



DECISION

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

The Australasian Meat Industry Employees Union (R2018/258)

MURRAY FURLONG

MELBOURNE, 10 JANUARY 2019

Alteration of other rules of organisation.

[1] On 8 October 2018 The Australasian Meat Industry Employees Union (AMIEU) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its rules.

[2] The particulars set out alterations to the following rules of The Australasian Meat Industry Employees Union:

- 9 – Membership Contributions
- 13 – Federal Council
- 17 – Federal Officers
- 47 – Branch Government
- 50 – Branch Elections

[3] The proposed alterations also included the insertion of a new Rule 16A – Additional Vote at Federal Executive Meetings.

[4] On 20 December 2018, AMIEU filed a further declaration, made by its Federal Secretary Treasurer, Mr Graham Smith. In that declaration, Mr Smith consented to the correction of several clerical and typographical errors referred to below and confirmed that the Federal Council relied on the power contained within sub-rule 39.3 to make the alterations Rule 9.10 of, and insertion of new Rule 16A into, the rules of the AMIEU that were not previously notified in accordance with sub-rule 39.2. Those alterations were set out in motions 6 and 8 which were carried by resolution of the Federal Council during its meeting of September 2018.

[5] On the information contained in the notice lodged on 8 October 2018 and the further declaration of Mr Smith dated 20 December 2018, I am satisfied the alterations have been made under the rules of the organisation.

[6] The alterations to Rules 9.1 and 9.10 change the amount of the membership contribution and define how the number of members for which capitation fees are payable will be calculated.

[7] The alteration to Rule 13.2.4 makes a change to the composition of delegates to the Federal Council from the Victorian Branch.

[8] The inclusion of Rule 13.8 will provide a mechanism for the Federal Council to finalise the wording of matters dealt with by the Federal Council other than at an assembled meeting.

[9] The inclusion of Rule 16A provides an additional entitlement of an extra vote or votes to the Branch Secretary of each Branch in the Federal Executive meetings where capitation fees have been paid by the Branch in respect of more than 1,000 members.

[10] The alteration to Rule 17.6 adds an option of appointing a Returning Officer who is an officer of AEC to attend elections. In the current rules, only a financial member of the Union can attend election as the Returning Officer.

[11] The alterations to Rule 47 change the composition of the representatives to the Branch Committees of Management of the Victorian and Tasmanian Branches.

[12] The alteration to Rule 50.15 makes a minor change regarding the Returning Officer's duty in relation to the arrangement of a post office box for ballots.

[13] The alterations to Rules 13.2.4 and 47 will have the effect of changing the composition of the Branch Committees of Management of the Victorian and Tasmanian Branches and the delegates to the Federal Council from the Victorian Branch. In *Beeson v Blayney* (1966) 8 FLR 292, it was held that the term of an office is an integral part of an election for the office and outlined a prima facie principle of construction that, unless it appears expressly or by implication in rules as amended, alterations to the rules of an organisation do not apply to past or uncompleted matters. Similarly, in *Higgins v McGrane* (1961) 5 FLR 82, it was held that there was a "necessary implication" that an existing office holder shall continue to hold office until the expiration of his or her term of office fixed by the rules of an organisation that were in force at the time of his or her election.

[14] The relevant alterations in this regard do not explicitly provide that the change to the composition of the Branch Committees of Management and the delegates to the Federal Council are to take effect immediately upon certification or that this change will have a retrospective effect. Further, such a construction does not appear to arise by implication given the terms of those rules as altered. Given this, the presumption outlined in the authorities is not displaced and the changes to the composition of the Victorian and Tasmanian Branch Committees of Management and to the Victorian Branch delegates to Federal Council will not take effect until the next scheduled elections to be held within those Branches have taken place.

[15] On 20 December 2018, Mr Smith gave consent, under subsection 159(2) of the *Fair Work (Registered Organisations) Act 2009*, for the Delegate 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 alteration to Rule 13.2.4 the word "members" has been omitted and replaced with the word "delegates";

- In proposed alteration to Rule 13.8 the word “Counsellors” has been omitted and replaced with the word “Councillors”;
- All of the existing text of Rule 47.25 has been deleted and replaced with new text; and
- All of the existing text of Rule 47.5 has been deleted and the word “DELETED” has been inserted.

[16] In my opinion, the alterations comply with and are not contrary to the *Fair Work (Registered Organisations) Act 2009*, 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 *Fair Work (Registered Organisations) Act 2009*.



DELEGATE OF THE GENERAL MANAGER

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