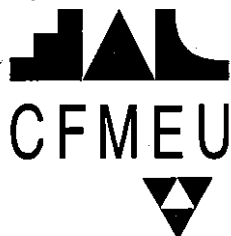


E 2002/30 7

# Construction Forestry Mining Energy Union NATIONAL OFFICE

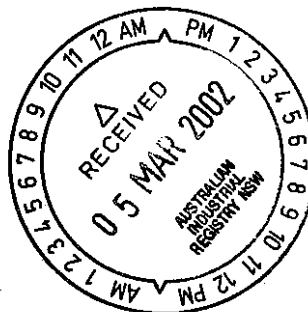


**National Secretary: John Maitland**  
phone: (+61.2) 9267 3393  
facsimile: (+61.2) 9267 2460

2nd floor  
15 Wentworth Avenue  
Sydney 2000

L2002-021  
4 March 2002

Ms Margaret Buchanan  
Deputy Industrial Registrar  
Australian Industrial Registry  
80 William St  
East Sydney 2010



Dear Ms Buchanan

**Re: CFMEU National Elections  
S. 214 and Reg. 61 Workplace Relations Act 1996**

In accordance with the above mentioned provisions of the Workplace Relations Act 1996, we submit the following information in relation to the elections of officers of the CFMEU.

1. Officers in respect of which an election is required under Rules 15 and 16 of the National Rules for the following positions:
  - National President
  - National Secretary
  - National Assistant Secretary
2. Reasons for election:
  - The term of office of the current office holders expires in 2002, sub rule 15(ii).
3. Offices with the same name:
  - See 1. above
4. Electorate:
  - Sub rule 15(ii) – National Collegiate, which is the “totality of delegates from all Divisions to each Divisional Conference, as defined in Rule 5.

5. Period of nomination:

- Nomination to open Monday 22<sup>nd</sup> April 2002
- Nominations close Wednesday 1st May 2002

6. Voting System:

- Postal ballot by above Collegiate Electorate
- Conducted:
  - Opening Monday 20<sup>th</sup> May 2002
  - Closing Wednesday 29<sup>th</sup> May 2002.

If you require further information, please contact Rick Fowler of this office.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Maitland', written in a cursive style with a large loop at the top.

John Maitland  
National Secretary

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
068	MEMORY TX		92801969	03/03	OK

## ERRORS

1) HANG UP OR LINE FAIL    2) BUSY    3) NO ANSWER    4) NO FACSIMILE CONNECTION



## AUSTRALIAN INDUSTRIAL REGISTRY

Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

## FACSIMILE

<b>TO</b>	Neil Kean		
<b>Organisation</b>	Australian Electoral Commission (New South Wales)		
<b>Fax Number</b>	02 9280 1969	<b>Phone Number</b>	02 9375 6360
<b>FROM</b>	Penny Curtis		
<b>Location</b>	Australian Industrial Registry (Sydney)		
<b>Fax Number</b>	02 9380 6990	<b>Phone Number</b>	02 8374 6607
<b>No of Pages (including cover)</b>	3	<b>Date</b>	6/03/2002
<b>Please notify sender if not all pages were received.</b>		<b>Time</b>	3:45 PM

Any information about individuals contained in this fax is **CONFIDENTIAL** and may **NOT** be used or disclosed further. If you are **NOT** the intended recipient, please contact the sender **IMMEDIATELY**.

## MESSAGE:

Prescribed information attached.

PR915157

WORKPLACE RELATIONS ACT 1996  
s.214 arrangements for conduct of an election

**Construction, Forestry, Mining and Energy Union**  
(E2002/30)

MARGARET BUCHANAN  
DEPUTY INDUSTRIAL REGISTRAR

SYDNEY, 4 APRIL 2002

**DECISION**

On 5 March 2002, the National Office of the abovenamed organisation lodged in the Industrial Registry prescribed information in relation to the conduct of an election.

The prescribed information was in relation to the conduct of an election for the following offices:

- National President (1)
- National Secretary (1)
- National Assistant Secretary (1)

I am satisfied that an election for the above offices is required to be held under the rules of the organisation and, under subsection 214(2) of the Act, I am making arrangements for the conduct of the election by the Australian Electoral Commission.





