

# TURNER FREEMAN

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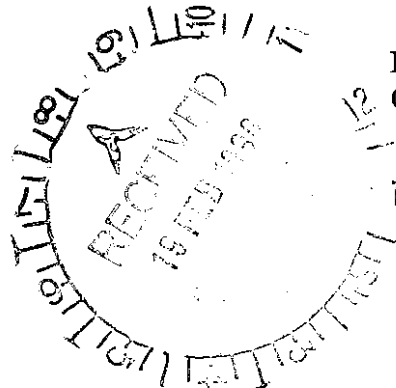
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19 February, 1996

The Registrar  
Australian Industrial Registry  
80 William Street  
EAST SYDNEY NSW 2011

Please reply to: SYDNEY  
Our Ref: PRT/12844-070



Dear Sir/Madam

**RE: CONSTRUCTION FORESTRY MINING AND ENERGY UNION, MINING AND ENERGY DIVISION - APPLICATIONS FOR EXEMPTIONS UNDER SECTION 198 AND 210**

We act for the Construction Forestry Mining and Energy Union, Mining and Energy Division. Please find enclosed the following Applications:

1. (a) Application on behalf of the Division under section 198 of the Industrial Relations Act.  
(b) Statutory Declaration of Bruce Watson dated 19 February 1996.
2. Application under section 210 of the Act, and supporting Statutory Declarations, on behalf of the Division and the following District Branches:-
  - Northern District Branch
  - Western District Branch
  - Queensland District Branch
  - South Australian District Branch
  - Western Australia District Branch
  - North Western Australian (Pilbara) District Branch
  - New South Wales Energy District Branch

As the Division and its District Branches propose to go to ballot in June/July 1996, we would be pleased if you would treat these Applications as a matter of some urgency. We await your further advices.

Yours faithfully  
TURNER/FREEMAN

Per: P R Tyson  
Encl

**INDUSTRIAL RELATIONS ACT 1988**

**APPLICATION UNDER SECTION 198  
FOR EXEMPTION FROM REQUIREMENT OF A SECRET POSTAL BALLOT**

IN THIS MATTER of an Application by **THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION, MINING AND ENERGY DIVISION** (R No.                      of 19 )

APPLICATION is hereby made by **THE CONSTRUCTION FORESTRY MINING AND ENERGY UNION, MINING AND ENERGY DIVISION** ("the Division") pursuant to Section 198(2) of the Industrial Relations Act, 1988 for exemption from Section 198(1) of the Act in relation to elections for each officer in the Division.

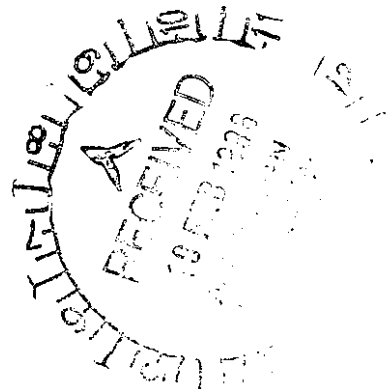
The grounds upon which this Application is made are as follows:-

1. The Division seeks to return to its traditional mode of conducting elections which are of long standing and which represent part of the tradition of the Division.
2. The traditional method of elections has ensured that each member has had an adequate opportunity of voting without intimidation and has resulted in substantially greater participation in those elections than would otherwise be attained.



Mr B Watson

**GENERAL SECRETARY  
CONSTRUCTION FORESTRY MINING AND ENERGY UNION,  
MINING AND ENERGY DIVISION**



STATUTORY DECLARATION

I, BRUCE WATSON of 361 Kent Street, Sydney in the State of New South Wales, do solemnly and sincerely declare as follows:

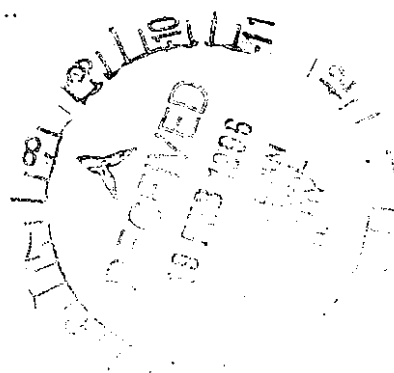
1. I am the General Secretary of the Construction Forestry Mining and Energy Union, Mining and Energy Division and as such I am a member of the Committee of Management of the Division which is referred to in the rules as the Central Council. I am authorised by the Central Council to make this declaration.
2. On the 11th day of October 1995 at a meeting of Central Council held in Sydney a resolution was carried as set out in the annexure attached hereto and marked with the letter "A".
3. Attached hereto and marked with the letter "B" is a notice setting out particulars of rule alterations adopted by the organisation consequent upon that resolution.
4. The particulars set out in the attached notice are correct.
5. The rule alterations were made in accordance with Rule 15 (new rules and alteration of rules) of the organisations rules.
6. The proposed rule alterations were examined and reported on by a rules committee of Central Councillors, the report of the rules committee was discussed by Central Council on the 11th day of October 1995 and approved by a majority of members present and voting at that meeting of Central Council.
7. The proposed rule alterations were submitted to the membership in accordance with Rule 8(iv). Returns received by me from Lodge Secretaries indicate that an aggregate national majority of members of the Division attending in voting at Lodge meetings have voted in favour of the proposed rule alterations.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Subscribed and declared at )  
 Sydney this 15<sup>th</sup> day )  
 of February one )  
 thousand nine hundred and )  
 ninety six )  
 Before me: )

*Bruce Watson*  
 .....

*Ash*  
 .....



**“A”**

**RESOLUTION**

“In accordance with the previous decision to return to the traditional method of voting in ballots for election of Union officials, determined by the first past the post method, Central Council recommends amendment to the ballot rules as per the attached notice.”

- Carried.

**"B"**

**NOTICE OF RULE AMENDMENTS**

**17. BALLOT**

- (a) The Central Council and each District Branch Board of Management shall appoint a Returning Officer to conduct elections within the Division and each District Branch respectively.

Such Returning Officer shall for the purpose of each election appoint Local Returning Officers who shall be responsible for the conduct of elections at each lodge or locality in such a way as to ensure, as far as practicable that no irregularities can occur in relation to an election.

Such Returning Officer or Local Returning Officer shall not be the holder of any office in or be an employee of the Union a Division or a District Branch or lodge of the Division.

- (b) The Returning Officer shall determine the times and dates of the commencement and close of the period for lodging nominations of candidates for election to an office having regard to:-

- (1) the date of the expiration of the term of office of the holder of the office;
- (2) the time required to lodge the nominations;
- (3) the time required to complete the election.

