



DECISION

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

United Firefighters' Union of Australia (R2022/65)

MURRAY FURLONG

MELBOURNE, 8 SEPTEMBER 2022

Alteration of other rules of organisation.

[1] On 31 May 2022 the Administrator of the United Firefighters' Union of Australia - Queensland Branch (the Branch), Mr Gavin Marshall (the Administrator), lodged with the Fair Work Commission (the Commission) a notice setting out particulars of alterations to the rules of the United Firefighters' Union of Australia (UFUA). The Administrator also lodged explanatory notes in support of the alterations.

[2] The particulars set out alterations to UFUA Rules 7, 10, 29, 35, 54 and 80, insert new rule 89A and in Schedule 3 insert new Rule 8.

[3] The substance of each alteration is set out and discussed below in paragraphs [72] to [146]. One preliminary observation is nonetheless warranted.

[4] The rules of the UFUA are organised into four broad categories. Rules 1 – 52 and Appendices A – E are concerned with the UFUA as a whole and its National Office. Rules 53 – 88 are principally concerned with branches of the UFUA in a generic sense.¹ Rules 89 and 90 operate in relation to both the UFUA and its branches. Schedules A – E contain a series of branch specific rules. The rules contained in each Schedule are made by a particular branch pursuant to Rule 86 and affect that branch only.

[5] As the altered rules listed in paragraph [2] indicate, the potential effect of the alterations is not limited to the Branch. That issue assumes importance below.

[6] The alterations were lodged following a judgment of Justice Abraham in the Federal Court of Australia (the Court) dated 24 February 2022 in *United Firefighters Union of Australia v United Firefighters' Union of Australia, Union of Employees, Queensland (UFUA case)*.² The judgment dealt with two applications that were before the Court and which were heard together.

[7] One application was made under section 167 of the *Fair Work (Registered Organisations) Act 2009* (the Act)³ for declarations as to membership of the UFUA of four firefighters. On 18 March 2022 Justice Abraham declared that the four firefighters were members of the UFUA, and had been continuously so since they joined.⁴

[8] The other application sought declarations, under section 323 of the Act,⁵ that the Branch has ceased to function effectively and there are no effective means under the rules of the UFUA or the Branch by which the Branch can function effectively. In addition, orders for a Scheme to reconstitute the Branch were sought.⁶ On 24 February 2022 Justice Abraham issued declarations in the terms sought.⁷ Orders reflecting the applicant's proposed scheme for the administration of the Branch were also made.⁸ The Order appointed Mr Gavin Marshall as Administrator of the Branch and approved a Scheme for the reconstitution of the Branch.⁹

[9] The Scheme provides the Administrator with all the powers of the Branch Officers and the Branch Committee of Management (BCOM). Among other powers, at clause 7 the Administrator is empowered to:

“...alter the rules of the UFUA and/or the Branch as necessary to enable the Branch to function effectively and shall submit any alterations to the General Manager of the Fair Work Commission for approval.”¹⁰

[10] Further, at clause 8 the Administrator is empowered to:

“...develop and implement policies, including by way of any Rule changes, to ensure the Branch will be representative of and accountable to its members, will be able to operate effectively, will encourage members to participate in the affairs of the Branch to which they belong, and will encourage the democratic functioning and control of the Branch.”¹¹

[11] The reference in clause 7 to submitting rule alterations to the General Manager can only be interpreted as a reference to my power to certify alterations to rules of an organisation pursuant to section 159 of the Act.¹² Accordingly, the tests in section 159 apply to these alterations.¹³ So too must the requirements of Regulation 126 in the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations).¹⁴

Background

[12] It is useful to set out a brief summary of events leading up to the application made to the Court for a Scheme to reconstitute the Branch. This summary is drawn from paragraphs [12] to [68] of Justice Abraham's decision in the *UFUA case*.

[13] The United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) is an association of employees registered under the *Industrial Relations Act 2016* (Qld). Overwhelmingly, its members are engaged in the provision of firefighting services. From 1990 to 2018 the Branch and the UFUQ operated as though they were one entity.¹⁵ Most members signed a dual application form for both the UFUA and the UFUQ. One membership fee was paid. That fee afforded membership of both entities. The names and postal addresses of all successful applicants for membership were entered in the part of the UFUA membership register which is maintained by the Branch. All successful applicants for membership were treated as members of both the UFUA and the UFUQ. The officers of the Branch and the UFUQ were substantially the same.

[14] In 2013 the double-sided dual membership application form was changed. Nevertheless, successful applicants continued to pay one fee, were entered in the UFUA's membership register and were treated as members of both entities.

[15] In September 2018, the BCOM took the view that UFUQ members were members of the UFUQ only and were not members of the UFUA. After providing a short opportunity for members to remedy this, the BCOM removed all the UFUQ members from the UFUA membership register, other than 56 members who were either national system employees or holders of Branch offices. All the members of the BCOM resigned from office in August 2019.

[16] Consequently, the UFUA applied to the Federal Court for orders under section 167 of the Act¹⁶ to recognise the continuous membership of four firefighters. The UFUA also applied for orders under section 323 of the Act to appoint an Administrator to reconstitute the Branch on the basis that it had ceased to function effectively as a result of the disenfranchisement of about 2500 members and the mass resignation of its Committee of Management.¹⁷ On 24 February 2022, Justice Abraham handed down her Decision and issued the Declaration and Orders that have led to the present matter.¹⁸

Request from UFUQ to be heard

[17] On 26 May 2022, Hall Payne Lawyers, acting for the UFUQ requested that, among other things, the UFUQ be given an opportunity to be heard in relation to these alterations. In their request the UFUQ asserted that if the alterations provide for an ongoing relationship between the UFUA and UFUQ, the alterations would be contrary to law. The Administrator was provided with the opportunity to respond to the UFUQ's request. He did so on 3 June 2022.

[18] I determined that the UFUQ should be heard in this matter insofar as the current rules explicitly define the UFUQ as an Associated Body¹⁹ and the alterations go to the relationship of the UFUA and Associated Bodies. On 24 June 2022, I invited the UFUQ to make a submission about:

- the extent that the proposed alterations may provide for an ongoing relationship between the UFUA and UFUQ; and
- if so, whether that would be contrary to law.

[19] On 8 July 2022, Hall Payne Lawyers lodged a submission on behalf of the UFUQ. A copy was provided to the Administrator. The Administrator was invited to lodge a submission in reply. On 15 July 2022, the Administrator asked me to reject the UFUQ's submission.

[20] Although only invited to make submissions as to the relationship between the UFUA and UFUQ, the UFUQ raised additional concerns. Points raised included whether the alterations are within the power of the Administrator and whether the alterations to Rules 7, 29, 54, 80 and Scheduled 3 Rule 8 are contrary to law. Though not invited to make submissions about those concerns, the submissions go directly to, and put in issue, matters I must form opinions about under the relevant statutory provisions. I have therefore considered all the points raised by the UFUQ.

Were the alterations properly made? The scope of the Administrator's powers

[21] Subsection 159(1) of the Act requires me to form an opinion, among others, about whether the alterations were made under the rules of the UFUA.²⁰ Where the rules of the UFUA and the Branch have been altered I would usually need to consider action taken by the National Committee of Management (NCOM) under Rule 49 of the UFUA rules²¹ and by the BCOM under Rule 87.²² Nothing in the materials before me suggests the alterations were made under

Rules 49 and 87. Ordinarily the alterations would not be able to be certified, due to a lack of action on the part of the respective committees of management.

[22] However, different considerations apply in the present matter. As noted above, the current alterations were made by an administrator, appointed pursuant to a scheme approved by order of the Court under section 323 of the Act. As noted in paragraphs [9] and [10] above, the Scheme directly empowers the Administrator to alter the rules of the UFUA and the Branch.

[23] Subsection 323(6) is apposite. It states:

“An order or direction of the Court under this section, and any action taken in accordance with the order or direction, has effect in spite of anything in the rules of the organisation or a branch of the organisation.”

[24] Two relevant propositions flow from this provision.

[25] First, an order made under subsection 323(6) has effect, as does any action taken in accordance with it.

[26] Secondly, it has effect in spite of anything in the rules of the UFUA or the Branch.

[27] The Scheme has given the Administrator a direct power to alter the rules of the UFUA and the Branch. Because the Scheme has been approved by the Court under section 323 it has effect. Further, it has effect in spite of anything in the rules of the UFUA or the Branch, including the procedures laid down in those rules for the alteration to the rules.

[28] In the circumstances, subsection 159 of the Act needs to be read down to the extent that paragraph 159(1)(c) does not apply. The fact that the alterations were not made under the rules of either the UFUA or the Branch does not lead to a conclusion that the alterations cannot be certified.²³

[29] However, that is not the end of the matter. As discussed, the Administrator’s powers to make rule alterations are derived from the Order of the Federal Court. Those powers are not unfettered. Rather the scope of the Administrator’s powers is subject to the terms of the Scheme. The pertinent terms are set out in clauses 7 and 8.

[30] The UFUQ submitted that the alterations go beyond the power of the Administrator. They submit that “the power is limited to alterations which are necessary to enable the Queensland Branch to function effectively. An exercise of this power does not extend to improving the functioning of the other branches of the UFUA unless doing so is an unavoidable incident of the variation to the rules to permit the Queensland Branch to function effectively.”²⁴

[31] The UFUQ submits that “[t]he proper approach...is to test each proposed alteration against the power granted by the Scheme.”²⁵ If this approach is applied the majority of the alterations are not, in the UFUQ’s submission, within the power of the Administrator and those alterations must not be certified.²⁶

[32] I agree that the correct approach is to test each proposed alteration against the power granted by the Scheme. I do so in paragraphs [72] to [146] below. I also agree that a purported alteration that is beyond power is not capable of certification.

