

## **MOUVELIS, Michael**

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**From:** Shane Lanning [Shane.Lanning@aec.gov.au]  
**Sent:** Wednesday, 1 October 2014 1:13 PM  
**To:** Orgs; Industrial Elections; Rosalind Read  
**Subject:** Post Election Report - CFMEU - E2014-199 [DLM=For-Official-Use-Only]  
**Attachments:** Declaration of Results - CFMEU - National Executive Committee - E2014 199.pdf; Post election report - CFMEU - E2014 199 - National Executive Committee.pdf

### **For-Official-Use-Only**

Good afternoon,

Please find attached the post election report for the CFMEU –National positions

Regards,

**Shane T Lanning**  
Manager Industrial Elections Section  
Australian Electoral Commission  
T: 03 9285 7145 | M: 0422 433 922 | F: 03 9285 7149

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### **For-Official-Use-Only**

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Rosalind Read  
Senior National Legal Officer  
CFMEU - FFPD  
148 - 152 Miller Street  
West Melbourne, VIC 3003

**Post Election Report For: Construction, Forestry, Mining and Energy Union - CFMEU  
Election E No 2014/199**

I refer to the above election for your organisation.

Section 197(1) of Schedule 1 of the *Fair Work (Registered Organisations) Act 2009* requires the AEC to provide a written report on the conduct of the election to the Industrial Registrar and to the organisation or branch for whom the election was conducted. A copy of the report in relation to this election is attached.

Section 198 of Schedule 1 requires that if an organisation or branch is given a post election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

If the attached Report identifies a rule that was difficult to interpret or apply, you should forward your response to the AEC by email to 'industrial.elections@aec.gov.au' within thirty days of the date of the report.

Section 198 and the regulations also require an organisation to make the post election report and the organisation's response to the report (if applicable) available to members.

Further, Regulation 141(4) of the *Fair Work (Registered Organisations) Act 2009* Regulations requires an organisation or branch to publish a notice on its web site advising members that a copy of the post election report is available upon request. If a website is not available, publishing a notice in a journal or newsletter would be considered appropriate.

Please contact me if you wish to clarify any aspect of this report.

Ben Murray  
Returning Officer  
30 September 2014

*Fair Work (Registered Organisations) Act 2009 Schedule 1*

**POST ELECTION REPORT**

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

**ELECTION/S COVERED IN THIS REPORT**

Election Decision No/s: E2014/199

**RULES**

Rules used for the election: [105N-FED: Incorporates alterations of 01/01/2014 determined on 19/12/2013 (R2013/122)]  
[105N-ATAI: Incorporates alterations 05/06/2014 in matter R2014/121]  
[105N-MIN: Incorporates alterations of 16/06/2014 in matter R2014/138]  
[105N-BWIU: Incorporates alterations of 31 January 2014 in matter R2013/483]

Rules difficult to apply/interpret: *None*  
Model Rule reference (if any): N/A

**ROLL OF VOTERS**

Total number of voters on the Roll: N/A  
Number of apparent workplace addresses: Nil  
Number of non-current addresses: Nil  
Other matters pertaining to the roll of voters: Nil

**IRREGULARITIES**

Details of written allegations of irregularities, and action taken by AEC: Nil  
Other irregularities identified, and action taken: Nil

**ATTACHMENTS**

Declaration of Results

Ben Murray  
Returning Officer

30 September 2014

# Construction, Forestry, Mining and Energy Union National Executive Committee

## Declaration of Results for Uncontested Offices

E2014/199

Below are the results of the election for the following offices, conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation.

### National Collegiate

#### National President

Candidates

MAHER, Anthony John

#### National Vice-Presidents (3)

Candidates

RAVBAR, Michael John  
SKOURDOUMBIS, Leo  
VICKERS, Andrew William

#### National Secretary

Candidates

O'CONNOR, Michael Joseph

#### National Assistant Secretary

Candidates

NOONAN, Dave

#### National Executive Committee Members (Construction & General Division) (3)

Candidates

SETKA, John  
No further nominations were accepted

#### National Executive Committee Members (Mining & Energy Division) (2)

Candidates

MCANDREW, Wayne Frederick  
USHER, Lorraine

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.