- (c) (1) The Returning Officer shall, within the period of 21 days before the date of the commencement of the period for lodging nominations of candidates for an election for an office within the Division or a District Branch, cause to be published by the Division in a newspaper or such other publications as the Returning Officer considers appropriate a notice setting out:-

- (A) the title of the office;
- (B) if a District Branch office, the name of the District Branch;
- (C) the form in which nominations are to be made;
- (D) the place for lodging nominations;
- (E) the times and dates of the commencement and close of the period for lodging nominations;

- (F) the times and dates of the commencement and close of the period of the ballot and inviting nominations of persons, eligible for election for the office under these rules to stand as candidates for election to the office.
- (2) The Returning Officer shall forward a notice containing the information referred to in paragraph (c)(i) to each lodge involved in the election and the notice should be displayed at each lodge and locality.
- (d) (1) A person is not eligible for election for an office unless the nomination is in writing and is signed by the person and two other financial members.
- (2) Where the Returning Officer finds that a document lodged at the place and within the period determined by the Returning Officer under paragraph (b) of this Rule and purporting to be the nomination of a person as a candidate for an election to an office is not a nomination in accordance with the provisions of this paragraph the Returning Officer shall, before rejecting the nomination, notify the person concerned of the defect and, where it is practicable to do so, give the person the opportunity of remedying the defect within not less than seven days after the Returning Officer being so notified.
- (3) A person is not eligible for election unless the nomination of the person as a candidate for election is lodged at the place determined by the Returning Officer under paragraph (c)(1)(D) of this Rule and within the period for lodging nominations under paragraph (b)(2), or under paragraph (d)(2) of this Rule.
- (e) Where on the expiry of the period for lodging the nomination of a candidate for election to an office, only one candidate is nominated for election for the office, the Returning Officer shall declare under paragraph (1) of this Rule that the candidate has been elected to that office.
- (f) (1) The Returning Officer shall prepare a roll of voters who are entitled to vote in the election.
- (2) The names of members of the Division or District branch who are entitled under the Rules to vote in an election shall form the roll of voters for the election.
- (3) The Returning Officer shall, at the place where the Returning Officer carries out the functions as Returning Officer, make the roll of voters in an election for an office available for inspection by members or by any person authorised by the Returning Officer, during the ordinary hours of business in the period that commences fourteen (14) days before the date of commencement of the issuing of ballot papers and ends on the day on which the result of the election is declared.

- (g) (1) Where more than one candidate is nominated for election for an office the Returning Officer shall determine the date of commencement of issuing ballot papers and the time and date of the close of the ballot having regard to:
  - (a) the date of expiration of the term of office of the holder of the office;
  - (b) the time required for the Returning Officer to send the Local Returning Officers return ballot papers by post; and
  - (c) the time required to complete the election.
- (2) The names of candidates for election for an office shall appear on the ballot paper for that election in the order determined as a result of a draw conducted by the Returning Officer. Each candidate may either attend the draw in person or nominate a person to attend on the candidates behalf.
- (3) As soon as practicable after the date determined for the commencement of issuing ballot papers in respect of an election, the Returning Officer shall issue by posting by registered post to each Local Returning Officer appointed under paragraph (a) of this Rule, sufficient ballot papers for each person whose name appears on the roll of voters for the relevant lodge or locality.
- (h) (1) Where, on application before the time of the close of the ballot in an election, the Returning Officer or a Local Returning Officer is satisfied that a ballot paper issued to a person whose name is on the roll of voters, has not been received or has been lost, destroyed or spoiled, the Returning Officer shall issue to that person, a duplicate ballot paper.
- (2) If a member whose name is on the roll of voters for any election will be absent from the lodge or locality during a ballot, such member may apply to the Returning Officer for a ballot paper to be sent to the Returning Officer at an address which the Returning Officer nominates.
- (i) The Local Returning Officer shall as soon as practicable after the receipt of the ballot papers from the Returning Officer as provided for in paragraph (g)(2), but in any event before the close of ballot as determined by the Returning Officer pursuant to paragraph (g)(1):
  - (a) provide to each member whose name appears on the roll of voters in the lodge or locality, a ballot paper either by attending the mine or work site at the beginning of each shift or such other means as may be required;
  - (b) initial each ballot paper so provided;

- (c) ensure that each ballot paper so provided contains written instructions to the voter as to the proper method of completion of the ballot paper in order to record a formal vote;
  - (d) provide a sealed container into which each member voting shall place the completed ballot paper;
  - (e) at the close of the ballot, open the sealed container and send the contents thereof in sealed envelopes by registered post to the Returning Officer.
- (j) (1) The Returning Officer shall open the sealed envelopes in which the ballot papers have been placed, withdraw each ballot paper and after rejecting informal ballot papers:-
- (a) count the number of votes to ascertain which candidate is successful in the election to the relevant office;
  - (b) place into a container or containers the ballot papers admitted as formal, seal each of the containers and endorse on each of the containers:-
    - (i) if relevant, the name of the District Branch and the title of the office;
    - (ii) the words "Ballot Papers admitted as formal";
    - (iii) the Returning Officer's signature; and
    - (iv) the date of signing.
  - (c) place into a container or containers the ballot papers rejected as informal, seal each of the containers and endorse on each of the containers:-
    - (i) if relevant the name of the District Branch and the title of the office;
    - (ii) the words "Ballot papers rejected as informal";
    - (iii) the Returning Officer's signature; and
    - (iv) the date of signing; and
  - (d) subject to Section 217 of the Industrial Relations Act, 1988 keep each of the containers in safe custody.
- (2) The Returning Officer shall reject as informal a ballot paper that:-



- (a) does not bear the initials of the Local Returning Officer;
  - (b) has upon it a mark or writing by which the voter can be identified.
- (3) Where, during the scrutiny, the Returning Officer is informed by a scrutineer appointed under paragraph (k) that the scrutineer objects to a ballot paper being admitted as formal, or rejected as informal, as the case may be, the Returning Officer shall decide the matter and endorse the decision on the ballot paper.
- (k) (1) Each lodge or locality shall in respect of each election appoint a scrutineer. Each candidate may appoint a scrutineer in respect of each election for which the candidate has nominated. Any appointment of a scrutineer by a candidate shall be made by notice in writing addressed to the Returning Officer or the Local Returning Officer. Not more than one scrutineer shall be allowed to each candidate in an election at each lodge or locality.
- (2) Subject to sub-paragraph (3), a scrutineer appointed under this sub-rule may:-
- (a) be present while the Returning Officer carries out the functions under paragraph (j) or while a Local Returning Officer carries out the functions under paragraph (i); and
  - (b) direct the attention of the Returning Officer or a Local Returning Officer to any irregularity concerning the issue of ballot papers, the admission of any envelope to scrutiny, the admission of a ballot paper as formal, the rejection of a ballot paper as informal or the counting of the votes.
- (3) Where a scrutineer appointed under this sub-rule:
- (a) interrupts the scrutiny otherwise than in accordance with sub-paragraph (2)(b); or
  - (b) fails to carry out a lawful request by the Returning Officer;
- the Returning Officer may direct the scrutineer to leave the place where the scrutiny is being conducted.
- (4) A scrutineer appointed under this paragraph shall comply with a direction by the Returning Officer under sub-paragraph (3).
- (l) (1) As soon as is practicable the returning Officer shall declare the result of an election by giving notice in writing to the Division at its registered

office (and to any District Branch in relation to which such election applies) of the result.

(2) When declaring the result in respect of the election the Returning Officer shall also declare in respect of the election:-

- (a) the number of ballot papers issued (other than duplicate ballot papers);
- (b) the number of duplicate ballot papers issued;
- (c) the number of ballot papers admitted as formal;
- (d) the number of ballot papers rejected as informal.

and both the NSW and Queensland Minerals Councils.

The application would not cost any employer one cent nor would it lead to any additional members for the CFMEU. The application merely preserves the status quo - the opposition clearly signals a hidden agenda by mining companies, contractors (particularly engineering contractors) and the unions supporting their stand. As mentioned in *Common Cause* many times, the big challenge to wages and conditions in the coal mining industry will be the "outsourcing" of large sections of the industry under separate awards and agreements.

## POWER INDUSTRY

The Kwinana Co-Generation Power Plant is presently covered by members of the CFMEU. The ASU has reached an agreement with Mission Energy for single union coverage and a separate enterprise agreement for that plant. They want to do what they did with Loy

Yang B Power Station in Latrobe Valley. The difference there was that Loy Yang B was a greenfield site whereas at Kwinana there are existing workers with existing union allegiances. The ASU has asked the ACTU to sort it out for them - this will be interesting.