[33] Clause 7 of the Scheme gives the Administrator power to “alter the rules of the UFUA and/or the Branch as necessary to enable the Branch to function effectively...”.²⁷ The words “as necessary” suggest that only alterations made for the purpose of enabling the Branch to effectively function can be made under this head of power. Clause 7 of the Scheme does not support alterations that are made for some other purpose.

[34] When considering what is necessary, regard should be had to the overall objectives of the Scheme, the purpose of the Order, Parliament’s intentions in enacting the Act, and the Court’s discussion of the Scheme, in particular paragraphs [158] to [178] of the *UFUA case*.

[35] Clause 8 of the Scheme also empowers the Administrator to alter rules. Clause 8 supports alterations which provide for the development and implementation of policies that ensure that:

- the Branch will be representative of and accountable to its members,
- effective operation of the Branch is enabled,
- the members’ participation in the affairs of the Branch is encouraged, or
- the democratic functioning and control of the Branch is encouraged.

[36] Clause 8 is not constrained by the words “as necessary”.

[37] Whether viewed jointly or severally clauses 7 and 8 are directed to rule alterations intended to facilitate particular outcomes for the Branch and its members, not for the UFUA as a whole. But that does not mean the alterations cannot affect other branches unless “unavoidable”, as submitted by the UFUQ. I discuss this in paragraphs [38] to [44] below.

Alterations which affect other branches

[38] The rules of a registered organisation are primarily a matter for the members of the organisation, subject to the requirements of the Act.²⁸ In *Brown v HSU*²⁹ Justice Flick observed in his analysis of the powers of the Federal Court to make a Scheme for the reconstitution of a branch:

“The reference ...to there being “no effective means under the rules of the organisation” serves to emphasise the importance of leaving it to the members to devise rules...”³⁰

[39] Under this Scheme, the Administrator is empowered to alter rules to achieve certain outcomes for the Branch and its members. Making alterations that affect members attached to other branches seems, on the face of it, to infringe on the principle that members attached to other branches should be free to determine their rules.

[40] This is particularly so for the UFUA. The UFUA rules empower Branch Committees of Management to change rules which affect members of that Branch only.³¹ The UFUA Rules also involve the branches if alterations are made at the national level, including generic branch rules made by the NCOM.³² Justice Abraham emphasised these points when considering whether there was an effective means under the UFUA rules for reconstituting the Branch.³³

[41] However, the Administrator has been empowered to alter both the Branch rules and the UFUA rules.³⁴ Had Justice Abraham intended to exclude alterations which affect the UFUA as a whole, including alterations affecting its other branches, that could have been made clear in

the Scheme. Because the Scheme has been approved by the Court under section 323 it has effect. There is no reason it should not be given full effect.

[42] When considering the overall purpose of the Scheme, the Administrator has been appointed to reconstitute a Branch in which current members have no opportunity to participate in the affairs of the UFUA and no opportunity for democratic representation or control. There would be questionable value in defeating the objectives of the Scheme by reading down the Administrator's powers, simply because alterations which are otherwise within power affect other branches. Alterations which affect other branches are neither completely excluded nor entirely impermissible.

[43] In addition, I see no reason to reject a rule alteration which affects other branches and their members simply because the relevant alteration could be made by the UFUA's NCOM under Rule 49.

[44] In this matter, questions about the scope of the Administrator's rule making power must be answered by determining whether an alteration:

- is necessary to enable the Branch to operate more effectively; or
- provides for the development and implementation of policies to ensure accountability, responsibility, effective operation, the encouragement of member participation, or the democratic functioning and control of the Branch.

The Administrator's policy of harmonising relations

[45] Clause 8 of the Scheme entitles the Administrator to "develop and implement policies, including by way of any Rules changes...".³⁵ To assess whether a proposed alteration is within this power, I must first identify the policy that the Administrator has adopted and determine whether the policy aims to ensure accountability, responsibility, effective operation, the encouragement of member participation, or the democratic functioning and control of the Branch. It is then necessary to determine whether an alteration made by the Administrator has been made for the purpose of developing and implementing this policy.

[46] The Administrator provided notes with the proposed alterations which explain his policy for reconstituting the Branch. He explains:

"My approach to the alterations facilitating the reconstitution of the Branch has been with the intent of eventually harmonising relations with the UFUQ or at least putting the Branch in the best possible position to achieve that...

...

...I hope and expect that the alterations will assist in convincing the UFUQ to return to the previous or similar arrangements."³⁶

[47] I have mentioned some of the previous arrangements above. They included:

- dual membership;
- the payment of a single membership fee to satisfy the financial obligations of both the UFUA and UFUQ;
- the rights of financial members (for those that had paid the single membership) to exercise full rights in both the UFUQ and the Branch, including the right to stand for and hold office, attend and vote at general meetings and the right to vote in elections for office; and

- the UFUQ provided financial and other forms of support to the Branch.

[48] While present, those arrangements:

- facilitated member participation in the Branch;
- ensured the Branch was democratically controlled;
- ensured the Branch functioned in a democratic manner;
- ensured the Branch was accountable and responsible to its members; and
- ensured the Branch was able to operate effectively.

[49] The Administrator's policy of harmonising relations aims to put in place arrangements similar to those listed in paragraph [47] and are for the purpose of ensuring accountability, responsibility, effective operation, the encouragement of member participation, or the democratic functioning and control of the Branch. Therefore alterations which go to harmonisation of relations are within the scope of clause 8 of the Scheme.

[50] The Administrator states that the alterations which go to harmonising relations will assist the Branch to operate effectively.³⁷ The Administrator has made clear his concern that a substantial proportion of prospective members will not join the UFUA if the relations between the Branch and the UFUQ are not reharmonised.³⁸ If the affairs of the UFUQ and the Branch were harmonised and dual membership reintroduced, the membership of the Branch is likely to increase significantly. Reharmonising relations and dual membership may also be presumed to lead to the execution of a service agreement between the Branch and the UFUQ. Significantly increasing the membership of the Branch and resources available to it means the Branch's effective operation is more likely to be ensured.

[51] However, the UFUQ advise there is no relationship between the UFUQ and the Branch, and that any historical relationship is "irreparable".³⁹ In the UFUQ's submission the alterations will not enable the Branch to function effectively, despite the stated aim of the Administrator, and consequently are outside the scope the Scheme. Irrespective of whether the alterations are necessary for the Branch to function effectively, they go to implementation of the Administrator's policy of harmonisation of relations and, as I concluded in paragraph [49] fall within the scope of clause 8. Whether the alterations are ultimately successful in harmonising relations does not place the alterations outside the scope of clause 8.

References to the UFUQ and whether contrary to law

[52] As noted in paragraph [18] the UFUQ was invited to make a submission about the extent, if any, to which the alterations provide for an ongoing relationship between the UFUA and UFUQ and whether so providing would be contrary to law. I consider that submission below.

[53] The UFUQ submitted that the current UFUA rules provide for a relationship with the UFUQ. The rules are said to do so by defining the UFUQ as an Associated Body in Rule 2.⁴⁰ The UFUQ has requested that the UFUA amend their rules to remove the reference to the UFUQ. The UFUA has not done so.⁴¹ The UFUQ advise that the relationship between the UFUQ and the UFUA is, in its view, irreparable. The UFUQ submits that as a result "the reliance of assistance that the Administrator seems to consider that he will be able to obtain from the UFUQ is baseless and futile."⁴² They advise that while it might be the Administrator's desire that the UFUQ return to the previous or similar arrangements, this desire is not reciprocated.⁴³

[54] The UFUQ submits that a relationship between two distinct legal entities cannot be enforced unilaterally through a rule. They say, “the rules of one organisation cannot mandate an ongoing relationship with a separate and distinct corporate entity, against the will of such corporation.”⁴⁴

[55] The current rules define the UFUQ as an Associated Body. The current rules also make provision for arrangements between the UFUA and UFUQ. For example, current rule 7(4) enables members of Associated Bodies, including members of the UFUQ, to become members of the UFUA.

[56] My task is to consider the proposed alterations, not the rules as they currently stand. The proposed alterations include provisions for arrangements between the UFUA and Associated Bodies. For example, proposed 29(4) enables Branch capitation fees to be paid by the relevant State Associated Body, and proposed Sub-rule 54(5A) enables a Branch to enter into service agreements with the relevant State Associated Body. However, the proposed alterations are permissive. They permit, but do not mandate, the payment of capitation fees by Associated Bodies. They permit, but do not mandate, the ability to enter into service agreements. None of the proposed alterations mandate a relationship against the will of another corporation, including the UFUQ. In my view, the alterations are not contrary to law on the basis that they mandate a relationship against the will of the UFUQ.

Whether the alterations further misrepresent the existence of a relationship

[57] The UFUQ quotes from communications to its members from the UFUA and from the Administrator.⁴⁵ The UFUQ alleges these communications misrepresent the relationship between the UFUA and UFUQ.⁴⁶ It submits that the alleged misrepresentation “is borne out by the circumstances of the proposed alterations”⁴⁷ and observe that the “Scheme does not provide for any ongoing obligation in relation to the UFUQ insofar as the Branch or the UFUA are concerned.”⁴⁸ Because the alterations further the alleged misrepresentation, the alterations are, in the UFUQ’s submission, contrary to law.

[58] Allegedly misrepresenting the relationship between the UFUA and UFUQ in communications to UFUQ members is not a matter relevant to my consideration under section 159 of the Act. I re-iterate my conclusion in paragraph [56] above, the alterations do not mandate a relationship with the UFUQ, they merely permit a relationship.

