

21C-202

16 September 2021

Acting General Manager
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

By email: ros@fwc.gov.au

Dear Acting General Manager

Re: s159(1) – Fair Work (Registered Organisations) Act 2009

Please find attached a notice of the alteration of the rules of the United Workers' Union (UWU) under the provisions of the above.

The alterations address issues associated with the conduct of the UWU elections scheduled for 2022 and discussions between officers of the UWU and the staff of the Registered Organisations Commission (ROC).

The UWU is required to file Prescribed Information (PI) as to the conduct of the elections with the ROC no later than 31 December 2021. Meetings of the UWU National Executive and Member Council have been scheduled for 20 October 2021 and 25 November 2021 respectively. Should the alterations be approved, they will facilitate the determinations required of each governing body and subsequent content of the PI.

In the circumstances the UWU requests the prompt consideration of the notice.

Should you require any further information, please contact myself on 0417 330 825 or by email – **paul.richardson@unitedworkers.org.au**

Yours sincerely



PAUL RICHARDSON
DIRECTOR – FINANCE, GOVERNANCE AND ADMINISTRATION

c.c. Mr B Steenson
Principal Lawyer – Compliance and Protected Disclosures
Registered Organisations Commission

Form F1 – Application (no specific form provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	United Workers' Union		
Surname			
Postal address	P.O. Box 343		
Suburb	North Melbourne		
State or territory	Victoria	Postcode	3008
Phone number	03 9287 1850	Fax number	03 9287 1818
Email address	paul.richardson@unitedworkers.org.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	United Workers' Union
Trading name of business	
ABN/ACN	52 728 088 684
Contact person	Paul Richardson

How would you prefer us to communicate with you?

☒ Email (you will need to make sure you check your email account regularly)

☐ Post

Does the Applicant have a representative?



A representative is a person or organisation who is representing the Applicant. This might be a lawyer or paid agent, a union or a family member or friend. There is no requirement to have a representative.

☐ Yes – Provide representative's details below

☒ No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person

Firm, union or company

Postal address

Suburb

State or territory

Postcode

Phone number

Fax number

Email address

Is the Applicant's representative a lawyer or paid agent?

☐ Yes

☐ No

The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

Title ☐ Mr ☐ Mrs ☐ Ms ☐ Other please specify:

First name(s) Not applicable

Surname

Postal address

Suburb

State or territory

Postcode

Phone number

Fax number

Email address

If the respondent is a company or organisation please also provide the following details

Legal name of business

Trading name of business

ABN/ACN

Contact person

1. The Application

1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

s 159 of the *Fair Work (Registered Organisations) Act 2009*

2. Order or relief sought

2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

Refer Attachment A

2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

Refer Attachment A

3. The employer

3.1 What is the industry of the employer?

Not applicable

4. Industrial instrument(s)

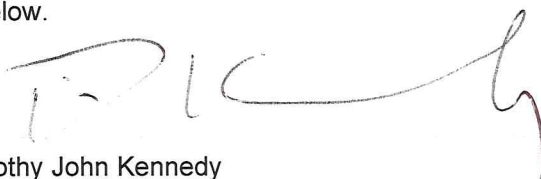
4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

Not applicable

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature 

Name Timothy John Kennedy

Date 16 September 2021



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

ATTACHMENT A

FAIR WORK COMMISSION

Fair Work (Registered Organisations) Act 2009

s159(1) – Alteration of other rules of organisations

Fair Work (Registered Organisations) Regulations 2009

Reg 126 – Alteration of other rules of organisations

NOTICE OF PARTICULARS OF RULE ALTERATION

Notice is given by the United Workers' Union of the following alteration to the organisation's rules.

1. By deleting rule 9(e)(i) and inserting in lieu the following:

(e) *In making a determination under sub-rule (d) the Member Council will take the following matters into account:*

(i) *that the total number of Convention Delegates to be elected at a Quadrennial Election is calculated by dividing the total number of Financial Industrial Members, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, by 300 and rounding to the nearest number;*

2. By deleting rule 29(a) and inserting in lieu the following:

(a) *For the purpose of this rule, the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<i>Total Convention Delegation</i>	<i>the number of Convention Delegates resulting from dividing the number of Financial Industrial Members by 300, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.</i>