## TRADE UNION TRAINING LEAVE

On 7 and 8 December the union's application for Trade Union Training Leave finally gets to be heard. After six months of delays and obstruction by employers the case will finally be determined on its merits. Most employers have private agreements to provide a certain amount of Trade Union Training Leave. This application is only to level the playing field for those who don't provide anything. Judging by the opposition of the employers you would think that it was an application for a 20% pay rise. ■

ENTERPRISE BARGAINING ON THE M.L.M. BOARD...



# Districts endorse a return to traditional method of election

In last month's *Common Cause*, we reported that the Central Council of the CFMEU's Mining and Energy Division had applied to the Industrial Registrar for an exemption from the provisions of the Industrial Relations Act so that the union can return to its traditional form of elections with workplace ballots conducted by the union.

As we go to press with the last issue for the year, this move has been endorsed by the District Boards of Management of the Queensland District Branch; the Northern District Branch; the

Western District Branch; and the Western Australia District Branch. Other Districts are in the process of considering the matter as we go to press. To comply with the legal requirements of the application *Common Cause* publishes the notice below that was endorsed by the Boards of Management of the four Districts:

## NOTICE

Notice is hereby given pursuant to Section 211(2)(b) that the following resolution was made by Central Council on the eleventh

day of October 1995:

## RESOLUTION

"In order that the District might return as far as possible to its traditional method of election of officers it is resolved that application be made to the Industrial Registrar for exemption from the requirement in Section 211 of the Industrial Relations Act that elections for an office in the District be conducted by the Australian Electoral Commission"

**CARRIED.**

# Central Council Resolutions

**T**he following are the seven resolutions adopted by the union's Central Council at its meeting in Sydney from October 11-14, 1995. The full Minutes of the Central Council meeting are available to union members through your lodge secretary:

## **RESOLUTION No. 1** **Certification of Agreements**

"That the Central Council of the Mining and Energy Division of the CFMEU authorises the District Branch Secretary or the District Branch President (or both of them) in each District Branch to make application to the Australian Industrial Relations Commission for the purpose of Certification of Agreements under section 170MA of the Industrial Relations Act, which applies solely to their particular District, and to execute such documents as may be required to discharge this function, including notifications under Sections 170PD and 170PH."

**CARRIED**

## **RESOLUTION No. 2** **Federal Election**

"Central Council calls on Federal Labor to immediately agree to commit to the following policies initiative in the lead up to the federal election.

- Establishment of a National Power Industry Council.
- Ratification of the ILO Convention on Safety and Health in Mines.
- Repeal of Section 118 of the

Industrial Relations Act.

- Review of Fringe Benefit Tax on housing in remote areas so that established towns are not disadvantaged through the introduction of Long Distant Commuting (Fly-in, Fly-out).
- Maintenance of Common Law Rights.

"Council states that a commitment to the above policy initiative will ensure that the Mining and Energy Division works effectively for the return of Labor federally."

**CARRIED**

## **RESOLUTION No. 3** **Remuneration Packages**

"Recognising the need to ensure that, as far as possible, all workers covered by the Mining and Energy Division receive similar remuneration packages, Central Council sets the following list of minimum objectives for enterprise bargaining agreements for the next two years.

- 15% real increase at the Level 1 or minimum wage rate.
- Preference of employment clause.
- Payment for attendance at Commission hearings.
- Paid time off for education and training.
- Payment of projected roster for all forms of leave.

"Council rejects the employers stance that any improvements in wages and conditions can only be achieved by workers making concessions.

"Council reminds the industry that increases in coal prices and already delivered increases in

productivity have seen the industry experience new levels of profitability and efficiency.

"Recognising that the move to the AIRC by coal industry workers now makes available, for the first time, protected industrial action in pursuit of enterprise agreements, Council calls on Districts and Lodges to take advantage of these provisions and where companies are reluctant to reach agreement or refuse to negotiate, they should be served with notices of intention to go into dispute, in accordance with Section 170PD, PG and PH of the Industrial Relations Act."

**CARRIED**

## **RESOLUTION No. 4** **National Office Fulltime Positions**

"Central Council recommends that the following positions constitute the National Office fulltime positions all of whom shall be members of the National Executive for the next term:

- General President
- General Secretary
- Senior Vice-President
- Vice-President Vocational Training
- Two Vice-Presidents - General, Political & Policy Work

"Council directs that the Rules be amended as per the schedule of Rule Amendments to accommodate the above including for two Vice-Presidents to be elected from and by Central Council to constitute the National Executive."

**CARRIED**

## **RESOLUTION No. 5** **Elections**

"Central Council recommends that the Mining and Energy Division of the CFMEU hold simultaneous elections of the Federal Branch and all District Branches to allow for the next term of office to commence on 1 July 1996. The precise timing to be determined by Central Council following progress in the application for exemption from the requirement for the Electoral Commission to conduct the Ballot and for the Ballot to be conducted by the organisation in our traditional manner."

**CARRIED**

## **RESOLUTION No. 6** **Health & Safety** **Provisions**

"Central Council recognising the need to update and improve mining and energy health and safety provisions and arrangements sets, as priority, the achievement of the national uniform stands which comply with the recently adopted International Convention on Safety and Health in Mines."

**CARRIED**

## **RESOLUTION No. 7** **Ballot Voting**

"In accordance with the previous decision to return to the traditional method of voting in ballots for election of union officials, determined by the first past the post method, Central Council recommends amendment to the Ballot Rules as per the attached notice."

**CARRIED**

## **SPECIAL MINUTE**

"This Central Council condemns the action of some companies in seeking to recruit mine labour from overseas on the pretext that there is not sufficient experienced workers of suitable calibre in Australia.

"Council seeks a mandate from the rank and file to hold a national 48-hour stoppage on Monday and Tuesday, 31 and 31 October, because the emerging lack of skilled labour has been caused by employers either refusing to embrace the work models or not providing the training agreed to in cases where work models are in place. Additionally, the lack of skills and experience has been contributed to by the industry's reluctance to embrace the Union's proposal for the development of Industry Training Centres and the industry's non-compliance with the National Training Reform Agenda.

"Council demands an urgent meeting with the Minerals Council and the Federal Minister for Employment and Education to immediately address the issue of employment training and recruitment in the industry.

"Failure by the Mineral Council and Federal Government to address this issue is to lead to rank and file meetings to discuss further action."

**CARRIED**

**NOTE: This Special Minute has already been endorsed by the rank and file but we include it here as part of the record of the resolutions from the Central Council meeting.**

# **Present at Council**

**National officials: J.** Maitland, General President; K. Hawkins, Acting General Secretary; T. Maher, General Vice-President; H. Fisher, General Vice-President.

### **Northern District:**

J. Parkes, D. Appleby, Mick. Ryan, R. Barker and P. Murray.

### **Queensland District:**

A. Vickers, J. Quinn, G. Walsh and R. Coates.

### **Southern District:**

B. Fittler and Mark Ryan.

### **Far Western District:**

E. Butcher.

### **Tasmanian District:**

L. Miles.

### **NSW Energy District:**

A. Drew.

### **South Australia District:**

G. Day.

### **South West Australia (Collie):**

J. Borlini.

### **Apologies:**

M. Watson and D. McIntyre.

### **Also in attendance:**

G. Wood - South West Australia (Collie); R. Keilty - Pilbara District (Energy); and R. Kunst - North Goonyella Lodge.



## AUSTRALIAN INDUSTRIAL REGISTRY

NEW SOUTH WALES REGISTRY

Mr Peter Tyson  
Turner Freeman  
GPO Box 4192  
Sydney NSW 2001

Dear Mr Tyson

### **Mining and Energy Division - Construction, Forestry, Mining and Energy Union Applications for exemptions under subsections 198(2) and 211(1)**

Receipt is acknowledged of your letters dated 19 February 1996 and 21 February 1996.