Financial viability of the Branch

[59] The UFUQ notes the Administrator is obliged “to take such steps as necessary to enable the Branch to function effectively.”⁴⁹ It submits that “[f]or an autonomous section of an organisation to function effectively it must be able to pay its debts as and when they fall due. That is, it must have arrangements in place to support the cost of its conduct.”⁵⁰ In the UFUQ’s submission the Administrator appears not to have put in place any arrangements to ensure that the Branch can pay its debts. It further submits that the Branch cannot rely on the UFUQ for financial support.⁵¹

[60] The Scheme arms the Administrator with the powers given to the Branch Officers and the BCOM under the UFUA rules.⁵² The UFUQ observes that in performing his duties the provisions of section 285 of the Act apply.⁵³ In particular, the Administrator “must exercise his

powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise...”⁵⁴. The UFUQ submits that a reasonable person in the Administrator’s position would “seek to ensure the financial viability of the Queensland Branch by means other than seeming to pin his hopes on a change in the relationship with the UFUQ.”⁵⁵ It further submits “by failing to create the means for an income to be derived by the Branch, the Administrator has failed to meet the requirements of section 285(1) of the RO Act.”⁵⁶

[61] Whether the Administrator is required to act in accordance with the provisions of section 285 of the Act is not a matter relevant to properly determining a section 159 application. Whether the Administrator has acted in accordance with section 285 of the Act is similarly not relevant.

[62] The UFUQ’s submissions do raise the question of whether the alterations endanger the Branch’s financial viability, and if so, whether that would be contrary to law.

[63] The UFUQ correctly observes that the alterations do not apparently provide for a substantial Branch revenue stream. On the material before me, approximately 50 members of the UFUA are currently attached to the Branch.⁵⁷ Aggregate membership fees payable by those members are unlikely to be significant. Proposed Sub-rule 80(3) provides that a member who has paid fees to an Associated Body in the relevant State is deemed to have paid those fees to the UFUA. Payments by members to the UFUQ will be deemed payment of UFUA fees. Any member covered by proposed Rule 80(3) does not have to pay further membership fees to the Branch. It is therefore unlikely that the Branch will derive significant revenue from subscriptions. Unless relations between the UFUQ and the Branch are reharmonised the UFUQ will not provide financial support to the Branch. In the UFUQ’s view, those relations will not be reharmonised. I am not aware of any contractual obligations on the UFUA to provide financial support to the Branch. Nor do the UFUA’s rules impose any binding obligation on the UFUQ to financially support the Branch.

[64] On the other hand, the Branch will have at least one liability. It must pay capitation fees to the national body.⁵⁸ The UFUQ have made it clear they will not enter into any arrangements for the payment of capitation fees on behalf of the Branch.⁵⁹

[65] The Act bestows corporate status on organisations registered under the Act.⁶⁰ A branch of an organisation has no separate legal status.⁶¹ Rules of organisations generally provide for branch funds and property. These funds and property are ultimately those of the organisation.⁶² Consequently liabilities accrued by the Branch are ultimately the liabilities of the UFUA. The question in regard to the proposed alterations, is not whether the Branch can meet the costs of its conduct, but whether the UFUA can. There is nothing before me to suggest that the financial viability of the UFUA is threatened by these alterations.

[66] It is reasonable to expect that organisations will provide financial support to constituent parts when necessary. The reconstitution of a branch which has ceased to function effectively is a time when such support is likely to be necessary. Further the Financial Reporting Guidelines for reporting units of registered organisations specifically recognise that reporting units may receive support from other parts of the organisation.⁶³ For the UFUA to support the Branch during its reconstitution is in line with its object of promoting “the extension of the Union throughout Australia.”⁶⁴ It is within its prerogative to commit resources to this objective if it so chooses. Further, although Rule 78 of the UFUA rules specifically provides that branches are

responsible for the liabilities they incur, branches cannot incur liabilities that exceed the value of the Branch fund without the consent of the NCOM.

[67] The UFUQ observed that it is not known what, if any, arrangements are in place for the Branch's ongoing financial viability.⁶⁵ However, there is nothing before me to suggest the NCOM is unwilling to support the Branch in its initial steps of reconstitution. To the contrary, the UFUA sought the Federal Court orders. This suggests the NCOM supports the Branch's reconstitution and will continue to do so.

[68] The proposed alterations are not contrary to law on the basis there are no arrangements in place for the Branch to meet the costs of its conduct.

Whether a rule change to set a fee is necessary

[69] A further question related to financial viability arises. The alterations do not include a mechanism for the Branch to set membership fees. Starting from the premise that the Branch must have revenue, the UFUQ submits that a rule change is necessary to set the Branch fee for membership. In not making such an alteration the Administrator is acting inconsistently with the Scheme.⁶⁶

[70] It might be considered desirable or even preferable to have a rule which sets a Branch membership fee. However, it is not necessary. Current Rule 80 empowers branches to set fees. That Rule does not require each branch to draw a branch specific membership fee rule. Nor is there anything elsewhere in the rules of the UFUA, or in the Act, that requires branch specific rules setting membership fees. My task is to determine whether to certify the alterations lodged by the Administrator, not to impose rules that might be considered preferable.⁶⁷

[71] I will now consider each of the proposed alterations in terms of whether they are within the powers of the Administrator, whether they comply with the Act and are not contrary to law.

Proposed Sub-rule 7(5): deeming persons to be members

[72] Proposed Sub-rule 7(5) provides that persons who were listed as members of the Branch at 2 September 2018 are deemed to have been properly admitted as members. Their membership is deemed to have been continuous from that date.

[73] It further provides that any person:

- who joined the Associated State body (the UFUQ) on or after 3 September 2018, and
- intended or understood that they had joined the Branch, and
- communicates that intention to the Branch

is deemed to have been a continuous member from the date they joined the UFUQ.

[74] The proposed sub-rule also provides that no error, omission or want of form associated with an application for membership shall invalidate the application.

Whether proposed Sub-rule 7(5) is within the power of the Administrator

[75] The Administrator advises that this proposed sub-rule “is designed to remove doubt about members who were wrongly removed from the list.”⁶⁸ The UFUQ submit that the Administrator’s explanatory note suggests an improper motive.⁶⁹ It argues that “[i]t is not necessary to resolve historic issues of membership to enable the Branch to function effectively. The Federal Court has resolved the membership of four particular members of the Branch and, to ensure the Branch functions effectively in respect of those four members, the proposed alterations should be so confined.”⁷⁰

[76] I refer to paragraphs [32] – [37] above. The Administrator is not confined to making alterations necessary for the effective functioning of the Branch. Limiting the Administrator’s powers in that way ignores clause 8 of the Scheme.

[77] Proposed Sub-rule 7(5) implements the Administrator’s policy regarding recognition of membership. That policy recognises as members those who were on the register prior to 3 September 2018 and persons who understood they had become a member on or after that date. That policy is intended to ensure:

- members of the Branch will be encouraged to participate in its affairs,
- democratic control of the Branch is encouraged, and
- democratic functioning of the Branch is encouraged.

[78] The proposed sub-rule falls within the scope of clause 8 of the Scheme.

[79] Further, to be able to function effectively there must be certainty about the Branch’s membership. If the Branch is uncertain about who to treat as a member it could not fulfil its statutory obligations in relation to members. For instance, it would be unable to determine who must receive financial reports.⁷¹ This proposed sub-rule provides certainty, and in my view, is necessary for the effective functioning of the Branch. It is consequently within the Administrator’s powers under clause 7 of the Scheme.

[80] Nor do I accept the proposition that the alterations should be confined to the four firefighters about whom the Federal Court made orders. In her discussion about compilation of the membership list, Justice Abraham makes the point that her conclusion about the four firefighters has more general application:

“It is difficult to see on what basis that acceptance could not be considered to have more general application, particularly given that most of the members joined pre-2013.”⁷²

[81] Prior to September 2018 the names of many UFUQ members also appeared on the UFUA membership list. Those people were treated as UFUA members. Justice Abraham observes:

“...those who filled the [application] form, in whichever fashion, were treated as members, and had the right to vote in the Queensland Branch elections. There is no basis to suggest persons have not been treated as and acted like members.”⁷³

[82] Justice Abraham assessed the BCOM’s 2018 actions as disenfranchising about 2500 members, by incorrectly removing their names from the membership list:

“...the approach taken by the BCOM in 2018, which had the consequence of disenfranchising approximately 2500 members...”⁷⁴

“...there is no suggestion that anything in the FW(RO) Act or the UFUA Rules support, or was the basis for, what occurred. Those circumstances cannot now be ignored...”⁷⁵

[83] The object of the Scheme is to reconstitute the Branch and, implicit in her Honour’s discussion, to remedy the error of disenfranchising a significant number of members.⁷⁶ As the UFUA argued before the Court and her Honour appears to have accepted:

“[the] Branch ... ceased to function effectively as a result of the disenfranchisement of some 2500 members and the mass resignations of its elected officials”.⁷⁷

[84] To confine the scope of the alterations to the four firefighters about whom the Federal Court has made orders would defeat the purpose of the Scheme. Consequently, it is appropriate that proposed Sub-rule 7(5) is not so limited.

[85] In my view proposed Sub-rule 7(5) is within the scope of the Administrator’s powers.

Whether proposed Sub-rule 7(5) complies with the Act and whether it is contrary to law

[86] The UFUQ submits proposed Sub-rule 7(5) is contrary to law because it:

- gives unilateral power to the UFUA to determine membership, circumventing the requirements of the section 167 of the Act,
- is contrary to section 171A of the Act because persons who not employees may be deemed members,
- is contrary to subsection 166(1) of the Act in that persons who are ineligible to join the UFUA may become members,
- does not provide for informed consent to become a member,
- breaches section 141(1)(d) which requires rules to provide for provision of certain information to applicants for membership, and
- lacks certainty.

