



BULLETIN

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25 September 2020

TO ALL UFUA MEMBERS

UFUA NATIONAL RULE CHANGES

The United Firefighters Union of Australia (UFUA) National Committee of Management has adopted changes to the UFUA rules on 15 September 2020.

In accordance with rule 49(4) of the UFUA Rules, the National Secretary is required to publicise the rule changes adopted by the National Committee of Management (NCOM). A summary of the changes is set out below. The full text of the changes is provided after the summary.

SUMMARY

A. Eligibility rules

The Tasmanian Branch has experienced an attempt by the Tasmania Fire Service to exclude the UFU from coverage of certain classifications, arguing rule (6)(e)(12) did not name the classifications, which have evolved since the rule was formulated.

The altered rule will clearly give the UFU coverage of person employed by, in, for or on behalf of the Tasmania Fire Service, the State Fire Commission.

B. Financial Units, calculation of capitation fees and disbursement of funds

These changes were designed to simplify and clarify the operation and application of the rules, and to assist in the good governance of the UFU.

UFUA accountants, Agosinelli Perlen, reviewed the changes when proposed and considered the changes reasonable for the practical operation of the UFU and its branches.

Specifically the changes are:

Capitation fees payable by branches were calculated by reference to a classification in NSW which no longer exists (Firefighter Level 1) having been abolished in 2014. Using the equivalent rank results in a capitation fee of \$34.42. However the formula in the rules has not been applied for at least 10 years and the National Committee of Management (NCOM) has set a lower capitation fee, which is currently \$20.52 plus GST. The change replaces the formula with the present figure of \$20.52 plus GST. Half of the fee is payable for part time members. Under the new rule NCOM will have the power to vary the amount if desired.

In various parts of the rules, amounts of money were defined by numbers of “financial units”. Financial units in turn were calculated by reference to a classification in the NSW firefighters award. After the changes dollar amounts replace references to financial units.

The number of quarters in which a branch has not paid monies to the National office is reduced from two to one before a branch becomes unfinancial.

Changes to rule 9 enables the expenditure on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, or expenditure for which a budget has been endorsed by NCOM or NEX without the express authorisation of NCOM or NEX. This clarifies the circumstances in which expenditure can occur and is in accord with the practice that is in place currently. It also enables payments to be made by bank transfer as well as cheque.

Changes to rule 64(1)(h) permits expenditure of the Branch funds on the general administration of the Branch and for purposes reasonably incidental to the general administration of the Branch without prior authorisation.

C. Amendments to election timetable for National officers

These changes to rule 23 implement suggestions made by the Australian Electoral Commission following the last National Officer elections.

D. Annual Meetings of NCOM by telephone etc

under the present rules it was arguable that the Annual Meeting of NCOM could not take place by telephone. This change to rule 14(1) makes it clear that the Annual Meeting can be by phone or other means.

E. International affiliations etc

This proposal clarifies that under rule 3(13) the UFU can affiliate with international bodies.

F. Representation

These changes to rules 12, 13 and 19 enable the National office to represent a member of a branch on request.

G. Compliance Rules

The Fair Work (Registered Organisations) Act (RO Act) requires registered unions to comply with various reporting and other obligations prescribed by the RO Act.

In late 2019 the UFU became aware that some branches may have contravened the RO Act by not keeping records as required.

Contraventions by branches are contraventions by the legal entity which is the UFUA, and it can be penalised by fines imposed by the Federal Court.

There is no present ability of the UFUA under its rules or the RO Act for the UFUA nationally to undertake the responsibilities of a branch, or to ensure that a branch or its officers have or can comply, or to force it to comply with the requirements of the RO Act. The Registered Organisations Commission, the statutory body responsible for enforcing the requirements of the RO Act, cannot itself compel compliance and can only seek penalties for non-compliance after the event.

Advice from legal counsel was that it would be prudent for the UFU to amend its rules to attempt to minimise non-compliance by any of its branches and thus prevent further exposure to penalties.