Your letter dated 19 February 1996 enclosed an application pursuant to subsection 198(2) of the Industrial Relations Act 1988 (the Act) comprising:

- a statutory declaration with Annexures A (Resolution) and B (Particulars of alterations to rule 17 of the rules of the Mining and Energy Division) declared by Mr Bruce Watson, General Secretary of the Mining and Energy Division (the Division);

made on behalf of that Division of the Construction, Forestry, Mining and Energy Union (CFMEU) for an exemption from the requirement that the rules of the Division provide for a secret postal ballot where a ballot is required for an election for an office by a direct voting system ( **R No. 20016 of 1996**).

Your letter dated 19 February 1996 also enclosed applications pursuant to subsection 211(1) of the Act comprising:

- a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr Bruce Watson, General Secretary of the Division (**R No. 20017 of 1996**);

- a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr Roland Land, District Branch Secretary of the Northern District Branch of the Division (**R No. 20022 of 1996**);

- a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr Les Moore, District Branch Secretary of the Western District Branch of the Division (**R No. 20019 of 1996**);

a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr Geoff Day, District Branch Secretary of the South Australia District Branch of the Division (**R No. 20025 of 1996**);

a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr Peter Neilson, District Branch Secretary of the Queensland District Branch of the Division (**R No. 20021 of 1996**);

a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr Gary Wood, District Branch Secretary of the Western Australia District Branch of the Division (**R No. 20020 of 1996**);

a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr David McIntyre, District Branch Secretary of the North Western Australia (Pilbara) District Branch of the Division (**R No. 20024 of 1996**); and

a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Ms Lorraine Usher, District Branch Secretary of the New South Wales Energy District Branch of the Division (**R No. 20023 of 1996**).

made on behalf of the Division and various District Branches for an exemption from the requirement that elections within the Division and the District Branches be conducted by the Australian Electoral Commission.

Your letter dated 21 February 1996 enclosed an application pursuant to subsection 211(1) comprising:

a statutory declaration with an annexure marked "1" (Resolution) and an annexure marked "2" (Copy of the published resolution) declared by Mr David Bean, District Branch Secretary of the Tasmanian District Branch of the Division (**R No. 20018 of 1996**),

made on behalf of the Tasmanian District Branch for an exemption from the requirement that elections within that District Branch be conducted by the Australian Electoral Commission (**R No. of 1996**).

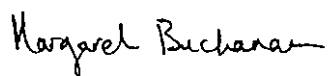
In accordance with Regulation 56 of the Industrial Relations Regulations, arrangements are being made for the publication of a notice of the applications for exemption from the requirements of subsection 210(1) in newspapers in all States and Territories in which the register of members of the CFMEU shows the Division to have members. My initial examination of the documents lodged indicates notices will need to be published in the States of New South Wales, Queensland, Western Australia, South Australia and Tasmania and therefore it is proposed to publish

notices in the *Sydney Morning Herald*, *Courier Mail*, *West Australian*, *Adelaide Advertiser* and the *Hobart Mercury*.

I request advice on whether the Division has members in Victoria, Australian Capital Territory and the Northern Territory in order to ensure compliance with Regulation 56. Given the remote locality of some members in Queensland and Western Australia, advice would also be appreciated on any suitable regional newspapers in which the notice might also be published.

If you wish to discuss this further, please contact me on 332 0641.

Yours sincerely



Margaret Buchanan  
Deputy Industrial Registrar  
NSW, Organisations

22 February 1996



# TURNER FREEMAN

## Solicitors

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G W Whiffin LL.B. B.A.  
T Ahilas B.A. B.S.W. LL.B. (Hons)

19 April, 1996

The Industrial Registrar  
80 William Street  
EAST SYDNEY NSW 2011

**ATTENTION: Margaret Bucannan**

Please reply to: SYDNEY  
Our Ref PRT/1996/1-006



Dear Sir/Madam

### **RE: CFMEU - 1996 ELECTIONS**

We refer to past discussions in relation to the Application by the CFMEU Mining & Energy Division, for an exemption pursuant to section 198 of the Industrial Relations Act. We enclose herewith for your attention, Statutory Declaration of Bruce Watson the General Secretary of the Division.

Yours faithfully

TURNER FREEMAN

Per: P R Tyson  
Encl

## STATUTORY DECLARATION

I, BRUCE WATSON of 361 Kent Street, Sydney in the State of New South Wales, do solemnly and sincerely declare as follows:-

1. I am the General Secretary of the Construction Forestry Mining and Energy Union, Mining and Energy Division.
2. The Division has resolved to apply for exemption pursuant to section 198 of the Industrial Relations Act, 1988 and I seek to refer to the text of that resolution set out in my Statutory Declaration filed in support of that Application.
3. The proposed Rule 17 ("the Ballot Rule") to the best of my knowledge complies with the requirements of the Act relating to the conduct of elections.
4. The proposed Ballot Rule applies to all elections for office, held in the Division and its District Branches.
5. It is my belief that if the Division and its Branches are exempted from section 198, elections for the Division and the District Branches will be conducted under the rules of the Division and the Act and the Regulations. This belief is based on the following factors:-
  - (a) By reason of the nature of the mining and energy industries, the Division has a stable, active and responsible membership organised around lodges at each mine or work site.
  - (b) There is a high level of awareness by the overwhelming majority of members of the importance of proper conduct of elections within the organisation and the requirements of the Rules in this regard.
  - (c) As a result there is also a high level of awareness of the traditional election procedures.
  - (d) Returning Officers are appointed under the Rules and are prominent members of the Division with many years of experience in conducting elections and are afforded by the Rules with independence in the discharge of their duties.
6. It is my belief that if the Division and its District Branches are exempted from section 198 the elections will be conducted in a manner which will afford members entitled to vote an adequate opportunity of voting without intimidation. I base this belief on the following factors:-
  - (a) Although on many occasions elections have been keenly contested, there has never been to my knowledge any allegation made to the organisation or its officers of intimidation of members during the conduct of elections.
  - (b) There has never been any application under section 159 of the Conciliation and Arbitration Act, 1904 or its successor, section 218 of the Industrial Relations Act, 1988 requesting an inquiry on the basis of an irregularity in an election.

7. The proposed Ballot Rule reflects the traditional method of election within the Division and its predecessors, the Australasian Coal & Shale Employees Federation and the United Mine Workers Federation of Australia. The elections under the traditional method have resulted in a participation by eligible voters of approximately ninety five percent.
8. There have, to my knowledge, been three ballots conducted within the Division and its predecessor organisations, other than by the traditional method. The first was a ballot of members in the amalgamation of the Australasian Coal and Shale Employees Federation ("the Federation") and the Federated Mining Mechanics Association which gave rise to the United Mine Workers Federation. In that election there was a return of six thousand one hundred and thirty one (6,131) ballot papers from a total of ten thousand seven hundred and thirty three (10,733) which were issued in accordance with the role of electors. This represented a participation rate of slightly over fifty seven percent which is substantially lower than that obtained by the Federation in elections conducted pursuant to the traditional method.
9. The second ballot was for the election of officers within the Division and the District Branches which took place in June 1992. The return achieved in this ballot is set out in the document annexed hereto and marked with the letter "A". The participation rate in this ballot was again substantially lower than that obtained in ballots conducted pursuant to the traditional method of election.
10. The third ballot was for the election of the General Secretary of the Division which took place in October 1995. The return achieved in this ballot is set out in the document annexed hereto and marked with the letter "B".

And I make this solemn declaration by virtue of the Statutory Declarations Act, 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particulars.

