

Form 2 – Application for ballot under Part 3 of Chapter 3
(paragraph 82(a))
Fair Work (Registered Organisations) Act 2009, subsection 94(4)

APPLICATION FOR BALLOT UNDER PART 3 OF CHAPTER 3

TO: THE FAIR WORK COMMISSION

I, Grahame Patrick Kelly (**the Applicant**) being authorised as set out below:

- (a) apply for a ballot be held to decide whether, in relation to the amalgamated organisation known as the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**), the constituent part formerly constituting the United Mineworkers Federation of Australia (**UMFA**), which was deregistered on 10 February 1992 in connection with the formation of the CFMMEU, and remaining separately identifiable under the rules of the CFMMEU as the Mining and Energy Division (**the Constituent Part**), should withdraw from the CFMMEU (**the Ballot**);
- (b) in the alternative, apply for a ballot to be held to decide whether the constituent part constituted by that part of the membership of the CFMMEU that would have been eligible for membership of the UMFA if it had not been de-registered on 10 February 1992 in connection with the formation of the CFMMEU (**the Alternative Constituent Part**), should withdraw from the CFMMEU (**the Alternative Ballot**); and
- (b) nominate myself, of 215-217 Clarence Street Sydney in the State of New South Wales as the representative constituent member for the purposes of the ballot under Regulation 82(c).

PARTICULARS OF APPLICATION

1. The Applicant is currently a member of the CFMMEU and a member of the Central Council of the Mining and Energy Division (**ME Division**) of the CFMMEU. The Central Council of the CFMMEU is the committee of management of the ME Division

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within the meaning of s.6 of the *Fair Work (Registered Organisations) Act 2009* (Cth) (RO Act).

2. The Applicant would have been eligible for membership of the United Mineworkers Federation of Australia (UMFA) had it not been de-registered on 10 February 1992.
3. The Applicant is entitled to make this application in accordance with s.94(3) of the RO Act having been authorised to do so in the following manner:
 - a. The Central Council of the ME Division, by a resolution passed on 14 September 2022, inter alia, authorised the Applicant to make the application for the Ballot and the Alternative Ballot and nominated him as the representative constituent member for the purposes of the ballots. A copy of the resolution is attached to this application and marked “Annexure 1”.
 - b. Further, the Alternative Ballot has been authorised by the prescribed number of constituent members, being 2,496 constituent members (out of a total of 18,027 constituent members) who have signed written authorisations to that effect. A copy of the written authorisations is attached to this application and marked “Annexure 2”.
4. The Constituent Part previously constituted the registered organisation known as United Mineworkers Federation of Australia. UMFA was deregistered in connection with the amalgamation under Division 7 of Part IX of the *Industrial Relations Act 1988* (Cth) (IR Act) between the “ATAIU and BWIU Amalgamated Organisation” and UMFA which took effect on 10 February 1992 (the 1992 amalgamation). The amalgamated organisation formed by the 1992 amalgamation is presently named the Construction, Forestry, Maritime, Mining and Energy Union. Division 7 of Part IX of the IR Act is a predecessor law as defined in s.93 of the RO Act. Accordingly, the application in respect of the Ballot meets the requirements of s.94(1)(a) of the RO Act.
5. The Constituent Part is a ‘separately identifiable constituent part’ under sub-paragraph (a) and/or (c) of the definition of ‘separately identifiable constituent part’ contained in s.93 of the Act by reason that the Constituent Part has a substantial identity with UMFA and remains separately identifiable under the rules of the CFMMEU as the ME Division.

6. The Alternative Constituent Part became part of the amalgamated organisation now known as the CFMMEU as a result of the 1992 amalgamation. Accordingly, the application in respect of the Alternative Ballot meets the requirements of s.94(1)(a) of the RO Act.
7. The Alternative Constituent Part is a “constituent part” under sub-paragraph (b)(i) of the definition of ‘constituent part’ contained in s.93 of the Act.
8. The Fair Work Commission has not within the last 12 months before this application, rejected an application for a ballot to be held in relation to the Constituent Part or the Alternative Constituent Part, nor has a ballot been held that rejected the withdrawal of the Constituent Part or the Alternative Constituent Part from the CFMMEU.
9. As this application is made more than 5 years after the date of the 1992 amalgamation the Applicant relies on s.94A and seeks that the Commission accept this application after the 5 year period having regard to the following matters set out in s.94A(2):
 - (a) the extensive record of the CFMMEU not complying with workplace laws;
 - (b) the negligible contribution of the Constituent Part or the Alternative Constituent Part to the said record of the CFMMEU; and
 - (c) the capacity of the proposed new organisation to promote and protect the economic and social interests of its members.
10. It is proposed that the ballot question to be put to the members of the Constituent Part under the Ballot be as follows:

“Do you approve the proposed withdrawal from the Construction, Forestry, Maritime, Mining and Energy Union, of the constituent part currently known as the Mining and Energy Division, and its registration as a separate organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth)?”

11. It is proposed that the ballot question to be put to the members of the Alternative Constituent Part under the Alternative Ballot be as follows:

“Do you approve the proposed withdrawal from the Construction, Forestry, Maritime, Mining and Energy Union, of the constituent part comprising that part of the membership of the Construction, Forestry, Maritime, Mining and Energy Union that would have been eligible for membership of the United Mineworkers Federation of Australia if it had not been de-registered, and its registration as a separate organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth)?”

12. This application is accompanied by the following documents:

- (a) a written outline of the proposal for the Constituent Part to withdraw from the CFMMEU which is marked “**Annexure 3**”;
- (b) a written outline of the proposal for the Alternative Constituent Part to withdraw from the CFMMEU which is marked “**Annexure 4**”;
- (c) a copy of the rules for the new organisation (which includes the proposed name of the new organisation), “**Annexure 5**”; and
- (d) a copy of the altered rules for the CFMMEU when the proposed withdrawal of the Constituent Part, or the Alternative Constituent Part, takes effect (which includes the name proposed for the CFMMEU when the proposed withdrawal of the Constituent Part, or the Alternative Constituent Part, takes effect), which is marked “**Annexure 6**”.

13. The Applicant applies for an order pursuant to s.102(1A) of the RO Act allowing the proposed ballots to be conducted by a designated official pursuant to an exemption which is in force under s.186 of the RO Act. The Applicant seeks that the ballot be conducted as an attendance ballot but that the designated official have the power to conduct a postal ballot in respect of members for whom it is not practical to conduct an attendance ballot.

Note 1: Section 95 of the Act requires this application to be accompanied by a fair and accurate written outline of the proposal to withdraw from the amalgamation.

Note 2: Section 95A of the Act requires this application to be accompanied by a statement of the name, and a copy of the rules, proposed for the new organisation and a statement of the name, and a copy of the alterations of the rules, proposed for the amalgamated organisation.

Dated: 15 September 2022

A large black rectangular redaction box covering the signature area.

Signature of Grahame Patrick Kelly