Whether proposed Sub-rule 7(5) gives unilateral power to the UFUA to determine membership and circumvents the requirements of s.167

[87] The UFUQ submits that Parliament gave the Court power to declare a person’s membership under section 167 of the Act.⁷⁸ The Court has done this for four named firefighters only.⁷⁹ In its submission, although the Scheme for reconstitution of the Branch provides the Administrator with the power to compile an electoral roll, it does not enable the rules to deem persons members retrospectively.⁸⁰ It argues the alterations are contrary to the Act because they circumvent the requirements of the section 167.⁸¹

[88] First, section 167 of the Act is only enlivened when an application has been made by a person or an organisation in relation to the person’s admission to membership or right to remain a member.⁸² On the facts before me, neither the UFUA nor any of the relevant persons have questioned the right to remain a member. To the contrary, the organisation is of the view that the relevant persons are entitled to remain members. Section 167 has not been enlivened.

[89] Secondly, clause 9 of the Scheme provides:

“The Administrator shall as soon as is reasonably practicable after the date of the Order, prepare a list of members of the Branch as at the date of the Order, and shall state whether the member was financial or unfinancial as at the date of the Order.”⁸³

[90] The Administrator’s task under clause 9 is to compile a list of persons who are members. Although the Scheme itself does not give any guidance about who are members, regard must be had to the purpose of the Scheme. In the *UFUA case* Justice Abraham provided clear guidance about who should be included on the membership list.⁸⁴ Her Honour made it clear that before September 2018 members of the UFUQ were on the UFUA register of members and that those persons were treated as members.⁸⁵ The notion that the membership list should be compiled only of persons who have subsequently consented to be included on the list was rejected:

“A person who is notified by the administrator that they are on the membership roll is treated under the Scheme as being a member, unless they opt out from membership (for example, by resigning).”⁸⁶

[91] Following Justice Abraham’s reasoning, the Administrator is entitled to include on the membership list at least all of the members who joined the UFUQ prior to September 2018, unless they “opt out”.

[92] The UFUQ differentiates between the list compiled by the Administrator under clause 9 of the Scheme and the register of members. They state “[i]t appears that the UFUA are conflating the section 167 orders with the Scheme for reconstitution of the Branch by deeming membership of those persons contained on the electoral roll, created to reconstitute the Queensland Branch, as members for all purposes.”⁸⁷

[93] Suggesting there should be two separate and distinct membership lists, a membership list and a separate and distinct one for the purpose of elections, creates an artificial and unworkable distinction. The Branch would not be able to function effectively if there were two competing membership lists; it would result in considerable uncertainty as to a person’s membership of the UFUA. It must be concluded that the membership list compiled by the Administrator is the list of persons who are members of the UFUA attached to the Branch. Proposed Sub-rule 7(5) merely clarifies this.

[94] Having regard to the objects of the Scheme and her Honour’s discussion about the compilation of the membership list, proposed Sub-rule 7(5) does not circumvent section 167 of the Act. It clarifies who are members for the purpose of reconstituting the Branch.

Whether proposed Sub-rule 7(5) provides that persons who are not employees will become members

[95] The UFUQ also points to the requirement of section 171A the Act.⁸⁸ Under that section, a person who ceases to be an employee ceases to be a member of an employee organisation. They submit that a number of firefighters will have retired since 2018. Proposed Sub-rule 7(5) would consequently deem membership to persons who are no longer employees. In the UFUQ's submission, that result is contrary to the Act and as a consequence the proposed sub-rule is contrary to the Act.⁸⁹

[96] I accept that some persons who were members in 2018 may no longer be employees. They may have retired, for instance. However, section 171A has effect despite anything in the rules of an organisation.⁹⁰ Therefore proposed Sub-rule 7(5) cannot be read as including persons who are no longer employees and therefore not contrary to section 171A of the Act.

Whether proposed Sub-rule 7(5) provides that persons who are ineligible will become members

[97] The UFUQ point to subsection 166(1) of the Act, which provides that only persons eligible to be members are entitled to join a registered organisation.⁹¹ They submit that if a person has, since September 2018, ceased to be eligible to join, they cannot be admitted to membership.⁹²

[98] This submission assumes the persons in question are applicants for membership. However, as discussed above in paragraphs [75] to [85] proposed Sub-rule 7(5) does not grant membership to persons who are not members. It merely clarifies who are members for the purpose of reconstituting the Branch.

[99] Further, a person who has joined the UFUA is entitled to remain a member, unless they resign or they are removed from membership in accordance with the process set out in current Rule 84.⁹³ There is nothing before me to suggest Rule 84 has been invoked in relation to members who have since become ineligible for membership.

Whether proposed Sub-rule 7(5) does not provide for informed consent to become a member and whether it does not provide for provision of information to applicants for membership

[100] The UFUQ asserts that proposed Sub-rule 7(5) is contrary to law on the ground that membership is contractual.⁹⁴ They submit that this proposed sub-rule deems membership on persons who have not consented and therefore is contrary to law.⁹⁵ They also point to the provisions of section 141(1)(d) of the Act,⁹⁶ which requires rules to provide that applicants for members be informed of the financial obligations arising from membership and the circumstances and manner in which a person may resign from membership. The UFUQ put forward that the proposed alterations fail to satisfy these requirements.⁹⁷

[101] Both arguments rest on the false assumption that proposed Sub-rule 7(5) confers membership on persons who are not currently members. The proposed sub-rule does not confer membership to persons who are not members. It clarifies who is a member for the purpose of reconstituting the Branch. Informed consent was given when the relevant persons joined the UFUA.

Whether proposed Sub-rule 7(5) lacks certainty

[102] In stating proposed Sub-rule 7(5) lacks certainty, the UFUQ observe that the rule does not define the “list” of members as at 2 September 2018 and that a firefighter in Queensland would not know if they are deemed to be a member.⁹⁸ They claim proposed Sub-rule 7(5) is so uncertain as to impose conditions on members that, having regard to Parliament’s intentions and the objects of the Act, are oppressive, unreasonable or unjust.⁹⁹

[103] In my view, the proposed sub-rule provides certainty about who is a member. As Justice Abraham made clear in the *UFUA case*¹⁰⁰ it was not until September 2018 that the BCOM decided that persons whose names appeared in the register of members maintained by the Branch were no longer members. There had been no lack of certainty about the membership list before that point. Uncertainty about membership commenced sometime in September 2018, when the BCOM started to question whether UFUQ members were also members of the UFUA. Any uncertainty complained of does not arise due to proposed Sub-rule 7(5).

[104] For persons who intended to join the Branch after 2 September 2018, proposed Sub-rule 7(ii)(a) applies. It requires the member to communicate to the Branch that they intended to join the UFUA and understood that they had done so. This requirement provides certainty as to membership for persons who intended to join after 2 September 2018.

[105] Proposed Sub-rule 7(5) complies with the Act and is not otherwise contrary to law.

Proposed alterations to Rule 10: the registers of members to include email addresses and mobile phone numbers

[106] The alterations proposed to Rule 10 require the National register of members and the registers of members maintained by Branches to include members’ email addresses and mobile phone numbers. The Administrator explains this will aid in communicating with members, encourage democratic participation in the affairs of the Branch and that the alteration is supported by the National Executive.¹⁰¹

[107] The UFUQ submits that these alterations are beyond power because the alterations are not limited to the Queensland Branch.¹⁰² They submit that the apparent support of the National Executive are not relevant to the exercise of the Administrator’s power.¹⁰³ They also submit that the Branch can function effectively without a requirement for email addresses and mobile phone numbers to be included on the membership register and therefore the alterations are not necessary to enable the Branch to function effectively.¹⁰⁴

[108] As per my reasoning in paragraphs [38] – [44], I see no reason to reject these alterations merely because they affect other Branches. As stated above, the question before me is whether the alterations are within the powers given to the Administrator by clauses 7 and 8 of the Scheme.

[109] Current communication is mostly conducted through electronic means, such as email and mobile phone-based applications. In my view, keeping a record of members’ email addresses and mobile numbers will facilitate better communication with members. Better communication between the Branch and the members attached to it will help ensure the Branch’s accountability to members, the participation of members in the affairs of the Branch

and the Branch's effectiveness. The alterations to Rule 10 are within the scope of clause 8 of the Scheme.

[110] Given the prevalent use of modern electronic communication methods, it is necessary for the Branch to collect this information in order to operate effectively. To rely on physical addresses as a means of communication would have a significant negative impact on the Branch's effectiveness. The alterations to Rule 10 are within the scope of clause 7 of the Scheme. There is no suggestion that the alterations do not comply with the Act or are otherwise contrary to law.

Proposed Sub-rules 29(4), 54(5A) and 80(3): service agreements and payment of membership fees and capitation fees

[111] It is convenient to deal with this group of proposed sub-rules in concert. The UFUQ submits that taken together these alterations create a number of issues.¹⁰⁵ The result, in the UFUQ's submission, is that they do not comply with the Act.¹⁰⁶

[112] Proposed Sub-rule 29(4) provides that any amount payable by a branch to the National fund may be paid by an Associated Body registered in the same State. Proposed Sub-rule 54(5A) provides that branches may enter into Service Agreements with an Associated Body registered in the same State. Proposed Sub-rule 80(3) provides that a member who has paid membership subscriptions, levies or fines to an Associated Body registered in the same State shall be deemed to have paid same to the UFUA.

Whether proposed Sub-rules 29(4), 54(5A) and 80(3) are within the power of the Administrator

[113] The UFUQ submits that proposed Sub-rules 29(4), 54(5A) and 80(3) are beyond power because they affect other branches and they are not necessary for the effective functioning of the Branch.¹⁰⁷ Consistent with the reasons set out above, I see no reason to reject these proposed sub-rules merely because they affect other Branches.

