



DECISION

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

The Australian Institute of Marine and Power Engineers (R2023/4)

MURRAY FURLONG

MELBOURNE, 9 MAY 2023

Alteration of other rules of organisation.

[1] On 19 January 2023, The Australian Institute of Marine and Power Engineers (AIMPE) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of an alteration to its rules. A supplementary declaration was lodged on 21 April 2023. The declarations were made by Mr Martin Byrne, AIMPE’s Federal Secretary.

[2] AIMPE seeks certification of the alteration under section 159 of the *Fair Work (Registered Organisations) Act 2009* (the Act).¹

[3] The particulars set out the insertion of new Rule 19A.

Substance of the alteration

[4] Proposed Rule 19A allows meetings of AIMPE’s members and collective bodies to be held in a number of ways. Notably, proposed Rule 19A expressly permits attendance at AIMPE meetings in person, or via electronic means of communication—including teleconferences or videoconferences—as long as participants can communicate freely, hear and be heard by one another.

[5] I have certified a number of rule alterations similar to proposed Rule 19A.² Like those, the alteration proposed in this matter complies with and is not contrary to the Act. Nor is the alteration contrary to the *Fair Work Act 2009* (the FW Act). Further, there is nothing before me to suggest the proposed alteration is contrary to or does not comply with modern awards and enterprise agreements.

Was the alteration made under the rules of the organisation?

[6] For an alteration to the rules of an organisation to take effect under section 159 of the Act, I must also certify that in my opinion, the alteration was made under the rules of the organisation.³

[7] On 21 December 2022, before the notice and particulars of the alteration had been lodged, an objection to the certification of the alteration was foreshadowed by Mr Peter Roots.⁴

Mr Roots is a member of AIMPE attached to its Queensland Branch and an Ordinary Member of AIMPE's Federal Council.⁵

[8] Among other things, Mr Roots said:

“[the] rule change that has been put to Fairwork for approval is a breach of process and therefor[e] has not been approved by AIMPE members in line with AIMPE rules...”

[9] On 21 February 2023, after the proposed alteration was lodged, Commission staff wrote to Mr Roots and Mr Byrne to express my view that:

“Mr Roots had indicated that he is both a member of the Organisation and its National Council. In the ordinary course, a member of a registered organisation or its National Council would be entitled to be heard where alterations to their organisation's rules are submitted for certification under the Act.”⁶

[10] Mr Roots was invited to make submissions in respect of his objection and Mr Byrne was invited to make submissions in reply. Mr Roots filed a submission on 2 March 2023. On behalf of AIMPE's Federal Executive,⁷ Mr Byrne filed a submission in reply on 9 March 2023.

[11] The material lodged by Mr Byrne on 9 March 2023 contained information which was not included in the matter's initiating documentation. Mr Roots was invited to reply to the additional information. He did so on 23 March 2023.

[12] I have considered all material filed by the parties in forming an opinion about whether the alteration was made under AIMPE's rules.

[13] The steps taken by AIMPE to alter its rules are set out below. I then address the submissions filed by Mr Roots and Mr Byrne.

Process required to alter AIMPE's rules

[14] Ordinarily, a two-step process is required to alter AIMPE's rules.⁸ Rule 38(i)(a) provides that AIMPE's Federal Council⁹ is the body empowered to make new rules and to alter, rescind or add to existing rules.¹⁰ However, the alterations are not taken to have been transacted at that point. They require the subsequent endorsement of AIMPE's financial members assembled in “a special meeting of the Institute”.¹¹

[15] A Special meeting of the Institute is an aggregation of Monthly Meetings of AIMPE's six branches.¹² Rule 19(iiiia) states:

“Quorum for a Special Meeting of the members of the Institute shall be constituted by the attendance of at least the persons referred to in clause 13(iv) from each Branch of the Institute. Such meeting shall occur and shall be deemed to have occurred when the last of a series of Monthly Meetings under Rule 13 concludes.”