## AUSTRALIAN INDUSTRIAL REGISTRY

Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

Fax  
Electoral Commissioner Through  
Australian Electoral Officer for NSW

Under subsection 214(2) of the Workplace Relations Act 1996, please arrange for the conduct of the following election by the Sydney office of the Australian Electoral Commission:

**E No 2002/30**

**Construction, Forestry, Mining and Energy Union**

Positions:

See Decision

Relevant Information: Scheduled election, collegiate voting system, electorate consists of delegates to Divisional Conferences

Contact: Mr John Maitland

Phone: (02) 9267 3393

A copy of the decision will be posted to you. The rules of the organisation are available from our website [www.airc.gov.au](http://www.airc.gov.au).

I further request that you arrange for this office to be notified that arrangements for the conduct of this election have been made, by facsimile transmission on (02) 9380 6990.

Stephen Kellett  
for Deputy Industrial Registrar

4 April 2002



**AUSTRALIAN INDUSTRIAL REGISTRY**

4  
Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

Electoral Commissioner Through  
Australian Electoral Officer for New South Wales

**Re: Construction, Forestry, Mining and Energy Union  
(E No. 30 of 2002)**

I confirm my facsimile message of 4 April 2002 and enclose a copy of the Registrar's Decision in relation to the conduct of an election in the abovenamed organisation under section 214 of the *Workplace Relations Act 1996*.

Yours sincerely

Stephen Kellett  
for Deputy Industrial Registrar

4 April 2002



**AUSTRALIAN INDUSTRIAL REGISTRY**

5  
Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

The Director, Non-Parliamentary Elections  
Australian Electoral Commission  
PO Box E 201  
KINGSTON ACT 2604

**Re: Construction, Forestry, Mining and Energy Union**

**(E No 2002/30)**

I enclose a copy of a Decision made under section 214 of the *Workplace Relations Act 1996*.

Stephen Kellett  
for Deputy Industrial Registrar

4 April 2002



AUSTRALIAN INDUSTRIAL REGISTRY

6  
Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

Mr John Maitland  
National Secretary  
CFMEU  
Box Q235, QVB Post Office  
SYDNEY NSW 1230

Dear Mr Maitland

**Re: Arrangements for the conduct of an Election  
(E No. 30 of 2002)**

A copy of the Registrar's decision in relation to the above matter is enclosed.

The Registrar is making arrangements, under subsection 214(2) of the *Workplace Relations Act 1996*, with the Electoral Commissioner for the conduct of the subject election by a member of the staff of the Australian Electoral Commission, New South Wales, 02 9375 6360 who will contact you in the near future about the election.

Yours Sincerely

Stephen Kellett  
for Deputy Industrial Registrar

4 April 2002



YOUR REF:  
OUR REF: LNR:472190  
DIRECT LINE: 9265 2538  
EMAIL: lriches@taylorscott.com.au

2 October 2002

The Deputy Industrial Registrar  
Australian Industrial Relations  
Commission  
80 William Street  
EAST SYDNEY NSW 2010

**Attention: Stephen Kellett**  
**Senior Officer Organisations**

Partners:  
David Coleman  
Gervase Liddy  
Peter Wilson  
Stephen Cahill  
Acc. Spec. (Pers.Inj.)  
Ray McClenahan  
Acc. Spec. (Pers.Inj.)  
**Senior Associates:**  
Lachlan Riches  
Lisa Powell  
Acc. Spec. (Pers.Inj.)  
Ivan Simic  
Acc. Spec. (Pers.Inj.)  
Matthew Berenger  
Lyn Johnston  
David Shoebridge  
**Consultants:**  
Richard Scott  
Colin McElhone

Dear Sir/Madam,

Re: **ELECTION FOR OFFICE IN THE CONSTRUCTION, FORESTRY,  
MINING & ENERGY UNION (EX PARTE SUTTON)**

We refer to our telephone conversation today with your Mr Kellett and to the Decision of Justice Gyles of the Federal Court of Australia of 31 July 2002 ([2002] FCA 971).

We note that the effect of the Court's Orders (copy attached for your records) is that to the extent that the prior election E No. 30 of 2002 involved the calling for and acceptance of nominations for the office of National Assistant Secretary of the Construction, Forestry, Mining & Energy Union, that election should be declared void.