[114] Are proposed Sub-rules 29(4) and 54(5A) necessary for the effective functioning of the Branch? On the facts as presented by the UFUQ, these sub-rules confer no immediate benefit on the Branch or its members. The UFUQ has made it clear that they have no relationship with the Branch and that they not do not intend to have a relationship with the Branch. Consequently, the UFUQ will not enter into a service agreement with the Branch, nor will it make payments to the UFUA's National fund on behalf of the Branch.¹⁰⁸

[115] However, that is not the end of the matter. Although the sub-rules will not have an immediate effect, it does not follow that the alterations are beyond the power of the Administrator. As stated in paragraphs [45] – [51], the policy of the Administrator is to harmonise relations with the UFUQ and this alteration goes to the implementation of that policy. Rule alterations which attempt to harmonise relations with the UFUQ are directed to the development and implementation of policies which ensure the Branch will be able to operate effectively. Proposed Sub-rules 29(4) and 54(5A) in my view, are within the scope of clause 8 of the Scheme.

[116] The Administrator states that proposed Sub-rule 80(3) "is intended to formalise the previous practice and understanding whereby if a member was paying subscriptions to the

UFUQ or another associated body in another State he/she was treated as a financial member of the Branch.”¹⁰⁹ The UFUQ submits the Administrator is exercising plenary power that he does not have.¹¹⁰ It further submits that the Administrator’s concern that it will be difficult to convince members to remain members is irrelevant to the exercise of his powers.¹¹¹

[117] The Administrator’s task is to reconstitute the Branch. His policy is to do so by harmonisation of relations with the UFUQ. Recognition of payment made to the UFUQ as payment to the UFUA implements this policy. Further the financial status of members is key to accessing rights conveyed under the Act and under the UFUA rules. For the Branch to be able to run effectively, the financial status of its members must be known. In my view proposed Sub-rule 80(3) is within the power of Administrator as set out in clauses 7 and 8 of the Scheme.

When read together, do proposed Sub-rules 29(4), 54(5A) and 80(3) comply with the Act?

[118] The UFUQ submits that taken together proposed Sub-rules 29(4), 54(5A) and 80(3) do not comply with the Act because:

- branch members will be unfinancial, imposing oppressive conditions on financial members,
- financial members will not be able to exercise their rights under the Act,
- some branches will be deprived of a revenue stream, imposing oppressive conditions on members of other branches, and
- the expression “Service agreement” is not defined.

Proposed Sub-rules 29(4), 54(5A) and 80(3): whether Branch members who pay fees to the UFUQ are unfinancial

[119] The UFUQ submits that “despite the provision of the RO Act requiring organisations to purge unfinancial members, members of the Queensland Branch are not required to pay a fee”¹¹² and that by “creating a class of members who are not financial, would be to effect an oppression on the financial members of the UFUA.”¹¹³

[120] If a member pays subscriptions, levies or fines to an Associated Body (in the same State as a branch of the UFUA), proposed Sub-rule 80(3) deems those amounts to have been paid to the UFUA. Should proposed sub-rule 80(3) be certified, members of the Branch who pay fees to the UFUQ will satisfy the subscription requirements for both organisations. The proposed alterations are similar to the rules considered by Court in *CEPU v Gray*¹¹⁴ (*CEPU case*), insofar as paying subscriptions to a State registered union discharges a member’s obligations to both the State Union and the registered organisation.¹¹⁵ Unlike the present circumstances, reciprocal arrangements *were* in place between the relevant Branch and the relevant State Union in the *CEPU case*. I discuss that matter in paragraphs [126] to [130] below.

[121] In terms of past payment of fees to the UFUQ, the Administrator has expressly advised the intention of the alteration: to formalise the previous practice whereby payment of fees to an Associated Body constitutes payment of fees to the relevant Branch of the UFUA.¹¹⁶ Alterations to the rules of a registered organisation do not apply to past or uncompleted matters, other than by express provision in the amended rules or by implication.¹¹⁷ The presumption against retrospective application of this sub-rule is explicitly rebutted.

[122] Proposed Sub-rule 80(3) does not create a class of unfinancial members. Consequently, the question of an oppressive, unreasonable or unjust effect on the financial members of the

UFUA does not arise. Nor do the requirements to purge unfinancial members from the register of members in accordance with subsection 172(1) of the Act.¹¹⁸

Proposed Sub-rules 29(4), 54(5A) and 80(3): whether financial members are not able to exercise their rights

[123] The UFUQ asserts that the Administrator has conflated the payment of capitation fees by branches to the National fund and the financial status of members.¹¹⁹ They state that capitation fees relate to the financiality of a branch and membership rights relate to individuals and their rights. The UFUQ make the point that the proposed rules will result in “an imbalance”, where certain members will not be able to exercise rights because their Branch is not financial.¹²⁰ As a consequence they submit that rules are prima facie oppressive, unreasonable and/or unjust in the context the relevant provisions of the Act.¹²¹

[124] The UFUQ are correct to observe that financial members of the UFUA may not be able to exercise their full rights if their branch is unfinancial. For example branch representatives may be denied voting rights on National Executive and NCOM if their branch is unfinancial.¹²² However, that observation applies to the current rules, not the alterations. The alterations themselves do not impinge on membership rights, they merely set out when a member is financial and how capitation fees can be paid. If a UFUA member considers the current rules oppressive, unreasonable and/or unjust (having regard to the Parliamentary intentions which underpin the Act), relief lies under section 163 of the Act.¹²³ An application to certify alterations to rules under section 159 of the Act is not the forum to argue that the existing rules of a registered organisation are contrary to section 142.

Proposed Sub-rules 29(4), 54(5A) and 80(3): whether branches will be deprived of a revenue stream, if so whether this will have an oppressive effect on members.

[125] The UFUQ also submit that, taken together, the proposed rules may operate to deprive some branches of any revenue stream. In particular there is no guarantee revenue will flow to the Branch.¹²⁴ They correctly state that an Associated Body is a separate legal entity at arm’s length from the UFUA, under no obligation to make payment.¹²⁵ The UFUQ argue that the effect of the alterations is to create a class of members attached to branches that cannot derive income and cannot pay capitation fees.¹²⁶ The purpose of “service agreement” rules is to provide for a reciprocal arrangement; an agreement is reached whereby another entity pays capitation fees on a branch’s behalf and provides other services to the branch.¹²⁷ In this instance there is no service agreement in place. Nor is it likely that there will there be.¹²⁸ Consequently, the UFUQ submit that the alterations will have an oppressive effect on members attached to other branches.¹²⁹

[126] The UFUQ have stated that they will not make any payment to the UFUA.¹³⁰ The circumstances before me are clearly distinguishable from those in the *CEPU case*. In the *CEPU case*, the majority of the Full Federal Court emphasised the importance of the reciprocal arrangements, whereby the relevant State union committed to the payment of sustenance fees on behalf of the Branch to the Divisional body. In determining whether the rule imposed oppressive, unreasonable or unjust conditions on other members, the majority placed weight on the fact that “the contribution is not lost to [the CEPU]”¹³¹ and stated that “we can see no reason why such persons should be regarded as having made any lesser contribution to the NSW Divisional Branch.”¹³² The majority concluded that the relevant CEPU rules did not impose oppressive, unreasonable or unjust conditions on members.

[127] The current circumstances are different. There is no reciprocal arrangement in place with the UFUQ and the contribution of Queensland Branch members will likely be lost to the UFUA. The question is, having regard to the requirements of subsection 141(1)(c) of the Act, does this impose oppressive, unreasonable or unjust conditions on other members?

[128] The UFUQ point to *Bramich v Transport Workers Union of Australia (Bramich case)*¹³³ to support their argument that creating a class of members who are attached to branches that cannot derive revenue and pay capitation fees would impose an oppressive condition on other members.¹³⁴ However, the *Bramich case* turns on the issue of denying membership rights to members of a disbanded branch, such as the right to elect persons to office.¹³⁵ The alterations before me do not deny membership privileges to a group of members. The proposed rules might conveniently allow members of some branches to fulfil membership fee obligations but, as discussed by the majority in the *CEPU case*, “a person is not oppressed or treated unjustly merely by reason of the circumstance that other persons are treated benevolently...[members suffer] no injustice merely because other members...enjoy a convenient mode of paying their dues.”¹³⁶

[129] Secondly, while the arrangement may impose a financial burden on other branches if the UFUA financially supports the Branch, I am not of the view that the burden necessarily imposes oppressive, unreasonable or unjust on the members of other branches. As discussed above in paragraph [66], it is reasonable to expect organisations and their members to subsidise constituent parts when necessary. The reconstitution of a branch is a time when support is likely to be necessary.

[130] A reciprocal arrangement like the one in the *CEPU case* may be preferable, because it would likely ensure payment of Branch capitation fees. However, the potential existence of a preferable rule does not render the proposed sub-rules contrary to the Act. Nor is it my task to impose a preferable rule.¹³⁷

Proposed Sub-rules 29(4), 54(5A) and 80(3): whether the service agreement provision lacks certainty

[131] The UFUQ submits that Sub-rule 54(5A) is contrary to the Act because it lacks certainty by not defining “service agreement”.¹³⁸ They submit that neither the Commission nor the Registered Organisations Commission would be able to know what service agreement is permitted by the rules and this uncertainty is likely to cause issues in respect of compliance. It submits proposed Sub-rule 54(5A) should not be certified for that reason.¹³⁹

[132] Neither the Commission’s lack of knowledge of the terms of service agreements nor that of the Registered Organisations Commission renders the alterations contrary to the Act. Even if the terms of the agreement are contrary to law, that does not make the alteration contrary to the Act. Instead, the implementation of the rule would be contrary to law.¹⁴⁰

[133] It might be preferable for proposed Sub-rule 54(5A) to specify the types of arrangements covered in a service agreement. As already stated, the potential existence of a preferable rule does not render Sub-rule 54(5A) oppressive, unreasonable or unjust having regard to the requirements as set out in paragraph 141(2)(c) of the Act. Nor is it my role to impose rules that might be preferable.

