



FairWork  
Commission

## DECISION

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

### **CPSU, the Community and Public Sector Union** (R2024/176)

CHRIS ENRIGHT

MELBOURNE, 12 MARCH 2025

*Alteration of other rules of organisation.*

[1] On 25 November 2024 the New South Wales Branch (the Branch) of the State Public Sector Federation (SPSF) Group of the Commonwealth and Public Sector Union (CPSU) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to the rules of the Branch. Further materials related to the alterations were lodged on 7, 10, 13 and 20 February 2025.

[2] The Branch seeks certification of the alterations under section 159 of the *Fair Work (Registered Organisations) Act 2009* (the Act).

[3] The particulars set out alterations to the Branch Rules 14 and 16.

[4] On the information contained in the notice, declaration and the further materials supplied by the Branch, I am satisfied the alterations have been made under the rules of the organisation.

[5] While both alterations concern elections of office holders (the first a direct election to Branch Council and the second a collegiate election to Federal Council) they are distinct, and I will deal with each separately. The proposed alteration to the Branch Council election subrule 14.5(a) seeks to include team voting in accordance with the Chapter C - SPSF Group Rules (“Chapter C”).

[6] The second alteration is related to the conduct of the ballot for the election of Branch Delegates to Federal Council. It specifies the Branch’s preference for the ballot to be conducted at a meeting of the college (as opposed to other available options). It is uncontroversial and does not require comment beyond expressing my opinion about the matters set out in subsection 159(1) of the Act.<sup>1</sup>

#### **Team voting**

[7] It is pertinent to include a brief explanation of team voting to clarify the context for what follows. The terms “team voting” or “group voting” describe the circumstance whereby a group of individuals nominate together as part of a “team” or “group ticket” for election to multiple positions; in this case, for positions as Delegates to Branch Council. By contrast, “ungrouped candidates” are individuals who are not part of a team ticket.

[8] In terms of its substance, this alteration is uncontroversial. Rule 19.6 of the Chapter C Rules at 3B permits “the option of Team Voting for Branch officers if provided in Branch Rules”. The alteration before me seeks to make such a provision in the Branch Rules and to expressly sanction team voting as a way of running for, and being elected to, the position of Branch Delegate on Branch Council.

[9] However, the wording of the proposed rule alteration warrants further discussion.

[10] Currently subrule 14.5(a) reads “The Branch **shall** elect 10 Delegates to Branch Council” (my emphasis). The rule currently employs “shall” unambiguously to mandate that the Branch must elect Delegates to Branch Council and that the total number to be elected is ten.

[11] The proposed subrule reads “The Branch **shall** elect 10 Delegates to Branch Council via the Team voting method set out in Part 3 of Chapter C.” (Again, the emphasis is mine.) Whether an election that “shall” be conducted “via the Team voting method” permits ungrouped candidates needs to be considered.

[12] Section 142(1)(c)<sup>2</sup> of the Act provides that rules must not place any oppressive, unreasonable or unjust conditions or restrictions on members having regard to, among other things, the democratic principles of the Act. Denying members the opportunity to run for office as an ungrouped candidate would, in my view, impose oppressive, unreasonable and unjust conditions on members, having regard to the democratic principles of the Act.

[13] Having identified this potential issue, Commission staff sought additional information. The Branch submitted that any interpretation that the alteration sought to restrict the rights of members was fallacious. It provided information on 10 February 2025. The most relevant excerpts are below:

“The proposed rules change at rule 14.5 refers to “the Team voting method” in Part 3 of Chapter C SPSF Group Rules. Part 3 of Chapter C includes Teams and ungrouped candidates (see for example rule 19.6 (c) of Part 3 (extracted below).

*19.6 (c)    **Ballot Draw***

*The Returning Officer, after confirming eligibility of nominations, will conduct a random ballot draw for Teams and Ungrouped candidates. The ballot draw will determine the left to right order of Teams. The order of the ballot will include the Teams in the order drawn. Ungrouped candidates will be placed in the last column below the line.*

It was not the intention for the rule change to exclude ungrouped candidates and the Branch’s view is that the wording includes all of Part 3, including ungrouped candidates. The word “shall” was in the wording of the original rule 14.5 and was not altered.”<sup>3</sup>

[14] I note that in addition to subrule 19.6(c) referred to above, there are also subsequent references to ungrouped candidates at subrules 19.6(d), 27(f) and 43A.1(c), all of which appear in Part 3 of Chapter C (the rules which provide for the election of office holders).

[15] The Branch’s submission points to the ongoing inclusion of “ungrouped members” in Part 3 of Chapter C as evidence that the rights of members are not being restricted by the proposed alteration. It is accepted that there is a provision for ungrouped candidates in rules relating to the conduct of the ballot draw (subrule 19.6(c)) as well as to the wording of ballot papers (subrule 27.1(f)) and distribution of preferences for team nominations (subrule 19.6(d)(ii)).