Secondly, the Orders have directed the Industrial Registrar to make arrangements for the calling of nominations and for all other steps in relation to the election required under the Rules of the CFMEU for that office.

On behalf of our client, the CFMEU, we request that the Registrar now take the steps indicated by the Court's Decision at your early convenience. We await your advice in relation to same in due course.

Yours faithfully  
**TAYLOR & SCOTT**

Per   
Lachlan Riches

MT:455375\_1



Level 2, Robell House, 287 Elizabeth Street, Sydney NSW 2000 Australia  
☎ (02) 9265 2500, Fax (02) 9265 2555, DX 176 Sydney  
www.taylorscott.com.au ABN 56 612 312 913

Offices also at Parramatta, Newcastle, Wollongong and Wagga Wagga

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**IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY**

No. N.494 of 2002

**RE ELECTION FOR OFFICE IN THE CONSTRUCTION, FORESTRY, MINING AND  
ENERGY UNION; EX PARTE SUTTON**

**ORDERS**

**JUDGE:**

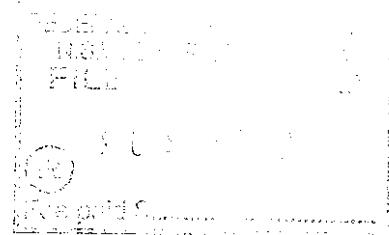
**GYLES J**

**DATE OF ORDER:**

**NEW SOUTH WALES  
31 JULY 2002**

**WHERE MADE:**

**SYDNEY**



**THE COURT ORDERS THAT:**

1. The calling for and acceptance of nominations for the office of National Assistant Secretary of the Construction, Forestry, Mining and Energy Union should be declared void.
2. The Industrial Registrar is directed to make arrangements for the calling of nominations and for all other steps in the election to be taken.

Date that entry is stamped: **30 SEP 2002**

~~DATED:~~

~~2002.~~

Deputy District Registrar

cc. John Sutton  
Secretary  
CFMEU Construction Division



# Federal Court of Australia

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## Re Election for Office in the Construction, Forestry, Mining and Energy Union; Ex parte Sutton [2002] FCA 971 (31 July 2002)

Last Updated: 9 August 2002

### FEDERAL COURT OF AUSTRALIA

Re Election for Office in the Construction, Forestry, Mining and Energy Union; Ex parte Sutton

[\[2002\] FCA 971](#)

INDUSTRIAL LAW - registered organisations - inquiry into election of National Assistant Secretary of CFMEU - alleged irregularity - where Returning Officer accepted nomination of individual not chosen by resolution from the National Conference of a Division - construction of rules of CFMEU

*Workplace Relations Act 1996* (Cth) ss 219, 223

*Re Churchill* (2001) 109 FCR 104 referred to

**RE ELECTION FOR OFFICE IN THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION; EX PARTE SUTTON**

**N 494 OF 2002**

**GYLES J**

**SYDNEY**

**31 JULY 2002**

**IN THE FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES DISTRICT REGISTRY N 494 OF 2002**

**RE ELECTION FOR OFFICE IN THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION; EX PARTE SUTTON**

**JUDGE:** GYLES J

**DATE OF ORDER:** 31 JULY  
2002

**WHERE MADE:** SYDNEY

**THE COURT ORDERS THAT:**

1. The calling for and acceptance of nominations for the office of National Assistant Secretary of the Construction, Forestry, Mining and Energy Union should be declared void.
2. The Industrial Registrar is directed to make arrangements for the calling of nominations and for all other steps in the election to be taken.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

**IN THE FEDERAL COURT OF AUSTRALIA**  
**NEW SOUTH WALES DISTRICT REGISTRY N 494 OF 2002**

RE ELECTION FOR OFFICE IN THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION; EX PARTE SUTTON

JUDGE: GYLES J

DATE: 31 JULY 2002

PLACE: SYDNEY

**EX TEMPORE REASONS FOR JUDGMENT**

1 This is an inquiry into an election for the office of National Assistant Secretary of the Construction, Forestry, Mining and Energy Union ("CFMEU") pursuant to s 219 of the *Workplace Relations Act 1996* (Cth) ("the Act"). I have been familiar with this matter since 28 May last, and I have had the benefit of comprehensive written and oral submissions from counsel. As I have reached a conclusion it is best that I give judgment immediately rather than adjourn to prepare fuller reasons, as uncertainty as to election to an office of the CFMEU should be settled as soon as possible.