Counsel have drafted the rules which effectively replicate the obligations of branches and branch officers under the RO Act, together with obligatory reporting to the National Secretary and an ability for him/her to acquire information about compliance. This would then give the National Secretary the ability to monitor compliance. If a branch's officers were not complying with the rules, the National Executive, NCOM, the National officers or indeed any member could bring a proceeding in the Federal Court seeking compliance with the rules.

These rules are also about ensuring good governance in the UFU and its branches.

The changes also remove or replace obsolete references in the rules.

FULL TEXT OF RULES CHANGES

The resolutions of NCOM containing the actual wording of the rule changes are as follows:

A. Eligibility rules

That rule 6 be altered:

1. By adding to the paragraph at the end of sub-rule 6(e)(12)(1) after the words "other than by" the following:

, in, for or on behalf of
2. By deleting sub-rule 6(e)(12)(6) and inserting:
3. *Any person employed in Tasmania other than a person employed by, in, for or on behalf of the Tasmania Fire Service, the State Fire Commission or a successor organisation or subsidiaries including but not limited to a person employed under the State Service Act 2000 shall not be eligible for membership.*

B. Financial Units, Calculation of capitation fees and disbursement of funds

That the rules be altered as follows:

1. By deleting rule 29(1) and inserting:

(1) (a) With effect from the 1st July, 2020, an amount of \$20.52 plus GST or such other amount as is determined by the National Committee of Management prior to the commencement of that Financial Year, and in the event that no determination is made the amount set for the previous Financial Year will apply which shall be paid by each Branch quarterly to the National Secretary in respect of each Branch member who is not a part time firefighter as contained in the certified audit of Branch membership in accordance with Sub-Rule 10(1)(e).

(b) With effect from the 1st July, 2020, an amount of \$10.26 plus GST or such other amount as is determined by the National Committee of Management prior to the commencement of that Financial Year, and in the event that no determination is made the amount set for the previous Financial Year will apply which shall be paid by each Branch quarterly to the National Secretary in respect of each part time firefighter Branch member who is so described in the certified audit of Branch membership in accordance with Sub-Rule 10(1)(e).

2. By deleting rule 35 and inserting:

Any member of the Union who owes the Union as subscriptions an amount in excess of \$100 shall be an unfinancial member of such member's Branch and the Union and shall not be permitted to hold Office or participate in the management or control of the Union or such member's Branch. All other members of the Union shall be financial members of their Branches and the Union.

3. By deleting paragraph (6) of rule 37 and inserting:

(6) If in the opinion of the National Executive the member is guilty of the offence alleged the National Executive may reprimand such member or may fine such member a sum not exceeding \$300 for any one offence or may suspend such member for a period not exceeding 12 months or may expel such member from the Union.

4. That the definition of “unfinancial Branch” in rule 2(4) be deleted and the following inserted:

“unfinancial Branch” means a branch which has not paid monies payable to the National Secretary under rule 29 in respect of any quarter. The Branch would become unfinancial in accordance with this definition upon the last day of the quarter and remain unfinancial until all unpaid monies are paid. For the avoidance of doubt, a Branch ceases to be unfinancial when all outstanding unpaid monies are paid.

5. By deleting paragraph 19(7) and inserting:

(7) shall not incur liabilities on behalf of the Union which at any time total more than \$60,000 without the authority of the National Committee of Management or the National Executive and shall report all liabilities which are incurred to the next meeting of the National Committee of Management or the National Executive whichever occurs first;

6. By deleting paragraph 19(8) and inserting:

(8) (a) where the amount exceeds \$10,000 the National Secretary shall not pay the same without the authority of the National Committee of Management or the National Executive. Provided that for the expenditure of the National funds on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, or expenditure for which a budget has been endorsed by the National Committee of Management or the National Executive, the express authorisation of the National Committee of Management or the National Executive shall not be necessary.

(b) where the amount exceeds \$5,000 the National Secretary shall pay the same by cheque or bank transfer unless expressly authorised otherwise by the National Committee of Management or the National Executive.

(c) where expenditure referred to in paragraph (a) herein has been made it shall be reported to the next meeting of the National Committee of Management or the National Executive whichever occurs first.

