



DECISION

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

Screen Producers Association of Australia (R2025/120)

CHRIS ENRIGHT

MELBOURNE, 8 AUGUST 2025

Alteration of other rules of organisation.

[1] On 16 July 2025 the Screen Producers Association of Australia (SPAA) lodged with the Fair Work Commission (the Commission) a notice and declaration setting out particulars of alterations to its rules. Further materials in support of the alterations were lodged on 17 and 24 July 2025.

[2] SPAA 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 subrules 17(a) and 24(b).

[4] On the information contained in the notice, declaration and other materials I am satisfied the alterations have been made in accordance with the organisation’s rules. However, I consider it appropriate to include the additional information at paragraphs [5] - [11] as it informed my decision.

SPAA rule altering procedure

[5] Subrule 28(a) provides that the President “shall preside at all meetings of the Association”.¹ The alterations were made at a Special Meeting of members held on 2 July 2025. The minutes of this meeting were lodged with the Commission; these did not record the President as Chair of that meeting. Commission staff wrote to SPAA seeking clarification of this issue.

[6] In SPAA’s email of 24 July 2025, it was put that:

- an Independent Chair was appointed following a special resolution of Council in 2024;
- under subrule 28(a)² the President is able to delegate the task of chairing meetings; and
- the effect of the 2024 Council resolution is that the President has delegated the task of chairing meetings to the Independent Chair.

[7] Relevantly part of subrule 28(a) expressly permits the President to delegate his authority.³ I am persuaded that the President can delegate the authority to chair a meeting under this rule, and has done so. However, this may not be the end of the matter.

[8] Subrule 28(b)⁴ provides that if the President is unavailable, the Vice President shall act as and have the powers of the President. The subrule also provides that if both the President and Vice President are unavailable, then the longest serving current Councillor shall act as and have the powers of the President.

[9] According to the minutes, on this occasion the President attended the Special Meeting of members. Had the President been unavailable, it is unclear how subrule 28(b) would operate to affect any delegation of authority to the Independent Chair, having regard to the vesting of that authority under the rules requiring the Vice President or the longest serving member of Council to chair the meeting. This issue did not arise as the President was available and attended the meeting.

[10] Further, subrule 25(c) confers voting rights on the Chair. Clearly such a rule is appropriate when the President (or other office holder) chairs the meeting as they are members of SPAA.⁵ However, as the Independent Chair is not a member of SPAA, conferring voting rights on a non-member at a meeting of members seems contrary to the democratic functioning and control of SPAA.⁶ Further, such a meeting may not constitute a meeting of members and render the proceedings invalid.⁷ The issue does not arise here as the Independent Chair did not purport to exercise any voting rights.

[11] Consequently, it is not necessary to determine whether the appointment of an Independent Chair—who is not expressly provided for in the rules—invalidated the proceedings of the meeting for these alterations. However, I recommend that SPAA consider the risks created by a Chair that is not mentioned in the rules, along with the implications of subrules 25(c) and 28(b).

The alterations

[12] Turning to the substance of the alterations before me, subrule 17(a) is related to the conduct of the collegiate election for President and Vice President. The proposed subrule clarifies that the college for this election is all Councillors. It further provides that, where an in-person attendance ballot is impractical, the Australian Electoral Commission (AEC) may conduct a secret postal ballot for these offices in accordance with the Act and its standard procedures.

[13] Rule 24 relates to the Annual General Meeting of Members (AGM). The proposed amendment to subrule 24(b) provides that the Council election results are to be announced at the AGM “if finalised”, thereby removing the mandatory requirement and mitigating the risk of delaying the AGM if a postal ballot is conducted.

[14] Some commentary regarding these alterations is warranted given the proposed alterations pertain to election rules that were (in part) the subject of recent post-election reports issued by the AEC⁸ and are likely to be relied upon for the conduct of SPAA’s forthcoming elections; nominations for which are scheduled to open on 2 September 2025.

The electorate for the President and Vice-President

[15] It is important to acknowledge that the proposed amendment to subrule 17(a) is made in response to a post-election report issued by the AEC to SPAA.⁹ Among other things, this report noted that rule 17(a) is ambiguous as to whether the electorate for the election of President and Vice-President is just the Councillors who have been recently elected or all Councillors.

[16] By omitting the phrase “newly elected Councillors” the ambiguity is removed and it is clear that both the President and Vice President are to be elected by and from all voting members of Council.

Ballot method for the election of the President and Vice-President

[17] Currently the rules provide that the election of the President and Vice-President is conducted in-person at a meeting of the Council.¹⁰ However, recent AEC post-election reports¹¹ note that the AEC was unable to organise in-person ballots due to the nature of the film and television production business. It has been communicated to Commission staff that SPAA members can be characterised as having demanding roles in screen production. Much of this type of work is undertaken in locations that are regional, rural, remote or geographically dispersed in other ways. Councillors may reasonably face barriers to attending an in-person meeting as is currently required.