Subscribed and declared at )  
 Sydney this 15<sup>th</sup> )  
 day of April )  
 one thousand nine hundred )  
 and ninety six )  
 Before me:

..... Bruce Watson

..... Lorna Usher

In reply please quote

N92/32029

Contact Officer

M. Hronsky  
(02)289 0369

## INDUSTRIAL ELECTIONS BRANCH

Level 3

Roden Cutler House

24 Campbell Street

Sydney NSW

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Correspondence

PO Box 21

Darlinghurst

NSW 2010

The General Secretary  
Construction Forestry and Mining Employees Union  
Mining Division  
72-74 Buckingham Street,  
SURRY HILLS NSW 2010

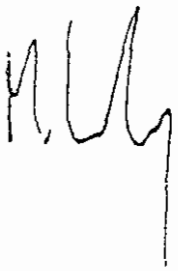
Dear Sir,

CONSTRUCTION FORESTRY AND MINING EMPLOYEES UNION  
MINING DIVISION

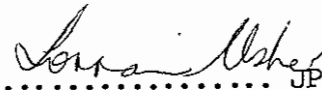
NO.2031 OF 1992 refers

	FEDERAL	NTHN	STHN	WEST
No. of ballot papers issued	15431	6251	3022	1344
No. of duplicate ballot papers issued	6	3	2	-
TOTAL BALLOT PAPERS ISSUED	15437	6254	3024	1344
No. of ballot papers returned for scrutiny	7404	2419	1937	623
Less No. of ballot papers rejected at preliminary scrutiny	-	-	-	-
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	7404	2419	1937	623
Percentage of votes recorded	47.98	38.69	64.09	46.35
Ballot papers returned unclaimed	346	197	18	33
BALLOT PAPERS NOT RETURNED	7681	3635	1067	688

Yours faithfully,

N. Kean per   
Neil Kean  
Returning Officer  
26 June, 1992.

This is the Annexure marked "A"  
referred to in the Statutory  
Declaration of Bruce Watson  
subscribed and declared on the  
16th day of April 1996  
before me:

  
..... JP

c.c. Northern, Southern and Western District Secretaries

"B"

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION  
MINING AND ENERGY DIVISION


Results of the election for the following office conducted under the rules of the organisation - E No.2060 of 1995

Ballot papers issued	23472
Duplicate ballot papers issued	5
TOTAL BALLOT PAPERS ISSUED	23477
Ballot papers/envelopes returned for scrutiny	9345
Less ballot-papers/envelopes rejected at preliminary scrutiny	476
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	8869
Percentage of ballot-papers returned to number issued	39.84
Ballot-papers returned as unclaimed mail	899

GENERAL SECRETARY

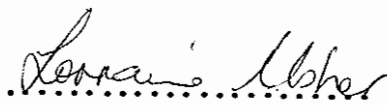
Candidates	Votes
KELLY, Michael Joseph	3419
WATSON, Bruce	3992
WOLFENDEN, Tony	1405
Formal ballot papers	8816
Informal ballot papers	53

I declare Bruce WATSON elected.

  
(T. Healy)  
Returning Officer  
Australian Electoral Commission  
SYDNEY

12 October 1995

This is the Annexure marked "B"  
referred to in the Statutory  
Declaration of Bruce Watson  
subscribed and declared on the  
16/10 day of April 1996  
before me:

  
Justice of the Peace



## AUSTRALIAN INDUSTRIAL REGISTRY

NEW SOUTH WALES REGISTRY

Mr Mike Kelly  
Industrial Registrar

**Re: Section 198(2) - Application for an exemption from the requirement that the rules make provision for a secret postal ballot for offices elected by a direct voting system (R No. 20016 of 1996)**

The Mining and Energy Division of the Construction, Forestry, Mining and Energy Union (CFMEU) lodged an application for an exemption under section 198(2) on 19 February 1996.

The application lodged on 19 February 1996 comprises:

- . an application setting out the grounds for the application signed by Mr Bruce Watson, General Secretary of the Division;
- . a statutory declaration made by Mr Bruce Watson setting out the compliance with the rule altering procedure under the rules of the Division;
- . Attachment A to the statutory declaration setting out the resolution making the alterations to rule 17 of the Divisional rules;
- . Attachment B to the statutory declaration setting out the particulars of the alterations to rule 17 of the Divisional rules; and
- . a copy of the notice of the resolution published in the journal of the Division, Common Cause.

On 23 April 1996, a further statutory declaration made by Mr Bruce Watson was lodged in the Industrial Registry seeking to address the matters required by section 198(2) and (3) of the Industrial Relations Act 1988 (the Act).

### Background

The former United Mineworkers Federation of Australia sought an exemption under section 198(2) in September 1991 (R No. 195 of 1991). The application and proposed alterations received substantial Registry comment in correspondence dated 25 October 1991 (attached).

The application was not pursued further at that time. This appears to have been due to the timing of elections that were due in early 1992 and the deregistration of the Federation on 10 February 1992 as a consequence of an amalgamation to form the Construction, Forestry and Mining Employees Union.

However, in response to the suggestion by the Registry that the re-drafted alterations be submitted in draft for comment, the Federation lodged re-drafted alterations attracting no adverse comment. The proposed alterations lodged in this matter mirror those re-drafted alterations except for minor numbering changes.

The relevant provisions for this matter are Regulation 44 of the Industrial Relations Regulations and section 198(2) and (3) of the Act.

Regulation 44 and section 198(2)

The application is in writing and states the grounds upon the application is made (Reg. 44).

The application is accompanied by particulars of the proposed alterations of the rules of the organisation, to provide for the conduct of elections for offices by a direct voting system by a secret ballot other than a postal ballot (s.198(2)).

N.B. Section 198(2) exemption has been previously granted to a Division of a registered employee union.

Section 198(3)

This provision sets out a number of matters upon which the Industrial Registrar must be satisfied in order to grant the exemption.

Section 198(3)(a)(i) - the alterations comply with and are not contrary to this Act (other than subsection(1)) and awards

Attached is a checklist setting out the compliance of proposed rule 17 with the requirements of the Act.

An unusual feature is that the proposed rule 17 provides for the appointment, conduct and duties of scrutineers by the candidates and by the Lodges. I have been advised by Mr Tyson, Turner Freeman, acting for the Division that such provision has traditionally existed in the Division as a way of ensuring that the conduct of elections are not adversely affected by factionalism. In relation to this application, it is difficult to see how scrutineers appointed by Lodges would adversely affect the proper conduct of an election. It is submitted that the Act does not prohibit additional mechanisms in the rules to ensure the proper conduct of elections.

There appears to be a minor typographical error in proposed rule 17(d)(2) "sand" instead of "and".

Section 198(3)(a)(ii) - the alterations are not otherwise contrary to law

It is submitted that the alterations do not appear to be contrary to law.

Section 198(3)(a)(iii) - the alterations have been decided on under the rules of the organisation

Attached is a checklist setting out the compliance of the Division with the rule altering procedure established under its rules.

It is submitted that the alterations have been made under the rules of the Division.

Section 198(3)(b)(i) - the conduct of a ballot under the rules as proposed is likely to result in a fuller participation by members than would result in a postal ballot

The statutory declaration lodged on 23 April 1996 sets out factual material showing that the former attendance ballots led to participation rates of nearly 90% compared with recent postal ballot participation rates (refer paragraphs 7 - 10).

It is submitted that it would appear that the application meets this requirement.

Section 198(3)(b)(ii) - the conduct of a ballot as proposed under the rules as proposed will afford members an adequate opportunity of voting without intimidation

The statutory declaration lodged on 23 April 1996 also sets out that to the knowledge of Mr Watson there have previously been no allegations of intimidation of members during the conduct of elections and there have been no applications for an inquiry into an irregularity in any election (refer paragraph 6).

It is submitted that it would appear that the application meets this requirement.

Recommendation

On the face of the application, it would appear that it meets the requirements of Regulation 44 and section 198(2) and (3).

