



DECISION

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

Police Federation of Australia (R2024/169)

CHRIS ENRIGHT

MELBOURNE, 20 FEBRUARY 2025

Alteration of other rules of organisation.

[1] On 5 November 2024 the Queensland Police Branch (the Branch) of the Police Federation of Australia (the PFA) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its Branch rules. Further submissions and materials in support of the alterations were lodged on 17 January and 13 February 2025.

[2] The PFA 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 rules 5-10, 15-18, 20-24, 27, 28, 31-35, 37, 39-40A, 41, 42, 51, 72-74, 76, 77, 80, 81, 83, 85-87, 89, 91 and 96, and to Schedule 1, rules 3 and 4, and Schedule 2, rule 1.

[5] The majority of the alterations seek to abolish the positions of Branch Secretary and Branch Assistant Secretary, replacing them with the new positions of Branch Industrial Manager and Branch Legal Manager, respectively.

[6] The changes have been sought to address different interpretations of the rules taken by the Commission, the former Registered Organisations Commissioner and the Branch, in relation to whether the Branch Secretary and Branch Assistant Secretary positions are in fact ‘offices’, falling within the meaning and definition set out at subsection 9(1)(a) of the Act.¹

[7] The current amendments finally resolve the question in dispute via the creation of the two new, non-office positions and the abolition of the Secretary and Assistant Secretary positions. The new positions were filled via appointment by the Branch Executive in 2024,² for the duration of four (4) years, and the next appointment will be at the first Branch Executive meeting following the conclusion of the term of the previous incumbent.

[8] Many of the alterations transfer existing duties from the Branch Secretary and Branch Assistant Secretary to the Branch Industrial Manager and the Branch Legal Manager, respectively. Most of these functions are administrative in nature and their transfer to non-office positions is not controversial and does not require comment beyond expressing my opinion about the matters set out in subsection 159(1) of the Act,³ which I do in paragraph [26] below.

Abolition of Secretary and Assistant Secretary

[9] Noting that it is ultimately a matter for an organisation to mould its internal structures as it sees fit, it nevertheless must do so in compliance with any legislative requirements and relevant case law.⁴ Authorities suggest that an elected office may be abolished if it is a *bona fide* decision of the organisation to do so.⁵

[10] If the positions being abolished are in fact ‘offices’ falling within the definition of the Act, then, for the avoidance of doubt, there is nothing before me to suggest that the changes being sought by the organisation are anything other than *bona fide* in nature, particularly having regard to the fact that the Branch Secretary and Branch Assistant Secretary positions are currently vacant.⁶ I further note the Branch has submitted that these changes also stem from advice received by the PFA in *Re Police Federation of Australia*,⁷ in which the Delegate of the Registered Organisations Commissioner urged the organisation to consider altering its Branch rules to better clarify whether or not the positions in question are offices.⁸

[11] Subsection 142(1)(c) of the Act stipulates that the rules must not impose oppressive, unreasonable or unjust conditions, obligations or restrictions on members, having regard to Parliament’s intention and the objects of the Act, and the *Fair Work Act 2009* (the FW Act).⁹

[12] In this regard, I note that whilst the Branch Secretary and Branch Assistant Secretary are being replaced by new, non-office positions, the ‘officer-like’ duties they formally performed were (and are still) required to be undertaken at the direction of the Branch President or Branch Executive (see in particular proposed Branch Rules 20(a)(iv)(15), 27(a) and 28(c)). I do not, therefore, consider that the change will result in a lacuna in the efficient management and effective operation of the Branch overall. Consequently, in my view, the abolition of Branch Secretary and Branch Assistant Secretary does not impose oppressive, unreasonable and unjust conditions on members, having regard to the objects of the Act.

Maintaining the register of members

[13] The alterations to rule 8 provide that the Branch Industrial Manager is required to maintain the Branch’s membership register.

[14] The *Fair Work (Registered Organisations) Regulations 2009* (the Regulations) require the register of members (among other records) to be kept by either the Secretary or an officer of the organisation.¹⁰ The question therefore arises as to whether the alterations to rule 8 require the records to be kept by a person who is not an officer, and therefore whether they contravene regulation 150.

