



DECISION

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

Australian Education Union (R2024/92)

CHRIS ENRIGHT

MELBOURNE, 2 SEPTEMBER 2024

Alteration of other rules of organisation.

[1] On 26 June 2024 the Tasmanian Branch of the Australian Education Union (the Branch) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its rules. Further information in support of the alterations was lodged on 24 July and 22 August 2024.

[2] The Branch 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 the following Tasmanian Branch rules:

- Rule 6 – Meetings of Branch Council;
- Rule 8 – Meetings of Branch Executive;
- Rule 25 – Branch Employees; and
- Rule 32 – Election – General Provisions.

[5] The alterations to rules 6, 8 and 32 are minor and uncontroversial. They are made to:

- allow additional time for a proxy notice to reach the State Manager;
- replace the outdated technology “facsimile” with “video conference, phone, email”;
- reduce the frequency of the Branch Executive meetings from 11 to 8 times a year and consequently increase the gap between each meeting from 6 to 8 weeks;
- change the nomination opening time for both Branch and Federal positions from “on the first day of school term 3” to “on approximately week 8 of Term 3”.

[6] The alterations to rule 25 permit elected office holders to be employees of the Branch.

[7] Under current rule 25, with the exception of the Branch President and the Branch TAFE President, elected office holders are not eligible to be Branch employees. The alterations to subrule 25(2) allow office holders to be employed as project officers subject to conditions prescribed in new subrules 25(7) – (9).

[8] New subrule 25(7) allows Branch Council delegates, with the exception of Executive Committee members, to apply for project roles of no more than one year duration.

[9] New subrule 25(8) provides that, if an office holder is the preferred candidate for a project officer position through a selection process, before an offer of employment is made, the President will convene an internal meeting of senior officers and the state manager to assess whether the appointment would be appropriate in the circumstances.

[10] New subrule 25(9) states that an office holder can only be appointed to a project officer position for a maximum of 12 months during each office holding cycle. It also provides that if re-elected or appointed to their office again, they can undertake a further 12 months in a project officer position, but no more than once in any three year period.

Whether the alterations are contrary to the limits on fixed-term contracts

[11] When considering whether to certify alterations to rules, I am required to consider, among other things, whether the proposed alterations are contrary to the *Fair Work Act 2009* (Cth) (the FW Act).¹

[12] Section 333E of the FW Act provides that employers cannot employ someone on a fixed-term contract that is longer than two years, that have more than one extension option or where the employee will be employed under consecutive contracts.²

[13] The alteration to rule 25 clearly provides for fixed-term contracts, but they are limited to one year. Any re-appointment cannot extend the contract for more than another year. The proposed alteration enables further appointments to project officer positions, but not as consecutive contracts.

[14] In my opinion the alterations to rule 25 are not contrary to section 333E of the FW Act.

Whether the alterations enable officers to gain an advantage

[15] When considering whether to certify alterations to rules, I am also required to consider, among other things, whether the proposed alterations are contrary to the Act.³

[16] Subsection 287(1) of the Act provides that an officer of an organisation or branch must not improperly use their position to gain an advantage for themselves or someone else.⁴

[17] In my view, the proposed alteration protects against branch officers from improperly using their position to gain an advantage (that being the offer of a project officer position) for themselves or for other office holders. Firstly, the Branch Executive is the body with the power to employ staff (subrule 7(3)(e)), and Executive Committee members are specifically excluded from applying for such positions. Secondly, proposed rule 25 requires a selection process, and if a Branch Council delegate is the preferred candidate, there is a review by senior officers and the state manager to determine whether an offer is appropriate.

Typographical error

[18] On 22 August 2024, the President of the Branch, Mr David Genford, gave consent under subsection 159(2) of the Act for me to make an amendment to the alterations for the purpose of

correcting a typographical, clerical or formal error. Accordingly, the following correction has been made:

- In proposed subrule 25(8), the phrase “State President” is changed to “President”.

[19] 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 Subsection 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.

² Section 333E of the FW Act provides:

- (1) A person contravenes this subsection if:
 - (a) the person enters into a contract of employment with an employee; and
 - (b) the contract includes a term that provides the contract will terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period); and
 - (c) the employee is not a casual employee of the employer; and
 - (d) subsection (2), (3) or (4) applies.

Note 1: This subsection is a civil remedy provision (see Part 4-1).

