

**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 31 December 2021*”

**DATED** this 6<sup>th</sup> day of April 2021



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

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

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Docklands Victoria 3008

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**FAIR WORK COMMISSION**

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**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. A meeting of the National Executive of the UWU held on 18 February 2021 received a report on the timing of the Inaugural National Convention and resolved as follows:  
  
*That the National Executive authorise the National Secretary to take the appropriate steps to effect a rule alteration to allow for the rescheduling of the Inaugural National Convention*
20. On 22 February 2021, the Member Council was provided by email correspondence from Paul Richardson, Director – Finance, Governance and Administration (acting under my instruction) along with a report and recommendation concerning the proposed alteration to the Rules of the UWU that is the subject of this Notice. The report and recommendation appear as **Annexure 1** to this declaration.
21. The report included instructions on how the Member Council could vote for or against the recommendation and a ballot paper. A sample of the ballot paper appears within **Annexure 1** to this declaration.
22. As at close of business, Wednesday 10 March 202, a total of 41 completed ballot papers or emails that conformed to the manner in which Member Councillors could cast a ballot, were received (**returned ballots**).
23. Of the returned ballots, all 41 were in favour of the proposed rule alteration.
24. As at 22 February 2021:
  - 24.1 the number of Member Councillors of the Member Council as provided for within Rule 33 was 43; and
  - 24.2 the number of officers comprising the National Executive as provided for within Rule 35 was 18.
20. Thus, the total number of officers presently comprising the Member Council is 61. For the purpose of Rule 66 of Schedule 5, a two thirds majority when rounded off equals 41. Accordingly the number of ballots returned in favour of the proposed alteration is equal to 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/)<sup>2</sup>
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 2021



**TIMOTHY JOHN KENNEDY**

**DATED: 6 April 2021**

Annexure 1 to this declaration is filed as a separate document.

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<sup>2</sup> Request made to UWU Communications for posting of the notice made concurrent with filing of the notice on 6 April 2021.

Annexure 2 to this declaration appears overleaf.

**ANNEXURE 2**

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

**RECORD OF RETURNED BALLOTS**

**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	Email	Yes
National Vice President	Carolyn Smith	Email	Yes
National Secretary	Tim Kennedy	Ballot	Yes
National Executive member	Jannette Armstrong	Email	Yes
National Executive member	Sharron Caddie	Email	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	Email	Yes
National Executive member	Godfrey Moase		
National Executive member	Dario Mujkic	Email	Yes
National Executive member	Demi Pnevmatikas	Email	Yes
National Executive member	Ben Redford	Email	Yes
National Executive member	Paul Richardson	Ballot	Yes
National Executive member	Lyndal Ryan	Ballot	Yes
Member Council Delegate	Gamaleldin Babiker		
Member Council Delegate	Judith Barber		
Member Council Delegate	Amy Bell	Email	Yes

Member Council Delegate	Greg Bartels	Email	Yes
Member Council Delegate	Michelle Chang		
Member Council Delegate	Judeth Clarke	Email	Yes
Member Council Delegate	David Clements	Ballot	Yes
Member Council Delegate	Evalyn Clow	Ballot	Yes
Member Council Delegate	Catherine Daniels		
Member Council Delegate	Kerrie Devir	Email	Yes
Member Council Delegate	Joel Dowden	Email	Yes
Member Council Delegate	Michael Formica	Email	Yes
Member Council Delegate	Agnes Galiza-Pua		
Member Council Delegate	Mira Ghamrawi		
Member Council Delegate	Kylie Grey	Email	Yes
Member Council Delegate	Lillian Grogan	Email	Yes
Member Council Delegate	Suzanne Gounder	Email	Yes
Member Council Delegate	Shona Haddon		
Member Council Delegate	Maria Halwood	Email	Yes
Member Council Delegate	Wesley Inglis		
Member Council Delegate	Heather Jackson	Email	Yes
Member Council Delegate	Justin Lane		
Member Council Delegate	Tracey Lidsay	Email	Yes
Member Council Delegate	Leah Malzard		
Member Council Delegate	Carol McCormack	Ballot	Yes
Member Council Delegate	Deirdre Meneaud		
Member Council Delegate	Colin Minns		
Member Council Delegate	Karen Moran		
Member Council Delegate	Margarita Murray-Stark		
Member Council Delegate	John Newton	Email	Yes



Member Council Delegate	Delma Panhuyzen	Email	Yes
Member Council Delegate	Paul Payne	Email	Yes
Member Council Delegate	Kim Prescott-Brown	Email	Yes
Member Council Delegate	Stephen Radford		
Member Council Delegate	Hayden Smallwood		
Member Council Delegate	Susan Szalay	Email	Yes
Member Council Delegate	Arthur Tsimopoulos	Ballot	Yes
Member Council Delegate	Barbara Turomsza	Ballot	Yes
Member Council Delegate	Robyn Weate		
Member Council Delegate	Janet Williams	Ballot	Yes
Member Council Delegate	Kenton Winsley	Ballot	Yes
Member Council Delegate	Andreas Wittmann		
Member Council Delegate	Samantha Wright		
<b>TOTAL VOTES CAST</b>			41