[16] Rule 13(iv) provides:

“The quorum for a Monthly Meeting shall be five financial members in addition to the Chairman and the Branch Secretary or such other member as the Branch Secretary shall authorise to attend in his/her stead.”

[17] Accordingly:

- the quorum for a Special Meeting of the members of the Institute is five financial members, plus the chair and the Branch Secretary, from each AIMPE branch;¹³ and
- a Special Meeting of the members of the Institute has not been held until the last of the branch Monthly Meetings has concluded.

[18] Further, Rule 13(viii) of AIMPE’s rules states:

“Any resolution affecting members of the Institute generally shall not be effective unless confirmed by a majority of the Branches of the Institute”.

[19] Monthly Meetings of each AIMPE branch are held on the last Tuesday of each month, or on another day determined by the Federal Executive.¹⁴ The Monthly Meetings of each branch are held at the registered office of the branch.¹⁵ Under the current rules, a member may only attend a Monthly Meeting in person.¹⁶

Steps taken by AIMPE to make the alteration

[20] Proposed new Rule 19A was unanimously approved by Federal Council on 3 June 2022.¹⁷ AIMPE then attempted to hold a Special Meeting of the members of the Institute via Monthly Meetings of each branch to be held on 30 August 2022.

[21] The Monthly Meetings of four branches were quorate and proceeded to business. Three of the four branches voted in favour of the alteration. The last branch voted against the alteration. A quorum was not obtained in the Monthly Meetings of the remaining two branches. As a consequence, the Monthly Meetings of those branches did not take place.¹⁸ At this point, the proposed rule alteration was not considered to have been endorsed.¹⁹

[22] On 12 October 2022, the Federal Executive resolved to re-submit the proposed alteration to a further Special Meeting of the members of the Institute, to be held in December 2022.²⁰ Notice for this Special Meeting of the members of the Institute was given in accordance with AIMPE rules.

[23] At the 20 December 2022²¹ Special Meeting of the members of the Institute, five branches’ Monthly Meetings obtained a quorum and proceeded to business. Of those, four AIMPE branches voted to carry the proposal. One branch did not vote, having ruled the motion “out-of-order under AIMPE Rules”.²² The final branch’s Monthly Meeting did not take place because a quorum was not obtained.

[24] In his 19 January 2023 declaration which accompanies the particulars of the proposed alteration, AIMPE Federal Secretary Mr Byrne states:

“The rule change rule requires the approval by the financial members in a special meeting. The Federal Executive decided to hold a second special meeting because of the failure

of two Branches to achieve a quorum at the first special meeting. At the second special meeting the resolution was approved by a majority of Branches as required under rule 13(viii)...”²³

[25] The proposed alteration appears to have been lodged for certification under section 159 of the Act because AIMPE believed:

- four branches endorsing the proposed alteration on 20 December 2022 meant the requirements of Rule 13(viii) had been fulfilled; and
- endorsement by the four branches meant the proposed alteration was endorsed by “the financial members assembled in a special meeting of the Institute”, in accordance with Rule 38(i)(a).

Mr Roots’ submissions

[26] In the submissions lodged on 2 March 2023, Mr Roots states:

“...a breach of the AIMPE’s rules has occurred in relation to the alteration as submitted by Martin Byrne. I respectfully submit that the General Manager should be satisfied that a breach of the rules of the organisation has occurred and as such Section 159(1)(c) *Fairwork (Registered Organisations) Act 2009* (Cth) is relevant.”²⁴

...

It is my respectful submission that the proposed alteration of AIMPE rules has been made contrary to AIMPE rules and as such the General Manager can be certain that the rules of AIMPE have not been followed, and such section 159(1)(c) *Fairwork (Registered Organisations) Act 2009* (Cth) is relevant, as such the General Manager should reject this proposed alteration of AIMPE’s rules.”²⁵

[27] Mr Roots did not take issue with the process which culminated in the alteration being put before and considered by AIMPE’s Federal Council.²⁶ Mr Roots was concerned by the subsequent process to seek endorsement of the financial members assembled in a Special Meeting of the members of the Institute under Rule 38(i)(a).