Note 2: A contract referred to in this subsection includes (and is not limited to) a contract of employment for a specified period of time, for a specified task or for the duration of a specified season.

Employment for more than 2 years

- (2) This subsection applies if the identifiable period is greater than 2 years.

Renewable contracts

- (3) This subsection applies if:
- (a) the sum of the identifiable period and any other period for which the contract may be extended or renewed is greater than 2 years; or
 - (b) the contract provides for an option or right to extend or renew the contract more than once.

Consecutive contracts

- (4) This subsection applies if the contract comes into effect after another contract (the previous contract) of employment between the person and the employee in circumstances referred to in subsection (5).
- (5) The circumstances for the purposes of subsection (4) are:
- (a) the previous contract included a term that provided that the contract would terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period); and
 - (b) the previous contract was for the employee to perform the same, or substantially similar, work for the person as the employee is required to perform under the contract referred to in paragraph (1)(a) (the current contract); and
 - (c) there is substantial continuity of the employment relationship between the person and employee during the period between the previous contract terminating and the current contract coming into effect; and
 - (d) any of the following apply:
 - (i) the sum of the period for which the previous contract was in effect and the identifiable period referred to in paragraph (1)(b) for the current contract is greater than 2 years;
 - (ii) the current contract contains an option for renewal or extension;
 - (iia) the previous contract contained an option for extension that has been exercised;
 - (iii) the previous contract came into effect after another contract (the *initial contract*) that satisfies the requirements of paragraphs (a) and (b) of this subsection and there was substantial continuity of the employment relationship between the person and the employee during the period between the initial contract terminating and the previous contract coming into effect.

³ See endnote 1 above

⁴ Subsection 287(1) of the Act provides that:

An officer or employee of an organisation or a branch must not improperly use his or her position to:

- (a) gain an advantage for himself or herself or someone else;

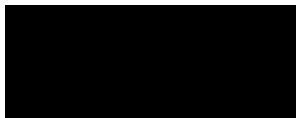
CONSENT OF AUTHORISED OFFICER in accordance with Section 159(2) of the *Fair Work (Registered Organisations) Act 2009*

I, David Genford of 32 Patrick Street Hobart am the President of the Australian Education Union Tasmanian Branch and am authorised to give consent under section 159(2) of the *Fair Work (Registered Organisations) Act 2009* to the General Manager (or Delegate) to amend the alteration for the purpose of correcting a typographical, clerical or formal error.

Alterations to the rules of the Australian Education Union Tasmanian Branch were notified to the Fair Work Commission on 26 June 2024. I give consent for the General Manager (or Delegate) to amend the alterations for the purpose of correcting the following typographical, clerical or formal errors:

1. In proposed subrule 25(8) the expression "State President" should read as "President".

Signed:



Dated: 21 August 2024



PLEASE NOTE:

This Consent Form must contain details of the errors to be corrected and the correction that is being consented to; a failure to identify and explain the corrections is likely to be insufficient to allow the General Manager or Delegate to alter the particulars. This Consent Form can be emailed back to the regorgs@fwc.gov.au email address or sent directly to the action officer handling your matter.

DECLARATION OF AUTHORISED OFFICER in accordance with Regulation 126 *Fair Work (Registered Organisations) Regulations 2009*

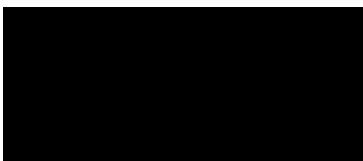
ALTERATION OF OTHER RULES OF ORGANISATIONS in accordance with section 159 of the *Fair Work (Registered Organisations) Act 2009*

I, David Genford of Level 1, 32 Patrick Street, Hobart am the President of the Australian Education Union, Tasmania Branch and am authorised to give this notice of particulars of alterations to the rules of the Australian Education Union, Tasmania Branch and to make this declaration as required by Regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009*.

1. I declare that the alterations were made in accordance with the rules of the Australian Education Union, Tasmania Branch
2. The particulars of the rule alterations are attached to this declaration and labelled 'Schedule A'.
3. The actions taken under the rules to make this alteration were as follows:
 - (a) The Tasmanian Branch Deputy President submitted a proposal in writing to the State Manager for rule changes as per the attached "Schedule A" on 15 May 2024
 - (b) The State Manager sent notice to Branch Council members on 30th May 2024 and included a copy of the proposed rule changes for discussion at the Branch Council meeting 'Schedule A'
 - (c) The State Manager prepared an Agenda which was sent on his behalf to all Branch Council members nominated address on 30th May 2024 which is attached and marked 'Schedule B'
 - (d) The Branch Council Meeting was held on the 17th June 2024
 - (e) 25 members attended the Branch Council Meeting plus 2 proxy votes. Current membership is 29.
As such the meeting was quorate.

