



## DECISION

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

### **Waste Contractors & Recyclers Association of NSW** (R2014/325)

MR ENRIGHT

MELBOURNE, 29 JANUARY 2015

#### *Alteration of other rules of organisation.*

[1] On 16 December 2014, the Waste Contractors & Recyclers Association of NSW (**the WCRANSW**) lodged with the Fair Work Commission (**the Commission**) a notice and declaration setting out particulars of alterations to the rules of the WCRANSW.

[2] The particulars set out alterations to rules 21 and 26 of, and the insertion of new rule 21A into, the rules of the WCRANSW.

[3] The WCRANSW also lodged an application for consent to an alteration of the eligibility rules of the WCRANSW pursuant to section 158 of the *Fair Work (Registered Organisations) Act 2009* (**the Act**) on 16 December 2014 in matter D2014/71. That application provided that the relevant alterations included alterations to rules 4, 5 and 6.4 of the rules of the WCRANSW.

[4] On 21 January 2015, the Commission wrote to the WCRANSW advising that the alterations to rules 4 and 5 set out in the application for consent to an alteration of the eligibility rules of the WCRANSW appeared to be alterations to non-eligibility rules. The Commission further advised that those alterations appeared to be capable of being determined under section 159 of the Act together with the alterations set out in the notice of particulars in this matter.

[5] On 27 January 2015, the WCRANSW advised that it desired to have the alterations to rules 4 and 5 determined under section 159 of the Act together with the alterations set out in the notice of particulars in this matter.

[6] The declaration of Mr Scott Bayliss, Secretary of the WCRANSW, made on 16 December 2014 (**the Declaration**) and lodged with the application for consent to an alteration of the eligibility rules of the WCRANSW provides, in accordance with regulation 121 of the *Fair Work (Registered Organisations) Regulations 2009* (**the Regulations**), that the alterations to rules 4 and 5 were made in accordance with the rules of the WCRANSW and states that the particulars set out in application are true and correct to the best of his knowledge and belief. The Declaration further provides that the alterations to rules 4 and 5 were made at the same Annual General Meeting of the WCRANSW on 11 November 2014 in which the alterations set out in the notice of particulars were made. Therefore, I am satisfied

that the matters that must be attested to in a notice of particulars setting out alterations of non-eligibility rules as prescribed by regulation 126(2) of the Regulations have been clearly and squarely addressed as they pertain to the alterations to rules 4 and 5.

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

[8] The essential thrust of the alterations to rule 26 is to increase the terms of office of the offices of President, Vice President, Treasurer and Secretary from a one to a four year term. Although this alteration will take effect upon the day it is certified,<sup>1</sup> this increase in the terms of office will not have any effect until the completion of the next election for those offices. As noted in *Beeson v Blayney* (1966) 8 FLR 292 the term of office is an integral aspect of an election for that office. Further, there is no indication in the alteration itself that it is to have a retrospective effect.<sup>2</sup> In its correspondence of 21 January 2015, the Commission advised the WCRANSW of the above and indicated that it will still need to lodge the prescribed information in relation to an election for the offices of President, Vice President, Treasurer and Secretary pursuant to section 189 of the Act which is due to be held this year. Given that an election for these offices will be conducted this year, I am satisfied that the effect of the omission of the current terms of office on certification of the alteration to rule 26 is not of a sufficient nature to render it “oppressive, unreasonable or unjust” for the purposes of section 142(1)(c) of the Act.

[9] 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

Endnotes:

<sup>1</sup> *Fair Work (Registered Organisations) Act 2009* s. 159(3)

<sup>2</sup> For examples of this construction being given to similar alterations see *Beeson v Blayney* (1966) 8 FLR 292 & *Higgins v McGrane* (1961) 5 FLR 82.

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