However, it is suggested that the consideration of this application may be further assisted by the submissions and testimony to be made at the hearing of the s.211 applications on Thursday 2 May 1996 and final consideration is deferred until after this hearing.

For your consideration.

*Margaret Buchanan*

Margaret Buchanan  
PEO  
NSW, Organisations

30 April 1996



SCHEDULE

Section	Subject matter	Rules Provision
S197 (1)(a)	holder each office to be elected by direct voting system or collegiate system	
(1)(b)	conduct of elections by returning officers	17(a)
(1)(c)	defective nominations - opportunity to rectify	17(d)(2)
(1)(d)(i)	manner in which persons become candidate	17(c) and (d)
(1)(d)(ii)	duties of returning officers	17(b)-(h), (j), (l)
(1)(d)(iii)	declaration of election result	17(l)
(1)(e)	secret ballot	17(i), (j)
(1)(e)(i)	absent voting	17(h)(2)
(1)(e)(ii)	the conduct of ballot	17(f), (g), (h), (i), (j), (k)
(1)(e)(iii)	appointment, conduct and duties of scrutineers representing candidates	17(k)
(1)(f)	Ensure no irregularities	

## Rule altering procedure under the rules of the Mining and Energy Division

### Rule 15

(i) New rules may be made and any of the Rules may be altered, amended, added to or rescinded by Central Council.

### Rule 15

(ii) Proposed new rules shall be examined and reported on by a rules committee of Central Councillors appointed from time to time as the occasion arises by central Council.

Refer para.6 of statutory declaration

### Rule 15

(iii) The report of the rules committee shall be discussed by the Central Committee and the proposed rule changes submitted for approval by a majority of members present and voting at that meeting of Central Council and then submitted for approval of the membership in the same manner as other Central Council resolutions.

Refer para 6 of statutory declaration

### Rule 8

(iv)(a) All business transacted by Central Council shall be confirmed before the meeting concludes and copies of the confirmed minutes shall be posted to the District Branches of the Division and shall be published in Common Cause within fourteen days of the conclusion of the meeting.

Refer copy of resolutions appearing in Common Cause and para 7 of statutory declaration

(iv)(b) The executive committee of each Lodge shall submit the confirmed resolutions of central Council to a meeting of the Lodge membership. The Secretary of each Lodge shall record the number of votes for or against each Council resolution. The Secretary shall send a return of the votes, signed and dated by the Secretary, to the General Secretary within 6 weeks of the date on which the General Secretary posted the Council minutes to the Lodges.

Refer paras 6 and 7 of statutory declaration

### Rule 8

(iv)(c) A resolution of the Central Council shall become the binding policy of the Division if the aggregate national majority of the members of the Division attending and voting at Lodge meeting meetings which consider the Council resolutions, vote in favour of the resolution.

Refer para 7 of statutory declaration

**TRANSCRIPT  
OF PROCEEDINGS**



**AUSCRIPT**

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Parramatta NSW 2150

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**Newcastle**  
Level 3  
61 Bolton Street  
Newcastle NSW 2300

Tel (049) 29 0260  
Fax (049) 29 6765

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**AUSTRALIAN INDUSTRIAL  
RELATIONS COMMISSION**

**MR M. KELLY, Industrial Registrar**

**R No 20016 of 1996  
R No 20025 of 1996**

**SECTION 198(2) APPLICATION  
BY THE M AND E DIVISION OF THE  
CFMEU FOR THE EXEMPTION FROM  
POSTAL BALLOT**

**SECTION 211(1) APPLICATION FOR  
EXEMPTION BY THE MINING AND ENERGY  
DIVISION OF THE CFMEU AND THE  
DISTRICT BRANCHES OF THAT DIVISION**

**SYDNEY**

**10.08 AM, THURSDAY, 2 MAY 1996**

THE REGISTRAR: I will take appearances please.

MR P. TYSON: I appear for each of the applicant organisations and with me is MR J. MAITLAND and MR B. WATSON.

5 THE REGISTRAR: Thank you Mr Tyson. This hearing was called in accordance with the Industrial Relations Regulation 59 to consider nine applications under section 211 seeking exemption from the conduct of elections by the Australian Electoral Commission for officers in the mining and energy division and district branches of that division of the CFMEU.

10 There is a preliminary issue that I would like to seek your views on and it goes to the question of the relationship between the section 211 applications and the existing application that I have under section 198 seeking exemption from the requirement for a secret postal ballot by a secret ballot other than postal. It seems to me that these matters, the nine applications under 211 and the 198 are really so related that in fact they should be handled concurrently  
15 by me.

The reason that I am of the view is that looking at the resolution which in fact stands behind both applications which in essence is that the division might return as far as possible to its traditional method of election of officers. It really goes to the heart of the objects of part 9 of the Industrial Relations Act covering registered organisations and in effect being to encourage members  
20 of organisations to participate in their organisations' affairs and to the question of encouraging democratic control.

I know the fixed view but I have a preliminary view that if we handle the 198 first and I think there may be technical reasons why we might in fact need to do that, as part of these proceedings today deal with the 198 application and on my reading of the provisions, if that is successful and I issue a certificate,  
25 then at that time the rules of the organisation are then so amended that rule 17 covering ballots is then available for consideration as part of the 211 process. Yes I am quite interested in how you feel about that.

30 MR TYSON: Yes Registrar, well that in fact reflects the approach of the organisations. In view of the organisations, the two applications are linked. The purpose of these applications is to return to the traditional mode of election. To do that it will be necessary for the organisations to be successful in both applications.

35 Insofar as the technical requirements of the 211 application of concern, to deal with that application we would have to deal with the proposed ballot rule 17 which has been submitted as part of the section 198 application. I was going to put to you that the section 211 application should proceed conditional upon the granting of the 198 application, however I think I prefer the approach that  
40 you suggested, that is that the 198 application be dealt with first and if successful we move onto the 211 application.

THE REGISTRAR: I appreciate the position you are coming from but I think it would for me, it would make me more comfortable knowing that presuming that the 198 was successful, then the rules that we are actually dealing with are the rules as certified by me at the time I signed the certificate and therefore we are dealing in fact with rules in place rather than rules in prospect which I would have been a little concerned about.

MR TYSON: Yes.

THE REGISTRAR: Now of course it runs at somewhat a risk for you in that if the first application is successful and the second were not, or if the nine applications were not, you are then in a quandary I might say and you might like to think about - one would hope we do not have to deal with that but it is better you understand that I will treat the processes separately in that sense.

MR TYSON: I will take some quick instructions on that Mr Registrar but I think the attitude of the organisations will be that that is the appropriate course. If you could just bear with me for one moment.

THE REGISTRAR: Certainly.

MR TYSON: Yes Mr Registrar, that risk that you referred to is a risk that the organisations are prepared to run.

THE REGISTRAR: Thank you Mr Tyson.

MR TYSON: I presume that the process that you have suggested is a process that could be handled today rather than a two step process over time.

THE REGISTRAR: Indeed, so to make clear, what I was proposing and I was not certain how long these proceedings might have to run so I left the day available for dealing with this process. Officer Margaret Buchanan, the Deputy Registrar here in New South Wales has obviously assisted me in preparing and we tried to think through what the various processes might involve.

It seems to me that if we deal and I will actually formally ask the record to join the two matters just so that for historical purposes we can actually follow them in the future. Join the 198. We then deal with the 198. I will adjourn at the end of that process. If a certificate is then to issue it would issue then. I can do that fairly quickly and also certify a set of rules at the same time. We would then immediately recommence proceedings and proceed to the 211. Is that satisfactory to you?

MR TYSON: Yes I think so.

