



## DECISION

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

### **Police Federation of Australia** (R2025/165)

PATRICK COYLE

ADELAIDE, 5 DECEMBER 2025

*Alteration of other rules of organisation.*

[1] On 10 October 2025 the Victoria Police Branch (the Branch) of the Police Federation of Australia (the PFA) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its Branch rules. Further information in support of the alterations was provided on 5 November 2025, 12 November 2025 and 27 November 2025.

[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 insert a new Rule 52CV – Workplace Delegates to the Branch rules.

#### **Does new Rule 52CV comply with the requirements under the FW Act?**

[5] The proposal introduces provisions regarding workplace delegates, as defined in sections 350A, 350B and 350C of the *Fair Work Act 2009 (Cth)* (FW Act).<sup>1</sup> Among other things, I am required to consider whether the proposal complies with and is not contrary to the FW Act.<sup>2</sup>

[6] Delegate of the General Manager, Chris Enright, has published several decisions regarding workplace delegates and the relevant provisions in the FW Act.<sup>3</sup> These decisions establish the following propositions:

- the word “delegate” in a rulebook can have a different meaning to workplace delegate as defined in the FW Act, depending on the context of the rule;<sup>4</sup>
- the meaning and application of the proposed rules regarding workplace delegates must be confined to the relevant statutory scheme;<sup>5</sup>
- rules regarding workplace delegates must not undermine the statutory scheme regarding workplace delegates set out in the FW Act;<sup>6</sup>
- a workplace delegate must be interpreted as a person who works in the enterprise or regulated business;<sup>7</sup>
- rules must not purport to extend workplace delegate rights or obligations to persons who would not be so entitled under the FW Act;<sup>8</sup>

- rights endowed by a union on workplace delegates can only be rights regulating their relationship with the union and cannot extend to parties external to the union.<sup>9</sup>

[7] I respectfully agree with these propositions established by Delegate Enright.

[8] Proposed Rule 52CV provides that an Association Delegate elected or appointed pursuant to the rules of The Police Association (TPA) shall become a Workplace Delegate of the Branch subject to the provisions of the FW Act and the endorsement of the Branch Executive. Such person shall also cease to be a Branch Workplace Delegate following their removal from their Association Delegate position.

[9] TPA in this context refers to The Police Association Victoria, which is a state registered union that federated with other police unions to form the PFA.<sup>10</sup>

[10] Following the federation, TPA retained parallel operations with the Branch and has its own rules. To date, all members of the Branch are members of TPA.<sup>11</sup>

[11] TPA in its Rules 81 – 102 provide for the election of Association Delegates and their power and responsibilities. Upon examining these rules, I am satisfied that they comply with the requirements listed in paragraph [6] above. Noting that Rule 52CV explicitly provides that the appointment of Workplace Delegates shall always be subject to the provisions of the FW Act, I am satisfied that Rule 52CV complies with the FW Act.

### **Does new Rule 52CV impose oppressive, unreasonable or unjust conditions?**

[12] The general requirements for rules of an organisation are listed in section 142 of the Act. Subsection 142(1)(c) specifies that rules must not impose conditions, obligations or restrictions that, having regard to, among other things, Parliament's intentions and the objects of the Act, are oppressive, unreasonable or unjust.<sup>12</sup> When considering whether conditions imposed on members are oppressive, unreasonable or unjust, regard must be had, among other things, to the democratic functioning and control of the organisation.<sup>13</sup>

[13] TPA is not an organisation registered under the Act and as such any alterations to its rules would not require the Commission's involvement. Therefore, TPA can make alterations to its rules without having to consider the requirements under the Act.

[14] A question arises as to whether Rule 52CV would remain in compliance with the Act, should TPA make further alterations to its rules that may be interpreted as imposing oppressive, unreasonable or unjust conditions on its members.

[15] Given the proposed Subrule 52CV(2) expressly provides that this rule shall always be subject to the provisions of the FW Act, it shall always comply with the Act irrespective of any potential changes the TPA may make. Consequently, in my view, the mere possibility that TPA might amend its rules contrary to the provisions of the FW Act does not make proposed Rule 52CV contrary to subsection 142(1)(c) of the Act.