[16] Clearly the Chapter C rules in relation to the “Team voting method” contemplate both grouped and ungrouped candidates. I accept the Branch’s submission that a possible interpretation of proposed subrule 14.5(a) is to allow both grouped and ungrouped candidates.

### **Interpreting the rules of organisations**

[17] It is well established that the rules of registered organisations should be read in a practical and commonsense way which avoids giving them an unduly technical, narrow or legalistic construction. In *Re TWU*,<sup>4</sup> a matter before the Federal Court, French J stated that the:

“preferred approach to the construction of union rules...requires them to be construed not technically or narrowly but broadly and liberally”.<sup>5</sup>

[18] Members of the High Court have endorsed a generous approach to the interpretation of organisations’ rules, including Barwick CJ in *R v Aird*<sup>6</sup> and Gibbs J in *R v Holmes*.<sup>7</sup> In *R v Gough*<sup>8</sup> the Full Court of the High Court observed that:

“...in accordance with ordinary principles [organisations’ rules] should if possible be given a meaning that will render them harmonious with the rest of the instrument in which they appear”.<sup>9</sup>

[19] In *Geneff*,<sup>10</sup> a matter before the Federal Court, Gray J preferred:

“the construction which most assists in the practical operation of the Federal Union and its branches.”<sup>11</sup>

[20] With these principles in mind, and specifically the principle that the alteration should be given a meaning that will render it harmonious with the rest of the rules, I suggest that the unnumbered paragraph at the start of Rule 14 is crucial to the correct construction of 14.5(a):

#### **“Rule 14: Election of Branch Officers and Delegates to Branch Council.**

Election of Branch Officers and Delegates to Branch Council will be in accordance with Part 3 of Chapter C of the Federal Rules.”

[21] The only meaning that can be derived from Rule 14 is that all the provisions of Part 3 of Chapter C are applicable, including provisions relating to ungrouped candidates. In particular, rule 19.6 (titled “Team voting - Above the line voting”) expressly refers to ungrouped candidates. I conclude from this, that so as to be harmonious with other Branch and Chapter rules, the term “Team voting method” in proposed subrule 14.5(a) does not exclude ungrouped candidates.

[22] This interpretation also renders it harmonious with the standards in the Act, in particular the democratic functioning of the Branch and the participation of members in the affairs of the Branch.<sup>12</sup>

[23] Further, this interpretation will assist in the practical operation of Branch elections by ensuring there is a consistent approach to team voting specifically, and elections more generally. This is likely to be more efficient, and to avoid both duplication of effort and the need to monitor myriad election processes.

[24] In summary, proposed subrule 14.5(a) can only be interpreted in a way that is congruent with other Branch rules, the Chapter C rules, the standards of the Act and in a manner that assists in the practical operation of Branch elections. In my view the correct interpretation of proposed subrule 14.5(a) is that “Team voting method” must include both grouped and ungrouped candidates. Consequently, I am satisfied that the alteration does not offend against section 142(1)(c) of the Act.

[25] Given the above, and for the avoidance of any doubt, I make two recommendations as follows:

- that the Branch publish this decision on its website, and;
- that the Branch communicate the proper interpretation of this rule to its members. I suggest it would be important to communicate upon certification of these rules and to reiterate this prior to Branch Council elections.

#### **Typographical, clerical or formal error**

[26] On 20 February 2025, Stewart Little, General Secretary, gave consent under subsection 159(2) of the Act for me to make an amendment to the alteration for the purpose of correcting a typographical, clerical or formal error. Accordingly, the following correction has been made in proposed subrule 14.5(a), the word “Teams” has been replaced with the word “Team”.

## Conclusion

[27] In my opinion, the alterations comply with and are not contrary to the Act, the *Fair Work Act 2009*, 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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<sup>1</sup> Section 159(1) provides that 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.

<sup>2</sup> Section 142(1)(c) provides that 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.

<sup>3</sup> Additional information received 10 February 2025.

<sup>4</sup> *Re Election for Office in Transport Workers Union of Australia, Western Australian Branch* (1992) 40 IR 245.

<sup>5</sup> *Ibid.*, at 253.

<sup>6</sup> *R v Aird; Ex parte The Australian Worker's Union* (1973) 129 CLR 654 at 659.

<sup>7</sup> *R v Holmes; Ex parte Public Service Association (NSW)* (1977) 140 CLR 63 at 73.

<sup>8</sup> *R v Gough; Ex parte Municipal Officers' Association* (1975) 133 CLR 59.

<sup>9</sup> *Ibid.*, at 69.

<sup>10</sup> *Re Geneff v Peterson & Ors* (1986) 19 IR 40.

<sup>11</sup> *Ibid.*, at 86.

<sup>12</sup> Section 5(3)

- (3) The standards set out in this Act:

- 
- (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.