[134] Sub-rules 29(4), 54(5A) and 80(3) comply with the Act and are not otherwise contrary to law.

Proposed alteration to Rule 35: levies and fines included for the purpose of determining financial status

[135] Under current Rule 35, a member who owes more than \$100 in subscription fees is an unfinancial member. The proposed alteration to the rule provides that a member who owes more than \$100, inclusive of subscription fees, levies or fines, is an unfinancial member. The Administrator advises that this rule historically included levies and fines but was inadvertently omitted in alterations adopted by the UFUA in 2020. He also advises that the reason he has made an alteration to include levies and fines is to reflect the rules of the UFUQ, which require members to pay subscriptions, levies and fines in order to be financial. The Administrator advises “it would be inconsistent with the financial status of a member of the UFUQ if different criteria applied to the Branch...”.¹⁴¹

Whether the alteration to Rule 35 is within the power of the Administrator

[136] The UFUQ submits that it is a misuse of the Administrators’ power to make alterations for the purpose of rectifying the inadvertence of the National Executive.¹⁴² I agree if this was the sole purpose. However, it is not the sole reason for the alteration. The alteration aligns the criteria for financial membership status for the Branch and the UFUQ membership. It goes to the policy of paving the way for harmonisation of relations with the UFUQ.

[137] As discussed in paragraphs [38] – [44], I see no reason to reject the alteration on the basis that it applies to all branches. Further, for the reasons set out above, alterations directed to paving the way for harmonisation of relations with the UFUQ sit within the purview of clause 8 of the Scheme. The alteration also complies with the Act and is not otherwise contrary to law.

Proposed alteration to Sub-rule 80(2): wider range of methods for payments of membership fees

[138] Among other things, Rule 80 currently sets out membership fee payment methods. The alteration to Sub-rule 80(2) expands the available methods to include a range of instalment options and a range of payment methods. The Administrator advises that the alterations update the methods to align with current practices and to align with the methods in the UFUQ rules.¹⁴³

Whether the alteration to Sub-rule 80(2) is within the power of the Administrator

[139] The UFUQ submits that it is a misuse of the Administrator’s powers to alter the rules to bring them in conformity with current practice.¹⁴⁴ If a member pays dues directly to the Branch, available payment methods need to align with current practice. In my view, altering the rules to provide for payment in accordance with current practice is necessary for the effective functioning of the Branch and therefore is within the powers of the Administrator. Further, the Administrator aims to bring the rule into conformity with the UFUQ rules and therefore the proposed alteration aligns with the Administrator’s policy of paving the way for harmonisation of relations, consistent with the power given to the Administrator under clause 8 of the Scheme. In addition, consistent with my reasoning above, the fact that the alteration affects other branches does not change this conclusion.

[140] Proposed Sub-rule 80(2) is within the Administrator's powers, complies with the Act and is not otherwise contrary to law.

Proposed Rule 89A: transitional Queensland BCOM and election and meeting procedures

[141] Proposed rule 89A is a Special Transitional Rule. It provides for a smaller Queensland BCOM than currently provided for in the rules. It also sets out some election and meeting procedures. The rule is stated to remain in place until the NCOM resolves to remove it.

Whether proposed Rule 89A is within the power of the Administrator

[142] The Administrator advises that a smaller BCOM is needed because he believes that encouraging members to stand for office may initially prove difficult.¹⁴⁵ Given the historical circumstances which precede the alterations I accept that proposition. The alteration is necessary to enable the Branch to operate effectively and falls within the powers of the Administrator.

Proposed Rule 8 in Schedule 3: representation on the NCOM

[143] Proposed Rule 8 of Schedule 3 provides that if the Branch is entitled to more than two National Delegates pursuant to current Rule 12, the third Delegate shall be the Branch Vice-President and the fourth Delegate shall be the Branch Executive Member/National Committee of Management Delegate.

Whether proposed Rule 8 in Schedule 3 is within the power of the Administrator

[144] This alteration ensures that members attached to the Branch are able to participate in the national affairs of the UFUA and ensures their democratic right to elect representatives. The alteration is necessary for the effective operation of the Branch and the democratic functioning and control by members of the Branch. This proposed rule is within the powers of the Administrator.

Whether proposed Rule 8 in Schedule 3 is contrary to the Act

[145] The UFUQ submits that this rule is neither clear nor certain in its language.¹⁴⁶ In my view, the rule is clear and certain as to which Branch offices are, ex-officio, National Delegates so long as proposed Special Transitional Rule 89A remains in force. Should the NCOM act to delete the Special Transitional Rule, then proposed Rule 8 of Schedule 3 will lack clarity because it refers to offices that will no longer exist. However, that is a matter for the future. Any uncertainty resulting from future rule alterations would need to be assessed, in the ordinary way, at that point in time. In the context of the present alterations the rule is not contrary to the Act.

[146] In my view, proposed Rule 8 in Schedule 3 complies with the Act and is not otherwise contrary to law.

Request for the General Manager to alter the rules of the UFUA under section 156

[147] Although it does not form part of this notification, the UFUQ have also asked me to exercise my powers under section 156 of the Act to amend the UFUA rules.¹⁴⁷

[148] In particular, the UFUQ have asked me to remove any references to the UFUQ.¹⁴⁸

[149] On 21 July 2022, the New South Wales Fire Brigade Employees Union (FBEU), a union registered under the *Industrial Relations Act 1996* (NSW), submitted a request in like terms. The FBEU has asked me to amend the UFUA rules under section 156 by deleting any reference to the FBEU.¹⁴⁹

[150] The essence of the UFUQ and FBEU submissions is that the current rules of the UFUA define the UFUQ and FBEU as Associated Bodies, but neither have, nor intend to have a relationship with the UFUA.¹⁵⁰ They submit that this misrepresentation is contrary to law.¹⁵¹ They also submit that the rules mandate a relationship between the entities and this is contrary to law because a relationship cannot be mandated against the will of a corporate body.¹⁵² They also argue that it is contrary to law because it misrepresents the workplace rights of another person and therefore is contrary to section 345 of the *Fair Work Act 2009*.¹⁵³ They put forward the example that the consequence of misrepresenting to state union members that they are also members of the UFUA “could, in circumstances of purported protected action, have grave and significant consequences for the person concerned.”¹⁵⁴

[151] Subsection 156(1) of the Act provides:

“Where the rules of an organisation do not, in the General Manager’s opinion, make provision required by this Act, the General Manager may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the General Manager’s opinion, necessary to bring them into conformity with this Act”

[152] The phrase “make provision required by this Act” was considered by SDP Williams in *Re Victorian Principals Federation*.¹⁵⁵ He determined that the words “make provision” were distinguished from the words “is contrary to the Act...” in the sense that the obligation on the relevant decision-maker was limited to assessing whether the rules contain the provisions that are required by the legislation. In his view, these words do not include considering what is not permitted to be in the rules.¹⁵⁶ This reasoning was subsequently adopted by VP Ross in *Re: Australian Principals Federation*.¹⁵⁷

[153] Neither SDP Williams nor VP Ross were considering section 156 of the Act. However, they were considering provisions in the *Workplace Relations Act 1996* which use the same wording. Their views should be regarded as persuasive.

[154] Neither the UFUQ nor the FBEU have proposed that the rules of the UFUA do not make provision as required by the Act. They have submitted that the rules are contrary to law and contrary to section 345 of the *Fair Work Act*. It is not necessary that I determine this point in this decision. I intend to invite further submissions from the UFUQ, the FBEU and the UFUA on this point.

Regulation 126

[155] Among other things, Regulation 126¹⁵⁸ requires an organisation lodge with the Commission a notice setting out the particulars of the alterations, and regulation 126(2) requires the notice to contain a declaration stating:

- (a) that the alteration was made in accordance with the rules of the organisation; and
- (b) the action taken under the rules to make the alteration; and
- (c) that the particulars set out in the notice are true and correct to the best of the knowledge and belief of the signatory.

[156] The notice of particulars lodged on 31 May 2022 did not contain a declaration as required by regulation 126(2). On 22 June 2000, Davies Lawyers, on behalf of the Administrator emailed a request that, in the current special circumstances, the Administrator be exempted from the procedural requirements of regulation 126(2). Though not invited to make a submission on this point the UFUQ contended that an exemption should not be granted, because the alterations go beyond the power granted to the Administrator.¹⁵⁹

[157] Regulation 178¹⁶⁰ allows the General Manager to exempt a person from compliance with a procedural requirement under the Regulations if the General Manager is satisfied that there are “special circumstances”. As explained above the power of the Administrator to make rule alterations is derived from the Order of the Federal Court approving the Scheme to reconstitute the Branch. The UFUQ submits that so far as the alterations are beyond the Administrator’s power, they must be made in accordance with the rules of the UFUA and a declaration addressing the matters contained in Regulation 126(2) lodged. I agree. However, the alterations do not go beyond the power of the Administrator.

[158] Special circumstances have arisen and, in accordance with my powers under regulations 178, I exempt the Administrator from compliance with the procedural requirements of regulation 126(2).

Typographical, clerical or formal errors

[159] On 26 August 2022 the Administrator, gave consent, under subsection 159(2) of the *Fair Work (Registered Organisations) Act 2009*, for the General Manager to make amendments to the alterations for the purpose of correcting typographical, clerical or formal errors. Accordingly, the following corrections have been made:

1. Delete the words “Branch Executive Members” which follow the words “3 Branch Executive Members” in proposed Sub-rule 89A(2)(e); and
2. Insert the word “Branch” before the word “Vice-President” in proposed Rule 8 of Schedule 3.