3. By deleting rule 32(a) and inserting in lieu the following:

- (a) *For the purposes of this rule, the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<i>Region</i>	<i>A State or Territory</i>
<i>Relevant Member</i>	<i>A person who was a Financial Industrial Member on 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted.</i>

4. *By deleting rule 29(c) and inserting in lieu the following:*

- (c) *Each Electorate is entitled to elect Convention Delegates that proportion of the Total Convention Delegation that the number of Financial Industrial Members residing in the respective Electorate bears to the Financial Industrial Members of the Union, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.*

DATED: 16th day of September 2021



TIMOTHY JOHN KENNEDY
INAUGRAL NATIONAL SECRETARY
UNITED WORKERS' UNION

This notice is filed by Paul Richardson, Director – Finance, Governance and Administration – United Workers' Union

833 Bourke Street
Docklands Victoria 3008

P.O. Box 343
North Melbourne Victoria 3051

Phone: 03 9287 1856
Mobile: 0417 330 825
Email: paul.richardson@unitedworkers.org.au

FAIR WORK COMMISSION

Fair Work (Registered Organisations) Act 2009

s159(1) – Alteration of other rules of organisations

Fair Work (Registered Organisations) Regulations 2009

Reg 126 – Alteration of other rules of organisations

NOTICE OF PARTICULARS OF RULE ALTERATION

DECLARATION

I, Timothy John Kennedy of 833 Bourke Street, Docklands, in the State of Victoria, Union Official do solemnly and sincerely declare:

1. I am the Inaugural National Secretary of the United Workers' Union (UWU), and I am authorised to make this declaration.
2. I make this declaration in support of the Notice of Particulars of Rule Alteration (**Notice**).
3. In this declaration, a reference to Rules means the Rules of the UWU. Furthermore, unless the contrary appears a reference to the Member Council includes a reference to the Inaugural Member Council and vice versa and a reference to the National Secretary includes a reference to the Inaugural National Secretary and vice versa.
4. The UWU is the amalgamation of the National Union of Workers [080V] and United Voice [108V]. The UWU came into operation on the amalgamation day (**amalgamation day**) as determined by the Fair Work Commission – being 11 November 2019. ([2019] FWC 6756)
5. The Rules contain at Schedule 5, transitional rules for the purposes of the operation, governance and functioning of the UWU.
6. Rule 36 of Schedule 5 provides that an officer or group of officers act with the powers and have the obligations under the rules from the amalgamation day until the day specified in Rule 28 of Schedule 5 and include that:

- 6.1 the Inaugural Member Council has the powers and obligations of the Member Council;
- 6.2 the Inaugural National Secretary has the powers and obligations of the National Secretary.
- 7. Rule 37 of Schedule 5 provides that the rules of the amalgamated union apply for the period from the amalgamation day until the Inaugural Quadrennial Elections to the following governing bodies and officers:
 - 7.1 the Member Council – the Inaugural Member Council; and
 - 7.2 the National Secretary – the Inaugural National Secretary.
- 8. This notice is made within and under the powers described in the time periods referred to at paragraphs 6 and 7 above.
- 9. Rule 33(c)(i) prescribes that the Member Council has the power to alter the Rules.
- 10. Rule 86 details the manner in which an amendment to the Rules is to be managed.
- 11. Rules 86(a) and (b) allow the National Secretary or the National President to request that the Member Council determine to amend the Rules provided that a copy of the proposed amendment is given to members of the Member Council.
- 12. Rule 86(a)(iii) allows for determination of an amendment to the Rules to be by an out of session ballot.
- 13. Rule 43 details the manner in which the Member Council (being a governing body) may determine a matter expeditiously and by means of an out of session ballot.
- 14. Rule 43(d) provides that an out of session ballot may be conducted by among other forms, by post, by email and/or a mixture of the means so described.
- 15. Rule 43(e) provides for the time limits within which out of session ballots may be determined, the quorum for the conduct of a ballot and the prescription of majority for the purpose of a determination. Notwithstanding the provisions of Rule 43(e)(i) where a request to amend Rules is conducted by an out of session determination, Rule 86(c) requires that the time limit in which ballots must be reviewed (sic)¹ be not less than 14 days.

¹ Rule 86(c) states “... where a determination is made following a request under paragraph (a)(iii) the time limit in which ballots must be reviewed is to be not less than 14 days.” (emphasis added). The UWU holds the view that the reference “reviewed” is a drafting error in the Rules and should read “received”. This provides for a proper construction of the rule – particularly when cross referenced to Rule 43(e)(i) which refers to time frames when conducting an out of session determination. To read the rule otherwise renders it, in part at least to be meaningless.