7. By deleting rule 31 and inserting:

Unless it has been expressly authorised by the National Executive or National Committee of Management to do otherwise, then all payments from the

National fund in excess of \$5,000 shall be by cheque signed by the National Secretary and one other member of the National Committee of Management or any other person so empowered by the National Committee of Management, or by bank transfer authorised by the National Secretary and one other member of the National Committee of Management or any other person so empowered by the National Committee of Management.

- 8.** In rule 64(1)(g) by deleting “120 financial units” and inserting \$60,000.
- 9.** By deleting “20 financial units” from rule 64(1) paragraph (h)(i) and inserting \$10,000.
- 10.** By deleting “10 financial units” from paragraph 64(1)(h)(ii) and inserting \$5,000.

- 11.** By adding a new sub-paragraph (iii) to paragraph 64(1)(h) as follows:

(iii) for the expenditure of the Branch funds on the general administration of the Branch and for purposes reasonably incidental to the general administration of the Branch the express authorisation the Branch Committee of Management shall not be necessary. Provided that any such expenditure shall be reported to the next meeting of the Branch Committee of Management.

- 12.** By deleting rule 79 and inserting:

Unless it has been expressly authorised by the Branch Executive or Branch Committee of Management to do otherwise then all payments from Branch funds in excess of \$10,000 shall be by cheque signed by the Branch Secretary and one other member of the Branch Committee of Management or other person so empowered by the Branch Committee of Management, or by bank transfer authorised by the Branch Secretary and one other member of the Branch Committee of Management or any other person so empowered by the Branch Committee of Management.

- 13.** By deleting from paragraph 84(4) “3 financial units” wherever occurring and replacing with \$300.

C. Amendments to election timetable for National officers

1. That rule 23(8) be deleted and the following inserted:

(8) The ballot for National Officer positions shall close at 5 p.m. two days before the National Committee of Management Election Meeting.

2. That rule 23(11) be deleted and the following inserted:

(11) The National Returning Officer shall declare to the National Committee of Management Election Meeting the result of the ballot. In the event of a tie, the National Returning Officer shall determine the result by casting lots. Except in so far as any Act from time to time provides otherwise or a protest is lodged in accordance with Rule 25, whenever any member has been declared elected to any office the member declared to be elected to such office, notwithstanding any defect or irregularity which may have occurred in or in connection with the calling or any dealing with nominations or the conduct of the ballot shall be recognised as validly holding such office.

D. Annual Meetings of NCOM by telephone etc

That the rules be altered as follows:

By deleting sub-rule 14(1) and inserting:

- (1) *(a) The National Committee of Management shall meet at least once in each year. The Annual Meeting shall be held at a time, date and place to be decided by the National Committee of Management: Provided that if the National Committee of Management has not prior to 1st February decided when and where it will meet during the year the National Secretary shall fix the time date and place of the meeting after consulting with the National President and with the Branch Secretaries who have the right to attend meetings of the National Committee of Management.*
(b) Such meeting may be conducted by telephone, radio or any other means by which members of the National Committee of Management are able to communicate orally with each other without being physically

present at the meeting. The Minutes of such meeting shall be taken and distributed in accordance with Rule 14(7).

E. International Affiliations

That the rules be altered as follows:

By deleting paragraph (13) of rule 3 and inserting:

(13) to affiliate to, federate and amalgamate with or in any manner associate with any trade union or industrial union or other organisation associations or institutions including international bodies having objects similar in the whole or in part to the objects of this Union;

F. Representation

That the rules be altered as follows:

1. By inserting in paragraph (12)(d) of rule 13 after the word “to” where first occurring the words “*represent or*”.
2. By deleting sub-rule 13(14) and inserting:

(14) This Sub-Rule does not in any way affect or limit the powers conferred by Sub-Rules (12) and (13) of this Rule but declares a policy to be followed in the exercise of those powers.

