



DECISION

Fair Work (Registered Organisations) Act 2009

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

Application by the Building Services Contractors Association of Australia, New South Wales Division

(D2025/1)

VICE PRESIDENT GIBIAN

SYDNEY, 9 MAY 2025

Application by organisation for cancellation of registration under s 30(1)(a) of the Fair Work (Registered Organisations Act) 2009 (Cth) - Hearing conducted to deal with the application – Approval given by members voting at a special general meeting – Other requirements contained in the Fair Work (Registered Organisations) Regulation 2009 (Cth) satisfied – Application granted.

Introduction

[1] The Building Service Contractors Association of Australia, New South Wales Division (the **BSCAA NSW**) is an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) (the **RO Act**). On 6 March 2025, the BSCAA NSW applied for its registration to be cancelled under s 30(1)(a) of the RO Act. It is the intention of the BSCAA NSW to dissolve and merge with Building Service Contractors Association of Australia Limited. A necessary step in that process is the cancellation of its registration as an organisation under 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] Where an application for cancellation of the registration of an organisation is made by the organisation itself under s 30(1)(a), the only requirement to be satisfied 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 by 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 BSCAA NSW provided the following reasons for seeking cancellation of registration:

The Building Service Contractors Association of Australia, New South Wales Division (BSCAA NSW) has been a registered organisation under the Fair Work (Registered Organisations) Act 2009. Over the years, the BSCAA NSW has successfully fulfilled its purpose and objectives as outlined in its constitution, providing significant value to its members. However, after a thorough review of its operations, financial status, and member needs, the BSCAA NSW has determined that continued registration is no longer necessary or beneficial for its members.

The changing landscape of the industry and the evolving needs of members suggest that the organisation can better serve its members by reallocating resources more effectively. By cancelling its registration, the BSCAA NSW can focus more on direct member services and support rather than administrative compliance. This decision aligns with the current and future interests of the members, allowing for more flexible and responsive operations

[5] The application attached a declaration made by its President, Debbie Delimitros, which explained the steps taken to resolve to proceed with cancellation of the organisation's registration. The declaration states as follows:

I, Debbie Delimitros of 473 Darling Street, Balmain, am the President of the Building Service Contractors Association of Australia NSW Division.

I am authorised to make this declaration under the rules of the Building Service Contractors Association of Australia NSW Division.

I declare that the resolution to cancel the registration of the BSCAA has been approved by a majority of members voting at a ballot of members taken in accordance with the rules of the Building Service Contractors Association of Australia NSW Division.

The actions taken under the rules to approve this resolution were as follows:

1. The President called for a Special Meeting.
2. The President sent notice to members on Thursday 6 February 2025 and included a copy of the proposed resolution, which is attached to this declaration
3. The Special General Meeting was held on the Monday 17 February 2025.
4. Six members attended the Special General Meeting. Current membership is 52. As such the meeting was quorate.
5. Six voted in support.
6. A notice was placed on the website on Monday 24 February 2025 indicating that the BSCAA has lodged an application to cancel its registration.

I declare that the facts set out in this notice have been verified by me and are true and correct to the best of my knowledge and belief.

[6] Notice of receipt of the application was published in the Commonwealth of Australia Gazette on 21 March 2025 in accordance with regulation 34(3). The period of objection closed on 28 April 2025. No objections were made within the prescribed 35 days period following gazettal provided for in regulation 34(4).

[7] 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 9 May 2025.

Disposition of the application

[8] I am satisfied, on the basis of the material before the Commission, that the application by the BSCAA NSW for cancellation of its registration was made in accordance with regulations 33 and 34 of the RO Regulations and should be granted.

[9] In relation to regulation 33, regulation 33(a) requires that approval has 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 to 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.

[10] A broad view has 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. ...

[11] 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 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 I have also adopted this view of the operation of regulation 33(a).²

[12] If that approach is adopted, the rules that apply for the purposes of regulation 33(a) are those contained in rules 13 and 14 of the BSCAA NSW’s rules dealing with an annual general meeting or special general meeting of members. There is no reason to doubt that a meeting of members of the BSCAA NSW can resolve to apply for cancellation of its registration as an organisation. In that regard, I note that rule 33.2 provides that it may be dissolved by a resolution of members in a general meeting convened for that purpose.

[13] I am satisfied that the requirements of rules 13 and 14 of the BSCAA NSW's rules were complied with in the organisation resolving to apply for cancellation of its registration. A special general meeting was held on 17 February 2025 at the direction of the President (rule 13.1), at least seven days' notice of the meeting was given to members (rule 13.3), the notice specified the place, the day and the hour of the meeting and stated the nature of the business to be transacted (rule 13.4), there was a quorum of six members present at the meeting (rule 14.1 and 14.4) and all attendees voted in favour of the resolution approving the cancellation of registration was approved (rule 14.6 and 14.7).

[14] I am also satisfied that the requirements of regulation 34 of the RO Regulations are satisfied. The application is made using the 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 Debbie Delimitros, President of the BSCAA NSW, which verifies the facts contained in the application (regulation 34(1)(c)) and the application was lodged at the Commission on 6 March 2025 (regulation 34(1)(d)). Notice of the application was placed on the BSCAA NSW 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 BSCAA NSW be cancelled under s 30(1)(a) of the RO Act.

[16] The cancellation will take effect on 16 May 2025. I have allowed a period of seven days after this decision before the cancellation takes effect to allow necessary administrative processes to take place within the Commission. An order to that effect will be issued separately.



VICE PRESIDENT

Appearances:

K Puxty, Chief Executive Officer, appearing for the applicant.

Hearing details:

9 May 2024.
Sydney (via video).

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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].

² *Victorian Chamber of Commerce and Industry* [\[2024\] FWC 3015](#) at [9]-[11].