16. The composition of the Member Council of the UWU is described at Rules 31 and 32.
17. A meeting of the National Executive of the UWU held on 31 August 2021 received a report on the quadrennial elections to be held in 2022 along with discussions that had occurred between the UWU and the Registered Organisations Commission (**ROC**).
18. Arising from the above-mentioned discussions with the ROC the UWU received correspondence to which the UWU replied. Copies of the correspondence accompany this Notice and are contained in **Annexure 1** of this declaration.
19. The National Executive resolved as follows:
- That the National Executive note the report and resolve to recommend to the Member Council consideration by means of an out of session determination, the rule alterations referred to in the report to give effect to the orderly conduct of the 2022 Quadrennial elections.*
20. On 31 August 2021, the Member Council was provided with email correspondence from Paul Richardson, Director – Finance, Governance and Administration (acting under my instruction) along with a report and recommendation concerning the proposed alteration to the Rules of the UWU that is the subject of this Notice. The report and recommendation appear as **Annexure 1** to this declaration.
21. The report included instructions on how the Member Council could vote for or against the recommendation and a ballot paper. A sample of the ballot paper appears within **Annexure 1** to this declaration.
22. As at close of business, Wednesday 15 September 2021, a total of 44 completed ballot papers or emails that conformed to the manner in which Member Councillors could cast a ballot, were received (**returned ballots**).
23. Of the returned ballots, all 44 were in favour of the proposed rule alteration.
24. As at 31 August 2021:
- 24.1 the number of Member Councillors of the Member Council as provided for within Rule 33 was 49; and
- 24.2 the number of officers comprising the National Executive as provided for within Rule 35 was 18.

20. Thus, the total number of officers presently comprising the Member Council is 67. Rules 43(f)(ii) and (iii) provide that members of a governing body of the UWU casting a ballot plus one constitutes a quorum and that unless provided otherwise require that a determination will be by a simple majority.
21. Accordingly, a quorum of the Member Council was constituted and further the number of ballots returned in favour of the proposed alteration is greater than the minimum required majority as required under the Rules of the UWU.
22. A list of each member of the Member Council appears as **Annexure 2** to this declaration. The list indicates the manner in which those members who participated in the out of session determination returned their ballot and the vote each casted.
23. The UWU has a website. In accordance with Regulation 126(1)(b) of the *Fair Work (Registered Organisations) Regulations*, the Notice has been published on the website – **www.unitedworkers.org.au/notices/**²
24. On the basis of the foregoing, I declare that the alteration has been made in accordance with the Rules of the organisation.
25. I further declare that the alteration:
- 24.1 complies with, and is not contrary to the *Fair Work (Registered Organisations) Act 2009 (the RO Act)*, the *Fair Work Act 2009*, any modern award and any enterprise agreement [s159(1)(a) of the RO Act];
 - 24.2 is not otherwise contrary to law; [s159(1)(a)(ii) of the RO Act]; and
 - 24.3 has been made under and in accordance with the UWU Rules [s159(1)(a)(iii) of the RO Act and Regulation 126(2)(a).].
26. In accordance with Regulation 126(2)(c) I also declare that the particulars set out in this declaration are true and correct to the best of my knowledge and belief.

DECLARED at Docklands, Victoria on this 16th day of September 2021

² Request made to UWU Communications for posting of the notice made concurrent with filing of this notice on 16 September 2021.

A handwritten signature in dark ink, appearing to read 'TJ Kennedy', is positioned above the printed text.

TIMOTHY JOHN KENNEDY
INAUGRAL NATIONAL SECRETARY
UNITED WORKERS' UNION



REPORT TO MEMBER COUNCIL

Annexure 1

Rule Alteration – Quadrennial Elections

31 August 2021

Tim Kennedy – National Secretary

Recommendation

That in accordance with Rule 86, the Member Council resolves to alter the Rules of the United Workers' Union as follows:

1. By deleting rule 9(e)(i) and inserting in lieu the following:

(e) *In making a determination under sub-rule (d) the Member Council will take the following matters into account:*

(i) *that the total number of Convention Delegates to be elected at a Quadrennial Election is calculated by dividing the total number of Financial Industrial Members, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, by 300 and rounding to the nearest number;*