Ben Murray  
Returning Officer

29 September 2014



## DECISION

*Fair Work (Registered Organisations) Act 2009*  
s.189—Arrangement for conduct of an election

### **Construction, Forestry, Mining and Energy Union** (E2014/199)

MR ENRIGHT

MELBOURNE, 1 SEPTEMBER 2014

*Arrangement for conduct of election.*

[1] On 26 August 2014 the Construction, Forestry, Mining and Energy Union (the CFMEU) lodged with the Fair Work Commission (the Commission) the prescribed information in relation to an election for the following offices:

#### **National Executive Committee**

National President	(1)
National Vice President	(3)
National Secretary	(1)
National Assistant Secretary	(1)
National Executive Committee Member (Construction and General Division)	(3)
National Executive Committee Member (Mining and Energy Division)	(2)

[2] On 26 August 2014, the abovenamed organisation requested an extension of time to lodge prescribed information which, in accordance with s 189(2) of the *Fair Work (Registered Organisations) Act 2009* (the Act) was due to be lodged by 1 July 2014. Although the prescribed day for lodgement had already passed, the CFMEU applied for an extension of time and stated in the application that the reasons for the delay in lodgement include the departure of industrial staff from the organisation as well “the burden of various external compliance obligations” upon the remaining industrial staff.

[3] The CFMEU may have been aware prior to the prescribed day and must have known for at least seven weeks after the prescribed day that the lodgement would not occur in accordance with s 189(2) of the Act unless the General Manager (or delegate) allowed a later lodgement. In those circumstances, it would have been appropriate for the CFMEU to engage with the Commission about the matter.

[4] I have considered the circumstances and the reasons articulated by the CFMEU and have decided to extend the time for lodgement of the prescribed information until 26 August 2014 pursuant to subsection 189(2) of the Act.

[5] I am satisfied that an election for the abovenamed offices is required to be held under the rules of the organisation and, under subsection 189(3) of the Act. I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER

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<Price code A, PR554786>

25 August 2014

The General Manager  
Fair Work Australia  
Level 8 Terrace Towers  
80 William Street  
East Sydney, NSW 2011

**RE: CFMEU National Officers and Additional National Executive Committee Member Elections**

In accordance with s.189(1) of the *Fair Work (Registered Organisations) Act 2009*, the Construction Forestry Mining and Energy Union (CFMEU) is required to conduct elections. Accordingly we ask that the General Manager arrange for the conduct of those elections by the Australian Electoral Commission. The Statement and Prescribed Information required by s.189(1) of the Act and Regulation 138 of the *Fair Work (Registered Organisations) Regulations (2009)* are attached.

In summary, the required elections are for specified National Officers and Additional National Executive Committee Members and under the rules, with such changes as are necessary, will take place on the following time table, subject to the views of the AEC returning officer:

Close of Roll:	1 September 2014
Nominations Open:	9 September 2014
Nominations Close:	26 September 2014

This prescribed information was not able to be lodged before the prescribed day in accordance with s.189(2). The National Office of the Union is reliant upon the industrial staff of the Divisions in relation to preparation of matters of this kind and unfortunately the preparation of this prescribed information was delayed as a result of a combination of the departure of some Divisional staff from the Union and the burden of various external compliance obligations which have proved overwhelmingly time consuming for several of our other staff across the Divisions in 2014. In the circumstances, the prescribed information has been lodged as expeditiously as administratively possible, bearing in mind the Union's resources.

The Union requests that the Commission extend the time required in relation to these elections and allow further time for the lodgement of this prescribed information in accordance with s.189(2). While we acknowledge that the delay in this matter is not insignificant, to the extent possible we would prefer to adopt the above timetable as it is both consistent with the Rules and would allow for finalisation of the nomination process before the CFMEU National Conference which is scheduled for early October. We advise that we have discussed this time frame with representatives of the AEC who have indicated, on a preliminary basis, that they have capacity to conduct the election on this basis if the General Manager orders it.

Please contact Rosalind Read on 03 9274 9200 or [rread@cfmeuffpd.org](mailto:rread@cfmeuffpd.org), if you require any further information in relation to this matter.

Yours faithfully,



Michael O'Connor  
National Secretary  
CFMEU

**FAIR WORK (REGISTERED ORGANISATIONS) ACT 2009**

**Section 189 – Arrangement for Conduct of Election**

**Statement Pursuant to Regulation 138 of the  
Fair Work (Registered Organisations) Regulations 2009**

I, Michael O'Connor, National Secretary, Construction, Forestry, Mining and Energy Union, of 148-152 Miller Street, West Melbourne state that the information annexed to this statement is being lodged in accordance with subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009*.

Signed:

A handwritten signature in black ink, appearing to read 'M O'Connor', written in a cursive style.

Date: 26 August 2014



# **FAIR WORK (REGISTERED ORGANISATIONS) ACT 2009**

**AND**

## **FAIR WORK (REGISTERED ORGANISATIONS) REGULATIONS 2009**

### **Prescribed Information in Relation to an Election**

The following prescribed information is provided pursuant to s.189(1) of the *Fair Work (Registered Organisations) Act 2009* and Regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009*.