[28] Mr Roots’ objection has three limbs.

[29] First, Mr Roots submits:

“The rule change was put to a special meeting of members on 30 August 2022. Special Meetings of members are held in accordance with Rule 19 of AIMPE rules. AIMPE has 6 branches, of the 6 branches a vote endorsing the rule change was only confirmed at 3 of the branches.

- a) In accordance with Rule 13(viii) a majority of Branches is required for a resolution affecting the members to be effective.

As at the Special Meetings held on 30 August an affirmative vote by a majority of branches was not achieved, the rule change alteration was not carried, at that point the process was at its end.

...

AIMPE rules are clear on the process to be followed for rules changes. Importantly once a rule change has not obtained a majority of approval from branches at a special meeting the process is complete. The Federal Executive do not have any authority to put this to a second special meeting of members. The rule change provisions have not been followed as per AIMPE's rules and as outlined above."²⁷ (internal numbering and footnotes omitted)

[30] In substance, Mr Roots asserts that once the 30 August 2022 meetings had concluded, the proposal to alter the rules should have been considered complete. At that point a majority of branches had not confirmed the proposal in accordance with Rule 13(viii). As a result, the proposal was not endorsed by the financial members assembled in a special meeting of the Institute for the purposes of Rule 38(i)(a). Hence, there was no alteration to AIMPE's rules.

[31] Second, Mr Roots asserts that the Federal Executive impermissibly usurped the power of the Federal Council to alter the rules. Mr Roots submits:

“The Federal Executive on 12 October 2022 made a decision which AIMPE rules specifically prohibited the Federal Executive from making. The Federal Executive made the decision that the rule change alteration which had not gained approval by the members of AIMPE would be put to a special meeting once again.

a) The Federal Executive of AIMPE has the authority to have general supervision over the Institute and conduct the affairs of the Institute during meetings of Federal Council. However, the Federal Executive are prohibited from having any power to alter the rules of the AIMPE.

b) As such the decision made by the Federal Executive on 12 October 2022 to resubmit the proposed rule change to a second special meeting of members was made without the authority to do so.”²⁸ (internal numbering and footnotes omitted)

[32] Third, Mr Roots refers to another proposal to alter AIMPE's rules and suggests Mr Byrne is in breach of the rules in connection with that proposal.²⁹

Mr Byrne's submissions

[33] In response to the first limb of Mr Roots' objection, Mr Byrne submits that Rule 38(i)(a) “is silent as to the question of whether a particular proposal can be submitted on more than one occasion.”³⁰ The objection:

“... [seeks] to import into the rules an explicit provision that there can only be one opportunity for the members to approve a particular rule change. Such a provision does not exist and should not be read into the rules.”³¹

[34] In Mr Byrne's submission the process contemplated by Rule 38(i)(a)³² was “not at an end”³³ on 30 August 2022. Instead:

“The process was incomplete because two Branches – the Queensland Branch and West Australia Branch - were unable to exercise a vote due to a lack of a quorum.”³⁴

[35] Turning to the second limb of Mr Roots' objection, Mr Byrne refers to AIMPE Rule 5(iii), which states:

“The Federal Executive shall govern and exercise general supervision over the affairs of the Institute and between meetings of the Federal Council; the Federal Executive shall have all the powers of the Federal Council except the power to alter Rules.”