[18] The proposed alteration to 17(a) addresses this problem by permitting the AEC to conduct SPAA’s collegiate election by postal ballot if it is impractical to hold an in-person meeting. Subsection 143(1)(e) of the Act requires elections for office holders to be conducted by secret ballot and does not prescribe a specific ballot method for second and subsequent stages in collegiate elections.¹² In my view, enabling the conduct of a postal ballot for the collegiate election of the President and Vice President in these circumstances complies with the requirements of subsection 143(1)(e) of the Act.

[19] The proposed alteration to 17(a) specifies that if a postal ballot is conducted, it is to be conducted in accordance with the Act and AEC standard procedures. Subsection 143(1)(e)(iii) requires rules to provide for the conduct of ballots for the election of office holders.¹³ It is noted that the wording of the proposed rule may give rise to some ambiguity given the AEC conducts industrial elections for registered organisations according to the organisation’s rules and not their own standards.¹⁴ Despite the proposed subrule, there is sufficient guidance in other subrules regarding the conduct of the ballot, irrespective of whether it is conducted in-person or by post.¹⁵ In my opinion the rules provide for the conduct of the ballot for the election of the President and Vice President and comply with subsection 143(1)(e)(iii) of the Act.

Other matters

[20] I note that election decisions of Delegates of the General Manager of the Commission and AEC post-election reports¹⁶ have recommended further alterations to SPAA’s election rules. Commission staff have advised me that SPAA has committed to making further alterations to their election rules prior to the 2026 scheduled elections in line with these recommendations. I recommend that SPAA also consider alterations that enable the

appointment of an Independent Chair and clarify the powers of such a position, as well as alterations which clarify the steps to be taken if a postal ballot is held for the election of the President and Vice President.

[21] 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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- 1 See subrule 28(a) “The President shall preside at all meetings of the Association including those of the Council. The President shall have all the authority usually vested in the chairman of any meeting. The President shall keep order and direct the manner of debate upon all questions introduced. Where voting is equal, the President shall have a casting vote. The President shall have power to cause any meeting of the Association or of the Council to be convened and shall have power to cancel a meeting which has been convened but has not commenced and appoint other dates for future meetings. the President shall have power to delegate his authority, to instruct the Chief Executive Officer and to suspend the Chief Executive Officer as provided by Rule 27. The President shall also have power to appoint an acting Chief Executive Officer in accordance with Rule 27(f).”
 - 2 See additional material provided by SPAA on 24 July 2025.
 - 3 Subrule 28(a) “The President shall have power to cause any meeting of the Association or of the Council to be convened and shall have power to cancel a meeting which has been convened but has not commenced and appoint other dates for future meetings. the President shall have power to delegate his authority, to instruct the Chief Executive Officer and to suspend the Chief Executive Officer as provided by Rule 27.”

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- 4 See subrule 28(b) “If the President is unavailable, the Vice-President shall act as and have the powers of, the President. If both are unavailable then the longest serving current Councillor shall act as and have the powers of, the President.”
- 5 See rule 14, which establishes a Council in which only representatives of members have voting rights, and from which the President and Vice-President are elected.
- 6 Subsection 5(3)(d) provides that Parliament’s intentions in enacting the Act include, among other things, to:
“provide for the democratic functioning and control of organisations”
- 7 *Re an Application by Gould; Re Australian Railways Union* (1956) 87 CAR 939; *Steuart v Oliver (No 2)* (1971) 18 FLR 83
- 8 See the Fair Work Commission website: www.fwc.gov.au – p.6 of E2024/71.
- 9 Ibid.
- 10 See subrule 17(a) “At the first meeting of the Council after each election, and prior to the Annual General Meeting, the newly elected councillors will convene to conduct (in concert with the Returning Officer appointed pursuant to (b) below) a collegiate election for the offices of President and Vice President of the Association from within their number.”
- 11 See the Fair Work Commission website: www.fwc.gov.au - E2024/71 and E2023/141.
- 12 Subsection 143(1)(e) provides that the rules of an organisation:
“must provide, that where a ballot is required, it must be a secret ballot...”
For direct voting system elections, subsection 144(1) requires that rules provide for a secret postal ballot. However, the President and Vice-President are elected by a collegiate electoral system, and therefore, other than the requirements that it be secret, there are no other requirements in relation to rules for the conduct of the ballot for these two offices.
- 13 Subsection 143(1)(e)(iii) provides that election rules:
(e) must provide that, where a ballot is required, it must be a secret ballot, and must make provision for:
...
(iii) the conduct of the ballot;
- 14 Subsection 193(1)(a) requires the electoral official conducting the election to “comply with the rules of the organisation”, subject to a number of exceptions, not presently relevant.
15. See subrules 17(d), (e), (f), (g), (h), (i), (j) and (m).
- 16 See the Fair Work Commission website: www.fwc.gov.au – E2025/ 58, E2024/71, E2023/141.