



DECISION

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

Health Services Union (R2017/126)

MURRAY FURLONG

MELBOURNE, 2 OCTOBER 2017

Alteration of other rules of organisation.

[1] On 20 June 2017 the South Australia/Northern Territory Branch of the Health Services Union lodged with the Fair Work Commission a notice and declaration setting out particulars of alterations to its rules.

[2] The particulars set out alterations to Branch rule 40.

[3] The effect of the alteration is to reduce the size of the Branch Committee of Management by removing the office of Junior Vice President in the South Australia/Northern Territory Branch.

[4] Under the current rules, the office of Branch Junior Vice President is a four year term.¹ The last election for the office was in 2014² with the next scheduled election expected in 2018. Consequently, if I certify this rule alteration it will result in the truncation and abolition of a current office.

[5] I note that, included with the particulars, was a copy of the written consent by the current South Australia/Northern Territory Branch Junior Vice President to the relinquishing of their office.

[6] The abolition of office has been discussed extensively in case law. Boland J of the Industrial Relations Commission of NSW considered the abolition (and truncation) of an office in an organisation registered under the *Industrial Relations Act 1996 (NSW)* - a legislative context that is not dissimilar to the *Fair Work (Registered Organisations) Act 2009* (the Act) – as follows:³

...in order for the rule change to be oppressive, unreasonable or unjust there needs to be something more than simply the truncation of the four year term. One has to consider, with particular regard to the object in s 3(d), what effect the rule change would have on the democratic control of the USU and whether it encouraged responsible management. The rule change abolishes a number of offices but it does not fundamentally alter the decision making structure of the organisation.⁴

[7] The following principles are relevant to the restructure of organisations⁵:

- an organisation has the right to restructure itself as it sees fit [*Williams v Hursey* (1959) HCA 51, 103 CLR 30];
- however, if an organisation seeks to abolish an office mid-term the abolishment must be effected in accordance with the rules and must be bona fide [majority in *Saint v Australian Postal and Telecommunications Union & Ors* (1976) 13 ALR 649];
- in addition, any abolition of office must not have an oppressive, unreasonable or unjust effect on members or applicants for membership (in the plural) having regard to the objects of the legislation [*Roughan v Australasian Meat Industry Employees' Union* (1992) 36 FCR 536].

[8] These principles indicate that the alterations should be certified unless they are found to be not bona fide or that they have an oppressive, unreasonable or unjust effect on members.

[9] I have nothing before me to suggest that the alterations are not bona fide. I must now consider whether the abolition of the offices has an oppressive, unreasonable or unjust effect on members or applicants for membership having regard to the objects of the Act.

[10] Subsection 142(1) of the Act outlines the general requirements for rules. Subsection 142(1)(c) provides that the rules of an organisation

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 2009*, are oppressive, unreasonable or unjust.

[11] Parliament's intention in enacting the Act is set out in section 5. The section provides for certain standards which include:

- ensure that employer and employee organisations are representative of and accountable to their members, and are able to operate effectively;⁶
- encourage the efficient management of organisations and high standards of accountability of organisations to their members;⁷ and
- provide for the democratic functioning and control of organisations.⁸

[12] Having regard to the above, I note that the alterations do not fundamentally alter the decision making structure of the organisation. I have not found anything to otherwise suggest that the alterations will have an oppressive, unreasonable or unjust effect on members of the organisation under section 142(1)(c).

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

[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.



DELEGATE OF THE GENERAL MANAGER

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¹ Rule 23A of the Health Services Union rulebook.

² See E2014/115.

³ See *Independent Education Union of Australia* [2015] FWCD 8168 at [10]

⁴ *Re - Application by USU for alteration of Rules - Reference by Industrial Registrar* [2008] NSWIRComm 248 (19 December 2008)

⁵ See *Independent Education Union of Australia* [2015] FWCD 8168 at [4]

⁶ *Fair Work (Registered Organisations) Act 2009*, section 5(3)(a)

⁷ *Ibid*, section 5(3)(c)

⁸ *Ibid*, section 5(3)(d)