

# Branch Bulletin February 2014

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## Travel Allowances

As members will recall, the Union and its members were disappointed that changes were introduced on how TA payments would be applied contrary to our understanding of the EA discussions.

The Union Executive endeavoured to negotiate with ASA/ARFF to have the rates corrected and achieved partial success on the rates paid to FIFO members and the rate paid for single day absences. The Union lodged an application in the Fair Work Commission to rectify the matter and continued to gather information to support its case.

However, following further investigation, including discussion with the ATO and advice from our Barrister, the Branch Committee of Management has determined to withdraw the application from the Fair Work Commission at this time. This was not an easy decision and was only made after careful consideration of legal advice and the potential tax implications weighed against the potential gain to members if the application was successful.

To summarise the reasons for the decision. Firstly, the increased payments may adversely affect some mem-

bers. Currently TA payments in the EA are based on the "reasonable" amounts determined by the Taxation Commissioner and are received tax free by you. These amounts also increased from January 2014 [ref TD 2013/16],

Secondly, where the rate of TA paid exceeds the "reasonable" amounts, PAYG tax must be withheld on the excess amount. Thirdly, at the end of the financial year, the full amount of the TA paid is taken into account in your assessable income and can affect your taxable income. Finally, they also have the potential to affect any income related government benefits and child support payments. These affects potentially negate the benefit of any increased payment.

TA payments are made to ensure no member is out of pocket when undertaking work related travel. If any costs exceed the "reasonable" amounts members are reimbursed on production of receipts [EA provision.]

Details about increased payments and potential tax implications have been provided to BCOM Delegates and Organisers. Please contact your Delegate or Organiser if you would like to discuss this further.

## Greater Consultation For Improved Relations

As members are aware, the Union has become increasingly frustrated at the failure of the ARFF to participate reasonably in a number of industrial matters affecting both the whole membership, some individual matters and claims and it became necessary to escalate some matters to the Fair Work Commission for assistance.

It was becoming clear that the litigation path was where the parties were headed and the ARFF became concerned to the point that it approached the Union for discussion on a better way of conducting relations, which is exactly what the Union has been trying to achieve all along. The discussions resulted in the parties agreeing to meet regularly on at least a quarterly basis focusing on issues of significance and priority for the Union and the ARFF. The first of these meetings should occur within the next few weeks.

This does not mean that the parties will not be involved in litigation in the Fair Work Commission in the future but when this does occur it should only happen when all other avenues have been exhausted and third party assistance is needed.

BCOM Delegates and Organisers have been asked to talk to members at each Unit to establish what members believe should be the priority issue/s the Union should focus on for this year. Please let them know your ideas as soon as possible.

## CFBT

In September 2012 a joint Union/employer working group was established for the purpose of implementing hygiene protocols and training practices to protect the health and safety of our members and to facilitate research on safer alternative fuel sources used in the training. Details of the improved practices and hygiene protocols were detailed in the Spring edition of this journal.

The ARFF and CFA are considering a joint project on issues associated with CFBT, Workplace Exposures and training fuels and the Branch's Deputy WHS Co-ordinator, Wes Garrett, was invited to participate. This flags the resumption of the CFBT working group and reflects the ARFF/Union view that the work of the CFBT

working group be broadened to include the issues workplace exposures and training fuels more broadly.

A meeting of representatives from ARFF, CFA, Deakin University, CSIRO and the Union took place on 7th February. A summary of the main points from the meeting follows.

- ARFF intends to integrate CFBT training into the 3 yearly workshop cycle;
- Station Managers will be encouraged to provide training on station between the workshops;
- EPA have applied some pressure regarding environmental pollution issues surrounding hot fire training involving kerosene and particle

board. ARFF will be looking into installation of a thermal oxidiser;

- The exposure study to be jointly funded by ARFF and CFA and will include the testing of 3 fuels; E0 and E1 particle board and OSB. Hay and untreated timber will not be included;
- CFA are interested in including heat stress and environmental testing;
- Deakin Uni and CSIRO will conduct the study;
- Study proposed to commence in May;
- The completed report will be made available to AFAC;
- The methods/protocols for testing were discussed and Deakin Uni will now draft a scope of work.