2 The office of National Assistant Secretary is a national office, and election is governed by cl 16 of the Rules of the CFMEU, the most important parts of which are as follows:

***"16 - Election of National Officers***

(i) The National Secretary, National Assistant Secretary and National President shall be elected by and from the National Collegiate, namely the delegates to all of the Divisional Conferences of the Union and the ballot for such positions shall be a secret postal ballot of delegates to all Divisional Conferences conducted, the necessary changes being made, in accordance with Rule 17 of these rules.

Provided that, for Divisions with more than one Divisional Branch, excluding FFTS Union Division, each Division shall be represented by at least one Officer.

Further provided that, for Division [sic] with more than one Divisional Branch, excluding FFTS Union Division, each Division shall hold at least one position of Joint Vice President as follows:

\* Joint Vice President (Construction and General Division)

\* Joint Vice President (Forest and Forest Products Division)

\* Joint Vice President (Mining & Energy Division)

Further provided that, each Division, prior to the calling for nominations, shall decide its nominees for the above positions by resolution from that Division's National Conference.

Further provided that the Principal Officer of the FFTS Union Division shall be a National Senior Vice-President and shall be and remain a member of the National Executive and the National Executive Committee.

Further provided that the Construction & General Division Senior Vice-President (Builders Labourers) shall be a National Senior Vice-President and shall be and remain a member of the National Executive and National Executive Committee.

Further provided that the Construction & General Division Senior Vice-President (former National Secretary of the OPDU) shall be a National Senior Vice-President and shall be and remain a member of the National Executive and National Executive Committee.

All full-time officers of each Division, not otherwise elected to any of the foregoing positions, shall be and remain members of the National Executive Committee.

..."

3 On 6 March 1998 Mr John Sutton had been declared elected to the office of National Assistant Secretary. On 4 March 2002 the National Secretary of the CFMEU wrote to the Deputy Industrial Registrar in the following terms (omitting formal parts):

*"1. Officers in respect of which an election is required under Rules 15 and 16 of the National Rules for the following positions:*

\* National President

\* National Secretary

\* National Assistant Secretary

2. Reasons for election:

\* The term of office of the current office holders expires in 2002, sub rule 15(ii).

3. Offices with the same name:

\* See 1. above

4. Electorate:

\* Sub rule 15(ii) - National Collegiate, which is the "totality of delegates from all Divisions to each Divisional Conference, as defined in Rule 5.

5. Period of nomination:

\* Nomination to open Monday 22<sup>nd</sup> April 2002

\* Nominations close Wednesday 1<sup>st</sup> May 2002

6. Voting System:

- \* Postal ballot by above Collegiate Electorate
- \* Conducted:
- \* Opening Monday 20<sup>th</sup> May 2002
- \* Closing Wednesday 29<sup>th</sup> May 2002."

4 On 19 April the Returning Officer appointed to act on behalf of the Australian Electoral Commission pursuant to Div 4 of Pt IX of the Act wrote to the National Secretary of the CFMEU including the following:

***"Relevant rules of the Union***

*Sub-rule 16(i) of the rules states that these offices shall be elected by and from the National Collegiate which is defined in that sub-rule as "the delegates to all of the Divisional Conferences of the Union".*

*Accordingly, I propose to post an election notice and a nomination form to each of the present Delegates to the Union's Divisional Conferences on the opening date for nominations given below. I understand, from the rules and from a conversation today with Mr Rick Fowler of your office, that the Union's **current** Divisions are:*

- \* Construction and General Division
- \* Forest and Forest Products Division
- \* Mining and Energy Division
- \* FFTS Union Division

**Election timetable**

I wish to confirm the following dates for the election, which were discussed with Mr Fowler today:

Nominations open 23 April 2002

Nominations close 10 May 2002 (12 noon)

and, if a ballot is required,

Ballot opens 29 May 2002

Ballot closes 14 June 2002 (12 noon)

5 The Returning Officer issued an Election Notice dated 23 April 2002 in the following form:

***"CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION***

***ELECTION NOTICE***

Workplace Relations Act 1996

Nominations are called for:

**National President**

**National Secretary**

**National Assistant Secretary**

\* **Written** nominations, which comply with the rules of the Union may be lodged from 23 April 2002 and **must reach me** not later than **12 noon on Friday, 10 May 2002**.

