWCD 1019, *Re Australian Municipal, Administrative, Clerical and Services Union* [2024] FWCD 1042, and *Re National Tertiary Education Union* [2024] FWCD 1051.

<sup>3</sup> *Re Australian Municipal, Administrative, Clerical and Services Union* [2024] FWCD 1042 at [16].

<sup>4</sup> *Re National Tertiary Education Union* [2024] FWCD 1051 at [9].

<sup>5</sup> *Re Independent Education Union of Australia* [2024] FWCD 1019 at [18].

<sup>6</sup> *Ibid.*, at [37].

<sup>7</sup> *Ibid.*, at [18].

<sup>8</sup> *Re Australian Municipal, Administrative, Clerical and Services Union* [2024] FWCD 1042 at [22].