Rule Change 1: Rule 6 (9)	27 voted in support
Rule Change 2: Rule 6 (11) (a)	27 voted in support
Rule Change 3: Rule 8 (1) and (1) (a)	27 voted in support
Rule Change 4: Rule 25	24 voted in support, 2 voted against, 1 abstained
Rule Change 5: Rule 32 (2) (a) (i), (ii)	27 voted in support
4. I declare that we have put a notice about this application and these rule changes on our website.
5. I declare that the particulars set out in this notice are true and correct to the best of my knowledge and belief.

Signed and dated by an officer.



David Genford
PRESIDENT
25/6/2024

**AEU Branch Council Paper
FOR DISCUSSION**

**Date: 17.06.2024
Item No. 7.10**

Rules Committee Paper

Proposed Rule Changes

Purpose

As our context changes, we must ensure the rules allow the union to be a responsive and proactive body. The following proposed rule changes aim to this.

Rule Change 1: Rule 6 (9)

An appointment of a proxy shall be in writing and must reach the State Manager an hour before the nominated start time of the Branch Council meeting.

Rationale: As experienced at our last Branch Council, current circumstances can make reaching a quorum difficult. Changing this rule will allow the late notice of proxies and prevent the convening of Branch Council meetings that do not reach a quorum due to last minute absenteeism.

Rule Change 2: Rule 6 (11) (a)

The Branch President may, in consultation with the State Manager, determine that it is not practicable for the Branch Council to assemble, and that the business of a Branch Council meeting shall be conducted by postal, video conference, phone, email or electronic vote.

Rationale: Facsimiles don't exist anymore. We need to bring the rule into the digital age.

Rule Change 3: Rule 8 (1) and (1) (a)

1. Branch Executive meetings shall be held at least 8 times each calendar year at a time determined by the Branch Executive provided that:
 - a. Not more than 8 weeks shall elapse without a meeting of the Branch Executive being held other than between the last meeting held in one calendar year and the first meeting held in the following calendar year.

Rationale: This change is a minimum, not a maximum number of meetings. The minimum number of meetings will ensure the accountability measures are taken to monitor and maintain the running of the union. Extraordinary meetings can, will and are currently called to deal with timely issues such as employment, negotiations and arising issues that need to be dealt with swiftly.

Rule Change 4: Rule 25

(2). Add to current section ... by the Branch “, except if appointed to a project officer role as per sub-section (8)”.

(7) Branch Council delegates under the rules, except Executive committee members, may apply for Project roles that are for up to one year, or less, in duration.

(8) The selection process, for a position to which (7) above applies, shall proceed as per appropriate normal processes except that if the holder of an elected office is selected for the position, prior to an offer of employment being made the President shall convene a meeting

with the State Manager, the TAFE President or their nominee, each of the deputy Presidents or their nominee, and a Branch Council delegate selected by the State President following an expression of interest process, to assess if the proposed appointment of the holder of an elected office to the project role is appropriate in the circumstances.

(9) An office holder may only be appointed to a project officer position for a maximum of 12 months, in total, during each office holding cycle. If re-elected or appointed to their office again, they can undertake a further 12 months in a project officer position, but no more than once in any 3-year period.

Rationale

The current rule hinders the proactive and flexible reactions of the union to issues. Although it is important to maintain good governance, we must also enable our elected members to take on projects within their field of expertise and interest. This change endeavours to maintain good governance while enabling the union to respond to issues, such as the current TAFE transition, in an effective and responsive way without disrupting the representation of members at Branch Council levels. It is important that we can use the expertise, experience, and knowledge of our elected members to further the aim of the union.

Rule Change 5: Rule 32 (2) (a) (i), (ii)

- i. Nominations for the Branch positions shall open on approximately week 8 of Term 3 in the relevant calendar year and close 5.00pm 2 weeks later.
- ii. Nominations for the Federal positions shall open on approximately week 8 of Term 3 in the relevant calendar year and close 5.00pm 2 weeks later.

Rationale

This change is bringing the rules in line with a 4-term school year.

Recommendation: That the rule changes be accepted by Branch Council.