\* A candidate may withdraw his or her nomination up to, but not later than, 12 noon on 17 May 2002.

\* A nomination form appears on the reverse side of this Notice.

\* Additional nomination forms are available from my office and from the Union's national office.

**NOTE:** Candidates may include with their nomination a statement or joint statement not exceeding 200 words in accordance with Rule 16 and paragraph 17(iii)(h) of the Union's rules.

**HOW TO LODGE NOMINATIONS**

**By Hand:** Australian Electoral Commission, Industrial & Commercial Elections  
Branch, Level 3, 24 Campbell Street, SYDNEY 2000

**By Post:** GPO Box 529, HAYMARKET NSW 1239

**By Fax:** (20) 9212.7336

*If a ballot is necessary, voting material will be posted on 29 May 2002 to the Delegates to all of the Divisional Conferences of the Union. The ballot would close at 12 noon on Friday, 14 June 2002.*

***Changed address? Advise the Union now.***

Ian Henry 23 April 2002

Returning Officer Telephone: (02) 9375.6346"

6 Mr John Sutton is also the National Secretary of the Construction and General Division of the CFMEU. I will return to explain Divisions later. On 23 April 2002 John Sutton communicated with all Divisional Branch Delegates to the Construction and General Division Divisional Conference as follows:

***"Re: Election of National Officers***

The election of the CFMEU's National Officers will shortly be conducted in accordance with the National Rules of the Union.



Under Rule 16 of those rules, each Division is to decide its nominees for those National positions by resolution of the Divisional Conference of those Divisions.

The three leading positions are Secretary, Assistant Secretary and President. The rules provide that these three positions must be shared between Mining, Construction and Forestry. You will be aware that the present incumbents are National Secretary (John Maitland), National Assistant Secretary (John Sutton) and President (Trevor Smith).

The Construction & General Division is also entitled to one of three Joint Vice-President positions. These Vice-Presidents' responsibilities are outlined in the Rules.

Attached is a proposed resolution in relation to the positions of National Assistant Secretary and Joint Vice-President (Construction & General Division).

Please complete this ballot paper and return it to this office as a matter of urgency but in any event by no later than 5.00pm Thursday 2<sup>nd</sup> May 2002."

7 The resolution which was circulated was as follows:

*"In accordance with National Rule 16, Election of National Officers, it is hereby resolved that the CFMEU Construction and General Division nominees for National Officers positions shall be as follows:*

*National Assistant Secretary - John Sutton*

*Joint Vice-President*

*(Construction & General Division) - Andrew Ferguson"*

Of the fifty persons entitled to vote, thirty seven returned ballot forms, with twenty seven in favour and ten against.

8 On 9 May 2002 the Construction and General Division of the CFMEU informed the Returning Officer that the Division's National Conference had decided that its nominee for the office of National Assistant Secretary was Mr John Sutton. A nomination of Mr Sutton, signed by two nominators, had been lodged. Prior to the close of nominations at 12 noon on 10 May 2002 the Returning Officer also received a nomination of Mr Martin Kingham for the office of National Assistant Secretary signed by two nominators.

9 By letter of 17 May 2002 the Returning Officer advised the Executive Officer of the CFMEU of the receipt of both the above (and the only) nominations for the office of National Assistant Secretary, and sought information which was said to be relevant to determining the eligibility of the nominees and their nominators. By letter of 21 May 2002 the National Secretary of the CFMEU wrote to the Returning Officer, drawing attention to the fourth paragraph of Rule 16(i), advising that the Construction and General Division had decided that its nominee for the position of National Assistant Secretary should be Mr John Sutton, and suggesting that the nomination of Mr Martin Kingham was invalid. The implication in this letter is that Mr Kingham was a member of the Construction and General Division of the CFMEU. As this is referred to in other evidence, I will proceed upon that basis. The Returning Officer responded by maintaining the view that Mr Kingham's nomination was valid, but inviting comments.

