



DECISION

Fair Work (Registered Organisations) Act 2009

s.30(1)(a) RO Act - Application by organisation for cancellation of registration

Application by the Victorian Chamber of Commerce and Industry

(D2024/7)

VICE PRESIDENT GIBIAN

SYDNEY, 30 OCTOBER 2024

Application by organisation for cancellation of registration – hearing conducted to deal with the application – approval given by a majority of members voting at a special general meeting – other requirements in the regulations met – application granted.

Introduction

[1] The Victorian Chamber of Commerce and Industry (the **VCCI**) is an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) (the **RO Act**). On 29 July 2024, the VCCI filed a Form F60 – Application by an organisation for cancellation of registration with the Fair Work Commission (the **Commission**) seeking the cancellation of its registration under s 30(1)(a) of the RO Act.

[2] Section 30(1)(a) of the RO Act provides that the Commission may cancel the registration of an organisation on application by the organisation made under the regulations. Regulations 33 and 34 of *Fair Work (Registered Organisations) Regulation 2009* (Cth) (the **RO Regulations**) set out the procedure to be followed by an organisation applying to cancel its own registration. Regulations 33 and 34 relevantly provide:

33 Cancellation of registration (Schedule 1, s 30(1)(a))

An organisation may apply under paragraph 30(1)(a) of the Act for the cancellation of its registration if approval has been given to the organisation to apply for the cancellation of its registration by a majority of the members voting at a ballot of the members taken:

- (a) in accordance with any rules that apply; or
- (b) if no rules apply—in accordance with:
 - (i) any rules of the organisation providing for the election of any of its officers by a direct voting system; or
 - (ii) if subparagraph (i) does not apply—procedures approved by the FWC.

34 Application for cancellation of registration (s 30(1)(a))

(1) An application by an organisation under paragraph 30(1)(a) of the Act for the cancellation of its registration must:

- (a) be in the form set out in the Procedural Rules or in a form otherwise approved by the President; and

- (b) set out full particulars of the circumstances that entitle the organisation to make the application; and
 - (c) contain a declaration signed by an officer of the organisation authorised to sign the declaration verifying the facts in the application; and
 - (d) be lodged with the FWC.
- (2) An organisation that has a web site must publish on its web site a notice that it has lodged the application mentioned in subregulation (1).
- (3) The FWC, on receipt of an application mentioned in subregulation (1), must publish a notice of the receipt of the application in the *Gazette*.
- (4) Within 35 days after publication of the notice mentioned in subregulation (3), an interested person (the **objector**) may lodge with the FWC a notice of objection to the application for cancellation of registration.
- ...
- (7) The FWC must:
- (a) fix a time and place for hearing the application and any objection to the application; and
 - (b) notify the organisation and any objector of the time and place fixed for the hearing.
- (8) The FWC must not:
- (a) refuse to grant an application for cancellation of registration without giving the applicant an opportunity to be heard; or
 - (b) grant the application without giving any objector an opportunity to be heard.

[3] As such, the only requirement imposed by s 30(1)(a) of the RO Act is that the application be made ‘under the regulations’. In summary, the regulations require that a majority of the members voting at a ballot of members taken in accordance with any rules that apply or, if no rules apply, any rules of the organisation providing for the election of any of its officers by a direct voting system or procedures approved by the Commission (regulation 33(a) and (b)). In addition, the application must be in the form set out in the Procedural Rules, being Form F60 (regulation 34(1)(a)), set out full particulars of the circumstances that entitle the organisation to make the application (regulation 34(1)(b)), contain a declaration made an officer of the organisation authorised to sign the declaration verifying the facts in the application (regulation 34(1)(c) and be lodged with the Commission (regulation 34(1)(d)). Notice of the application must be published on the organisations website if it has one (regulation 34(2)).

