



20 October 2021

Peter Marshall
National Secretary
United Firefighters Union of Australia

By email: p.marshall@ufuvic.asn.au; ufunational@ufanat.asn.au

Dear Mr Marshall,

**United Firefighters Union of Australia, Queensland Branch – Financial Reports
FR2019/105 and FR2020/98**

Purpose of correspondence

I write to follow-up on our increasing concerns about the abovementioned financial reports (**FRs**), aspects of which have now been the subject of communications between the Registered Organisations Commission (**ROC**) and the United Firefighters Union of Australia (**UFUA**) for more than two years¹. The purpose of this letter is to clarify what our concerns are in the context of the extensive engagement which has occurred about the FRs over the period of more than two years.

Our main concerns include transparency (that for example, the membership of the UFUA do not have access to mandatory financial reports and information), that the organisation is (apparently knowingly) falling into an increasing number of potential contraventions of the Fair Work (Registered Organisations) Act 2009 (the **RO Act**) and that it continues to provide undertakings to the ROC about financial reporting which are not then met.

To ensure a level regulatory playing field for every registered organisation, the ROC continues to focus on assisting registered organisations to achieve high levels of voluntary compliance and transparency for their members, particularly in relation to their key financial reporting obligations. One of the reasons for our approach is that registered organisations are spending, or have spent, their members money and are required to be transparent about that.

You will be in no doubt that the UFUA's continued failure to lodge these outstanding financial reports within the required statutory timeframes does not meet either its compliance obligations or the objective of transparency.

As you are also aware, the obligations set out in sections 265, 266 and 268, require that audited financial reports be prepared and audited within six months of the end of the financial year, considered by a meeting of a relevant body of the organisation, accompanied by a designated officer certificate and lodged with the ROC within 14 days of that meeting.

¹ The ROC's first courtesy letter to the Branch about its financial report was dated 2 July 2019

We provided you with advice, in our letter to you dated 11 June 2020, that the relevant body to consider the financial reports is the National Committee of Management (**NCOM**) – in the absence of a Queensland Branch Committee of Management (**BCOM**), its officers having resigned in August 2019 according to a notification of change lodged with the ROC.

I have indicated our key concerns above and despite our communications with the UFUA for over 2 years, including the UFUA's provision of undertakings to lodge the required reports, the relevant financial reports continue to remain outstanding.

I hope it will be helpful to provide a chronology below to simplify our engagement on this issue to date. **Please Note:** Where there is a reference to UFUA in the chronology, this refers to the National Office rather than the Queensland Branch (**the Branch**).

Chronology of communications about financial reports

The chronology I refer to above is as follows:

- **2 July 2019:** Courtesy letter to Branch following end of 2019 financial year noting reporting obligations that arose from that.
- **10 December 2019:** Reminder letter to Branch regarding financial reporting and the timeframe for lodgement.
- **17 January 2020:** 'Hastener' letter sent from ROC to Hall Payne Lawyers (acting for former Branch officers), and copied to UFUA National Secretary, as more than six months had elapsed since the end of financial year and the 2019 FR for Queensland Branch had not been lodged, and seeking lodgement by 31 January 2020.
- **22 January 2020:** Letter from Hall Payne Lawyers to ROC, advising that records of the Branch were provided to the UFUA on 15 September 2019. (This letter from Hall Payne was subsequently provided to UFUA on 13 March as indicated below).
- **7 February 2020:** Letter from ROC to UFUA noting that the Branch is still a reporting unit and that obligations such as financial reporting remain (even where all offices of the BCOM are vacant). The letter noted that it was the ROC's understanding that the UFUA National Office had been provided with materials and records by the former Branch Secretary, and requested an update by 17 February on what steps the UFUA proposed to take to ensure that the 2019 FR was finalised and lodged with the ROC.
- **12 February 2020:** Letter from UFUA to ROC seeking clarification of the ROC's request to the UFUA for the 2019 FR for the Branch, querying why the ROC considers that the materials and records of the Branch have been provided to the UFUA, and asking what steps the ROC considers that the UFUA should take in relation to the matter.
- **13 March 2020:** Letter from ROC to UFUA (in response to the UFUA's 12 February 2020 letter). Guidance provided by the ROC in relation financial reporting processes and obligations and noting that the ROC has been advised that former Branch officers are prepared to provide assistance and cooperation in relation to the process but cannot 'sign off' the FR as they are not current officers. ROC also provided (with the consent of former Branch officers) copies of correspondence between the UFUA and the former Branch Secretary, as well as the 22 January 2020 letter from Hall Payne to the ROC.
- **19 March 2020:** Email from UFUA to ROC advising that external accountant is reviewing the records and should finish this assessment **by the end of the following week**. [emphasis added]