2. By deleting rule 29(a) and inserting in lieu the following:

(a) *For the purpose of this rule, the words in column A have the meaning assigned opposite in column B:*

A	B
Total Convention Delegation	<i>the number of Convention Delegates resulting from dividing the number of Financial Industrial Members by 300, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.</i>

3. By deleting rule 32(a) and inserting in lieu the following:

(a) For the purposes of this rule, the words in column A have the meaning assigned opposite in column B:

A	B
Region	<i>A State or Territory</i>
Relevant Member	<i>A person who was a Financial Industrial Member on 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted.</i>

4. By deleting rule 29(c) and inserting in lieu the following:

(c) Each Electorate is entitled to elect Convention Delegates that proportion of the Total Convention Delegation that the number of Financial Industrial Members residing in the respective Electorate bears to the Financial Industrial Members of the Union, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.

Executive Summary

During 2022 elections for all offices within the Union are scheduled to occur.

As part of the necessary preparation for the election the Union is required to file Prescribed Information (PI) with the Registered Organisations Commission (ROC).

The PI details the offices that are subject to election, the manner of how the election is conducted and the relevant dates associated with the election.

As the first election being that for the Union's Convention delegates commences on 1 March 2022, the PI is required to be filed no later than 31 December 2021 (being two months prior to the opening of nominations).

On 9 August 2021, Finance, Governance and Administration (FGA) met with staff of the ROC to discuss the PI for the purposes of the above.

Subsequent to the meeting, ROC corresponded with the Union indicating that the operation of several rules would inhibit the issuing of a decision and potentially cause a delay in the election timetable.

The Union replied on 19 August 2021 after FGA discussed the Union's proposed response with the National President and the National Secretary.

Whilst it is open to the Union to disregard the invitation of ROC to consider rule alterations this may have undesirable consequences as to the timing of the election. Thus, on balance and as communicated to the ROC, the NEX having considered matters has recommended the above rule alterations for approval to the Member Council.

If approved the alterations would alter the date for the determination of the composition of the Member Council and the number of Convention Delegates to be elected from 31 January in the year of the elections to 15 December in the year immediately preceding the elections.

Budget / Financial Implications

Nil

Risk

A possible delay in the timing and conduct of the Quadrennial elections that are to occur in 2022 which in turn would potentially result in the need for the timing of the holding of the Convention to be altered

Attachments

Attached is a summary of the procedure to be adopted by the Member Council when considering an alteration to the Union's rules. The method of considering the alteration is by means of an out of session determination.

Also attached are copies of the correspondence referred to in the report between the ROC and the Union.

Attachment - Process for Altering Rules

The Member Council has the power to alter the rules of the United Workers Union [Rule 86].

Alterations to the rules may be proposed by the National Secretary or the National President [Rule 86(a)].

The Member Council may consider rule alterations:

- At an ordinary meeting of the Member Council [Rule 86(a)(i)];
- At a special meeting of the Member Council [Rule 86(a)(ii)]; or
- By an out of session ballot [Rule 86(a)(iii)];

Where an out of session ballot is to be conducted the Member Council must be given a copy of the proposed alteration to the rules, with the request for an out of session ballot [Rule 86(b)].

Where the alteration is to be considered by an out of session ballot the period for receiving completed ballots is to be no less than 14 days [Rule 86(c)].

An out of session determination may be conducted by post, email, text, other electronic communication or a mixture [Rule 43(d)].

RULE 86(a)(iii) – ALTERATION TO RULES OF THE UNITED WORKERS’ UNION

OUT OF SESSION DETERMINATION BY MEMBER COUNCIL

Please complete your ballot by either:

- Marking the box of your choice below and returning your completed ballot in the stamped addressed envelope provided (for those Councillors without email access) or
- Marking the box of your choice and then scanning a completed copy of this ballot to Paul Richardson – paul.richardson@unitedworkers.org.au or;
- Replying by email to Paul Richardson – paul.richardson@unitedworkers.org.au indicating “yes” or “no” in your email.

Regardless of the method of voting you use, please return your ballot by no later than **12noon EST Wednesday 15 September 2021**.