[36] Mr Byrne submits:

“The submission of the objector would have merit if the Federal Executive had substituted an alternative rule change for the one approved by the Federal Council and put that different proposal to the second special meeting. The Federal Executive did not do that. The Federal Executive submitted the same proposal approved by the 2022 Federal Council. So, the Federal Executive did not attempt to alter the rules as alleged. Rather the Federal Executive decided to take an additional step to implement the decision of the Federal Council. The Federal Executive was carrying out the will of the Federal Council.”³⁵

and

“...this was a reasonable course of action intended to overcome the frustration caused by the failure of two Branches to obtain a quorum.”³⁶

Consideration

[37] I am unable to accept Mr Roots' submission that the proposal to alter the rules was complete on 30 August 2022 when the special meetings concluded. I accept the thrust of Mr Byrne's submissions. The process did not conclude, as Mr Roots submits, on 30 August 2022.

[38] As Delegate Enright noted in *Health Services Union*³⁷, “the correct approach to interpreting the rules of organisations commences by applying the ordinary principles of legal construction”.³⁸ That said, “the nature of the document and its purposes are [also] relevant considerations”.³⁹ It should be remembered that AIMPE's rules will have been “drawn, more likely than not, by union officials more familiar with the practical affairs of industry than with the niceties or subtle nuances of language”.⁴⁰

[39] Aspects of AIMPE's rules are not as clear as they might be. Nonetheless, it is sufficiently clear that the “endorsement of the financial members assembled in a special meeting of the Institute” under Rule 38(i)(a) requires the process described above in paragraphs [14] – [19] to take place.

[40] That process did not conclude, as Mr Roots submits, on 30 August 2022. The process was incomplete until a Special Meeting of the members of the Institute occurred; that is, when “the last of a series of Monthly Meetings under Rule 13” concluded.⁴¹ This had not occurred on 30 August 2022.

[41] Turning to the second limb of Mr Roots' objection, I agree that the power to alter AIMPE's rules is vested exclusively in the Federal Council,⁴² I also agree that the Federal Executive has no power to alter AIMPE's rules. However, I do not agree that calling for subsequent meetings of the branches, or some of them, can properly be characterised as altering

the rules. The Federal Executive took steps to convene a Special Meeting of the Institute. Given the terms of Rule 19(iii) and the fact one or more branches' Monthly Meetings did not take place in August or December 2022 because a quorum was not obtained, Federal Executive had to take those steps more than once. Doing so was within the scope of Federal Executive's powers under Rule 5(iii).

[42] Finally, the existence of a further proposal to alter the rules does not of itself render the current alteration, or the process used to transact it, invalid. If further alterations are transacted and lodged, they will be dealt with on their merits in due course. I offer no comment about whether Mr Byrne is not performing his duties under the rules as Mr Roots suggests, other than to note that if it was the case relief would lie under section 164 of the Act.

Had a Special Meeting of Members of the Institute occurred on 20 December 2022?

[43] Based on the information in Mr Byrne's 19 January 2023 declaration, it is apparent that a quorum was not present at either the 30 August 2022 or 20 December 2022 Monthly Meeting of the Queensland Branch.

[44] Because there was no quorum for the 30 August 2022 Monthly Meeting of the Queensland Branch and no quorum for the 20 December 2022 Monthly Meeting of the Queensland Branch, a Monthly Meeting of that branch had not occurred.⁴³ As the Queensland Branch's Monthly Meeting had not occurred, "the last of a series of Monthly Meetings under Rule 13" could not have concluded in accordance with Rule 19(iii). As a consequence, a Special Meeting of the members of the Institute had not occurred and could not be deemed to have occurred for the purposes of Rule 19(iii). Therefore, member endorsement of the proposed alteration under Rule 38(i)(a) had not been obtained. The rule altering process was, at that point, incomplete.

