

## Form F1 – Application (no specific form provided)

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

This is an application to the Fair Work Commission.

### The Applicant



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

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

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

<b>Legal name of business</b>	United Workers' Union
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	Paul Richardson

### How would you prefer us to communicate with you?

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

Post

### Does the Applicant have a representative?



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

Yes – Provide representative's details below

No

### Applicant's representative



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

<b>Name of person</b>			
<b>Firm, union or company</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

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

Yes

No

### The Respondent



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

<b>Title</b>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
<b>First name(s)</b>	Not applicable		
<b>Surname</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	
<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

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

<b>Legal name of business</b>	
<b>Trading name of business</b>	
<b>ABN/ACN</b>	
<b>Contact person</b>	

## 1. The Application

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

Refer Attachment A

## 2. Order or relief sought

### 2.1 Please set out the order or relief sought.



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

Refer Attachment A

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



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

Refer Attachment A

## 3. The employer

### 3.1 What is the industry of the employer?

Not applicable

## 4. Industrial instrument(s)

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

Not applicable

## Signature



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

<b>Signature</b>	
<b>Name</b>	Timothy John Kennedy
<b>Date</b>	6 April 2020



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

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**

**ATTACHMENT A**

**FAIR WORK COMMISSION**

*Fair Work (Registered Organisations) Act 2009*

**s159(1) – Alteration of other rules of organisations**

*Fair Work (Registered Organisations) Regulations 2009*

**Reg 126 – Alteration of other rules of organisations**

**NOTICE OF PARTICULARS OF RULE ALTERATION**

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

1. By deleting Rule 38 of Schedule 5 and inserting in lieu the following:

“38. *The Inaugural Convention will meet no later than 30 June 2021*”

**DATED** this 6<sup>th</sup> day of April 2020



**TIMOTHY JOHN KENNEDY**  
**INAUGRAL NATIONAL SECRETARY**  
**UNITED WORKERS' UNION**

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

833 Bourke Street  
Docklands Victoria 3008

P.O. Box 343  
North Melbourne Victoria 3051

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

**FAIR WORK COMMISSION**

*Fair Work (Registered Organisations) Act 2009*

**s159(1) – Alteration of other rules of organisations**

*Fair Work (Registered Organisations) Regulations 2009*

**Reg 126 – Alteration of other rules of organisations**

**NOTICE OF PARTICULARS OF RULE ALTERATION**

**DECLARATION**

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

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

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

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

16. The proposed alteration is an alteration to a transition rule of the UWU.
17. Rule 66 of Schedule 5 requires that an alteration to the Schedule may be altered by three quarters of the total votes of the Member Council being cast in favour of the proposed alteration.
18. The composition of the Member Council of the UWU is described at Rules 31 and 32.
19. On 19 March 2020, the Member Council was provided by email and by surface mail correspondence from myself along with a report and recommendation concerning the proposed alteration to the Rules of the UWU that is the subject of this Notice. The report and recommendation appear as **Annexure 1** to this declaration.
20. The report included instructions on how the Member Council could vote for or against the recommendation and a ballot paper. A sample of the ballot paper appears within **Annexure 1** to this declaration.
21. As at close of business, Friday 3 April 2020 a total of 52 completed ballot papers or emails that conformed to the manner in which Member Councillors could cast a ballot, were received (**returned ballots**).
22. Of the returned ballots, all 52 were in favour of the proposed rule alteration.
23. As at 19 February 2020:
  - 23.1 the number of Member Councillors of the Member Council as provided for within Rule 33 was 18; and
  - 23.2 the number of officers comprising the National Executive as provided for within Rule 35 was 47.
20. Thus, the total number of officers comprising the Member Council is 65. For the purpose of Rule 66 of Schedule 5, a two thirds majority when rounded off equals 43. Accordingly the number of ballots returned in favour of the proposed alteration is greater than the required two thirds majority.
21. A list of each member of the Member Council appears as **Annexure 2** to this declaration. The list indicates the manner in which those members who participated in the out of session determination returned their ballot.