Conclusion

[160] Although it has not been necessary to set out in full the UFUQ's submissions or refer in detail to every one of them, I have had regard to all of the material put to me in reaching my decision in this matter. In doing so I have concluded that none of alterations are beyond the scope of the Administrator's powers, that all comply with the Act and none are otherwise contrary to law.

[161] In my opinion, the alterations comply with and are not contrary to the Act, the *Fair Work Act 2009*, modern awards and enterprise agreements, and are not otherwise contrary to law. I certify accordingly under subsection 159(1) of the Act.



GENERAL MANAGER

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¹ Note: some of those rules are concerned specifically with the UFUA's Aviation Branch

² *UFUA case: United Firefighters' Union of Australia v United Firefighters' Union of Australia, Union of Employees, Queensland* [2022] FCA 145

³ Section 167(1) of the Act provides:

Where a question arises as to the entitlement under section 166 of a person:

- (a) to be admitted as a member of an organisation (whether for the first time or after having resigned, or been removed, as a member of the organisation); or
- (b) to remain a member of an organisation;

application may be made to the Federal Court for a declaration as to the entitlement of the person under this section by either of the following:

- (c) the person;
- (d) the organisation concerned

⁴ NSD1027/2020

⁵ Subsection 323(1) of the *Fair Work (Registered Organisations) Act 2009* (the Act) provides:

An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation may apply to the Federal Court for a declaration that:

- (a) a part of the organisation, including:
 - (i) a branch or part of a branch of the organisation; or
 - (ii) a collective body of the organisation or a branch of the organisation;

has ceased to exist or function effectively and there are no effective means under the rules of the organisation or branch by which it can be reconstituted or enabled to function effectively; or

- (b) an office or position in the organisation or a branch of the organisation is vacant and there are no effective means under the rules of the organisation or branch to fill the office or position;

and the Court may make a declaration accordingly

⁶ Subsection 323(2) of the Act provides:

Where the Court makes a declaration under subsection (1), the Court may, by order, approve a scheme for the taking of action by a collective body of the organisation or a branch of the organisation, or by an officer or officers of the organisation or a branch of the organisation:

- (a) for the reconstitution of the branch, the part of the branch or the collective body; or
- (b) to enable the branch, the part of the branch or the collective body to function effectively; or
- (c) for the filling of the office or position

⁷ NSD987/2020

⁸ Ibid.

⁹ The orders and the Scheme also dealt with other matters which need not be traversed

¹⁰ NSD987/2020, appendix A, clause 7

¹¹ Ibid., appendix A, clause 8

¹² Section 159 of the Act provides:

- (1) An alteration of the rules (other than the eligibility rules) of an organisation does not take effect unless particulars of the alteration have been lodged with the FWC and the General Manager has certified that, in his or her opinion, the alteration:
 - (a) complies with, and is not contrary to, this Act, the Fair Work Act, modern awards and enterprise agreements; and
 - (b) is not otherwise contrary to law; and
 - (c) has been made under the rules of the organisation.
- (2) Where particulars of an alteration of the rules (other than the eligibility rules) of an organisation have been lodged with the FWC, the General Manager may, with the consent of the organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.
- (3) An alteration of rules that has been certified under subsection (1) takes effect on the day of certification.
- (4) This section does not apply in relation to an alteration of the rules of an organisation that is:
 - (a) proposed to be made in relation to an application for an exemption from subsection 144(1); or
 - (b) determined or certified by the General Manager under subsection 144(7) or section 156, 163, 246, 247 or 249; or
 - (c) proposed to be made for the purpose of an amalgamation under Part 2 of Chapter 3 or Division 4 of Part 7 of Chapter 11; or
 - (d) proposed to be made for the purposes of a withdrawal from amalgamation under Part 3 of Chapter 3

¹³ Alterations of the current type are not listed among those in subsection 159(4) as outside the scope of section 159. Nor does Part 2 of Chapter 11 of the Act contain specific provisions to deal with alterations to the rules of organisations arising from proceedings under that Part

¹⁴ Regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009* provides

- (1) For subsection 159(1) of the Act, if an alteration of the rules (other than the eligibility rules) of an organisation is made, the organisation, within 35 days after the alteration is made, or within any additional period the General Manager allows, must:
 - (a) lodge with the FWC a notice setting out the particulars of the alteration; and
 - (b) if the organisation has a web site—publish on its web site a notice that the notice mentioned in paragraph (a) has been lodged.
- (2) The notice must contain a declaration, signed by an officer of the organisation authorised to sign the declaration, stating:
 - (a) that the alteration was made in accordance with the rules of the organisation; and
 - (b) the action taken under those rules to make the alteration; and
 - (c) that the particulars set out in the notice are true and correct to the best of the knowledge and belief of the signatory.
- (3) The General Manager may refuse to certify, under subsection 159(1) of the Act, an alteration of the rules unless this regulation is complied with

¹⁵ Notwithstanding the fact that the Branch, as a local emanation of the UFUA, and the UFUQ are discrete legal entities.

¹⁶ See endnote 3 for full recitation of subsection 167(1) of the Act

¹⁷ *UFUA case*, op., cit., [2]

¹⁸ *UFUA case*, op. cit., and NSD987/2020

¹⁹ See Rule 2 of the UFUA rules

²⁰ See endnote 10 for full recitation of section 159 of the Act, and paragraph 159(1)(c) in particular

²¹ In relation to the alterations to UFUA Rules 7, 10, 29, 35, 54 and 80 and the insertion of new Rule 89A

²² In relation to the insertion of new Rule 8 of Schedule 3

²³ This approach appears consistent with that taken by Delegate Carruthers in *Re: Health Services Union* ([2012] FWAD 6936, 21 August 2012 at paragraphs [22] – [24]) (the *HSU case*). Delegate Carruthers was dealing with a Scheme approved by the Court under s.323 of the Act in connection with the Health Services Union. In the *UFUA case* Abrahams J described the Scheme sought in connection with the UFUA as “relevantly, in identical terms to the one approved by Flick J in *Brown v HSU*.” (*UFUA case* [158])

²⁴ Hall Payne Lawyers, submission on behalf of the UFUQ received 8 July 2022, paragraph 12

²⁵ *Ibid.*, paragraph 20

²⁶ *Ibid.*, paragraph 21

²⁷ NSD987/2020, appendix A, clause 7

²⁸ See *Municipal Officers’ Association of Australia v Lancaster* (1981) 54 FLR 128 at 164

²⁹ *Brown v Health Services Union* (2012) 205 FCR 548

³⁰ *Ibid.*, [70]

³¹ See Rules 86 and 87

³² See Rule 49

³³ *UFUA case*, op. cit., [154]

³⁴ NSD987/2020, appendix A, clause 7

³⁵ *Ibid.*, appendix A, clause 8

³⁶ Administrator, note 1 of the explanatory notes lodged 31 May 2022

³⁷ Administrator, op. cit., note 1

³⁸ *Ibid.*

³⁹ Hall Payne Lawyers, op. cit., paragraph 24

⁴⁰ Hall Payne Lawyers, op. cit., paragraph 106

⁴¹ *Ibid.*, paragraphs 107 & 108

⁴² *Ibid.*, paragraph 109

⁴³ *Ibid.*, paragraph 112

⁴⁴ *Ibid.*, paragraph 109

⁴⁵ *Ibid.*, paragraphs 114 to 119

⁴⁶ *Ibid.*, paragraphs 110 & 131

⁴⁷ *Ibid.*, paragraph 131

⁴⁸ *Ibid.*, paragraph 113

⁴⁹ *Ibid.*, paragraph 120

⁵⁰ *Ibid.*, paragraph 120

⁵¹ *Ibid.*, paragraphs 121-127

⁵² NSD987/2020, appendix A, clause 2

⁵³ Subsection 285(1) of the Act provides:

An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:

- (a) were an officer of an organisation or a branch in the organisation’s circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer

⁵⁴ Hall Payne Lawyers, op. cit., paragraph 127

⁵⁵ *Ibid.*, paragraph 129

⁵⁶ *Ibid.*, paragraph 130

⁵⁷ *UFUA case*, op. cit., [64]

⁵⁸ See current UFUA Sub-rule 29(1)

⁵⁹ Hall Payne Lawyers, op. cit., paragraph 131

⁶⁰ Section 27 of the Act provides:

An organisation:

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property; and
- (d) must have a common seal; and
- (e) may sue or be sued in its registered name

⁶¹ See *Williams v Hursey* (1959) 103 CLR 30 at p.54

⁶² *Ibid.*, at p.55

⁶³ Section 255 of the Act requires the Registered Organisations Commissioner to issues Reporting Guideline for the purpose of General Purpose Financial Reports. See Reporting Guideline 11 for disclosures required if a reporting unit is reliant on support from other reporting units in the organisation

⁶⁴ See current UFUA Sub-rule 5(17).

