



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)
(R2023/8)

MURRAY FURLONG

MELBOURNE, 11 APRIL 2023

Alteration of other rules of organisation.

[1] On 6 February 2023 the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations of its rules. On 10 March 2023, the AMWU lodged submissions in support of the alterations.

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

[3] The particulars set out alterations to Rules 5A, 5D, 5E and 6A. Specifically, the alterations address the age requirement of the Apprentice Rank and File Delegate office.

[4] The Apprentice Rank and File Delegate is a member of the AMWU’s branch and National committees of management. Currently, only members who are under 25 years of age are eligible to nominate for that office. If the alteration is certified, members who are under 30 years of age will be eligible to nominate for the office. The rule alterations therefore expand the cohort who are eligible to nominate.

[5] The AMWU previously lodged a notification of alterations which concerned eligibility requirements for the office of Apprentice Rank and File Delegate. That matter was allocated matter number R2022/105.

[6] Commission staff advised the AMWU that the alterations, if certified, would create an internal inconsistency in the rules concerning eligibility requirements for the office of Apprentice Rank and File Delegate. The AMWU subsequently withdrew the notification of those alterations.

[7] The present alterations resolve the inconsistency.

[8] Notwithstanding the above, the alterations themselves require comment.

Are the alterations contrary to the Act or otherwise contrary to law?

[9] Alterations to the rules of an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (the Act), aside from its name or eligibility rules,¹ do not take effect unless I, as the General Manager,² am satisfied that 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.³

[10] In the present matter a member's eligibility to nominate for an office is determined by their age. There are three questions which arise in relation to this.

[11] Firstly, do the alterations impose on members of the organisation conditions, obligations or restrictions that are oppressive, unreasonable or unjust when having regard to Parliament's intentions in enacting the Act? If so, then the alterations are contrary to section 142(1)(c) of the Act and therefore cannot be certified.

[12] Secondly, do the alterations introduce rules which discriminate between applicants for membership or members of the organisation on the basis of age? If so, then the alterations are contrary to section 142(1)(d) of the Act and therefore cannot be certified.

[13] Thirdly, do the alterations contravene Commonwealth anti-discrimination legislation? If so, then the alterations cannot be certified.

[14] In previous matters which dealt with analogous circumstances,⁴ I noted that the reservation of places on a committee of management for certain categories of members does not, of itself, infringe or discourage democratic control of a committee of management.⁵

[15] Furthermore, if the alterations:

- impose conditions or restrictions which encourage members of a particular demographic to nominate for office, which in turn, increases member participation in the organisation's affairs;
- are intended to ensure that the organisation is representative of members of a particular demographic; and
- are intended to increase diversity of persons on bodies which have policy determination and/or management functions:

then those alterations will not be considered to be oppressive, unreasonable or unjust and therefore are not contrary to section 142(1)(c) of the Act.⁶

[16] In relation to section 142(1)(d) of the Act, the Act does not provide a definition of the term 'discriminate',⁷ nor does it provide any guidance as to the meaning of the term 'discriminate'.⁸

[17] When I have considered similar alterations previously, I have adopted the view that the management of offices are not discriminatory so long as the differential treatment is relevant and appropriate to the object to be attained.⁹

[18] In relation to the third question these alterations pose, the *Age Discrimination Act 2004* (Cth) (ADA) is apposite.

[19] Subsection 23(2) of the ADA provides:

“...

(2) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person who is a member of the registered organisation, on the ground of the member's age:

- (a) by denying the member access or limiting the member's access, to any benefit provided by the organisation; or
- (b) by depriving the member of membership or varying the terms of membership; or
- (c) by subjecting the member to any other detriment.

...”

[20] However, subsection 33(a) of the ADA provides:

“This Part does not make it unlawful for a person to discriminate against another person on the ground of the other person's age, by an act that is consistent with the purposes of this Act, if:

- (a) the act provides a bona fide benefit to persons of a particular age;

...”

[21] The AMWU's submissions note that raising the age requirement for the Apprentice Rank and File Delegate office from 25 years to 30 years is “intended to encourage and increase member participate [sic] within a particular age range”.¹⁰

[22] The AMWU also notes that members in that particular age range “are either completing their trade qualification or new to entering the workforce” within the industries covered by the Union's rules.¹¹

[23] The AMWU submits that the alterations are intended to “broaden the opportunities for members to have a voice” on branch and National Committees of Management.¹²

[24] On the question of whether the alterations are contrary to the ADA, the AMWU contends that the change in the age requirement “provides a bona fide benefit to apprentice rank and file members and rile [sic] members or members under the age of 30 years”.¹³ The AMWU claim that the bona fide benefit would be that members under the age of 30 years would have more of an opportunity to contribute to “the Union's decision-making bodies”.¹⁴

[25] I accept the AMWU's submissions that the alterations are not contrary to the Act and the ADA.

[26] The alterations are not oppressive, unreasonable or unjust. The differential treatment at issue is not sufficient to render the rule discriminatory, as that term is used by Gaudron J in *Street v Queensland Bar Association*.¹⁵ The differential treatment envisaged by the alterations is relevant and appropriate to the object to be attained.

[27] I also accept that the alterations provide a bona fide benefit to members under the age of 30 years.

[28] Therefore, 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 have been made under the rules of the organisation. I certify accordingly under subsection 159(1) of the Act.



GENERAL MANAGER

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¹ *Fair Work (Registered Organisations) Act 2009* (Cth) s 158-158A.

² Or the General Manager's Delegate – see s.343A of the Act.

³ See Section 159(3) of the Act.

⁴ See *Construction, Forestry, Maritime, Mining and Energy Union* [2022] FWCG 54.

⁵ *Pillar v Building Workers Industrial Union of Australia* [1994] AILR 249.

⁶ *Re: The Association of Professional Engineers, Scientists and Managers, Australia* [2017] FWCD 4034.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2018] FWCD 6837.

¹⁰ “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU), ‘Re: R2023/8 – s.159 – Alterations of other rules of organisation’, Submission in “*Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union*” known as the Australian Manufacturing Workers’ Union (AMWU) [2023] FWCG 15, R2023/8, 10 March 2023, p.2.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*, p.3.

¹⁴ *Ibid.*

¹⁵ (1989) 168 CLR 461.