- **20 March 2020:** Email from ROC to UFUA acknowledging 19 March email and looking forward to further update.
- **27 March 2020:** Letter from UFUA to ROC advising that the accountant had requested further searches, which had now been done. UFUA to advise ROC when material has been evaluated.
- **22 May 2020:** Email from ROC to UFUA seeking update (by 3 June) on the status of the 2019 FR.
- **29 May 2020:** Letter from UFUA to ROC providing update on the progress of the 2019 FR and seeking advice from the ROC in relation to compliance with RO Act requirements where the Branch has no current BCOM to deal with the financial reporting steps.
- **11 June 2020:** Letter from ROC to UFUA (in response to UFUA's 29 May 2020 letter) providing advice in relation to financial reporting steps where an organisation is preparing an FR for a Branch with no current officers.
- **21 July 2020:** Email from ROC to UFUA seeking update on the 2019 FR for the Branch
- **23 July 2020:** Email from UFUA to ROC advising that the 2019 FR had been completed by the accountant for UFUA and that the UFUA was looking to call a meeting of NCOM the following week.
- **3 August 2020:** Courtesy reminder letter from ROC to UFUA, following end of financial year, about preparation of 2020 FR.
- **7 August 2020:** Email from ROC to UFUA seeking update about 2019 FR, arising from UFUA's 23 July email.
- **14 August 2020:** Email from UFUA to ROC advising that the UFUA was still in the process of arranging for the 2019 FR to be presented to the NCOM, that the report had been received from the accountant and a draft committee of management statement prepared, and that the UFUA hoped to have the matter presented to NCOM by the week ending 11 September 2020.
- **25 September 2020:** Email to UFUA seeking confirmation of whether the 2019 FR had been considered by the NCOM as foreshadowed and when the ROC might expect it.
- **1 October 2020:** Email from UFUA to ROC enclosing financial statements and a committee of management statement. (Several required FR documents not lodged – operating report, s.255(2A) report, audit report – as well as no loans, grants and donations statement).
- **9 October 2020:** Letter from ROC to UFUA seeking lodgement of missing items by 29 October.
- **9 December 2020:** Reminder email from ROC to UFUA providing reminder of the need to lodge the 2020 FR.
- **11 December 2020:** Letter from ROC to UFUA seeking lodgement of outstanding FR documents and inviting the UFUA to make submissions in relation to the ROC considering compliance action in the form of an inquiry or investigation. (No submissions provided).
- **18 December 2020:** Lodgement of unaudited FR for 2019 financial year.
- **18 December 2020:** Email from ROC to UFUA seeking copy of auditor's report (as it was unclear at that stage whether the FR was unaudited or if the auditor's report had simply been omitted).