[15] In its submission the Branch notes that the Regulations require an officer to *keep* these records, whereas proposed rule 8 merely requires the Branch Industrial Manager to *maintain* these records. It explains that *maintaining* the records is a separate administrative task to that of *keeping* the records.¹¹ It says:

“...the term ‘keep’ requires the Branch President to ensure that the records exist and are safely stored whereas the term ‘maintain’ requires a day-to-day operation of ensuring that the records are up to date.”¹²

[16] The Branch relies on proposed rule 24(f), which provides that the Branch Industrial Manager reports to the Branch President, to conclude that the rules require the Branch President to keep the records in accordance with regulation 150.¹³

[17] I note that the Macquarie Dictionary defines the verb ‘to keep’ as ‘to maintain in condition or order’,¹⁴ suggesting that ‘keeping’ and ‘maintaining’ are not necessarily distinguishable. The Federal Court has confirmed that the obligation to ‘keep’ a document under the RO Act includes an obligation to maintain it accurately.¹⁵ Consequently, I am not persuaded by the Branch’s argument that keeping and maintaining the register are separate tasks. Rather, the RO Act requires that an elected officer must have overall responsibility for ensuring that the register of members is kept, and I find that this includes having ultimate accountability for causing the register to be maintained accurately. But I do not consider that this means that such an officer is personally required to undertake all administrative activities associated with changing the register. Those administrative tasks can be delegated, including by a delegation effected under the rules of the organisation.

[18] I further note that rule 22(b) of the Federal rules of the PFA prescribes that the Federal President is the prescribed officer responsible for keeping the registers required under the Act. In my view, the proper interpretation of the proposed rule is that the Branch Industrial Manager will be delegated the administrative tasks associated with maintaining the register, while the accountability for ensuring it is maintained remains with an elected officer. I consider that this interpretation is consistent with both regulation 150 and the Branch’s apparent intention. On this basis, I do not consider that the alterations to rule 8 contravene Regulation 150.

Designated officer for the purpose of financial reporting

[19] The alterations to rule 27 provide that the Branch Industrial Manager is required to keep, or cause to be kept, the Branch Accounts and to arrange for their audit. I further note that the Branch is a reporting unit, as defined under the Act,¹⁶ for the purpose of financial reporting. Section 243 of the Act defines a reporting unit’s Designated Officer as the officer who, under the rules, is responsible (whether alone or with others) for undertaking the functions necessary for the reporting unit to comply with its financial reporting obligations.¹⁷ The question therefore arises as to whether the alterations to rule 27 bestow this responsibility on a person who is not an officer and therefore contravene section 243 of the Act.

[20] In its submission the Branch notes that, in relation to financial management and financial reporting, the Branch Industrial Manager reports to both the Branch Executive and the Branch President (proposed rule 27). It contends that because the Branch Industrial Manager is subject to the direction of the Branch President, and because the Branch President has overall responsibility for the management of the Branch, the Branch President is the Designated Officer.¹⁸

[21] For the same reasons as set out in paragraph [17] above, in my view, the proper interpretation of the proposed rule is that the Branch Industrial Manager will be delegated the administrative tasks associated with undertaking the functions necessary for the Branch to comply with its financial reporting obligations, while overall responsibility remains with the Branch President. In my view, the alterations do not bestow responsibility for undertaking the required financial management functions on a person who is not an officer and therefore do not contravene section 243 of the Act.

Fixed term contracts

[22] As aforementioned, the amendments to rules 40 and 40A also provide that both the new Branch Industrial Manager and the Branch Legal Manager will be employees of the Branch, appointed for fixed terms and for the duration of four (4) years.

