

## Annexure 2

### Outline of Proposed Withdrawal of the Mining and Energy Division from the Construction, Forestry, Maritime, Mining and Energy Union

#### A. Introduction

1. On 1 March 2021, the National Convention of the Mining and Energy Division ('ME Division') of the Construction, Forestry, Maritime, Mining and Energy Union ('CFMMEU') voted unanimously to recommend to the Central Council of the Mining and Energy Division that an application be made under the *Fair Work (Registered Organisations) Act 2009* ('the Act') to withdraw from the CFMMEU.
2. The National Convention is the single largest gathering of delegates, officials and Lodge Officers of the ME Division. More than 300 National Convention delegates voted to endorse the resolution.
3. On 25 March 2021, a meeting of Central Council voted unanimously to make an application ('the Application') to the Fair Work Commission ('FWC') under s.94 of the Act for a ballot of members under the Act to decide whether the ME Division should withdraw from the CFMMEU and form its own registered organisation. The Central Council is the supreme governing body and the committee of management of the ME Division. The Central Council also specifically approved a detailed scheme of withdrawal, including this Outline.
4. The Central Council has also appointed Grahame Kelly to make the application as provided for in s.94(3)(d) of the Act.

**Annexure 1 to the Application** contains a copy of the resolution of the Central Council approved on 25 March 2021 concerning the application to the FWC for a withdrawal ballot.

5. The ME Division is well placed to operate effectively as a separately registered organisation. If approved the newly registered organisation would have around 21,000 financial members which would automatically transfer across from the CFMMEU pursuant to s.111 of the Act ; it would be in a very strong financial position with over \$96 million in assets; its existing officials, professional and administrative staff would transfer to the newly registered organisation; the existing democratic structures would be preserved in the newly registered organisation and finally, it would have an already strong reputation to build upon.

6. Importantly, if approved the newly registered organisation will not be responsible for any penalties, liabilities or debts that belong to other Divisions of the CFMMEU. The newly registered organisation, as an independent organisation, will also be free to set its own industrial priorities free from any interference from the CFMMEU.

**B. The proposal**

7. The ME Division is a constituent part of the CFMMEU. The CFMMEU is an ‘amalgamated organisation’ for the purposes of Chapter 3, Part 3 of the Act.
8. The ME Division became a constituent part of the CFMMEU as a result of the amalgamation of the Construction, Forestry, Mining and Energy Union, the Maritime Union of Australia and the Textile Clothing and Footwear Union of Australia in 2018.
9. The ME Division is a ‘separately identifiable constituent part’ under sub-paragraph (c) of the definition contained in s.93 of the Act.
10. It is proposed that members of the ME Division of the CFMMEU should be allowed to vote in a secret ballot to decide whether or not the ME Division should withdraw from the CFMMEU. The ballot application is made pursuant to s.94 of the Act.
11. It is proposed that the ballot question to be put to the members of the ME Division will be as follows:

“Do you approve the proposed withdrawal of the Mining and Energy Division from the Construction, Forestry, Maritime, Mining and Energy Union and its registration as a separate organisation under the *Fair Work (Registered Organisations) Act 2009*?”
12. The ballot question will require members to vote ‘yes’ or ‘no’. If a majority of the ME Division members who participate in the ballot vote ‘yes’ to the ballot question, the members of the ME Division will have approved the proposed withdrawal from the CFMMEU.
13. It is proposed that the ballot be conducted both as an attendance ballot and also a postal ballot (in the circumstances described below) and be conducted by a designated official pursuant to s.102(1A) of the Act. It is anticipated that a majority of members of the ME Division will vote via an attendance ballot. This approach reflects the longstanding practice of members of the ME Division of voting in ballots conducted by a National Returning Officer.

14. The attendance ballots will be secret ballots and will be conducted in accordance with the requirements of the Act and the *Fair Work (Registered Organisations) Regulations 2009* ('Regulations'). However, the designated official will have the power to conduct a postal ballot for any member who is absent from the work site, or in other circumstances where it is not practical to conduct an attendance ballot. Any postal ballot will be conducted in accordance with the Act and the Regulations.
15. Following the declaration of the ballot result, if the members of the ME Division vote 'yes', the ME Division will make application to the Federal Court of Australia pursuant to s.109 of the Act. The application will seek orders fixing the withdrawal date of the ME Division and will seek orders dealing with the transfer of assets to the newly registered organisation and any other matters requiring Court approval.
16. Once the Federal Court of Australia determines the withdrawal date, the General Manager of the FWC will enter the new registered organisation into the register of organisations pursuant to and in accordance with s.110 of the Act.
17. Pursuant to s.111 of the Act, existing members of the ME Division will automatically become members of the newly registered organisation on registration day and will cease being members of the CFMMEU. The former members of the CFMMEU will become members of the newly registered organisation without the payment of entrance fees.

