



DECISION

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

The Australian Institute of Marine and Power Engineers (R2020/127)

MURRAY FURLONG

MELBOURNE, 14 JANUARY 2021

Alteration of other rules of organisation.

[1] On 21 August 2020 The Australian Institute of Marine and Power Engineers (the Institute) 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 Rule 19.

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

[4] The alterations:

- deem a Special Meeting of the Institute to have occurred when all the Institute's branches have held a monthly meeting;
- set out the quorum when a Special meeting of the Institute is held this way;
- set out the time that the Special Meeting of the Institute is taken to have been held; and
- set out the quorum for a Special Meeting of a Branch of the Institute.

[5] There is some history to the present alterations.

[6] On 23 August 2019 the Institute lodged an application for certification of alterations under section 159 of the *Fair Work (Registered Organisations) Act 2009* (the Act).¹

[7] To certify an alteration under section 159 of the Act I must be satisfied the alteration:

- complies with and is not contrary to the Act, the Fair Work Act, modern awards and enterprise agreements; and
- is not otherwise contrary to law; and
- has been made under the rules of the organisation.²

[8] After examining the material lodged in August 2019, Commission staff advised the Institute that the first two limbs of the test appeared to have been met. However, in the Commission's preliminary view the alterations appeared not to have been made under the rules of the organisation.

[9] Under Rule 38 the Institute's Federal Council may make, add to, amend, rescind or otherwise alter the rules so that the rules comply with the requirements of the Act or the Regulations made thereunder.³ However, if the Institute wishes to change its rules for any other purpose a different process applies. The Federal Council still transacts the alterations, but an additional step must then be taken. The alterations need to be endorsed by the Institute's members at a Special Meeting of the Institute.⁴

[10] Under the Institute's current rules, the endorsement step creates a difficulty. The rules do not presently provide for a quorum at Special Meetings of the Institute. In *Re: The Restaurant and Catering Association of Victoria*,⁵ the Commission held that when the members of a registered organisation are asked to consider rule alterations at a General Meeting and the rules of the organisation do not contain a quorum rule, all of the members of a registered organisation must attend the meeting if it is to validly transact business.⁶

[11] An alternative view suggests that, in the case of corporations, only a majority of members of a body need to be present before a meeting of that body can validly transact business.⁷ I note subsection 27(a) of the Act in this regard.

[12] It was not necessary to determine whether a majority of the Institute's members on the one hand, or all of them on the other, had to attend the Special Meeting of the Institute in order for the meeting to endorse the earlier alterations. The Institute indicated that less than half of its members attended the relevant meetings.

[13] The current alterations are clearly intended to address the issues which arose in the earlier matter.

[14] In *Re: The Restaurant and Catering Association of Victoria*, Delegate Carruthers held that:

... the absence of a quorum posed such difficulties for the organisation as to be likely to impose conditions or restrictions upon members that are oppressive, unreasonable or unjust (see paragraph 142(1)(c) of the RO Act). Further, RCAV was advised that such a rule could arguably impede the efficient management and democratic functioning of the organisation, contrary to the objects of the RO Act (see paragraphs 5(3)(c) and (d)). ...these particular circumstances enliven the power... to amend the organisation's rules in order to meet legislative requirements."⁸

[15] I agree with Delegate Carruthers' conclusion that the absence of a quorum rule means the Institute's rules are contrary to subsection 142(1)(c) of the Act and could be contrary to the Parliamentary intentions set out in section 5. In addition, a rule altering procedure which requires half of the members of an organisation to attend a special meeting is sufficiently onerous that the rules do not in any practical sense make provision for their alteration, contrary to subsection 141(1)(b)(xiii). The power of the Institutes' Federal Council to amend the rules, so that the rules comply with the requirements of the Act, is enlivened as a result. That is how the alterations in the present matter were transacted.

[16] The current alterations are an appropriate response to the issues that arose in the previous matter. I commend the Institute for the constructive way it engaged with the Commission after those issues were identified.

[17] 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.



ACTING GENERAL MANAGER

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¹ R2019/114 refers.

² See subsections 159(1)(a) – (c) of the Act.

³ See Ruel 38(1)(d).

⁴ Rule 38(1)(a).

⁵ Delegate Carruthers; *Re: The Restaurant and Catering Association of Victoria*; 18 December 2012; PR532004.

⁶ *Ibid.* Delegate Carruthers relied on a decision by Maddern J in an *Re: Qantas Supervisors and Salaried Staff Association*; [1982] 2 IR 348 at p. 349 in which his Honour stated: “...in the absence of rules providing to the contrary, an association formed by a given number of members cannot, by a lesser number than its total membership, determine matters binding the whole of the membership...” See also *Joske’s Law and Procedure at Meetings in Australia*; 10th Edition, E.S. Magner, Lawbook Co, Sydney 2007 at 5.05 which states: “Unless provision is made for a quorum, all the members of a body must be present at a meeting, as otherwise its acts will not be valid. As authority for this proposition Joske relied on *Ball v Pearsall* (1987) 10 NSWLR 700; *Green v The Queen* (1891) 17 VLR 329; *St Leonards Municipality v Williams* [1966] Tas SR 166]. *Re: Qantas Supervisors* concerned an application by an association for registration as an organisation under a legislative predecessor to the Act. His Honour proceeded on the basis that the applicant was an unincorporated association – at 349.

⁷ *Horsley’s Meetings: Procedure, law and Practice*; 7th Edition, A.D. Lang, LexisNexis Butterworths, Chatswood, 2010 at 5.4) affirms the view expressed in Joske, in relation to unincorporated associations. However, in the case of a corporation Horsley states that “a majority of the membership of the body needs to be present to enable a general meeting to conduct business validly, that is, in a way that will have legal effect”; citing *Merchants of the Staple of England v Bank of England* (1887) 21 QBD 160 at 165”

⁸ PR532004 at [12].