[16] 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 Sections 350A, 350B and 350C of the FW Act provide as follows:

**350A Protection for workplace delegates**

- (1) The employer of a workplace delegate must not:
- (a) unreasonably fail or refuse to deal with the workplace delegate; or
  - (b) knowingly or recklessly make a false or misleading representation to the workplace delegate; or
  - (c) unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.

Note: This subsection is a civil remedy provision (see Part 41).

- (2) To avoid doubt, subsection (1) applies only in relation to the workplace delegate acting in that capacity.  
(3) The burden of proving that the conduct of the employer is not unreasonable as mentioned in subsection (1) lies on the employer.

*Exception—conduct required by law*

- (4) Subsection (1) does not apply in relation to conduct required by or under a law of the Commonwealth or a State or a Territory.

**350B Protection for workplace delegates—regulated workers**

- (1) The associated regulated business for a workplace delegate who is a regulated worker must not:
- (a) unreasonably fail or refuse to deal with the workplace delegate; or
  - (b) knowingly or recklessly make a false or misleading representation to the workplace delegate; or
  - (c) unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.

Note: This subsection is a civil remedy provision (see Part 41).

- (2) To avoid doubt, subsection (1) applies only in relation to the workplace delegate acting in that capacity.  
(3) The burden of proving that the conduct of the associated regulated business is not unreasonable as mentioned in subsection (1) lies on the associated regulated business.

*Exception—conduct required by law*

- (4) Subsection (1) does not apply in relation to conduct required by or under a law of the Commonwealth or a State or a Territory.

*Meaning of associated regulated business*

- (5) The **associated regulated business** for a workplace delegate who is a regulated worker is the regulated business that:
- (a) engaged the workplace delegate under a services contract; or
  - (b) arranged for, or facilitated entry into, the services contract under which the workplace delegate performs work.

**350C Workplace delegates and their rights**

*Meaning of workplace delegate*

- (1) A **workplace delegate** is a person appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for either or both of the following:
- (a) members of the organisation who work in a particular enterprise;
  - (b) members of the organisation who perform work for, or that has been arranged or facilitated by, a particular regulated business.

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*Rights of workplace delegates*

(2) The workplace delegate is entitled to represent the industrial interests of those members, and any other persons eligible to be such members, including in disputes with the employer or regulated business concerned.

Note: This section does not create any obligation on a person to be represented by a workplace delegate.

(3) The workplace delegate is entitled to:

- (a) reasonable communication with those members, and any other persons eligible to be such members, in relation to their industrial interests; and
- (b) for the purpose of representing those interests:
  - (i) in relation to employees—reasonable access to the workplace and workplace facilities where the enterprise concerned is being carried on; and
  - (ii) in relation to regulated workers—reasonable access to the workplace facilities provided by the regulated business concerned; and
  - (iii) if the workplace delegate is an employee—reasonable access to paid time, during normal working hours, for the purposes of related training, unless the workplace delegate is employed by a small business employer.

(4) The employer of, or associated regulated business for, the workplace delegate is taken to have afforded the workplace delegate the rights mentioned in subsection (3) if the employer or regulated business has complied with the delegates' rights term in the fair work instrument that applies to the workplace delegate.

(5) Otherwise, in determining what is reasonable for the purposes of subsection (3), regard must be had to the following:

- (a) the size and nature of the enterprise or regulated business;
- (b) the resources of the employer concerned or the regulated business;
- (c) the facilities available at the enterprise or provided by the regulated business.

2 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.

3 *Re Independent Education Union of Australia* [2024] FWCD 1019, *Re Australian Municipal, Administrative, Clerical and Services Union* [2024] FWCD 1042 and *Re National Tertiary Education Union* [2024] FWCD 1051.

4 *Re Australian Municipal, Administrative, Clerical and Services Union* [2024] FWCD 1042 at [16].

5 *Re National Tertiary Education Union* [2024] FWCD 1051 at [9].

6 *Ibid* at [18].

7 *Re Independent Education Union of Australia* [2024] FWCD 1019 at [37].

8 *Ibid*.

9 *Re Australian Municipal, Administrative, Clerical and Services Union* [2024] FWCD 1042 at [22].

10 See Part E of PFA's rules

11 The Branch confirmed in its correspondence dated 5 November 2025

12 Subsection 142(1)(c) of the Act provides that rules:

...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.

13 Subsection 5(3) of the Act sets out the following standards for registered organisations:

- (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