Determination

That in accordance with Rule 86, the Member Council resolves to alter the Rules of the United Workers’ Union as follows:

5. By deleting rule 9(e)(i) and inserting in lieu the following:

(e) In making a determination under sub-rule (d) the Member Council will take the following matters into account:

- (i) that the total number of Convention Delegates to be elected at a Quadrennial Election is calculated by dividing the total number of Financial Industrial Members, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, by 300 and rounding to the nearest number;***

6. By deleting rule 29(a) and inserting in lieu the following:

- (b) For the purpose of this rule, the words in column A have the meaning assigned opposite in column B:***

A	B
<i>Total Convention Delegation</i>	<i>the number of Convention Delegates resulting from dividing the number of Financial Industrial Members by 300, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.</i>

7. By deleting rule 32(a) and inserting in lieu the following:

(a) For the purposes of this rule, the words in column A have the meaning assigned opposite in column B:

A	B
<i>Region</i>	<i>A State or Territory</i>
<i>Relevant Member</i>	<i>A person who was a Financial Industrial Member on 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted.</i>

8. By deleting rule 29(c) and inserting in lieu the following:

(c) Each Electorate is entitled to elect Convention Delegates that proportion of the Total Convention Delegation that the number of Financial Industrial Members residing in the respective Electorate bears to the Financial Industrial Members of the Union, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.

☐ Yes

☐ No

Name: _____

Signature: _____

Date: _____



Australian Government
Registered Organisations Commission

13 August 2021

Tim Kennedy
National Secretary
United Workers Union

By email: reporting@unitedworkers.org.au

c.c. Paul Richardson, Director, Finance Governance and Administration,
Paul.Richardson@unitedworkers.org.au

Dear Mr Kennedy,

United Workers Union: election rules and upcoming quadrennial election

I refer to the quadrennial election for the United Workers Union (**UWU**) which is scheduled to be conducted in 2022, and to recent communications between Paul Richardson of the UWU and the Registered Organisations Commission (**ROC**) in preparation for that election.

We appreciate the UWU's proactive approach in making contact with the ROC to discuss election-related issues prior to the time at which prescribed information (**PI**) is required to be lodged.

As part of our discussions with UWU representatives Paul Richardson and Bev Myers, ROC staff identified that the UWU rules in relation to elections provide for:

- 1 March 2022¹ as the date for opening of nominations; and
- 31 January 2022 as the date for determining the number of persons to be elected from particular electorates.²

Section 189 of the *Fair Work (Registered Organisations) Act 2009* (**the RO Act**) together with Regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009*, requires that an organisation must lodge PI for an election at least two months prior to the earliest date on which a person can become a candidate in that election (i.e. two months before the date that nominations open).

One of the reasons for this timeframe is to enable the ROC to consider the PI and for the Delegate of the Commissioner to issue a decision, in accordance with section 189(3) of the RO Act, if satisfied that an election is required for those offices. It also allows the ROC to provide

¹ Being the first business day in March; rule 3(a), UWU rulebook R2021/50 (incorporating rule alterations certified 25 May 2021)

² UWU rules 29(a) and 32(a) requiring the relevant date to be the 31 January that falls in the final year of the preceding term

advance notice to the Australian Electoral Commission (**AEC**) of a likely impending election – enabling it to consider what steps it may need to take in preparation (e.g. considering possible allocation of returning officer, etc.), pending the issuing of the election decision by the ROC Delegate.

In the case of the UWU quadrennial election this means that the PI would need to be lodged before 1 January 2022 – in practice during December, before the end of the 2021 working year.

Number of officers not able to be determined at the time PI is lodged

Such a timetable, prescribed by the RO Act, has the effect that the UWU would not be able to notify the ROC, at the time that an on-time PI was lodged, of the number of officers to be elected in each of its electorates for Convention Delegates – as the calculation date for that (namely 31 January 2022) would not yet have been reached.

In such circumstances, an estimate of numbers (while apparently quite helpful as a preparatory step) would not, in fact, assist the Delegate of the Commissioner when it came to the actual issuing of an election decision. This is because the Delegate has to be satisfied that an election for particular offices is required, under the rules of the organisation, to be conducted.

Where multiple offices of the same type are to be elected (e.g. multiple officers elected by the same electorate) and/or are determined using a formula based on the number of members in a particular electorate, the Delegate must determine this, where known, and include it in the election decision.

Where the numbers are unable to be precisely determined at the time that the election decision is issued, the Delegate would need to issue a decision in the following terms:

[Name of office]

Electorate A number to be determined in accordance with the rules

Electorate B number to be determined in accordance with the rules

and so on.