The 18 April 2023 Monthly Meeting

[45] On 14 April 2023, Commission staff contacted Mr Byrne about the issues with obtaining quorum for Monthly Meetings of the Queensland Branch.⁴⁴ Following that discussion, Mr Byrne arranged to place the proposed alteration before the Queensland Branch's 18 April 2023 Monthly Meeting.⁴⁵ Notice that the alteration would be considered at this meeting was given in accordance with AIMPE rules.⁴⁶ This meeting was quorate and validly constituted.⁴⁷ The Queensland Branch voted in favour of the proposed alteration.⁴⁸

[46] Mr Byrne set out the details of the 18 April 2023 Monthly Meeting of the Queensland Branch in a supplementary declaration lodged with the Commission on 21 April 2023.⁴⁹ In that supplementary declaration, Mr Byrne states:

"The Special Meeting to consider the proposed rule change has now concluded. Five Branches of the AIMPE have endorsed the proposed rule change. This exceeds the majority required under the AIMPE rules for a vote by a special meeting."⁵⁰

[47] I take Mr Byrne's statement to mean:

- because the Monthly Meeting of the Queensland Branch took place on 18 April 2023, the requirements of Rule 19(iii) had been met;

- by 18 April 2023 the proposed alteration had been confirmed by a majority of the Branches of the Institute. As a consequence, the requirements of Rule 13(viii) had been fulfilled; and
- the proposed alteration had therefore been endorsed by the financial members assembled in a special meeting of the Institute for the purposes of Rule 38(1)(a).

[48] I accept that a Special Meeting of the members of the Institute occurred when the last of a series of branch Monthly Meetings—the Monthly Meeting of the Queensland Branch—concluded on 18 April 2023. Once the Special Meeting of the members of the Institute occurred, the proposed alteration had been confirmed by a majority of AIMPE’s branches.

[49] On the basis of the information contained in Mr Byrne’s 19 January 2023 declaration and 21 April 2023 supplementary declaration, I am satisfied the alteration has been made under AIMPE’s rules.

Amendments to the alterations to correct typographical, clerical or formal errors

[50] On 9 May 2023, Martin Byrne, Federal President of AIMPE, gave consent under subsection 159(2) of the Act for me to make an amendment to the alterations for the purpose of correcting typographical, clerical or formal errors. Accordingly, the following correction has been made:

- The instance of the word “our” in proposed sub-rule 19A (ii) (c) be changed to “out”, to read: “by a combination of the means set out above”.

Conclusion

[51] In my opinion, the alteration complies with and is not contrary to the Act, the FW Act, modern awards and enterprise agreements, is not otherwise contrary to law and has 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 Subsection 159(1) of the Act states:

“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.”

² See for instance *Australian Education Union* [2021] FWCG 3547; *Shop, Distributive and Allied Employees Association* [2017] FWCD 4554; *NSW Farmers’ (Industrial) Association* [2022] FWCG 14.

³ See paragraph 159(1)(c) of the Act.

⁴ Matter number R2022/151 refers.

⁵ See annual return of information filed by AIMPE under section 233 of the Act (AR2023/30 refers).

⁶ I note that Mr Byrne did not object to Mr Roots being heard. The matter proceeded on that basis.

⁷ The Federal Executive governs and exercises general supervision over the affairs of the Institute. Between meetings of the Federal Council; the Federal Executive has all the powers of the Federal Council except the power to alter Rules (see Rule 5(iii)).

⁸ In limited circumstances the process only involves the Federal Council (see Rule 38(d)), but that process is not applicable in this instance.

⁹ AIMPE’s Federal Council consists of the Branch Secretaries of each of AIMPE’s six Branches and 11 additional ordinary members, drawn from the six branches (see Rules 7(i) & (ii)). Subject to control by the members via plebiscite (see Rule 6(i)), the Federal Council is AIMPE’s the supreme governing body and has management and control of the AIMPE’s affairs (see Rule 8).

¹⁰ See Rule 38(i)(a) of AIMPE’s rules.

¹¹ Ibid.

¹² See Rule 19(iii). I note the word “Institute” is used throughout the rules to refer to AIMPE as a whole.

¹³ See Rules 19(iii) & 13(iv).