10 On 28 May 2002 Mr Sutton made application to the Court pursuant to s 218 of the Act for an inquiry, on the basis that there had been an irregularity in relation to the election by reason of the acceptance of the nomination of Mr Kingham for the office of National Assistant Secretary. I was

satisfied, pursuant to s 219, that an inquiry should be conducted and made orders for that purpose. Mr Kingham was represented during an interlocutory hearing.

11 By letter dated 7 June 2002 Mr Kingham wrote to the Returning Officer in the following terms:

*"I hereby withdraw my nomination for the position of CFMEU Assistant National Secretary."*

The Returning Officer refused to accept that withdrawal because of the operation of the provisions of the following part of Rule 17(iii)(g) of the Rules of the CFMEU:

*"A member having nominated for any office in accordance with this Rule may withdraw the nomination by notifying the Returning Officer in writing of an intention to do so at any time up to seven (7) days after the closing of nominations."*

Rule 17 is relevant because of the provisions of the first paragraph of Rule 16(i).

12 It is now claimed on behalf of Mr Sutton that the refusal of the Returning Officer to accept the withdrawal was an irregularity in connection with the election. Mr Kingham took no part in the proceeding after 7 June 2002. Indeed, the only represented parties have been Mr Sutton, on the one hand, and the Returning Officer, on the other. This is somewhat awkward, as there is no active contradictor with an interest in the outcome, although those representing the Returning Officer have put full arguments to support the position of the Returning Officer, a course which I regard as appropriate in the circumstances.

13 Mr Sutton now contends that there have been other irregularities in connection with the election, namely:

*"An irregularity has happened because the Returning Officer fixed a time for the opening and closing of nominations and the conduct of the ballot which was in breach of the Rules of the Organization namely Rule 16(i) importing, mutatis mutandis, the provisions of Rule 17 of the National Rules and, in particular, Rule 17(iii)(e), (g), (o), (p) and (r)."*

14 It is also claimed by Mr Sutton that the failure of the Construction and General Division of the CFMEU to decide its nominee prior to the opening of the nominations was an irregularity, although no relief is sought in relation to it.

15 The fundamental issue which requires determination is the claimed irregularity concerning the acceptance of the nomination of Mr Kingham. I shall deal with that issue first. The contention for Mr Sutton is that the effect of Rule 16(i) is that holders of, and so nominations for, the office of National Assistant Secretary are limited to the nominee of a Division chosen by resolution from the National Conference of the Division. It is contended for the Returning Officer that any delegate to any Divisional Conference of the Union can be a nominee for any national office and can be nominated by any two members of the Union.

16 It is necessary to consider Rule 16(i) as part of the Rules as a whole. The structure of the CFMEU involves Divisions and Branches. Divisions are occupational and Branches are geographic. In a further complication, there are branches of Divisions, which may be geographic, occupational or on an area basis. Included amongst the Rules governing Divisions are the following:

#### **"27 - DIVISIONS**

(i) There shall be Divisions of the Union established, in accordance with the rules of the

Union. Such Divisions shall be established on a basis of industry or occupation.

(ii) Each Division shall have autonomy to decide matters which do not directly affect the members of another division without any interference by any other body within the Union, including but not limited to:

- (a) The industrial interests of its members.
- (b) The election of officers within the Division.
- (c) Matters arising from the Objects of the Division.
- (d) Structure of the Division.

(iii) Each division shall have autonomy in relation to its funds and property.

(iv) Each Division shall have rules and have power to make, alter or rescind such rules, to be called Divisional Rules. Without limiting the generality of the foregoing paragraph, each Division shall have power to determine policy for that Division, not inconsistent with the rules and policy of the Union as decided by National Conference or National Executive.

...

(vi) Divisions shall, in accordance with their rules, have Branches along a geographic, occupational or area basis which branches of a Division will be called Divisional Branches and may have more than one divisional branch in a State or Territory divided on a geographic or occupational basis."

17 It is apparent from Rule 42, which contains transitional provisions, that the CFMEU was the result of an amalgamation of a number of former unions. Although the Divisions which now exist are somewhat rearranged from the earlier position, the occupational divide and the high degree of autonomy given to Divisions is clearly the product of this amalgamation and the de facto federation which that involved.