Such an approach, while legally possible, would result in either the issuing of an election decision being delayed and/or substantial further work by the AEC to calculate and verify the number of offices for which nominations are called in each electorate.

Unfortunately, waiting until after 31 January 2022 to lodge the PI would appear not to be a viable option for two reasons: (i) it would place the UWU in a situation of likely contravening the RO Act (as section 189(2) is a civil penalty provision) and (ii) if the election were sought to run in accordance with the timetable in the UWU rules, it would provide an exceptionally narrow timeframe for the issuing of the decision by the ROC and for the necessary steps that the AEC is required to take to issue the notice calling for nominations.

ROC's approach where similar Issue identified in other elections

The issue of the number of officers not being able to be determined, until some later (post-decision) date, is one that the ROC has been faced with on a number of occasions.

This issue has therefore been raised with a number of registered organisations recently, including as part of election decisions issued. For example, *Australian Salaried Medical Officers Federation* [2021] ROCD 5 (in relation to election E2020/222), *Australian Education Union* [2021] ROCD 81 (in relation to election E2021/73) and *Police Federation of Australia* [2021]

ROCD 50 (in relation to election E2021/38). Where the issue is raised in election decisions, subsequent follow-up is undertaken by the ROC to identify what remedial action, if any, has been taken by the organisation in relation to this issue.

In circumstances where the AEC is left to determine the number of offices to be elected, because an organisation's rules about the dates on which the number is determined are such that the ROC is not able to do so as part of the issuing of an election decision, this creates additional work for the AEC. Given the additional work and in the context of COVID-related backlogs in industrial elections, this may lead to delays in the conduct of the election (including the AEC possibly needing to conduct it under a timetable different to that which is in the organisation's rules – as is allowed for by section 193 of the RO Act).

Opportunity to resolve this issue

The purpose of this letter is therefore to draw the UWU's attention to this issue ahead of the upcoming election and to ask it to consider proactively taking steps, in order to address the issue prior to the lodgement of prescribed information for the quadrennial election.

It presents an opportunity for the issue to be resolved before the election process commences.

It is apparent to the ROC that this issue of not being able to determine the number of offices to be elected from various electorates is an issue that will recur at every scheduled UWU election if the rules remain in their current form.

I note that the UWU's rules, in particular rule 86, provide that the Council is empowered to transact rule changes and that it may do so by a range of means including an out of session vote.

We note that any such rule change would require certification by the Fair Work Commission (**FWC**) and, in the event that the UWU determined to resolve this issue by way of rule alteration, we would work with it to facilitate the prompt consideration of the rule change by the FWC.

It is, of course, ultimately a matter for each registered organisation what it determines in relation to its rules. However, it would assist if the UWU were to give consideration to this issue as part of ensuring the effective handling of election-related matters both now and into the future.

I would appreciate your advice, **by Wednesday 1 September 2021**, in relation to whether the UWU proposes to take steps to address this issue prior to the lodgement of prescribed information.

Please feel free to contact me directly either by email to bill.steenson@roc.gov.au or by phone on (02) 8293 4665 if you require any further information or wish to discuss this matter. If further time is required by the UWU to consider this issue, please contact me accordingly.

Yours sincerely



Bill Steenson
Principal Lawyer, Compliance
Registered Organisations Commission



BIGGER, STRONGER, UNITED.

TIM KENNEDY SECRETARY
JO SCHOFIELD PRESIDENT

21C-123

19 August 2021

Mr B Steenson
Principal Lawyer, Compliance
Registered Organisations Commission
GPO Box 2983
MELBOURNE VIC 3001

By email: bill.steenson@roc.gov.au

Dear Mr Steenson,

Re: United Workers' Union – Election Rule and Upcoming Quadrennial Election

I refer to the above and your correspondence dated 13 August 2021.

The United Workers' Union (UWU) appreciates the willingness of staff of the Registered Organisations Commission (**the Commission**) to assist the UWU in preparing for the upcoming elections and in particular the engagement over the content of the Prescribed Information (PI) to be filed.

Your correspondence raises consideration by the UWU of the opportunity to take proactive steps that would resolve the issue identified by the Commission in not being able to determine the number of offices of Convention Delegates and Member Councillors until a date that would be later than the issuing of any decision as to the conduct of the election.