22. The UWU has a website. In accordance with Regulation 126(1)(b) of the *Fair Work (Registered Organisations) Regulations*, the Notice has been published on the website – [www.unitedworkers.org.au/notices/](http://www.unitedworkers.org.au/notices/)
23. On the basis of the foregoing, I declare that the alteration has been made in accordance with the Rules of the organisation.
24. I further declare that the alteration:
- 24.1 complies with, and is not contrary to the *Fair Work (Registered Organisations) Act 2009 (the RO Act)*, the *Fair Work Act 2009*, any modern award and any enterprise agreement [s159(1)(a) of the RO Act];
  - 24.2 is not otherwise contrary to law; [s159(1)(a)(ii) of the RO Act]; and
  - 24.3 has been made under and in accordance with the Rules [s159(1)(a)(iii) of the RO Act and Regulation 126(2)(a).
25. In accordance with Regulation 126(2)(c) I also declare that the particulars set out in this declaration are true and correct to the best of my knowledge and belief.

**DECLARED** at Docklands, Victoria on this 6<sup>th</sup> day of April 2020



**TIMOTHY JOHN KENNEDY**

**DATED: 6 April 2020**

Annexures 1 to this declaration as filed as separate documents.

Annexure 2 to this declaration appears overleaf.

**ANNEXURE 2**

**MEMBER COUNCIL – OUT OF SESSION DETERMINATION – RULE ALTERATION**

**RECORD OF RETURNED BALLOTS**

<b>OFFICE</b>	<b>OFFICE HOLDER</b>	<b>FORM OF BALLOT</b>	<b>VOTE</b>
National President	Jo-anne Schofield	Email	Yes
National Vice President	Susan Allison	Email	Yes
National Vice President	Gary Bullock	Email	Yes
National Vice President	Samuel Roberts	Ballot paper	Yes
National Vice President	Carolyn Smith	Email	Yes
National Secretary	Tim Kennedy	Email	Yes
National Executive member	Jannette Armstrong	Email	Yes
National Executive member	Sharron Caddie	Ballot paper	Yes
National Executive member	Caterina Cinanni	Email	Yes
National Executive member	Melanie Gatfield	Email	Yes
National Executive member	Helen Gibbons	Email	Yes
National Executive member	Karma Lord		
National Executive member	Godfrey Moase	Ballot paper	Yes
National Executive member	Dario Mujkic	Email	Yes
National Executive member	Demi Pnevmatikas	Ballot paper	Yes
National Executive member	Ben Redford	Email	Yes
National Executive member	Paul Richardson	Ballot paper	Yes
National Executive member	Lyndal Ryan	Email	Yes
Member Council Delegate	Gamaleldin Babiker		
Member Council Delegate	Judith Barber	Email	Yes
Member Council Delegate	Amy Bell	Email	Yes
Member Council Delegate	Judeth Clarke	Ballot paper	Yes

Member Council Delegate	David Clements	Ballot paper	Yes
Member Council Delegate	Evalyn Clow	Ballot paper	Yes
Member Council Delegate	Catherine Daniels	Ballot paper	Yes
Member Council Delegate	Phyllis DeGois	Ballot paper	Yes
Member Council Delegate	Kerrie Devir	Ballot paper	Yes
Member Council Delegate	Joel Dowden	Ballot paper	Yes
Member Council Delegate	Sharon Eurlings	Email	Yes
Member Council Delegate	Michael Formica	Ballot paper	Yes
Member Council Delegate	Agnes Galiza-Pua		
Member Council Delegate	Mira Ghamrawi	Ballot paper	Yes
Member Council Delegate	Nicholas Gordon	Ballot paper	Yes
Member Council Delegate	John Gow	Email	Yes
Member Council Delegate	Kylie Grey		
Member Council Delegate	Lillian Grogan	Ballot paper	Yes
Member Council Delegate	Suzanne Gounder	Ballot paper	Yes
Member Council Delegate	Shona Haddon	Ballot paper	Yes
Member Council Delegate	Maria Halwood	Ballot paper	Yes
Member Council Delegate	Wesley Inglis		
Member Council Delegate	Heather Jackson	Ballot paper	Yes
Member Council Delegate	Justin Lane	Ballot paper	Yes
Member Council Delegate	Tracey Lidsay	Ballot paper	Yes
Member Council Delegate	Leah Malzard	Ballot paper	Yes
Member Council Delegate	Carol McCormack	Ballot paper	Yes
Member Council Delegate	Deirdre Meneaud	Ballot paper	Yes
Member Council Delegate	Colin Minns	Ballot paper	Yes
Member Council Delegate	Karen Moran	Ballot paper	Yes
Member Council Delegate	Margarita Murray-Stark		