18 The supreme governing body of the CFMEU is the National Conference, which is convened every two years or specially. It consists of all of the members of each and every Divisional Executive for every Division of the Union. Persons elected as members of the Divisional Executive are to be elected in accordance with the Rules of the Division. (See Rule 13)

19 There is a National Executive Committee consisting of the National Principal Officers, being the National President, National Senior Vice-President from the FFTS Union Division, National Secretary and the National Assistant Secretary and a full-time elected officer of each Division at a national level who is not one of the National Principal Officers. This body (subject to the review of its actions by the National Executive) has the care, control, superintendence, management and administration of the affairs, business and national funds of the Union. (See Rule 14)

20 The National Executive is composed of the National Executive Committee and the Principal Officer of each Divisional Branch of the Union who is not otherwise a member of the National Executive Committee and (subject to National Conference) has the care, control, superintendence, management and administration in all respects of the affairs, business, national funds and property of the Union. (See Rule 15)

21 Rule 17 governs the election of delegates to Divisional Conferences, in accordance with the Rules

of the Division, every four years by secret postal ballot of the whole of the Divisional Branch financial members entitled to vote (insofar as the Construction and General Division is concerned). Rule 18 deals with the Divisional Executive and provides as follows:

**"18 - DIVISIONAL EXECUTIVE ELECTION**

(i) There shall be a Divisional Executive composed in accordance with Divisional Rules and elected in accordance with such Divisional Rules.

(ii) Every Divisional Executive shall be elected either:

(a) by and from the Divisional Conference; or

(b) by direct ballot of the financial members of the Division.

(iii) The Divisional Officers at a national level shall be members of that Divisional Executive.

(iv) The position of delegate to National Conference is to be held by the same person as is holding the position as Divisional Branch member of the Divisional Executive and the election to one position is to be an election to the other position, a removal from one position shall be a removal from the other and they are, for all purposes under these rules to be one and the same person and/or position."

22 The duties of National Officers are set out in Rule 22. The only full-time office is that of the National Secretary.

23 With this background in mind, I prefer the construction of Rule 16 advanced on behalf of Mr Sutton, at least insofar as the present controversy is concerned. I recognise the force of the submission put on behalf of the Returning Officer concerning the effect of the first paragraph of Rule 16(i). However, it seems to me that the balance of the Rule constitutes a very careful representation and power-sharing exercise, bearing all the hallmarks of the kind of negotiated compromise which would be expected in the case of an amalgamated federation. In my opinion, the second and fourth paragraphs of Rule 16(i) have the effect that the holder of the office of National Assistant Secretary must be the nominee of a Division with more than one Divisional Branch. In the events which have happened, the only nominee for the position of National Assistant Secretary who answers that description is Mr Sutton. Mr Kingham does not answer that description. I should add that there is no suggestion that Mr Kingham was a nominee of any other Division. In saying this, I am not suggesting that it would have been open to another Division to nominate Mr Kingham.

24 I recognise that there may be difficulties in applying Rule 16(i) where there is more than one nominee for each national office, but that problem does not arise in this case. For present purposes, even if there were such a difficulty, it would not overcome what, to my mind, is the clear intent of the second and fourth paragraphs of Rule 16(i) when understood against the background of the structure and governance of the CFMEU.

25 Counsel for the Returning Officer referred to various provisions of the Act which, it was said, encourage democracy in the affairs of registered organisations. This may be accepted at a very general level. However, counsel did not identify any section of the Act which would render the Rules as construed by Mr Sutton invalid. Even if the expansive view of the role of the Court in an Inquiry of this nature taken in *Re Churchill* (2001) 109 FCR 104 is correct, there is, in this case, no claim of invalidity and no concurrent application pursuant to s 208 of the Act. Indeed, as pointed out by counsel for Mr Sutton, the Returning Officer has no obvious interest in, or standing to make, any such challenges to the Rules. The Australian Electoral Commission has a limited (but important) role

in relation to the conduct of elections, but has no wider role in relation to registered organisations. The rules of an organisation are primarily the concern of the members of the organisation, although the Industrial Registrar has an important role in relation to rules generally.

26 In any event, counsel for Mr Sutton does not accept that the Rules are undemocratic. He points to the rank and file involvement in the election of the delegates to Divisional Conference and also points to the Divisional election of the nominee for National office. This submission illustrates that there can be more than one view taken as to the best method of attaining the objects of the Act, and I do not see it as my role in this Inquiry to express any view as to the preferred approach.