## Gloves

Pac Fire have advised that the glove samples for sizing and fitting will be available within the next week. The sizing and fitting exercise involves representative from Pac Fire going to each ARFF unit and individually fitting members at the Unit. In addition, a member from each unit will be trained in the correct use of the dedicated tape measure used by Pac Fire. This member will size and fit those individuals who are not available on the day the Pac Fire reps visit their Station.

## SECRETLY RECORDING CONVERSATIONS AT WORK - DO SO AT YOUR PERIL (Andrew Rich, Slater & Gordon)

Decisions in the Fair Work Commission highlight the need for workers to consider carefully before pushing the record button on recording devices. A recent decision of Deputy President Sams in the Fair Work Commission considered the issue of an employee recording private conversations to which he was a party which occurred at work.

The decision related to an employee, Mr Thomas, employed by Newland Food Company in Queensland. The termination of Mr Thomas' employment, the Commission found, was put in train as a result of the workers compensation claim that Mr Thomas had lodged following his injury at work. Mr Thomas had recorded conversations with various people in management relating to his entitlements, his return to work, as well as the meeting at which his employment was terminated. Mr Thomas recorded these conversations without the knowledge of the other people in the conversations.

The Commission ultimately made findings that the termination of Mr Thomas' employment was harsh, unjust and unreasonable. However, this was for reasons which outweighed the fact that Mr Thomas had recorded the work conversations that he had, and in circumstances where Mr Thomas was not dismissed for having recorded those conversations.

In Queensland, it is not illegal to record private conversations to which you are a party. Nevertheless, the Commission made it clear that this did not mean that recording private conversations at work could not form a legitimate basis for the termination of employment, or mean that an employee unfairly dismissed ought not be reinstated.

A recent decision of Deputy President Sams in the Fair Work Commission considered the issue of an employee recording private conversations to which he was a party which occurred at work.

## WHISTLEBLOWING - THE NEW FRAMEWORK

(Andrew Rich, Slater & Gordon)

On 15th January 2014 the *Public Interest Disclosure Act 2013* (Cth) commenced operation. How are you affected?

In broad terms, the stated intention of the Act is to provide protection for the disclosure of information by public officials (and former public officials) that should be disclosed in the public interest, and for the investigation of matters that are disclosed.

The important questions are:

1. Who is protected for making what disclosures?
2. What protections are there?
3. What happens when a disclosure is made?

### WHO AND WHAT

First, and perhaps most importantly, who is protected and what disclosure are protected— are you protected and for the disclosure of what information to whom?

Only **public interest disclosures** are protected and ‘public interest disclosure’ has a precise definition.

#### Public Interest disclosure

To be a public interest disclosure the person making the disclosure must first either be, or have been, a **public official**.

A **public official** includes a member of a **prescribed authority** or an authority or an individual who is employed by the Commonwealth other than as an APS employee and who performs duties for a prescribed authority. A **prescribed authority** includes a **Statutory Agency**.

Most importantly, there are different rules for internal and external disclosures of information. You must make an internal disclosure before you make a disclosure outside your agency.

#### Internal disclosures

For information disclosed internally, the person to whom you make a disclosure must be “an **authorised internal recipient**” or your supervisor.

An “**authorised internal recipient**” when the conduct relates to an agency, means;

1. An **authorised officer** of the agency;

An **authorised officer** of an agency is defined as “the principal officer” of the agency OR a public official who belongs to the agency and is appointed in writing by the principal officer of the agency as an authorised officer for the purposes of the Act.

If you make a disclosure to your supervisor, your supervisor must give the information to an authorised officer of the agency if s/he believes on reasonable grounds that the information could concern disclosable conduct.

2. The Commonwealth Ombudsman, if the person making the disclosure believes on reasonable grounds that it would be appropriate to make a disclosure to the Ombudsman; or
3. An investigative agency, if that agency has the power to investigate the disclosure other than under the Act.

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First, and perhaps most importantly, who is protected and what disclosure are protected— are you protected and for the disclosure of what information to whom?