 - (a) In any industrial proceedings which affect the members of only one branch it should not control the proceedings nor appoint agents, solicitors or counsel unless requested by that Branch or a member of that branch to do so.*
 - (b) it should not seek or agree to an award, order or determination nor any provision in an award or industrial agreement to have operation in a State or Territory unless requested by that Branch or a member of that branch to do so.*
3. By inserting in sub-rule 19(1) after “Sub-Rules (2), (3),” the following:

(12),
4. By adding at the end of after “Secretary” in sub-rule 44(4) the following:

, or, where the National Secretary is representing members, by two members of the National Committee of Management at least one of whom shall be the National President or National Secretary.

G. Compliance rule changes

The rules are altered as follows:

1. In rule 2(1)(a) by adding “, *the RO Act, the RO Regulations*” after “Regulations’.
2. In rule 2(4) by deleting the definition of “the Act” and inserting “*“the Act” means the Fair Work Act 2009 or any preceding or succeeding legislation thereto.*”
3. In rule 2(4) by inserting two new definitions as follows:
“the RO Act” means the Fair Work(Registered Organisations) Act 2009 or any successor thereto.,
“RO Regulations” means the Regulations made under the RO Act.
4. In rule 9 by deleting “Commonwealth Industrial Registrar “ and inserting “*Registered Organisations Commissioner*” wherever occurring.
5. In rule 10(2) by renumbering paragraphs (c) and (d) as (d) and (e) respectively, and a new paragraph (c) as follows:

(c) a copy of the register of the Branch referred to in sub-rule (a) as it stood on 31 December in each year for a period of 7 years after the 31 December concerned;
6. By adding a new sub-rule 10(3) as follows:

(3) (a) Within 7 days of the certification of paragraph (ii) of sub-rule 10(2)(b), the Branch Secretary of each branch shall provide to the National Secretary a copy of the lists of members of the Branch referred to in sub-rule (2) paragraph (c) as they stood on 31 December in each year for the period of 7 years after the 31 December concerned.

(b) the Branch Secretary of each branch shall provide to the National Secretary a copy of the list of members of the Branch referred to in sub-rule (2) paragraph (c) within 7 days of its compilation after 31 December in each year subsequent to the certification of this sub-rule (3).

7. In rule 13 by adding the following new sub-rule (19):

(19) (a) For the purpose of this sub-rule (19), "Reporting Obligations" shall mean the obligations in connection with the declarations and records required to be lodged annually and the various financial returns required under Chapter 8 of the RO Act

(b) Notwithstanding anything in the rules of the Union, the National Committee of Management is empowered to authorise the National Secretary to take all steps necessary to ensure compliance by the Union in connection with the Reporting Obligations.

(c) Without limitation to the power conferred by sub-rule 19 paragraph (b) herein, the National Committee of Management is empowered to authorise the National Secretary to:

(i) direct any officer or employee of the Union, including of its branches, to provide any information or document within their possession or control necessary for the satisfaction of the Reporting Obligations;

(ii) access any premises and review any databases held by the Union, including its branches, for the purpose of satisfying the Reporting Obligations; and

(iii) require any officer or employee of the Union, including of its branches, to provide such assistance as is necessary for the satisfaction of the Reporting Obligations.

8. In rule 19(11)(b) by deleting "Conciliation and Arbitration".

9. By deleting rule 19(16) and inserting:

(16) shall:

- (a) keep an up-to-date register of Branch Officers and National Officers;*
- (b) lodge annually with the Registered Organisations Commissioner the declarations and records as required by the RO Act at the time prescribed by the RO Regulations;*

10. By adding new sub-rules 19(28) and (29):

(28) shall prepare on behalf of the Union an officer and related party disclosure statement which reports any disclosures made by officers of the Union under rule 90, provide the statement to members, and lodge it with the Registered Organisations Commissioner.

(29) shall comply with any other requirements of the RO Act and RO Regulations.