**C. Names of the newly registered organisation and the amalgamated organisation**

18. It is proposed that the name of the newly registered organisation will be the Mining and Energy Union ('MEU').
19. It is proposed that the name of the amalgamated organisation after withdrawal, will be the Construction, Maritime and Manufacturing Union.
20. The proposed name of the newly registered organisation reflects its coverage of workers in the mining and energy industries. The proposed name of the newly registered organisation does not offend s.95A(2) of the Act, as it is not so similar to the proposed name of the amalgamated organisation or any other organisation as to cause confusion.
21. The proposed name of the amalgamated organisation reflects the requirement in s.95A(3) of the Act in that the name of the amalgamated organisation must reflect the fact of the withdrawal of the constituent part. Accordingly, the name of the amalgamated organisation will be exactly the same as before the withdrawal save only for:

- a. the deletion of the reference to the mining or energy industries which will be covered by the MEU; and
- b. the reference to “Forestry” being updated with “Manufacturing”.

**D. General rules of the proposed newly registered organisation**

22. The proposed rules of the amalgamated organisation after withdrawal and the proposed rules of the MEU are attached to the Application.

**‘Annexure 3 to the Application’** contains the proposed rules of the MEU and its District Branches.

**‘Annexure 4 to the Application’** contains the proposed rules of the amalgamated organisation after withdrawal which is marked.

23. The proposed rules of the MEU largely reflect the existing rules of the ME Division and its District Branches. This is because it has been sought to only amend the existing ME Division rules to the extent necessary to give effect to the withdrawal, or to ensure consistency in processes of the newly registered organisation and District Branches and consistency in terminology, or to otherwise ensure compliance with the Act.
24. Accordingly, the vast majority of the changes to the ME Division rules concern the change of the word ‘Division’ to ‘Union’ (as the relevant context requires) and similar consequential changes to give effect to the existence of a new registered organisation out of what was the ME Division, or to ensure consistency in processes of the newly registered organisation and consistency in terminology.
25. The organisational structure of the ME Division will be retained in the MEU. That is, each of the existing District Branches is identified and retained, the relevant governing bodies of the ME Division become the governing bodies of the MEU and the Lodge structure which is particular to the ME Division will continue to exist in its current form. There are other rule changes that are more substantive and reflect the need to deal with organisational matters that were previously dealt with in the rules of the CFMMEU. These include new rules simplifying and modernising the method by which employees may join the newly registered organisation; a new rule conferring power on the Central Council to deal with a situation in which a District Branch might cease to function properly; a new rule requiring financial and expenditure policies to be developed and implemented by the newly registered organisation and a new rule dealing with offences and penalties.

26. Also, the rules contain a substantial transitional rule which explicitly deals with the transfer of existing office holders and structures of the ME Division into the MEU. The transition rule is necessary to ensure that there is no confusion or interruption to the normal operation of the ME Division as it transitions into the MEU.

**E. General rules of the amalgamated organisation after withdrawal**

27. The ME Division has sought only to amend the rules of the amalgamated organisation to the extent necessary to reflect the withdrawal of the ME Division. Accordingly, the approach taken has been to simply delete all references to the ME Division, its members and District Branches.
28. The deletion of references to the ME Division is also reflected in rules dealing with the governing bodies of the amalgamated organisation. The rule changes simply provide that the ME Division no longer exists as part of the amalgamated organisation and has no presence on its governing bodies.
29. The proposed rules of the amalgamated organisation have been provided to the FWC with tracked changes in order to demonstrate the limited nature of the proposed alterations to the rules of the amalgamated organisation.

**F. Eligibility rules of the amalgamated organisation and the newly registered organisation**

30. The approach that has been taken to the drafting of the eligibility rules of the respective organisations is to give effect to the requirements of sections 95A(4) to (6) of the Act.
31. It is not sought or intended that the MEU cover any employee or class of employee that was not covered by the ME Division as part of the CFMMEU. To this end attention has been given to:
- a. The wording of the existing eligibility rules of the CFMMEU.
  - b. The principles set out in rule 42 of the CFMMEU, which deals with the translation of members into industry Divisions.
  - c. The practical application of the eligibility rules as between the respective Divisions of the CFMMEU.

- d. Existing and/or historical agreements or arrangements between the respective Divisions of the CFMMEU about demarcation/the allocation of members between the Divisions.