27 I am thus satisfied that there was an irregularity as alleged in the nomination of Mr Kingham having been accepted. I am also satisfied that as a result of this irregularity the result of the election may be affected. The principal relief sought pursuant to s 223 of the Act is an order declaring that the calling for and acceptance of nominations for the office of National Assistant Secretary of the CFMEU should be declared void and that the Industrial Registrar be directed to make arrangements for the calling of nominations and for all other steps in the election to be taken. This relief should be granted. This conclusion renders it unnecessary to consider the other irregularities which have been alleged.

I certify that the preceding twenty-seven (27) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gyles.

Associate:

Dated: 5 August 2002

Counsel for Mr Sutton: S Rothman SC and M Perry

Solicitor for Mr Sutton: Taylor & Scott

Counsel for the Returning Officer: G Johnson on 29, 30, 31 July 2002

Solicitor for the Returning Officer: J Heard of the

Australian Government Solicitor

Date of Hearing: 7, 18 June, 29, 30, 31 July 2002

Date of Judgment: 31 July 2002



**AUSTRALIAN INDUSTRIAL REGISTRY**

Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

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Mr Lee Jones  
Australian Electoral Commission  
Non-Parliamentary Elections  
PO Box 496  
HAYMARKET NSW 1239

Dear Mr Jones

**Re: Section 224 Workplace Relations Act 1996 - E2002/30**

I refer to the Order of Justice Gyles of the Federal Court of Australia, New South Wales District Registry, in No. N 494 of 2002 dated 31 July 2002 (copy enclosed).

I am making arrangements for the conduct of the election under s224 of the *Workplace Relations Act 1996* by the Australian Electoral Commission for the office set out in the abovementioned Order in the Construction, Forestry, Mining and Energy Union.

Yours sincerely,

Robin Godfrey  
Deputy Industrial Registrar

4 October 2002



**AUSTRALIAN INDUSTRIAL REGISTRY**

Level 8, Terrace Towers  
80 William Street, East Sydney, NSW 2011  
Telephone: (02) 8374 6666  
Fax: (02) 9380 6990

Mr Lachlan Riches  
Taylor & Scott Lawyers  
Level 2, Robell House, 287 Elizabeth Street  
SYDNEY NSW 2000

Dear Mr Riches

**Re: Construction, Forestry, Mining and Energy Union - E2002/30**

I refer to your letter dated 2 October 2002 accompanied by Orders made by Justice Gyles of the Federal Court of Australia on 31 July 2002 - No N 494 of 2002, which was received in the Registry on 4 October 2002.

I enclose a copy of correspondence from the Industrial Registry to the Australian Electoral Commission about this matter.

Yours sincerely

Stephen Kellett  
for Deputy Industrial Registrar

4 October 2002



In reply please quote N2002/203  
Contact Officer Lee Jones  
Telephone 02 9375 6361  
Facsimile 02 9212 7336  
Email lee.jones@aec.gov.au

Level 3  
Rodden Cutler House  
24-28 Campbell Street  
SYDNEY NSW 2000

PO Box 496  
HAYMARKET NSW 1239  
ABN 21 133 285 851

Australian Industrial Registry  
80 William Street  
EAST SYDNEY NSW 2011

Attention: Stephen Kellett

**Via Facsimile: (02) 9380 6690**

Dear Mr Kellett

**E No.30 of 2002 refers**

**Construction Forestry Mining Energy Union**

I refer to arrangements for me to conduct an election for the above organisation.

A copy of my declaration of result is attached.

Yours sincerely

Lee Jones  
Senior Returning Officer

08 November 2002





# ***DECLARATION OF RESULTS OF UNCONTESTED OFFICES***

Election: E No 30 of 2002

Construction, Forestry, Mining and Energy Union

**Office: National Assistant Secretary**

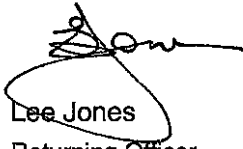
**Candidate/s:**

**Number of Vacancies: 1**

SUTTON

John David

As the number of nominations accepted did not exceed the number of vacancies, a ballot was not necessary. Accordingly, I declare the abovenamed candidate/s elected unopposed.



Lee Jones  
Returning Officer  
08 November 2002