11. By deleting sub-rule 54(7) and inserting:

(7) It shall as required by the RO Act:

(a) adopt or otherwise deal with including reporting to members the annual report, accounts, balance sheet and operating report of the Branch and the Branch auditor's report;

(b) ensure that each officer of the Branch whose duties include duties that relate to the financial management of the Branch has completed the training required by rule 90(25)

12. In sub-rule 54(11) by inserting after "Regulations", "*the RO Act, the RO Regulations,*".

13. In rule 64(1)(k)(ii) by deleting "Industrial Relations Act 1988" and inserting "*the Act*"

14. In rule 64(1) by adding the following new paragraphs:

(jj) shall:

(i) keep a copy of the register of members of the Branch as it stood on 31 December in each year for the period of 7 years after the 31 December concerned and provide a copy to the National Secretary by the end of February in each year;

- (ii) *compile a register of members of the Branch as at seven days before the first weekday occurring on or after 14th March in the year of a Branch election and provide to the National Secretary a copy of that register within seven days of its compilation;(note; this is the date set by the rules for the close of nominations which is the date prescribed by the regs)*
- (iii) *inform the National Secretary in writing by 1 March in each year of the number of members of the branch as at 31 December in the preceding year.*
- .
- (kk) *shall advise the National Secretary in writing by the end of February in each year whether any election for an office in the Branch must be held during the calendar year which commenced on 1 January, and if so the name and numbers of each office or position in the Branch for which an election is due, and the reason for the election.*
- (ll) (a) *shall lodge a notification with the Registered Organisations Commissioner of any change to the records required to be kept under sub-rule 10(2) or any change to the place of the Registered Office of the Branch within 35 days of the change and provide a copy of the notification to the National Secretary at the time of its lodgement.*
- (b) *shall provide to the National Secretary in writing by 1 March in each year a copy of the records required to be kept under sub-rule 10(2).*
- (mm) (a) *shall as soon as practicable after the end of each financial year prepare on behalf of the Branch an officer and related party disclosure statement which reports any disclosures made by officers of the Branch under rule 90;*
- (b) *provide a copy of the statement to the National Secretary within five months of the end of the financial year;*

(c) *within the period of 6 months starting after the end of each financial year:*

(i) *provide the statement to members; and*

(ii) *lodge with the Registered Organisations Commissioner a copy of the statement provided to members and provide a copy of the lodged documents to the National Secretary*

(nn) *Shall inform the National Secretary in writing whether each officer of the Branch whose duties include duties that relate to the financial management of the Branch has completed the training required by rule 90(25) within 6 months after the person begins to hold the office.*

(oo) *shall inform the National Secretary in writing of the appointment of a Branch auditor and the term of that appointment within one month of the appointment.*

(pp) *comply with any requirements of the Act , the Regulations, the RO Act or the RO Regulations, or any direction from the National Secretary under sub-rules 13(19) and 19(3).*

15. In rule 65(4) insert "RO" before "Act" .

16. In rule 86(1) by inserting ", the RO Act" after "the Act".

17. In rule 86(2) by deleting "Industrial Relations Act 1988" and inserting "Act".

18. By deleting rule 86(3) and inserting:

(3) *The Secretary of any Branch which alters the Rules affecting such Secretary's Branch only, shall within 28 days of the amendment thereof file with the General Manager of the Fair Work Commission full particulars of the alteration in such form and manner that the General Manager is able to form an opinion whether or not the alteration complies with and is not contrary to the provisions of the Act, the regulations, the RO Act and the RO Regulations, or of an award made pursuant to the Act and is not otherwise contrary to law and has been made in accordance with the relevant procedures laid down by the Rules of the Union.*

19. By deleting rule 86(4) and inserting:

- (4) *The Secretary of any Branch who files particulars with the Registrar General Manager pursuant to Sub-Rule (3) of this Rule shall as soon as practicable but no later than 7 days forward to the National Secretary a true copy of the said particulars and shall thereafter forward to the National Secretary a copy of all correspondence and documents and transcript with respect to the Registrar's or the Australian Industrial Relations Commission's General Manager's or the Fair Work Commission's dealings with the alteration.*

Strength in Unity

READ OUT AT MUSTER AND PIN ON NOTICE BOARD

Authorised by National Secretary Peter Marshall and National President Greg McConville