



DECISION

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

“Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU)
(R2018/85, R2018/172)

MURRAY FURLONG

MELBOURNE, 6 DECEMBER 2018

Alteration of other rules of organisation.

[1] On 16 April 2018 the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) (the Union) lodged with the Fair Work Commission a notice and declaration setting out particulars of alterations to its rules.¹

[2] The alterations constitute a comprehensive revision of the Union’s rules. Other than the Union’s eligibility rules and name, every rule has been altered. In particular:

- Rules 3A, 4, 5, 6, 6A, 7, 8, 10, 10A, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 25, 26, 27, 35, 36, 42, 48, 49, 50, 51, 52, and 53 were altered by being placed in Appendix 1 - Transitional. Although the text of those rules is unchanged and they keep their existing numbering within the appendix, they are now the subject of sunset provisions;

and

- Rules 3 - 58 of the Union’s rules have otherwise been deleted, and the following new rules have been inserted in lieu: 3, 4, 5, 5A, 5A1, 5A2, 5A3, 5B1, 5B2, 5B3, 5B4, 5C, 5D1, 5D2, 5E1, 5E2, 5E3, 5F, 5G, 5H1, 5H2, 5H3, 5H4, 5I, 5J, 5K, 6A, 6B, 6C, 6D, 7A, 7B, 7C, 7D, 7E, 7F, 7G1, 7G2, 8A, 8B, 8C, 8D, 8E, 8F, 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J, 9K, 10A, 10B, 10C, 10D.

[3] The union is the product of a series of amalgamations. Within the Union there are now a number of Divisions, which correspond with the amalgamated organisations. The Divisions operate relatively autonomously, have their own Committees of Management at State and National level and have representatives on the Union’s State and National governing bodies. At present, the Food and Confectionary Division, the Printing Division and the Vehicle Division exist. The primary focus of the alterations is to restructure the Union to effect a staged removal of these Divisions and create a unitary structure instead. The changes take place in three distinct phases.

[4] The first phase runs from certification until 30 June 2019. The status quo will generally prevail in relation to the Union's structure and governance arrangements during this period. However, the quadrennial electoral cycle which commences in early 2019 will be conducted without elections for Divisional Regional Offices or Divisional Officers on National and State collective bodies. Nonetheless, existing membership groupings will be recognised. Rank and file members will be elected to National and State bodies as representatives of a Membership Group cohort that approximates whichever of the Food and Confectionary, Printing or Vehicle Division they were formerly attached to. Divisional offices at both National and State level are abolished as the current four year electoral term expires.

[5] The second phase runs from 1 July 2019 to 30 June 2023. The provisions of Appendix 1 cease to have effect when this phase commences. The persons elected in 2019 will take office and operate under new Rules 3 – 10D. The quadrennial elections in the first half of 2023 will be run without regard to the Membership Groups. A member will generally be entitled to vote for any candidate in their State and for any National candidate.

[6] The final phase commences when the persons elected in the 2023 electoral cycle take office. From this point the Union will have a unitary structure, as opposed to a divisional structure, which will be organised at National and State levels.

[7] The Union engaged with the Fair Work Commission before transacting the alterations. A number of issues were identified. Many of these were minor or technical in nature. However, concerns were raised about whether the rules pertaining to the Union's Retired Members' Division were consistent with section 171A of the *Fair Work (Registered Organisations) Act 2009* (the Act), amongst other things.

[8] In response to those issues, the Union lodged further alterations on 5 July 2018.² Each alteration supersedes or modifies the relevant aspect of the alterations that were lodged in April. As such, the two sets of alterations are intended to be considered as a package.

[9] On the information contained in the notices lodged on 16 April and 5 July 2018, I am satisfied that each set of alterations was made under the Union's rules.

[10] The Union's new structure is said to be organised around key principles including:

- a rank and file majority on the key policy and governance bodies at National and State level;
- increasing the number of female delegates and guaranteed representation for apprentices and/or younger members;
- a united membership in each State;
- the supreme governing bodies at National and State level meeting every two years instead of three;
- streamlined elections; and
- streamlined system of charges affording natural justice.

[11] As I have previously noted, compliance with existing case law suggests I certify alterations which abolish offices, unless they are found to be not bona fide or that they have an oppressive, unreasonable or unjust effect on members.³ I am aware that the Union is experiencing falling membership and subscription income, at least in relation to certain Divisions.⁴ In this context, restructuring the Union to decrease the number of offices — paid or otherwise — does not have an oppressive, unreasonable or unjust effect on members or applicants for membership. Nor is there anything before me which would suggest the restructure is not bona fide.

[12] Further the new structure and associated governance arrangements are consistent with the Parliamentary intention that underpins the Act, particularly:

- ensuring that employer and employee organisations registered under the Act are representative of and accountable to their members, and are able to operate effectively;
- encouraging members to participate in the affairs of organisations to which they belong;
- encouraging the efficient management of organisations; and
- providing for the democratic functioning and control of organisations.⁵

[13] I also note that given the magnitude of the changes and their impact on the forthcoming elections in the Union, a working copy of the proposed rules was provided to the Australian Electoral Commission (AEC) approximately two weeks ago. Other than a couple of minor matters of interpretation, the AEC has offered no comment.

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

[15] On 6 December 2018, Paul Bastian, National Secretary, gave consent, under subsection 159(2) of the Act, for the Delegate to make amendments to the alterations for the purpose of correcting typographical, clerical or formal errors. Accordingly the following corrections have been made:

- In proposed Rule 5H2.3(b) the reference to Rule 6A.10(e) has been changed to 6A.10(d);
- In proposed Rule 5H4.4(b) the reference to Rule 6A.10.6 has been changed to 6A.10(e)
- In proposed Rule 5A2.3(c)(iv) paragraph iv) has been deleted in order to remove the reference to the National Secretary - Retired Members Division.



DELEGATE OF THE GENERAL MANAGER

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¹ R2018/85

² R2018/172

³ See for instance [2018] FWCD 1229

⁴ See for instance [2018] FWCD 4188

⁵ See section 5(3)(a) – (d) of the Act.