32. Accordingly, the proposed eligibility rules of the MEU are comprised of the following components:

- a. Rule 2 (A) of the proposed MEU rules deals with the coverage of the MEU in the coal industry. This rule originally derived from the now de-registered United Mineworkers Federation of Australia ('UMFA'). With the exception of the State of South Australia, it is uncontroversial that the ME Division has at all relevant times exercised exclusive coverage of workers in the coal industry as part of the CFMMEU.
- b. Rule 2 (B) of the proposed MEU rules deals with the coverage of the MEU in the Mining, Exploration and Energy industries of workers who would have previously been eligible to be members of the Federated Engine Drivers and Firemens' Association of Australasia ('FEDFA'). It is proposed that the eligibility rule that derives from the FEDFA be shared by the MEU and the amalgamated organisation based on the principles set out in rule 42. Accordingly, the approach taken to drafting the eligibility rules of both the MEU and the amalgamated organisation is that both organisations will retain the FEDFA rule, but with appropriate mutual limitations reflecting the existing application of the rule (that is, the existing demarcation/allocation of members) within the CFMMEU.
- c. Rule 2(C) of the proposed MEU rules deals with the coverage of the MEU of bauxite mining operations in or around the town of Weipa in far north Queensland. This eligibility rule derives from an order of the Australian Industrial Relations Commission. As the coverage solely concerns the mining industry, it is appropriately part of the coverage of the MEU.
- d. Rule 2 (D) of the proposed MEU rules deals with the coverage of the MEU in the County of Yancowinna, which is based around the town of Broken Hill in New South Wales. The coverage proposed in respect of this class of employees is based on the wording of rule 42(iii) of the CFMMEU rules and the existing practices and arrangements in respect of this class of employees since 1993.
- e. Rules 2(E), 2(F) and 2(G) pertain to the additional eligibility that accrues to the newly registered organisation as a result of the 'uplifting' of the eligibility rules of

counterpart State registered organisations in the States of Queensland, New South Wales and Western Australia under section s.158A of the Act. The ME Division has sought to only include those aspects of the former State eligibility rules that pertain to the Mining, Exploration or Energy Industries and which derive from the former UMFA or FEDFA. These rules are, by their terms, restricted in operation to the States from which they derive and are similarly limited by any State demarcation order or agreement applying as of the date of the withdrawal application.

f. Rule 2(H) provides that independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be eligible for membership of the Union, shall be eligible for membership of the Union.

33. The proposed rules of the MEU have also retained each of the limitations or restrictions that applied to the relevant eligibility rules described above as of the day before the withdrawal application was made. Accordingly, the MEU will be subject to the same restrictions or limitations on eligibility as applied to the ME Division as of its date of registration.

**G. Particulars of the assets and liabilities of the amalgamated organisation and the newly registered organisation**

34. The CFMMEU is a reporting unit for the purposes of the Act. A reporting unit must comply with the reporting requirements set out in Chapter 8 of the Act. These requirements include detailing the financial and assets positions of the reporting unit, prepared in accordance with mandated accounting standards.

35. Each of the Divisions of the CFMMEU is also a reporting unit for the purposes of the Act. As such, each of the Divisions is required to lodge annual financial reports with the Registered Organisations Commission ('ROC').

36. Rule 27(iii) of the CFMMEU provides that: "*Each Division shall have autonomy in relation to its funds and property*". This has meant that each Division has had the control and exclusive use of the funds and property that are attached to the Division. In the case of the ME Division, there is likewise a Divisional rule that provides for District Branch autonomy in respect of property owned or acquired by the District Branch (ME Division rule 12(ii)).

37. The CFMMEU has, in practice, operated on the basis of a highly decentralised financial structure with the funds and assets of the organisation residing overwhelmingly in the Divisions. That is shown by the fact the CFMMEU Central Office in its most recent (2019) financial year report recorded a net loss of (\$272,275) and a net liability position of (\$627,405).
38. In contrast, the latest financial reports for each of the respective Divisions lodged with the ROC reveals the following results for funds and assets:
  - a. Mining and Energy Division – a net surplus result of \$1,387,627 and a net asset value of \$57,922,822.
  - b. Construction and General Division – a net surplus result of \$1,942,207 and net asset value of \$11,589,312.
  - c. MUA Division – a net surplus of \$1,310,497 and a net asset value of \$44,695,228.
  - d. Manufacturing Division – a net deficit of (\$2,881,196) and a net asset value of \$4,568,889.
39. In addition, whilst the MUA Division and Manufacturing Division reports consolidate the financial reports for each of their Branches, the ME Division and the Construction and General Division do not. Accordingly, to ascertain the total financial and asset position of each of those Divisions, the financial returns of each of the respective Divisional Branches needs to be combined with the Central Office return.
40. Under this method, the total surplus of the ME Division increases to \$4,337,020 and the net asset position increases to \$96,967,598.
41. There is no property, assets or liabilities held in common by the ME Division and any other Division or part of the CFMMEU, with the possible exception of part ownership of any current deficit attaching to the Central Office.
42. The ME Division proposes that the newly registered organisation will assume ownership of all of the funds, assets, property and liabilities of the ME Division as outlined in the most recent financial reports to the ROC by the ME Division National Office and each of its District Branches, with any necessary adjustments being made to reflect the date of withdrawal.



43. Further, the ME Division proposes that the inventory of funds, assets, property and liabilities belonging to the ME Division will be subject of transfer to the newly registered organisation and will be the subject of orders sought from the Federal Court of Australia under s.109 of the Act.
44. The asset and funds position of the ME Division is very strong and will enable the newly registered organisation to properly represent members as a newly registered organisation.

The proposed rules of the MEU, the proposed rules of the amalgamated organisation after withdrawal and the most recently lodged financial reports of the CFMMEU, its Divisions and Divisional Branches can be accessed via this QR code.

**Insert QR Code**