- **19 December 2020:** Email from John Agostinelli of Agostinelli Perlin Accountants (**Agostinelli**) seeking to discuss matter, including what would happen if the auditor's report was qualified.
- **21 December 2020:** Telephone call from Agostinelli. Confirmed that the 2019 FR has not been audited, however an auditor had been engaged and the audit might have a qualified opinion due to no Branch office holders being available to verify 2019 financial year events. Agostinelli also stated that the auditor would also attend to the audit of the 2020 financial year.
- **21 December 2020:** Email from Agostinelli to ROC stating that the aim is to have the audit completed by January 2021.
- **21 January 2021:** 'Hastener' letter sent from ROC to UFUA regarding 2020 FR as more than six months had elapsed since the end of financial year and the FR had not been lodged. The letter sought an update by 1 February 2021 as to when the audited FRs for 2019 and 2020 would be lodged. (No response forthcoming).
- **9 February 2021:** Letter from ROC (Enright) to UFUA (in the absence of a response from the UFUA), foreshadowing the possible commencement of an inquiry in relation to possible contraventions of financial reporting obligations and encouraging the UFUA in the meantime to complete financial reporting processes including lodgement of audited and outstanding FRs.
- **15 February 2021:** Letter from UFUA to ROC apologising for not responding to earlier ROC correspondence and stating apparent reasons for the delay in preparation and lodgement of FRs.
- **4 June 2021:** Telephone call from ROC (Fenwick) to Agostinelli to follow up progress of 2019 and 2020 FRs. Message left.
- **11 June 2021:** Telephone call from Agostinelli, who advised that Kidman Partners had commenced the audit for the 2019 FR and that they have all the required documents. Agostinelli stated that he would follow up with UFUA about access to bank statements for the 2020 financial year and would email ROC with any updates.
- **9 July 2021 (8:47am):** Email from Agostinelli to ROC noting that Kidman Partners had been appointed as auditors, advising that "they have all the information required to finalise the [2019] audit" and expect the audit to be completed within the next two weeks. The email also stated that "there are still issues retrieving 2020 records from the banks for the Branch pending legal action".
- **9 July 2021 (9:45am):** Email from ROC to Agostinelli seeking confirmation of when the full financial report will be lodged with the ROC.
- **9 July 2021 (3:45pm):** Email from Agostinelli advising that the 'final presentation of the financials' had been discussed with the UFUA and it was proposed that they be presented to Executive on 27 July and lodged by the end of that week (30 July).
- **16 August 2021:** Email from ROC (Stenson) to UFUA seeking an update as soon as possible, as previous information provided to the ROC had stated that the 2109 FR was expected to be presented to the NCOM in late July and then lodged with the ROC.
- **17 August 2021:** Email from UFUA to ROC advising that the issue would be followed up and that a further update would be provided once that had occurred.
- **20 August 2021:** Telephone message from ROC (Stenson) to UFUA, following up UFUA's 17 August email as nothing further heard.

- **20 August 2021:** Telephone call from UFUA (Marshall) undertaking to follow up again with accountant and UFUA staff.
- **27 August 2021:** Email from ROC (Stenson) to Agostinelli (c.c. to UFUA) seeking confirmation of the status of Branch FRs.
- **27 August 2021:** Email from UFUA to ROC (Stenson) advising that a telephone conference would be organised with Agostinelli for Monday (30 August).
- **7 September 2021:** Email from ROC (Fenwick) to UFUA following up 27 August 2021 email, as no update received following proposed 30 August 2020 teleconference with Agostinelli.
- **7 September 2021:** Phone call from UFUA (Marshall) to ROC (Fenwick), in which the ROC was advised that Marshall believed that the ROC had been given updates recently, such as by Agostinelli. ROC confirmed no further update had been received from Agostinelli or UFUA since the UFUA's 27 August email. UFUA (Marshall) undertook to send follow-up email.
- **8 September 2021:** Email from UFUA to ROC, forwarding a 7 September update from Agostinelli which states that the auditor's report is expected to be received 'this week'.

Since that time, it appears that no further updates have been provided to the ROC and no lodgements made.

Next steps

As indicated to you in my letter dated 9 February 2021, the ROC needs to consider the form of its appropriate and proportionate regulatory response where an organisation does not comply with its obligations under the RO Act, and that this may include the commencement of an Inquiry under section 330 of the RO Act. The UFUA has the same statutory reporting obligations as every other registered organisation and the ROC takes a consistent approach in working with organisations to ensure those obligations are met.

I note that in your letter dated 15 February 2021, you stated that "the ROC is fully cognisant of the reasons why the Queensland Branch is unable to meet its obligations and conducting an Inquiry will not inform it any better". Since that time, lodgements of the audited 2019 and 2020 FRs have not occurred, despite indications from the UFUA that they would be.

Even though the Branch is currently without a BCOM, it will have been apparent to the UFUA since the ROC's letters of 13 March and 11 June 2020 (if not before) that the UFUA, as the organisation registered under the RO Act bears the ultimate responsibility for ensuring the preparation, auditing, consideration and lodgement of the Branch FRs for the 2019 and 2020 financial years.

I note that the UFUA currently has proceedings in the Federal Court in relation to the Branch and its administration going forward. Regardless of the outcome of those proceedings, the obligations on the UFUA in relation to the 2019 and 2020 FRs remain.

Publication of correspondence on the ROC's website

As you know, the ROC facilitates and promotes transparency by publishing financial reports on our website. Given the circumstances we have summarised above, we will publish this correspondence where we would otherwise have provided the financial reports for FR2019/105 AND FR2020/98.

I propose to write to you again shortly when the ROC has determined its next steps in relation to these overdue FRs.

In the meantime, please feel free to contact me directly, [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CE', with a small horizontal line to the right.

Chris Enright
Executive Director
Registered Organisations Commission