#### **1. Names and Number of Offices (Regulation 138(1)(a) and (c))**

**1.1** The name and number of each office in respect of which an election is required is as follows:

- (a) National President (1);
- (b) National Vice-Presidents (3);
- (c) National Secretary (1);
- (d) National Assistant Secretary (1);
- (e) Additional National Executive Committee Members (Construction and General Division) (3); and
- (f) Additional National Executive Committee Members (Mining and Energy Division) (2).

#### **2. Reasons for Election (Regulation 138(1)(b))**

The term of office for each of the offices contained in paragraph 1 is due to expire in the normal course of events on 31 December 2014 (see subrule 15(ii) of the Construction, Forestry, Mining and Energy Union's Rules (**the CFMEU Rules**)).

#### **3. Electorates (Regulation 138(1)(d))**

**3.1 National President, National Vice-Presidents, National Secretary & National Assistant Secretary**

- (a) Subrule 16(i) of the CFMEU Rules provides that the National President, National Vice-Presidents, the National Secretary and the National Assistant Secretary are to

be elected by and from the National Collegiate. The National Collegiate is made up of the delegates to all of the Divisional Conferences of the union (howsoever described in the Divisional Rules).

- (b) Subrule 16(i) of the CFMEU Rules further provides that:
  - (i) the Divisional Secretary of the Construction and General Division, the Divisional Secretary of the Forestry, Furnishing, Building Products and Manufacturing Division (FFPD) and the General President of the Mining and Energy Division shall between them hold the positions of National Secretary, National Assistant Secretary and National President; and
  - (ii) there shall be one Vice President from each Division who shall be nominated by and from their own Divisional Conference.

### **3.2 Additional National Executive Members**

- (a) Subrule 14(i) of the CFMEU Rules provides that the offices of the Additional National Executive Committee Members (Construction and General Division) are elected by and from the Construction and General Division Divisional Conference.
- (b) Subrule 14(i) of the CFMEU Rules further provides that the offices of the Additional National Executive Committee Members (Mining and Energy Division) are elected by and from the Mining and Energy Divisional Conference.

## **4. Close of Roll: National Officers (Regulation 138(1)(f))**

### **4.1** The Rules, subject to necessary changes, provide that the Roll is to close on **1 September 2014**, as follows:

- (a) Subrule 16(i) of the CFMEU Rules provides that the ballot for the National Officers shall be conducted “the necessary changes being made, in accordance with Rule 17”.
- (b) Rule 17 of the CFMEU Rules provides at subrule 17(i) that “the method of electing Divisional Branch delegates to Divisional Conference shall be in accordance with the Rules of the Division every four (4) years in conjunction with the Divisional Branch elections”.
- (c) Paragraph 17(iii)(g) of the CFMEU Rules provides that “the nomination process, closure and receiving of, are in accordance with the rules of the Division” [sic].
- (d) Whilst paragraph 17(iii)(q) of the CFMEU Rules provides that “[f]or the purpose of the election the books of the Divisional Branches shall be deemed closed in accordance with the rules of the Division”.

- (e) Each of the Divisions of the union have rules which deal with the closure of the electoral roll including:
  - (i) subrule 32(xiii) of the rules of the Forestry, Furnishing, Building Products and Manufacturing Division (FFPD) which provides that the roll is deemed closed as at 1 September in the year of the election.
  - (ii) subrules 8(viii) and 38(p) of the rules of the Construction and General Division which provides that the books shall be deemed closed 8 days before the date on which nominations open; and
  - (iii) paragraph 17(g)(2) of the rules of the Mining and Energy Division which provides that the roll shall be closed seven days before the day on which nominations open.

4.2 Having regard to the above rules and the obligation to conduct the ballot in accordance with the rules, *with the necessary changes made*, the Union proposes that the roll close on 1 September 2014. This date is consistent with the FFPD rules and is 8 days before the proposed opening date for nominations, set out below, in a manner which is consistent with the requirements of the Construction & General Division Rules and exceeds the time period allowed in the Mining & Energy Divisional Rules.