⁶⁵ Hall Payne Lawyers, op. cit., paragraph 123

⁶⁶ *Ibid.*, paragraph 130

⁶⁷ See *Thornton v McKay* (1946) 56 CAR 561; *Wright & Anor v McLeod & Ors* (1983) 51 ALR 483

⁶⁸ Administrator, op. cit., note 2

⁶⁹ Hall Payne Lawyers, op. cit., paragraph 29

⁷⁰ *Ibid.*, paragraph 30

⁷¹ Subsection 265(1) of the Act provides:

A reporting unit must provide free of charge to its members either:

- (a) a full report consisting of:
 - (i) a copy of the report of the auditor in relation to the inspection and audit of the financial records of the reporting unit in relation to a financial year; and
 - (ii) a copy of the general purpose financial report to which the report relates; and
 - (iii) a copy of the operating report to which the report relates; or
- (b) a concise report for the financial year that complies with subsection (3)

⁷² *UFUA case*, op. cit., [171]

⁷³ *Ibid.*, [174]

⁷⁴ *Ibid.*, [172]

⁷⁵ *Ibid.*, [176]

⁷⁶ *Ibid.*, [168] – [178]

⁷⁷ *Ibid.*, [2]

⁷⁸ Hall Payne Lawyers, op. cit., paragraph 84

⁷⁹ *Ibid.*, paragraph 82

⁸⁰ *Ibid.*, paragraph 85

⁸¹ *Ibid.*, paragraph 86

⁸² See endnote 3 for full recitation of subsection 167(1) of the Act

⁸³ NSD987/2020, appendix A, clause 9

⁸⁴ *UFUA case*, op. cit., [139] to [178]

⁸⁵ *Ibid.*, [174] and see [12] to [69] for summary of events

⁸⁶ *Ibid.*, [169]

⁸⁷ Hall Payne Lawyers, op. cit., paragraph 85

⁸⁸ Section 171A of the Act provides:

- (1) If a person is a member of an organisation and the person is not, or is no longer:

- (a) if the organisation is an association of employers—a person of a kind mentioned in paragraph 18A(3)(a), (b), (c) or (d); or
- (b) if the organisation is an association of employees—a person of a kind mentioned in paragraph 18B(3)(a), (b), (c) or (d); or
- (c) if the organisation is an enterprise association—a person of a kind mentioned in paragraph 18C(3)(a), (b), (c) or (d);

the person's membership of the organisation immediately ceases.

(2) Subsection (1) has effect despite anything in the rules of the organisation

⁸⁹ Hall Payne Lawyers, *op. cit.*, paragraphs 79 & 80

⁹⁰ See endnote 88 for full recitation of section 171A of the Act, in particular see subsection 171A(2)

⁹¹ Subsection 1661(1) of the Act provides:

Subject to any modern award or order of the FWC, a person who is eligible to become a member of an organisation of employees under the eligibility rules of the organisation that relate to the occupations in which, or the industry or enterprise in relation to which, members are to be employed is, unless of general bad character, entitled, subject to payment of any amount properly payable in relation to membership:

- (a) to be admitted as a member of the organisation; and
- (b) to remain a member so long as the person complies with the rules of the organisation

⁹² Hall Payne Lawyers, *op. cit.*, paragraphs 78 - 80

⁹³ Or cease to be a member in accordance with section 171A of the Act, see full recitation of section 171A in endnote 88

⁹⁴ Hall Payne Lawyers, *op. cit.*, paragraph 65

⁹⁵ *Ibid.*, paragraph 68

⁹⁶ Paragraph 141(1)(d) of the Act provides that the rules of an organisation:

...must require the organisation to inform applicants for membership, in writing, of:

- (i) the financial obligations arising from membership; and
- (ii) the circumstances, and the manner, in which a member may resign from the organisation

⁹⁷ Hall Payne Lawyers, *op. cit.*, paragraph 70

⁹⁸ *Ibid.*, paragraph 63

⁹⁹ Paragraph 142(1)(c) of the Act provides:

(1) The rules of an organisation:

...(c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to Parliament's intention in enacting this Act (see section 5) and the objects of this Act and the Fair Work Act, are oppressive, unreasonable or unjust

¹⁰⁰ *UFUA case*, *op. cit.*, [12] – [69]

¹⁰¹ Administrator, *op. cit.*, note 1

¹⁰² Hall Payne Lawyers, *op. cit.*, paragraph 32 and paragraphs 17 to 19

¹⁰³ *Ibid.*, paragraph 32

¹⁰⁴ *Ibid.*, paragraph 33

¹⁰⁵ *Ibid.*, paragraph 87

¹⁰⁶ *Ibid.*, paragraphs 89 -101

¹⁰⁷ *Ibid.*, paragraphs 35, 40 and 44

¹⁰⁸ *Ibid.*, paragraph 131

¹⁰⁹ Administrator, *op. cit.*, note 4

¹¹⁰ Hall Payne Lawyers, *op. cit.*, paragraph 46

¹¹¹ *Ibid.*, paragraph 47

¹¹² *Ibid.*, paragraph 96

¹¹³ *Ibid.*, paragraph 97

¹¹⁴ *CEPU case: CEPU v Gray* [2012] FCAFC 158

¹¹⁵ *Ibid.*, at [24], a point with which the dissenting Judge concurred at [52]

¹¹⁶ Administrator, *op. cit.*, note 4

¹¹⁷ See *Beeson v Blayney* (1966) 8 FLR 292

¹¹⁸ Subsection 172(1) of the Act provides that if:

- (a) the rules of an organisation require a member to pay dues in relation to the person's membership of the organisation; and
- (b) the member has not paid the amount; and
- (c) a continuous period of 24 months has elapsed since the amount became payable; and
- (d) the member's name has not been removed from the register kept by the organisation under paragraph 230(1)(a);

the organisation must remove the name and postal address of the member from the register within 12 months after the end of the 24 month period

¹¹⁹ Hall Payne Lawyers, op. cit., paragraph 90

¹²⁰ Ibid.

¹²¹ Ibid., paragraph 91

¹²² See current Sub-rules 12(7) and (8).

¹²³ Subsections 163(1), (2) and (3) of the Act provide:

- (1) A member, or an applicant for membership, of an organisation may apply to the Federal Court for an order under this section in relation to the organisation.
- (2) If the application is made by a member, the order under this section may declare that the whole or a part of a rule of an organisation contravenes section 142 or that the rules of an organisation contravene section 142 in a particular respect
- (3) If the application is made by an applicant for membership, the order under this section may declare that the whole or a part of a rule of an organisation contravenes paragraph 142(1)(c) or (d) or that the rules of an organisation contravene paragraph 142(1)(c) or (d) in a particular respect

¹²⁴ Hall Payne Lawyers, op. cit., paragraph 92

¹²⁵ Ibid., paragraph 93

¹²⁶ Ibid., paragraph 97

¹²⁷ Ibid., paragraph 94

¹²⁸ Ibid., paragraph 96

¹²⁹ Ibid., paragraph 97

¹³⁰ Ibid., paragraph 96

¹³¹ *CEPU case*, op. cit., [37]

¹³² Ibid., [38]

¹³³ *Bramich case: Bramich & Ors v Transport Workers Union of Australia & Ors* 97 (2000) FCR 204

¹³⁴ Hall Payne Lawyers, op. cit., footnote 8

¹³⁵ *Bramich case*, op. cit., [32]

¹³⁶ *CEPU case*, op. cit., [28]

¹³⁷ See *Thornton v McKay* (1946) 56 CAR 561; *Wright & Anor v McLeod & Ors* (1983) 51 ALR 4830

¹³⁸ Hall Payne Lawyers, op. cit., paragraph 100

¹³⁹ Ibid., paragraph 101

¹⁴⁰ See *O'Sullivan v AWU* (1938) 39 CAR 323; *Allshorn v Stapleton & Ors* (1984) 4 FCR 236

¹⁴¹ Administrator, op. cit., note 1

¹⁴² Hall Payne Lawyers, op. cit., paragraph 37

¹⁴³ Administrator, op. cit., note 3

¹⁴⁴ Hall Payne Lawyers, op. cit., paragraph 43

¹⁴⁵ Administrator, op. cit., note 5

¹⁴⁶ Hall Payne Lawyers, op. cit., paragraph 102

¹⁴⁷ The request to do so was contained in in the UFUQ's 26 May 2022 request to heard in this matter (*UFUQ request*), paragraph 21

¹⁴⁸ Ibid.

¹⁴⁹ FBEU request that the General Manager alter the UFUA's rules under section 156, received 21 July 2022 (*FBEU request*), paragraph 26

¹⁵⁰ *UFUQ request*, op. cit., paragraph 4, and *FBEU request*, op. cit., paragraph 18

¹⁵¹ *UFUQ request*, op. cit., paragraph 15, and *FBEU request*, op. cit., paragraph 23

¹⁵² *UFUQ request*, op. cit., paragraph 8, and *FBEU request*, op. cit., paragraphs 19 & 20

¹⁵³ Subsection 345 of the Fair Work Act 2009 provides:

- (1) A person must not knowingly or recklessly make a false or misleading representation about:
 - (a) the workplace rights of another person; or
 - (b) the exercise, or the effect of the exercise, of a workplace right by another person.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it

¹⁵⁴ *UFUQ request*, op. cit., paragraph 17 and *FBEU request*, op. cit., paragraph 21

¹⁵⁵ (1999) 95 IR 262, [88] to [101]

¹⁵⁶ This decision was ultimately quashed on appeal in [2001] AIRC PR904611, C No. 39334 of 1999. However, the appeal was decided by reference to other criteria for registration and the question of the meaning of rules 'make provision' was not discussed

¹⁵⁷ [2006] AIRC, PR968104, D2003/39 at paragraph [250]. No point was taken with that aspect on appeal, see [2006] AIRC, Dec 441/96, PR 973525, C2006/14

¹⁵⁸ See endnote 14 for full recitation of regulation 126

¹⁵⁹ *Hall Payne Lawyers*, op. cit., paragraph 3

¹⁶⁰ Regulation 178 provides as follows:

- (1) In any proceedings before the General Manager, the General Manager may exempt a person from compliance with a procedural requirement under the Act or these Regulations if the General Manager is satisfied that there are special circumstances.
- (2) An exemption under subregulation (1) may be granted:
 - (a) absolutely; or
 - (b) subject to conditions.
- (3) Failure to comply with a procedural requirement for proceedings before the General Manager does not render the proceedings void but the proceedings may be:
 - (a) set aside, either wholly or in part, as irregular; or
 - (b) amended; or
 - (c) otherwise dealt with as and how the General Manager thinks fit