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In short, if you are going to complain internally, you must do so to the principal officer or a person who they have appointed to receive complaints, or to your supervisor.

Furthermore, before you make an internal disclosure to such a person, the information that you are disclosing must tend to show (or you must believe on reasonable grounds that the information tends to show) one or more instances of “disclosable conduct”.

Disclosable conduct is conduct of a kind mentioned in the following table that is conduct that is

1. engaged in by an agency; or
2. engaged in by a public official, in connection with his or her position as a public official; or
3. engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract.

Disclosable conduct	
Kinds of disclosable conduct	
Conduct that contravenes a law of the Commonwealth, a State or a Territory.	
Conduct, in a foreign country, that contravenes a law that: (a) is in force in the foreign country; and (b) is applicable to the agency, public official or contracted service provider; and (c) corresponds to a law in force in the Australian Capital Territory.	
Conduct that: (a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or (b) involves, or is engaged in for the purpose of, corruption of any other kind.	
Conduct that constitutes maladministration, including conduct that: (a) is based, in whole or in part, on improper motives; or (b) is unreasonable, unjust or oppressive; or (c) is negligent.	
Conduct that is an abuse of public trust.	
Conduct that is: (a) fabrication, falsification, plagiarism, or deception, in relation to: (i) proposing scientific research; or (ii) carrying out scientific research; or (iii) reporting the results of scientific research; or (b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice.	
Conduct that results in the wastage of: (a) public money (within the meaning of the <i>Financial Management and Accountability Act 1997</i> ); or (b) public property (within the meaning of that Act); or (c) money of a prescribed authority; or (d) property of a prescribed authority.	
Conduct that: (a) unreasonably results in a danger to the health or safety of one or more persons; or (b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.	
Conduct that: (a) results in a danger to the environment; or (b) results in, or increases, a risk of danger to the environment.	
Conduct of a kind prescribed by the PID rules.	

The following is also disclosable conduct:

1. conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;
2. conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

In short, if you are going to complain internally, you must do so to the principal officer or a person who they have appointed to receive complaints, or to your supervisor.

### External Disclosures

External disclosures, may be made to any person other than a foreign official. However, the following must be true:

1. the information that you are disclosing must tend to show (or you must believe on reasonable grounds that the information tends to show) one or more instances of “**disclosable conduct**”; and
2. you must have first made an internal disclosure that included the information disclosed; and
3. (a) a **disclosure investigation** was conducted and you believe on reasonable grounds that the investigation was inadequate; OR  
 (b) a **disclosure investigation** was conducted and you believe on reasonable grounds that the response to the investigation was inadequate;  
 (c) a disclosure investigation was required to be undertaken under the Act and the investigation was not completed within the time limit required under the Act; and
4. the disclosure is not, on balance, contrary to the public interest, and
5. no more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct, and
6. the information does not consist of, or include, intelligence information, and
7. none of the conduct with which the disclosure is concerned relates to an intelligence agency.

### **PROTECTIONS**

If you make a public interest disclosure then:

1. you are not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and
2. no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against you on the basis of the public interest disclosure.
3. you have absolute privilege in proceedings for defamation in respect of the public interest disclosure; and
4. a contract to which you are a party must not be terminated on the basis that the public interest disclosure constitutes a breach of the contract.

You are also protected, and may seek compensation for any loss, damage or injury suffered as a result of a reprisal or threat that occurs wholly or partly as a result of a belief or suspicion that you may have made or that you propose to make a public interest disclosure.

### **WHEN A DISCLOSURE IS MADE**

Relevantly, if you make an internal disclosure, the authorised officer must allocate the handling of the disclosure to an agency. When deciding which agency to allocate the matter to, the authorised officer must have regard to the principle that an agency should not handle the disclosure unless any of the following apply:

1. some or all of the disclosable conduct with which the information may be concerned (suspected disclosable conduct) relates to the agency; and
2. if the agency is the Ombudsman—some or all of the suspected disclosable conduct relates to an agency other than an intelligence agency.

The authorised officer must inform you about this.

The principal officer of an agency must investigate a disclosure if the handling of the disclosure is allocated to the agency by an authorised officer (subject to certain exemptions). The principal officer must advise you about this. The principal officer must then also inform you of the length of any investigation.