Before turning to this opportunity and our reply, the UWU feels obliged to make several observations.

Firstly, whilst the Commission does not call into question the validity of the UWU Rules, it is necessary for us to reiterate that the Rules are properly constructed, were properly considered by the antecedent unions and were the subject of exhaustive discussion with staff of the Registered Organisations Section of the Fair Work Commission (ROS) prior to filing the application for an amalgamation ballot to ensure they complied with the requirements of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

The construction of rules 29 and 32 were deliberate and reflect the intent of the UWU.

As such it is somewhat inappropriate that the Commission should invite the UWU to consider altering the Rules simply because it would make easier the decision on the PI and, purportedly, the work required of the Australian Electoral Commission (AEC) thereafter.

Second, the UWU does not agree with the statement that '[the approach] ...would result insubstantial further work by the AEC to calculate and verify the number of offices for which nominations are called...'

As discussed at our meeting on 9 August 2021, all that is required to give effect to rules 29 and 32 is that on or after 31 January 2022, the UWU would formally communicate the number of offices to the AEC as well as the Commission. Insofar as the AEC does not commence the calling of nominations for the Convention election until 1 March 2022, the UWU is of the view that provided its numbers are communicated in an expedient manner without any ambiguity and in a suitable form that the necessary preparatory work of the AEC is not materially affected.

The calculations are not work of the AEC they are the work of the organisation. Further, whilst the AEC has the power to seek verification of the number of offices, the UWU notes that based on the past experiences of the antecedent unions, the AEC seeks verification through the medium of written communication from the organisation and nothing more.

Finally, as is noted in the decisions to which you have referred, the operation of rules 29 and 32 is not uncommon amongst other registered organisations.

The above said, the UWU has reflected on the discussion at our abovementioned meeting which along with your correspondence has allowed the organisation to form a view about how best to approach the issue.

In all the circumstances and driven by a desire for the scheduled elections to occur efficiently and without the need for potential delay (subject of course to any adverse effect of COVID-19 restrictions) it is our intention to request that the Member Council positively consider rule alterations to provide an alternative.

A draft of the rule alterations proposed are attached for your reference.

Rule 86 allows for the Member Council to determine matters, including rule alterations by means of an out of session determination. The process associated with this will commence as soon as practicable.

Should the rule alterations be approved, the UWU will then file the PI on or around 16 December 2021 rather than as originally forecast as being on or around 3 December 2021. This is within the timeframe set out in Regulation 138(3) of the *Fair Work (Registered Organisations) Regulations* and therefore in compliance with s189 of the RO Act.

Should the General Manager (or their Delegate) approve the rule alteration this would mean that the PI will specify the number of offices required for the elections of Convention Delegates and the composition of the Member Council. In this respect the UWU will be contacting the ROS to inform them of our intentions so that it may hopefully give proper yet expedited consideration to any application the UWU may or will make under s159(1) of the RO Act.

I trust this clarifies matters and appropriately responds to your letter.

The UWU will as a matter of courtesy inform the Commission if and when the proposed alterations are approved by the Member Council and the subsequent filing of any application with the FWC.

In meantime, should you require any clarification or additional information please contact me.

Yours sincerely,

PAUL RICHARDSON
DIRECTOR – FINANCE, GOVERNANCE AND ADMINISTRATION

RULE ALTERATIONS – PRESCRIBED INFORMATION – CONDUCT OF ELECTIONS

1. By deleting rule 9(e)(i) and inserting in lieu the following:

- (e) *In making a determination under sub-rule (d) the Member Council will take the following matters into account:*
- (i) *that the total number of Convention Delegates to be elected at a Quadrennial Election is calculated by dividing the total number of Financial Industrial Members, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, by 300 and rounding to the nearest number;*

2. By deleting rule 29(a) and inserting in lieu the following:

- (a) *For the purpose of this rule, the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<i>Total Convention Delegation</i>	<i>the number of Convention Delegates resulting from dividing the number of Financial Industrial Members by 300, as at 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted, rounded up to the nearest whole number.</i>

3. By deleting rule 32(a) and inserting in lieu the following:

- (a) *For the purposes of this rule, the words in column A have the meaning assigned opposite in column B:*

<i>A</i>	<i>B</i>
<i>Region</i>	<i>A State or Territory</i>
<i>Relevant Member</i>	<i>A person who was a Financial Industrial Member on 15 December in the year immediately before the year in which the Quadrennial Election is to be conducted.</i>