THE REGISTRAR: All right, if we can begin and perhaps for the record what I will be doing is joining rule matter 20016 of 1996 which is an

application for exemption from the requirement that the rules make provisions for a secret ballot for officers elected by a direct voting system. That that matter be joined to the other matters of today and we will commence with the 198 proceedings. Mr Tyson, do you wish to deal with the requirements about which I need to be satisfied in relation to 198?

MR TYSON: I think I should deal with them briefly Mr Registrar. Those requirements are found within section 198(3). The first relevant requirement is in 198(3)(a), that is the proposed alterations to the rules comply with and are not contrary to the Act. The proposed alterations to the rules consist of a replacement of current ballot rule 17 with the new ballot rule 17 which is attached to the application.

The requirements of the Act substantially contained in section 197 of the Act. I have prepared a brief schedule which I might hand up. That schedule deals with the various sub paragraphs of section 197 and points to the appropriate rule provision in which in ballot rule 17 which deals with the particular subject matter.

#### **EXHIBIT A1 - BRIEF SCHEDULE RE BALLOT RULE 17**

MR TYSON: Commencing with section 197(1)(a), that provision requires that the whole of each office in the organisation be elected by either a direct voting system or a collegiate electoral system. The proposed rule changes do not alter the present rules of the division or any of the applicant district branches. It would be my submission that in the absence of any alteration of the present rules, those rules have been certified by the Commission - well I will go back one step.

The proposed ballot rule 17 does not deal with anything except the conduct of the election. It does not deal with the form of the electorate by which the officer is elected. That is dealt with by existing rules which have been certified by the Commission and which in accordance with that certification, comply with the provisions of section 197(1). I did not propose to go through each of those provisions in the divisional rules or the district rules unless you thought it necessary.

THE REGISTRAR: No I do not believe it is necessary, in fact I have obviously taken the opportunity to go through the draft rule 17 against the various provisions of section 197.

MR TYSON: Thank you Mr Registrar.

THE REGISTRAR: Your schedule does match the one that we developed as well.

MR TYSON: I see. That may speed things up somewhat. There is a fundamental point and that is that the rule, ballot rule 17 of the division

applies not only to the divisional elections but to the elections of each district branch office. That is so because of rule 12(iii)(a) of the divisional rules which - do you have a copy of the divisional rules, I can hand a copy up?

THE REGISTRAR: Yes I have. So it is 12?

5 MR TYSON: 12(iii)(a). It is on page 19 of my copy. I am not sure whether that would coincide with yours.

THE REGISTRAR: So 12(a)?

MR TYSON: 12(iii).

THE REGISTRAR: 3?

10 MR TYSON: (a).

THE REGISTRAR: (a). I am with you.

MR TYSON: That rule provides:

*That each district branch will have complete control of its affairs subject to the general rules and the following conditions.*

15 The general rules being of course the divisional rules:

*(a) Each district branch shall be governed by a committee ... (reads)... according to rule 17.*

Now the district branch rules reflect that requirement.

THE REGISTRAR: Yes.

20 MR TYSON: So we are dealing only with the divisional ballot rule when we are dealing with the election for officers throughout the division of district branches.

THE REGISTRAR: Yes.

25 MR TYSON: Going back to section 197(1)(b) the subject matter of that sub rule is that the rules are to provide for the conduct of every such election including the acceptance or rejection of nominations by a returning officer who is not the holder of any office in or an employee of the organisational branch of the organisation.

30 The relevant rule in rule 17 is 17(a), perhaps there are other rules as well but so far as the holding of office, you will note that in the third paragraph of rule 17(a) that the returning officer or local returning officer:

*Shall not be a holder of any office or be an employee of the union, a division or a district branch or lodge in the division.*

5 The next provision is section 197(1)(c), that relates to defective nominations and the opportunity to rectify defective nominations. That is dealt with in clause 17 or rule 17(d)(2) and you will see that that provision reflects almost word for word the requirement of the Act.

THE REGISTRAR: Yes it does.

10 MR TYSON: The next provision is 197(1)(d)(1) which requires that the rules make provision for the manner in which persons may become candidates for election. That is dealt with in rule 17(c) and 17(d). Those rules are I would submit fairly comprehensive rules providing for the publication of notices both through newspapers or other appropriate publications and also through lodge notices and (d) deals with the specific way in which a member may nominate.

15 (d)(1) provides that a person is not eligible unless he is a financial member - unless he nominates in writing and signed by a person - by him and two other financial members. (d)(2) is the rectification of defective nominations provision and (d)(3) provides that a person is not eligible for election unless  
20 the nomination of a person as a candidate is lodged at the place determined by the returning officer within the period determined by the returning officer.

The next provision in section 197 is sub section (1)(d)(2) which requires that the rules make provision for the duties of the returning officer. Those duties are set out throughout rule 17 but in particular 17(b) to (h) and 17(j) and (l).  
25 Without going through the rules in detail, 17(b) provides for the returning officer to determine the times and dates of commencement and close at the period for lodging nominations having regard to the date of expiration of term of office, time required to lodge nominations and the time required to complete the election.

30 17(c), we have just dealt with. That imposes on the returning officer the obligation to publish notices of the elections. 17(d) imposes on the returning officer a duty in respect of defective nominations which we have dealt with. 17(e) the returning officers' duties in relation to a situation where only one candidate is nominated, as set out in that section. His obligation is to declare that the single candidate has been elected.

35 17(f) sets out the obligations of the returning officer in relation to the preparation of a roll of voters and how that roll is to be formed. 17(f)(2) provides that the names of members or the division or district branch who are entitled under the rules to vote in an election shall form the roll. 17(f)(3) provides that the returning officer is to make the roll of voters available, for  
40 inspection by members or by any person authorised by him during ordinary business hours at the place where he conducts his duties.



5 17(g) deals with the situation where more than one candidate nominates and obliges the returning officer to determine the commencement of the period for the issuing of ballot papers and the time and date of the close of the ballot having regard to the date of expiration of the term of office, the time required by the returning officer to send ballot papers to local returning officers and the time required to complete the election.

[10.28am]

10 Sub clause 2 of 17(g) deals with the duties of the returning officer in relation to the way the names of candidates are to appear on the ballot paper. That is to be determined by a draw. 17(g)(3), the returning officer is required as soon as practicable after the commencement of the issue of ballot papers to post by registered post to each local returning officer sufficient ballot papers for each person whose name appears on the roll of voters for the relevant lodge or locality.

15 17(h) deals with the returning officers' obligations in relation to spoilt ballot papers where he is satisfied that the ballot paper is being lost, destroyed or spoilt. He is advised to issue a duplicated ballot paper. 17(h)(2) deals with absent voting and provides that a member on the roll of voters may apply in writing - sorry, may apply to the returning officer for the issue of a ballot  
20 paper in those circumstances.

17(i) does not deal with the obligations of returning officer as such. It deals with the obligations of the local returning officer. I am not sure whether that is strictly relevant to the provision in section 197 but - - -

25 THE REGISTRAR: Actually one of the things Mr Tyson I will do as we go through this proceeding and I understand Mr Maitland is more than happy to do so, is to actually give me a clear understanding of what the traditional method was in a real practical sense and that will certainly help me for my understanding of that process.

MR TYSON: Yes.

30 THE REGISTRAR: Yes but from my understanding I do not believe we have to deal with the local returning officers.

MR TYSON: I propose to call Mr Maitland to give short evidence on that subject in the section 211.

THE REGISTRAR: 211.

35 MR TYSON: Application.

THE REGISTRAR: Yes.

MR TYSON: If you think it appropriate I can do it in this application.

THE REGISTRAR: No I do not believe it is necessary at this stage.