On completing an investigation the principal officer must prepare a report and must provide a copy to you.

You are also protected, and may seek compensation for any loss, damage or injury suffered as a result of a reprisal or threat that occurs wholly or partly as a result of a belief or suspicion that you may have made or that you propose to make a public interest disclosure.

## Legal Service Proves Benefits of Membership

The Union's Legal Service provided through Slater and Gordon establishes itself as a real benefit of membership of the UFU. Here are just two examples of the effectiveness and benefits of the service.

The first case relates to a member who had attended for a prostate cancer screen in 2010 which returned a negative result but was subsequently diagnosed with the cancer in 2013. His claim for compensation under the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 was refused. Comcare determined that the member had been diagnosed when examined in 2010 and because the Fair Protection for Firefighters Act had not been enacted

until 2011, our member was not entitled to the benefits under the Act. The Union's Legal Service was successful in having Comcare reverse its decision and got justice for our member.

The second case concerned a member who sustained a back injury during a training exercise on the job. Comcare rejected our member's claim on the basis that while his injury at work possibly contributed to his condition, Comcare was not satisfied on the balance of probabilities that work was a significant contributing factor. Comcare preferred the view that the real cause

of the injury was vigorous physical exercise undertaken in training for a triathlon and work as a casual life guard. Once again our Legal Service was successful in having the Comcare decision overturned and our member's claim for compensation accepted.

The Union's Legal Service is only available to financial members and continuing provision of services is conditional on the member maintaining their financial membership of the Union.

To access the Legal Service simply contact the Union Office for a referral.

Case law establishes that this leave is to be granted on all the facts and circumstances and not a single element. It is the totality of the "care **and support**" that is the consideration.

## Union has win for member on carer's leave

ARFF recently denied a member's application for leave to care for his child while the mother underwent treatment for cancer. The application was denied on the basis that our member knew 4 weeks in advance of the commencement of the treatment of the need for the carer's leave and that this was not a case of "the sudden unavailability of the care provider for a member of the

immediate family or household." The Union maintained the application was wrongly denied and that Airservices were not correctly interpreting the provisions of the NES and were acting in breach of these provisions and also those in the Enterprise Agreement. The Union argued that any application for this leave must take the full circumstances of what is involved into account. Case law establishes that

this leave is to be granted on all the facts and circumstances and not a single element. It is the totality of the "care **and support**" that is the consideration.

It was only when faced with a dispute notification in the Fair Work Commission that the employer ultimately provided our member with his rightful entitlement.

## Retirement Membership

At its recent annual meeting the Branch Committee of Management endorsed the making of a new "Retired Membership" rule. Under the rule members who retire or are retired from the job due to LOEQ/medical grounds can apply for "retired membership". These members will be able to access the Union's legal service, discount purchasing services and receive copies of newsletters and journals but will not be entitled to nominate anyone for office or hold office within the Union.

**ARE YOUR NAME AND ADDRESS, BANKING DETAILS AND PERSONAL EMAIL ADDRESS UP TO DATE.? IF NOT PLEASE NOTIFY THE UNION OFFICE RIGHT AWAY.**

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DP Sams stated:

*“many acts of an employee are perfectly legal, such as refusing to comply with the lawful and reasonable directions of management, refusing to work with particular persons or refusing to take directions from a particular person in authority, refusing to comply with Company policies on drug and alcohol testing, safety or other policies - even abusing the boss. However, the fact that an act is lawful in the wider community sense, does not mean that the same act in the workplace would not constitute a valid reason for an employee’s dismissal.”*

It should be noted that private conversations can be recorded in Western Australia in certain circumstances, but the same is not the case in other states and territories.

DP Sams considered that “there could hardly be an act which strikes at the heart of the employment relationship, such as to shatter any chance of re-establishing the trust and confidence necessary to maintain that relationship, than the secret recording by an employee of conversations he or she has with management.”