¹⁴ See Rule 13(i).

¹⁵ See Rule 13(vii) and 12(i).

¹⁶ See Rules 13(iii), (ii) and (vii).

¹⁷ See the 19 January 2023 declaration of AIMPE Federal President Martin Byrne at paragraph 3(e).

¹⁸ Ibid at paragraphs 3(f) – (h).

¹⁹ Ibid at paragraph 3(i).

²⁰ Ibid at paragraph 3(j)

²¹ I note that this was not the last Tuesday in the month. The date of these Monthly Meetings of the Branches appears to have instead been decided upon by the Federal Executive under Rule 13(i), presumably because the last Friday in December 2022—December 27—fell so close to Christmas. See Martin Byrne’s 19 January declaration, *Op cit*, at Schedule D.

²² See the 19 January 2023 declaration of AIMPE Federal President Martin Byrne at paragraph 3(n).

²³ Ibid, see un-numbered second last paragraph on page 3.

²⁴ See Mr Roots’ 23 February 2023 submission (lodged in the Fair Work Commission on 2 March 2023) at page 1.

²⁵ Ibid at paragraph 9.

²⁶ Ibid at page 1.

²⁷ Ibid at paragraphs 1 – 2, 8.

²⁸ Ibid at paragraph 4.

²⁹ Ibid at paragraph 6.

³⁰ See Mr Byrne’s 9 March submission at page 2.

³¹ Ibid at page 1.

³² And by necessary implication various subrules of Rules 12, 13 and 19: see paragraphs [10] – [14] (inclusive) above.

³³ See Mr Byrne’s 9 March submission at page 1.

³⁴ Ibid at page 1.

³⁵ Ibid at page 2.

³⁶ Ibid at page 2.

³⁷ [2014] FWCD 3522.

³⁸ See for instance *R v Aird; Ex parte Australian Workers' Union* (1973) 129 CLR 654 at 659.

³⁹ Interpreting Trade Union Constitution Rules; J W Shaw QC; (1988) 62 *Australian Law Journal* 690.

⁴⁰ *R v Aird; Ex parte Australian Workers' Union* (1973) 129 LR 654 at 659.

⁴¹ See Rule 19(iii).

⁴² Subject to the endorsement of the financial members under Rule 38(i)(a).

⁴³ See for instance *Re Alma Spinning Co* (Bottomley's case) (1880) 16 Ch D 681; *Re Romford Canal Co* (1883) 24 Ch D 85; *Myer Queenstown Garden Plaza Pty Ltd v Port Adelaide City Corp* (1975) 11 SASR 504; 33 LGRA 70.

⁴⁴ Case law associated with quorums at meetings suggests different considerations may apply where a quorum is able to be obtained due to lack of participant availability (or perhaps a lack of interest) on the one hand and a conscious attempt to frustrate the opportunity to meet on the other. Mr Byrne indicated that to the best of his knowledge the nature of the industry and the employment circumstances of AIMPE's members meant a lack of in-person availability seemed to be the predominant obstacle to obtaining quorums.

⁴⁵ I again note that this was not the last Tuesday in the month. The date of these Monthly Meetings of the Branches appears to have instead been decided upon by the Federal Executive under Rule 13(i), presumably because the last Friday in April 2023—April 25—was the ANZAC Day public holiday.

⁴⁶ See the 21 April 2023 supplementary declaration of AIMPE Federal President Martin Byrne at 3(a) – (d).

⁴⁷ *Ibid*.

⁴⁸ *Ibid* at paragraph 3(d).

⁴⁹ On 18 April 2023, Mr Byrne advised Commission staff via email that the Queensland Branch had held a quorate meeting earlier that day. On 19 April 2023, Commission staff advised Mr Roots of this advice and invited him to make any further submission he would like me to consider. The Commission did not receive any further submission from Mr Roots.

⁵⁰ *Ibid* at paragraph 3(e).