[23] The FW Act prescribes limitations on fixed term employment contracts and prohibits employers from engaging an employee in an employment contract for a period greater than two (2) years, subject to certain exceptions.¹⁹

[24] In response to further enquiries made by Commission staff, the Branch has confirmed that the new positions are both remunerated above the relevant income threshold and are thus exempted from the fixed term contract prohibitions set out in the FW Act. Consequently, in my view, the alterations to rules 40 and 40A do not contravene sections 333E – 333L of the FW Act.

Typographical errors

[25] On 13 February 2025, Shane Allan Prior, Branch President, gave consent under subsection 159(2) of the Act for me to make various amendments to the alterations for the purpose of correcting typographical, clerical or formal errors. Accordingly, the following corrections have been made:

- in proposed rule 40A(b) the reference to the year ‘2018’ has been replaced with ‘2024’; in proposed rule 40A(c) the reference to ‘sub-rule (1)’ has been replaced with ‘sub-rule (a)’;
- proposed rules 40(q) and 40(r) have been renumbered as ‘40(r)’ and ‘40(s)’, respectively; and
- in proposed rule 76(q), the word ‘Secretary’ has been replaced with the words ‘Industrial Manager’.

Conclusion

[26] 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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¹ Section 9(1)(a) of the Act provides as follows:

(1) In this Act, office, in relation to an organisation or a branch of an organisation means:

(a) an office of president, vice president, secretary or assistant secretary of the organisation or branch.

² The Branch is entitled to make staffing appointments without explicit rules about particular positions, as long as the appointments meet with the PFA's overall objectives and the correct processes for appointing staff have been followed.

³ Section 159(1) of the Act provides that:

(1) An alteration of the rules (other than the eligibility rules) of an organisation does not take effect unless particulars of the alteration have been lodged with the FWC and the General Manager has certified that, in his or her opinion, the alteration:

(a) complies with, and is not contrary to, this Act, the Fair Work Act, modern awards and enterprise agreements; and
b) is not otherwise contrary to law; and
c) has been made under the rules of the organisation.

⁴ *Imlach v Daley* (1985) 7 FCR 457 at 462.

⁵ *Saint v Australian Postal and Telecommunications Union* (1977) 30 FLR 385 at 393.

⁶ Submission made on 17 January 2025 at para. 43.

⁷ [2020] ROCD 42.

⁸ Op. cit. at para. 41.

⁹ Section 142(1)(c) of the Act provides as follows:

(1) The rules of an organisation:

...(c) 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.

Section 5 of the Act sets out Parliament's intention and subsection 5(3) set out the following standards:

- (a) ensure that employer and employee organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and
- (b) encourage members to participate in the affairs of organisations to which they belong; and
- (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and
- (d) provide for the democratic functioning and control of organisations; and
- (e) facilitate the registration of a diverse range of employer and employee organisations

¹⁰ Regulation 150 provides that:

For section 233 and subsection 236(1) of the Act, an officer of an organisation, other than the secretary, who is required by the organisation or by the rules of the organisation to keep the records mentioned in subsection 230(1) of the Act is a prescribed officer of the organisation.

¹¹ Op. Cit., at [55].

¹² Ibid. at [56].

¹³ Ibid. at [53] and [54].

¹⁴ The Macquarie Dictionary, Ninth Edition, (2023), The Macquarie University NSW.

¹⁵ *Registered Organisations Commission v Australian Hotels Association* [2019] FCA 1516 at [47]-[48].

¹⁶ Section 242(2) of the Act provides that:

- (3) Where an organisation is divided into branches, each branch will be a reporting unit unless a certificate issued by the General Manager stating that the organisation is, for the purpose of compliance with this Part, divided into reporting units on an alternative basis (see section 245) is in force.

¹⁷ Section 243 provides that:

A designated officer is an officer of:

- (a) in the case of a reporting unit that is the whole of an organisation—the organisation; or
- (b) in any other case—a branch, or one of the branches, that constitutes the reporting unit;

who, under the rules of the reporting unit, is responsible (whether alone or with others) for undertaking the functions necessary to enable the reporting unit to comply with this Part.

¹⁸ Op. Cit., at [62] to [65].

¹⁹ See *Fair Work Act 2009*, sections 333E to 333L.