The application

[4] The application filed by the VCCI set out the reasons for seeking cancellation of registration as follows:

1. The members of Victorian Chamber of Commerce and Industry Incorporated (formerly, the Victorian Chamber of Commerce and Industry) have passed a special resolution in general meeting, for the purposes of rule 27 of the organisation’s registered rules, sections 11 and 12 of the *Associations Incorporation Reform Act 2012* (Vic) (**AIR Act**) and all other purposes, to change the organisation’s entity type from a body corporate established under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**RO Act**) to an incorporated association registered under and in accordance with the AIR Act.
2. The organisation previously gave notice to the Commission of its change of name from the Victorian Chamber of Commerce and Industry upon the change to the organisation’s entity type from a body corporate established under the RO Act to an incorporated association registered under the AIR Act.

3. A copy of the minutes of the special general meeting of members of Victorian Chamber of Commerce and Industry Incorporated (formerly, the Victorian Chamber of Commerce and Industry) held on 19 January 2024, including the declaration of the President that the resolutions approving, amongst other things:

- (a) The organisation changing entity type to an incorporated association under the AIR Act; and
- (b) In accordance with section 30(1)(a) of the RO Act and regulations 33 and 34(1) of the *Fair Work (Registered Organisations) Regulations 2009* (Cth), the organisation applying for cancellation of its registration under the RO Act,

Were passed is enclosed with this application and marked “**Attachment A**”.

4. Noting the members of the organisation have approved the change of entity type to an incorporated association governed under and in accordance with the AIR Act, the organisation no longer wishes to maintain its registration as a body corporate under the RO Act because:

- (a) The organisation will have the benefit of greater administrative efficiency being governed under the AIR Act alone;
- (b) The rights and responsibilities of members will be more coherently defined under the AIR Act and the new rules of association approved by members for adoption in connection with and for the purposes of the change of entity type; and
- (c) The organisation will have fewer ongoing regulatory and administrative costs.

5. It is noted that the RO Act and the AIR Act prescribe different (and sometimes conflicting) obligations on organisations to maintain their registration under each respective regime, with both of which it would be particularly difficult to comply.

6. The organisation’s continued registration under the RO Act is no longer consistent with its objectives and cancellation of its registration under the RO will allow the organisation to reduce its regulatory compliance obligations.

7. Consumer Affairs Victoria registered the organisation as an incorporated association under the AIR Act with effect on and from 9 July 2024, being Victorian Chamber of Commerce and Industry Incorporated (registration number A0123796K).

8. The organisation undertakes to continue to liaise with the Fair Work Commission to effect its cancellation of registration under the RO Act, as required.

[5] Notice of receipt of the application was published in the Commonwealth of Australia Gazette on 4 September 2024 in accordance with regulation 34(3). The period of objection closed on 9 October 2024. No objections were made within the prescribed 35 days period following gazettal provided for in regulation 34(4).

[6] There is some uncertainty as to the procedure required to be adopted in dealing with an application for cancellation of registration under s 30(1)(a) of the RO Act in the event that no objection is made to the application. On one view of regulation 34(7), the Commission is required to fix a time and place for hearing the application whether or not an objection is made.

Although no objection was made, for the abundance of caution, a short hearing was conducted in relation to the application on 30 October 2024.

Disposition of the application

[7] I am satisfied, on the basis of the material before the Commission, that the VCCI's application for cancellation of its registration was made in accordance with regulations 33 and 34 of the RO Regulations.

[8] In relation to regulation 33, regulation 33(a) requires that approval have been given by a majority of members voting at a ballot of members taken 'in accordance with any rules that apply'. Regulation 33(b) only applies 'if no rules apply'. The phrase 'any rules that apply' in relation 33(a) has some ambiguity attached to it. It is not entirely clear whether regulation 33(a) refers to rules that specifically apply to an application for cancellation of the registration of the organisation or could also include other rules which permit the members of the organisation to make a decision by voting at a ballot.