Member Council Delegate	John Newton	Email	Yes
Member Council Delegate	Delma Panhuyzen	Ballot paper	Yes
Member Council Delegate	Paul Payne	Email	Yes
Member Council Delegate	Kim Prescott-Brown	Email	Yes
Member Council Delegate	Stephen Radford		
Member Council Delegate	Sherelle Roberts		
Member Council Delegate	Rhonda Seychell		
Member Council Delegate	Hayden Smallwood		
Member Council Delegate	Susan Szalay	Ballot paper	Yes
Member Council Delegate	Arthur Tsimopoulos	Ballot paper	Yes
Member Council Delegate	Barbara Turomsza		
Member Council Delegate	Robyn Weate	Ballot paper	Yes
Member Council Delegate	Janet Williams	Ballot paper	Yes
Member Council Delegate	Kenton Winsley		
Member Council Delegate	Andreas Wittmann		
Member Council Delegate	Samantha Wright	Ballot paper	Yes
<b>TOTAL VOTES CAST</b>			52 yes votes

## NOTES

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



## REPORT TO MEMBER COUNCIL

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### ANNEXURE 1

#### **Rule Alteration – Inaugural National Convention**

17 March 2020

**Tim Kennedy – National Secretary**

#### **Recommendation**

**That in accordance with Rules 86 and 66 of Schedule 5, the Member Council resolves to alter the Rules of the United Workers' Union as follows:**

**By deleting Rule 38 of Schedule 5 and inserting in lieu the following:**

***“38. The Inaugural Convention will meet no later than 30 June 2021.”***

#### **Executive Summary**

Currently the Rules require that the Inaugural National Convention of the Union be held no later than 30 June 2020.

As councillors will be aware the Convention was scheduled for 4 – 6 May 2020 on the Gold Coast, however the potential and actual spread of the Coronavirus (COVID19) has resulted in the deferral of the Convention until a later date.

This decision was made having regard to the information available from the relevant health authorities and was considered to be in the best interests of Convention delegates, the broader community and the Union as a whole.

Whilst the alteration would provide an additional twelve month window in which to hold the Convention the intention of the Union would be to hold the meeting at the earliest opportunity, balancing the public health situation, the availability of the venue and avoiding periods such as school holidays.

The Member Council is asked to consider approving an alteration to the Union's rules so as to ensure that we are not acting contrary to our current obligations.

#### **Budget / Financial Implications**

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Costs that can be identified that have been incurred and that are directly attributable to the holding of the Convention are venue hosting and accommodation. To date the Union has paid \$299,634 to the provider (The Star).

Discussions with the provider have resulted in an in principle agreement that the event can be deferred at no loss to the Union.

### **Risk**

Whilst it is possible that failing to hold the Convention prior to 30 June 2020 in accordance with the current Rules would be defensible it is desirable to put the question of a rescheduled date for the Convention beyond doubt.

The alteration proposed removes any risk of charge or allegation that the Union failed to act in accord with its rules.

### **Attachments**

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

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## **Attachment - Process for Altering Rules**

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

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

The Member Council may consider rule alterations:

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

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

Where the alteration concerns a transitional rule it requires two thirds approval by members of the Council [Rule 66 of Schedule 5].

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

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

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

**OUT OF SESSION DETERMINATION BY MEMBER COUNCIL**

Please complete your ballot by either:

- Marking the box of your choice below and returning your completed ballot in the stamped addressed envelope provided; or
- Marking the box of your choice and then scanning a completed copy of this ballot to Paul Richardson – [paul.richardson@unitedworkers.org.au](mailto:paul.richardson@unitedworkers.org.au) or;
- Replying by email to Paul Richardson – [paul.richardson@unitedworkers.org.au](mailto:paul.richardson@unitedworkers.org.au) indicating “yes” or “no” in your email.

Regardless of the method of voting you use, please return your ballot by no later than Friday 3 April 2020.

**Determination**

**That in accordance with Rules 86 and 66 of Schedule 5, the Member Council resolves to alter the Rules of the United Workers’ Union as follows:**

**By deleting Rule 38 of Schedule 5 and inserting in lieu the following:**

***“38. The Inaugural Convention will meet no later than 30 June 2021.”***

**Yes**

**No**

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_