DP Sams referred to the judgement of SDP Drake in *Lever v Australian Nuclear Science and Technology Organisation* [2009] AIRC 784 and the decision of Cloghan C in *Schwenke v Silcar Pty Ltd T/A Silcar Energy Solutions* [2013] FWC 4513 which he considered supported his position. These judgements are available on the Fair Work Commission’s Website at [www.fwc.gov.au](http://www.fwc.gov.au).

## FIFO Members - TA or LAFHA

FIFO members have been waiting for clarification from the Australian Taxation Office as to whether or not they are paid Travel Allowances or Living Away From Home Allowances. There are differences in the treatment of these allowances for taxation purposes. On this basis an application has been made to the Australian Taxation Office for a “class ruling” to clarify the matter.

The ATO have advised that the ruling should be published by the end of February.

## Alex Forrest Joins IARC Committee

President of the United Fire Fighters of Winnipeg Alex Forrest has been invited to join the IARC Committee for the evaluation of the carcinogenic risks to humans.

The IARC is the WHO Organisation’s source for information about cancer. The objective of the IARC is to promote international collaboration in cancer research with an emphasis placed on identifying the role of environmental and lifestyle risk factors and evaluating the evidence of carcinogenicity of specific exposures.

As we all know, Alex has worked tirelessly and successfully over the past decade to ensure occupational cancer is recognised for firefighters and to ensure presumptive legislation is enacted to ensure firefighters can access assistance and their entitlements. He was instrumental in the success of the UFUA campaign for federal presumptive legislation in 2011 and the resulting legislation in Tasmania, Western Australia and South Australia.

His appointment to the prestigious IARC committee is testament to his dedication and work regarding occupational cancers for firefighters.

Alex has been informed he is the only non-medical practitioner on the committee.

In his email to the UFUA and global partners Alex said “it is a big win for firefighters everywhere”.

“This appointment could not have been possible without the years of research and work that the International Association of Firefighters have done on this issue combined with the success of our North American locals and the success of our Australian legislation combined with the work of our European Unions in making this issue an international movement.”

In his email to the UFUA and global partners Alex said “it is a big win for firefighters everywhere”.



## UFUA AVIATION BRANCH

Box 8, TLC Building  
16 Peel Street  
South Brisbane QLD 4101

Phone: (07) 3846 5580  
Fax: (07) 3844 8026  
Email: [ufuavat1@bigpond.com.au](mailto:ufuavat1@bigpond.com.au)

**Branch President:** Joe Stenhouse  
**Senior Vice President:** Jon Vaughan  
**Junior Vice President:** Simon Osborn  
**Branch Secretary:** Henry Lawrence

### BCOM Delegates

**North Queensland:** John Ring  
**South East Queensland:** Karl McDonald  
**New South Wales:** Al Lerpiniere  
**Victoria:** Jake Callaghan  
**South Australia:** Simon Osborn  
**Tasmania:** Simon Owen  
**Western Australia:** Les Milhinch  
**Northern Territory:** Ricky Nolan

**National WHS Coordinator:** Mal Lacy  
**Deputy WHS Coordinator:** Wes Garrett

### Organisers

<b>Cairns:</b> Mike McCarthy	<b>Townsville:</b> Tim Creighton
<b>Mackay:</b> David Tromba	<b>Rockhampton:</b> Phil Turner
<b>Maroochydore:</b> Derrick Runge	<b>Brisbane:</b> Karl McDonald
<b>Coolangatta:</b> Peter Young	<b>Sydney:</b> Mat Crook
<b>Melbourne:</b> Brendon Mimmo	<b>Hobart:</b> Scott Greenwood
<b>Launceston:</b> Trevor Mortyn	<b>Adelaide:</b> Wes Garrett
<b>Perth:</b> Vacant	<b>Darwin:</b> Vacant
<b>Broome:</b> Matt Reynolds	<b>Port Hedland:</b> Dennis Nixon
<b>Karratha:</b> John Le Bon	<b>Alice Springs:</b> Dan Thompson
<b>Ayers Rock:</b> Perry Stedman	<b>Hamilton Island:</b> Shane Campbell
<b>Avalon:</b> Marc Jansen	<b>Canberra:</b> Vacant

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[www.ufuav.asn.au](http://www.ufuav.asn.au)