

## DRAFT ORDER

*Fair Work (Registered Organisations) Act 2009*

s 94(1) RO Act - Application for ballots for withdrawal from amalgamated organisation

**Mr Grahame Patrick Kelly**  
(D2022/10)

PRESIDENT HATCHER  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT MASSON

MELBOURNE, 1 March 2023

*Application by Grahame Patrick Kelly – withdrawal from amalgamated organisation – Mining and Energy Division – Construction, Forestry, Maritime, Mining and Energy Union*

The Fair Work Commission being satisfied that:

- a. the application dated 15 September 2022 (**the Application**), for a ballot to decide whether the constituent part referred to in paragraph 1(a) of the Application (**the Constituent Part**), is validly made under s 94 of the *Fair Work (Registered Organisations) Act 2009* (**the Act**);
- b. the outline of the proposed withdrawal which is annexure 3 to the Application meet the requirements in s 100(1)(b);
- c. the rules of the proposed Mining and Energy Union as amended on 16 February 2023, when the proposed withdrawal of the Constituent Part takes effect, meet the requirements in s 100(1)(ba);
- d. the altered rules for the CFMMEU as further amended on 16 February 2023 meet the requirements in s 100(1)(ba); and
- e. the proposal for withdrawal complies with any requirements specified in the *Fair Work (Registered Organisations) Regulations 2009*.

### THE FAIR WORK COMMISSION ORDERS THAT:

1. The application in respect of the Alternative Constituent Part referred to in paragraph 1(b) of the Application, be adjourned to a date to be fixed after the hearing and determination of the application in respect of the Primary Constituent .

2. Pursuant to s 100 of the *Fair Work (Registered Organisations) Act 2009* (**the Act**):
- a. A vote be taken by secret ballot (**the Ballot**), 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, 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 (**Constituent Part**), should withdraw from the CFMMEU.
  - b. The persons to be balloted are the members of the Constituent Part (**Constituent Members**).
  - c. The question to be put in the Ballot is:

*Do you approve the proposed withdrawal of the constituent part currently known as 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 (Cth)?*
  - d. The commencing day of the Ballot shall be 17 May 2023 and the closing day of the ballot shall be on 19 June 2023.
  - e. The Ballot is to be conducted by Shane Russell Thompson (**the Designated Official**), with the expenses of the Ballot to be borne by the Constituent Part.
  - f. The Ballot is to be conducted in part as an attendance ballot and in part as a postal ballot. The Designated Official may elect to conduct a postal ballot in respect of any Constituent Members for whom he considers it is not practical or appropriate to conduct an attendance ballot.
  - g. The ballot paper to be used for the attendance ballot shall be in the form annexed to this Order as “**Annexure 1**”.
  - h. The ballot paper to be used in the postal ballot shall be in the form annexed to this Order as “**Annexure 2**”.
  - i. Despite sections 102(2)(a) and 102(2)(aa) of the Act, when conducting any postal ballot, instead of including with the ballot paper sent to the Constituent Members,

hard copies of the outline of proposed withdrawal, the rules of the proposed Mining and Energy Union and the altered rules for the CFMMEU when the proposed withdrawal of the Constituent Part takes effect, the ballot paper may be accompanied by a document directing Constituent Members to a QR code which provides a URL link to the said documents.

j. Despite Regulation 94B(2) of the *Fair Work (Registered Organisations) Regulations 2009*, when conducting any attendance ballot, instead of the Constituent Members being sent hard copies of the outline of proposed withdrawal, the rules of the proposed Mining and Energy Union and the altered rules for the CFMMEU when the proposed withdrawal of the Constituent Part takes effect, they may be sent a document directing Constituent Members to a QR code which provides a URL link to the said documents.

3. Pursuant to s.96(2)(b) of the Act the Applicant is granted leave to file the “yes” case which is annexed to the witness statement of Grahame Kelly dated 27 February 2023 as annexure GK-90.

4. Pursuant to s.98(2) of the Act the Applicant is granted leave to file an amended outline of proposed withdrawal in the form annexed to the witness statement of Grahame Kelly dated 27 February 2023 as annexure GK-94.

Form 3 – Ballot Paper under Part 3 of Chapter 3

(Regulation 90A)

Fair Work (Registered Organisations) Act 2009, section 102

**BALLOT OF MEMBERS OF:**

The constituent part formerly constituting the United Mineworkers Federation of Australia, which was deregistered on 10 February 1992 in connection with the formation of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), and remaining separately identifiable under the rules of the CFMMEU as the Mining and Energy Division.

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**BALLOT PAPER IN RESPECT OF PROPOSED WITHDRAWAL FROM AMALGAMATED ORGANISATION**

**ST**

*Initials of the Designated Official*

*Initials of the Assisting Official*

**CLOSING DATE OF BALLOT: 5pm Monday 19 June 2023**

*Directions to Voter*

- Record your vote on the ballot paper as follows:
  - ★ if you approve the withdrawal of the constituent part from the amalgamated organisation referred to in the question set out below, write **"YES"** in the space provided opposite the question;
  - ★ if you do not approve the withdrawal of the constituent part from the amalgamated organisation referred to in the question set out below, write **"NO"** in the space provided opposite the question.
- Do not place on this paper any mark or writing by which you may be identified.

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**QUESTION FOR VOTERS:**

Do you approve the proposed withdrawal of the constituent part currently known as 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* (Cth)?

**Write YES or No in the box above**

Form 3 – Ballot Paper under Part 3 of Chapter 3

(Regulation 90A)  
Fair Work (Registered Organisations) Act 2009, section 102

**BALLOT OF MEMBERS OF:**

The constituent part formerly constituting the United Mineworkers Federation of Australia, which was deregistered on 10 February 1992 in connection with the formation of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), and remaining separately identifiable under the rules of the CFMMEU as the Mining and Energy Division.

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**BALLOT PAPER IN RESPECT OF PROPOSED WITHDRAWAL FROM AMALGAMATED ORGANISATION**

**ST**

*Initials of the Designated Official*

**P**

**CLOSING DATE OF BALLOT: 5pm Monday 19 June 2023**

*Directions to Voter*

3. Record your vote on the ballot paper as follows:
    - ★ if you approve the withdrawal of the constituent part from the amalgamated organisation referred to in the question set out below, write **"YES"** in the space provided opposite the question;
    - ★ if you do not approve the withdrawal of the constituent part from the amalgamated organisation referred to in the question set out below, write **"NO"** in the space provided opposite the question.
  4. Do not place on this paper any mark or writing by which you may be identified.
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**QUESTION FOR VOTERS:**

Do you approve the proposed withdrawal of the constituent part currently known as 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* (Cth)?

**Write YES or No in the box above**