4. By deleting rule 29(c) and inserting in lieu the following:

ANNEXURE 2

MEMBER COUNCIL – OUT OF SESSION DETERMINATION – RULE ALTERATIONS

RECORD OF RETURNED BALLOTS

OFFICE	OFFICE HOLDER	FORM OF BALLOT	VOTE
National President	Jo-anne Schofield	Email	Yes
National Vice President	Susan Allison	Ballot	Yes
National Vice President	Gary Bullock	Email	Yes
National Vice President	Samuel Roberts	Email	Yes
National Vice President	Carolyn Smith	Email	Yes
National Secretary	Tim Kennedy	Ballot	Yes
National Executive member	Jannette Armstrong		
National Executive member	Sharron Caddie	Email	Yes
National Executive member	Caterina Cinanni	Ballot	Yes
National Executive member	Melanie Gatfield	Email	Yes
National Executive member	Helen Gibbons	Email	Yes
National Executive member	Karma Lord	Email	Yes
National Executive member	Godfrey Moase	Ballot	Yes
National Executive member	Dario Mujkic	Email	Yes
National Executive member	Demi Pnevmatikos	Email	Yes
National Executive member	Ben Redford	Ballot	Yes
National Executive member	Paul Richardson	Ballot	Yes
National Executive member	Lyndal Ryan	Email	Yes
Member Council Delegate	Arou Akot	Email	Yes
Member Council Delegate	April Astuti		
Member Council Delegate	Gamaleldin Babiker		
Member Council Delegate	Judith Barber	Email	Yes

Member Council Delegate	Greg Bartel		
Member Council Delegate	Amy Bell		
Member Council Delegate	Karen Bunker		
Member Council Delegate	Michelle Chang		
Member Council Delegate	Judeth Clarke		
Member Council Delegate	David Clements	Email	Yes
Member Council Delegate	Evalyn Clow	Email	Yes
Member Council Delegate	Karma Dema		
Member Council Delegate	Robert Dickinson		
Member Council Delegate	Joel Dowden	Email	Yes
Member Council Delegate	Michael Formica		
Member Council Delegate	Agnes Galiza-Pua		
Member Council Delegate	Mira Ghamrawi	Ballot	Yes
Member Council Delegate	Kylie Grey	Email	Yes
Member Council Delegate	Lillian Grogan		
Member Council Delegate	Suzanne Gounder	Email	Yes
Member Council Delegate	Shona Haddon	Ballot	Yes
Member Council Delegate	Maria Halwood	Email	Yes
Member Council Delegate	Wesley Inglis		
Member Council Delegate	Heather Jackson	Email	Yes
Member Council Delegate	Jeff Kirkby	Email	Yes
Member Council Delegate	Justin Lane	Ballot	Yes
Member Council Delegate	Tracey Lidsay		
Member Council Delegate	Leah Malzard	Ballot	Yes
Member Council Delegate	Mabor Madit		
Member Council Delegate	Carol McCormack		
Member Council Delegate	Deirdre Meneaud	Email	Yes

Member Council Delegate	Colin Minns	Email	Yes
Member Council Delegate	Karen Moran	Ballot	Yes
Member Council Delegate	Margarita Murray-Stark		
Member Council Delegate	John Newton	Email	Yes
Member Council Delegate	Josie Ngme	Email	Yes
Member Council Delegate	Delma Panhuyzen	Email	Yes
Member Council Delegate	Paul Payne	Email	Yes
Member Council Delegate	Kim Prescott-Brown		
Member Council Delegate	Stephen Radford		
Member Council Delegate	Ram Sharma		
Member Council Delegate	Hayden Smallwood		
Member Council Delegate	Susan Szalay	Ballot	Yes
Member Council Delegate	Arthur Tsimopoulos	Email	Yes
Member Council Delegate	Barbara Turomsza	Email	Yes
Member Council Delegate	Janet Williams	Ballot	Yes
Member Council Delegate	Kenton Winsley	Ballot	Yes
Member Council Delegate	Andreas Wittmann	Email	Yes
Member Council Delegate	Samantha Wright		
TOTAL VOTES CAST			44

NOTES

As of the date of the out of session determination being circulated there was one vacancy on the National Executive and one vacancy on the Member Council.