## 5. **Opening and Close of Nominations: National Officers (Regulation 138(1)(e))**

5.1 The Rules, subject to necessary changes, provide that nominations are to **open on 9 September 2014** and **close on 26 September 2014** as follows:

### 5.2 **Opening of Nominations**

- (a) Subrule 16(i) of the CFMEU Rules provides that the ballot for the National Officers shall be conducted “the necessary changes being made, in accordance with Rule 17”.
- (b) Rule 17 of the CFMEU Rules provides at subrule 17(i) that “the method of electing Divisional Branch delegates to Divisional Conference shall be in accordance with the Rules of the Division every four (4) years in conjunction with the Divisional Branch elections”.
- (c) Paragraph 17(iii)(g) of the CFMEU Rules provides that “the nomination process, closure and receiving of, are in accordance with the rules of the Division” [sic]. Rule 17(r) goes on to provide that “the opening and closing of the ballot shall be in accordance with the rules of the Division”.
- (d) Each of the Divisions have rules which deal with the opening of nominations including:

- (i) subrule 32(c)(ii) of the FFPD rules which provides that nominations shall open on the second Monday in September. We note that in 2014 the second Monday in September is **Monday 9 September**.
- (ii) subrules and 38(c) of the Construction and General Division rules which provides that nominations shall be called before the last day in August.
- (iii) paragraph 17(b) of Mining and Energy Division rules which provides that the Returning Officer shall determine the times and dates of the commencement and close of the period for lodging nominations.

### 5.3 Closure of Nominations

- (a) Each of the Divisions have rules which deal with the closure of nominations including:
  - (i) subrule 32(c)(ii) of the FFPD rules which provides that nominations shall close at 4 pm on the last Friday in September. We note that in 2014 the last Friday in September is **26 September 2014** and that a period of **19** days elapses between the opening and closure of nominations under the FFPD Rules.
  - (ii) subrules and 38(e) of the Construction and General Division rules which provides that nominations shall close on the second last Friday of September. We note that in 2014 the second last Friday in September is **19 September 2014** and that a period of **19 days** elapses between the opening and closure of nominations under the C&G Rules.
  - (iii) paragraph 17(b) of Mining and Energy Division rules which provides that the Returning Officer shall determine the times and dates of the commencement and close of the period for lodging nominations.

5.4 Having regard to the above rules and the obligation to conduct the ballot in accordance with the rules, *with the necessary changes made*, the Union proposes that nominations **open on 9 September 2014 and close on 26 September 2014**. This date is consistent with the FFPD rules and allows a period of time to elapse between opening and closure of nominations (**19 days**) which is consistent with the requirements of the Construction & General Division Rules, in addition having regard to the discretion allowed under the Mining & Energy division Rules these dates are appropriate.

## 6. Additional National Executive Committee Members

6.1 Rule 14(1) of the CFMEU Rules states that Additional National Executive Committee Members are to be elected “by and from” their respective Divisional Conferences, indicating that the Divisional Rules governing elections from Divisional Conferences, govern elections for these positions:

- (a) Rule 9 of the Construction & General Division Rules, which deals with election of other offices from the Divisional Conference, refers to the conduct of the election in accordance with Rule 17 of the CFMEU Rules.
- (b) Rules 10 and 19 of the Mining & Energy Division Rules which deal with the election of other offices from the Central Council, refer to the conduct of those elections in accordance with Rule 17 of the Divisional Rules, which as noted above provide discretion to the returning officer in relation to the setting of dates regarding opening and closure of nominations and the closure of the roll.

**6.2** Moreover, reference to the Divisional Rules is consistent with Rules 16 and 17 which deal with election of other national offices by reference to the Divisional Rules. As there is no other more specific rule dealing with the election of the offices of Additional National Executive Committee Members, the rules relating to elections generally in the Union also should apply to these offices.

**6.3** In addition, Rule 16(viii) which deals with casual vacancies of National Executive Committee members generally states that they are to be elected in accordance with rule 17(iii) of the CFMEU Rules. While the present election is not an election arising out of a casual vacancy, it would be unusual if elections in relation to a casual vacancy were conducted on a basis other than the election for the substantive position.

**6.4** Consequently the Rules require that the election of Additional National Executive Committee Members should be conducted in accordance with Rule 17(iii) which then refers to the Rules for the conduct of Divisional Branch Elections, with the necessary changes being made. In the present circumstances administrative convenience indicates that such changes as are appropriate to align these elections with the elections for the other National Officers are necessary in the circumstances.

**6.5 Close of Roll (Regulation 138(1)(f))**

- (a) For the reasons noted above in paragraph 4, and consistent with Rule 17(iii), the Rules, subject to necessary changes, provide that the Roll is to close on **1 September 2014**.

**6.6 Opening and Close of Nominations (Regulation 138(1)(e))**

- (a) For the reasons noted above in paragraphs 5.2 and 5.3, and consistent with Rule 17(iii), the Rules, subject to necessary changes, provide that nominations are to **open on 9 September 2014** and **close on 26 September 2014** as follows:

**7. Voting System**

**7.1** The voting system for each of the offices which are the subject of this request, and identified in paragraph 1 is a collegiate voting system.