[9] A broad view has generally been taken in relation to the words 'any rules that apply' in regulation 33(a). In *Building Service Contractors' Association of Australia – Queensland Division, Industrial Organisation of Employers* [2016] FWC 6435, Hatcher VP (as his Honour then was) said (at [3]):

[3] In relation to reg.33, the Association's application refers to a vote of members having been taken pursuant to rule 37 of its rules. Rule 37 is concerned with the procedure for the dissolution of the Association, not its deregistration. It may be that the Association wishes also to dissolve itself, but rule 37 is not relevant to passage of a resolution for deregistration only. There is no provision in the Association's rules specifically concerned with deregistration, so the relevant rules for the purpose of reg.33(a) are rules 13-16, which are concerned with the calling and conduct of general meetings of members. It is plain from the information contained in the Association's application that the meeting of members which passed the deregistration resolution was one called for that purpose, so the aspects of those rules concerned with special general meetings are applicable. ...

[10] As such, his Honour concluded that, where the organisation's rules contain no provision that was specifically concerned with deregistration, the relevant rules for the purpose of regulation 33(a) were those concerned with the calling and conduct of general meetings of members. His Honour was apparently satisfied that the rules generally dealing with the calling and conduct of general meetings of members were the 'rules that apply' for the purposes of regulation 33(a). That approach has been followed in a series of further decisions.¹

[11] I consider that I should follow these decisions. If that approach is adopted, the rules that apply for the purposes of regulation 33(a) are those contained in rule 27 of the VCCI's rules dealing with an Annual General Meeting or Special General Meeting of members. In any event, the rules of the VCCI provide an adequate basis to conclude that a general meeting of members has authority to approve application being made to the Commission to cancel the registration of the organisation. If that is the case, rule 27 is plainly a rule that applies. It is appropriate to explain why that is so.

[12] Rule 14 of the VCCI's rules sets out the powers of the Board of Directors which include, in rule 14(e), to 'lodge any document referred to in rule 43'. Rule 43 in turn provides that the Board of Directors may, by resolution, give consent to the organisation to the lodging of any document under, amongst other things, the RO Act. The powers of the Board of Directors in rule 14 are subject to 'any resolution of a General or Special Meeting of Members'. Accordingly, the rules contemplate that a General or Special Meeting of Members may pass a resolution dealing with matters within the powers of the Board of Directors, including the lodging of any document under the RO Act.

[13] I am satisfied that the requirements of rule 27 of the VCCI's rules were complied with. The application states that a Special General Meeting was held on 19 January 2024 which was called by the Executive Council (rule 27(b)); that more than seven clear days written notice of the meeting was given to each member of the organisation (rule 27(c) and (d)); that a quorum of at least 15 members was present in person at the meeting (rule 27(f)); and that the resolution approving the organisation applying for cancellation of its registration was passed by a majority of members (rule 27(i)).

[14] I am also satisfied that the requirements of regulation 34 of the RO Regulations are satisfied. The application is in Form F60 (regulation 34(1)(a)) and sets out full particulars of the circumstances that entitle the organisation to make the application (regulation 34(1)(b)). The application contains a declaration made by Adrian Kloeden, President of the VCCI, which verifies the facts contained in the application (regulation 34(1)(c) and the application was lodged at the Commission on 29 July 2024 (regulation 34(1)(d)). The Commission received confirmation that notice that it had lodged that application was placed on the VCCI website (regulation 34(2)).

[15] For these reasons, I am satisfied that the application was made in accordance with regulation 33 and 34. I consider it appropriate that the registration of the VCCI be cancelled under s 30(1)(a) of the RO Act.

[16] The cancellation is to take effect on 6 November 2024. An order to that effect will be issued separately.



VICE PRESIDENT

Appearances:

B Woods, MinterEllison, appearing for the Applicant.

Hearing details:

2024.
Sydney (via video).
30 October.

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¹ *Health Services Association of New South Wales* [\[2020\] FWC 1977](#) at [3]; *Consult Australia [Industrial]* [\[2020\] FWC 5046](#) at [5]; *Clay Brick & Paver Association of New South Wales* [\[2023\] FWC 1221](#) at [5].