5 MR TYSON: Moving on to 17(j), once the votes have been recorded at lodge level and the local returning officer has returned those votes in sealed envelopes to the returning officer as provided for in 17(i), 17(j) sets out the obligations of the returning officer in relation to dealing with the ballot papers. Sub section (a) provides that he is to count the number of votes to ascertain which candidate is successful.

10 (b) He is obliged to place in a container or containers ballot papers admitted as formal. Seal each container and endorse on those containers the words set out in the sub section and sign them and date them. 17(j)(c), he has the same obligation in relation to informal ballot papers and 17(j)(d) obliges the returning officer subject to section 217 of the Act to keep all of the containers in safe custody.

15 17(j)(2) sets out the basis upon which the returning officer is to reject ballot papers as being informal. Those the two bases set out in the sub section are that they do not bear the initials of the local returning officer or that a mark or writing by which the voter can be identified is detected on the ballot paper.

20 Finally in sub section (3) of that - sub rule (3) of that rule, the returning officer is obliged where a scrutineer objects to a ballot paper being admitted as formal, to decide the matter and endorse his decision on the ballot paper. The final relevant provision is 17(l) which deals with the situation once the ballot papers have been counted, the returning officer is to declare the result of the election by giving notice in writing to the division or the district branch as relevant and under sub rule (2) when declaring the result he is to also  
25 declare the number of the ballot papers issued, the number of duplicate ballot papers issued, the number of ballot papers which were admitted as formal and the number of ballot papers rejected as informal.

30 It is my submission that rule 17 sets out quite comprehensively the duties of the returning officer as required by the Act. The next provision in section 197 is 197(d)(3) which requires that the rules make provision for the declaration of the result on the result of the election. I have just dealt with that. That is contained in rule 17(l).

THE REGISTRAR: (l).

35 MR TYSON: Section 197(1)(e) provides that the ballot is a secret ballot. I think in that context I should deal with rule 17(i). 17(i) deals with that stage of the election where the ballot papers have been forwarded to the local returning officers at each lodge in a sealed container. The local returning officer is obliged to provide each member whose name appears on the roll, a

ballot paper, either by attending the mine or work site or by such other means as maybe required.

5 He is obliged to initial each ballot paper so provided. He is obliged to ensure that each ballot paper contains written instructions as to the proper method of completion of the ballot paper and most relevantly he is obliged to provide a sealed container into which each member voting shall place the completed ballot paper.

10 At the close of the ballot he is to open the sealed container, send the contents in sealed envelopes by registered post to the returning officer. The effect of that provision is to ensure that the member voting has an opportunity to do so in secret. 197(1)(e) requires provision in the rules for absent voting. I have dealt with that. That is rule 17(h)(2).

197(1)(2) requires provision for the conduct of the ballot. I think I have dealt with each provision within rule 17.

15 THE REGISTRAR: Yes.

MR TYSON: And as a whole rule 17 provides for that conduct.

THE REGISTRAR: It does.

20 MR TYSON: Rule 17(1)(3) deals with the appointment, conduct and duties of scrutineers representing candidates. Rule 17(k) is the rule dealing with scrutineers. There are two aspects to 17(k). One aspect is the appointment of scrutineers by the lodge. This is an aspect of the traditional method of the election which will be dealt with I think more thoroughly in the - - -

[10.37am]

THE REGISTRAR: 211.

25 MR TYSON: 211 application. But for the purposes of this application 17(k) also provides in 17(K)(1) in the second sentence, that each candidate may appoint a scrutineer in respect of each election. The appointment is to be made by notice in writing and addressed to the returning officer or local returning officer. Not more than one scrutineer shall be allowed to each candidate in  
30 an election of each lodge or locality.

17(k)(2) sets out the entitlement of a scrutineer and that is to be present when the returning officer carries out his functions or the local returning officer and to direct the attention to any irregularity concerning the ballot papers. The admission of any envelope to scrutiny. The admission of a ballot paper as  
35 formal or rejection of a ballot paper as informal or the counting of votes.

17(k)(3) gives certain entitlements to the returning officer to control the conduct of the scrutineer where he interrupts the scrutineer, otherwise and in accordance with sub paragraph 2(b) or fails to carry out the lawful request and 17(k)(4) requires the scrutineer appointed under this paragraph to comply with a direction issued under sub paragraph (3).

The final requirement of section 197(1) is in sub section (f) which requires that the rules ensure so far as practicable that no irregularities can occur in relation to an election. It will be my submission Mr Registrar that rule 17 is a comprehensive rule. It deals in detail with each step of the process. It ensures the secrecy of the ballot. It ensures each member entitled to vote has an opportunity to do so and without intimidation and I would submit that the requirements of the Act have been complied with.

THE REGISTRAR: Thank you Mr Tyson. One other section that I would turn my attention to, section 199 with regards terms of office and that is also covered - there are four terms.

MR TYSON: Yes.

THE REGISTRAR: For each of the officers covered.

MR TYSON: And indeed the situation in that regard is very much the same as in relation to section 197(1) that dealt with in other parts of the rules. The next requirement under section 198(3) is that the rules be not otherwise contrary to law. I would submit that there is nothing on the face of the rules which would indicate that they are contrary to any other law.

The third requirement in section 198(3) is that the rules have been decided on under the rules of the organisation. With the application there was submitted a statutory declaration.

THE REGISTRAR: By Mr Watson?

MR TYSON: By Mr Watson, setting out the process that was adopted under rule 14 I think it is.

THE REGISTRAR: Rule 15.

MR TYSON: Rule 15 of the divisional rules which is entitled: new rules and alterations rules and I would submit that you would be satisfied with that the rules have been decided upon pursuant to the rules of the organisation.

THE REGISTRAR: Yes, the material contained in the statutory declaration is adequate for that purpose.

MR TYSON: Thank you Mr Registrar.

THE REGISTRAR: The provisions in relation to and I should have mentioned this at the start, regulation 44 and the 198(2) which go the question of that the application was in writing and stated the grounds upon which it was made. I would confirm of course that those documents were lodged with the Registry and so that requirement has been met.

MR TYSON: Thank you Mr Registrar. Turning now to section 198(3)(b), there has been filed with the Commission a statutory declaration of Mr Bruce Watson. Unfortunately my copy is undated.

THE REGISTRAR: Would this be the one of 18 April?

MR TYSON: That would be it.

THE REGISTRAR: That would be the later one I would think.

MR TYSON: Yes a two page statutory declaration with two annexures.

THE REGISTRAR: Yes.

MR TYSON: If I could have that formally admitted as an exhibit.

**EXHIBIT A2 - STATUTORY DECLARATION  
OF MR BRUCE WATSON**

MR TYSON: Section 198(3)(b) provides that you must be satisfied that the granting of the exemption is likely to result in a fuller participation by members of the organisation in the ballot that then would result from a postal ballot. If I could take you to paragraph 8 of the statutory declaration by Mr Watson. In paragraph 8 he states that:

*There have been three ballots conducted within the ...(reads)... pursuant to the traditional method.*

In paragraph 9 he states:

*That the second ballot was for the election of officers ...(reads)... annexed hereto and marked with the letter A.*

Turning to annexure A you will see that that is a document issued by the Australian Electoral Commission. The percentage of votes recorded federally was 47.98 per cent. In the northern, southern and western districts respectively, it was 38.69. 64.09. 46.35. Returning to paragraph 10 of the stat dec, the third ballot was the election of the general secretary of the division which was in fact Mr Watson. Which took place in October 1995. The results of that are set out in annexure B. And you will see that the return in that election was 39.8 per cent.

Now Mr Watson in paragraph 7 of his application states in the second sentence:

5                   *That the elections under the traditional method have resulted in a participation by eligible voters of approximately 95 per cent.*

The returns by secret postal ballot therefore in rough terms resulted in a participation rate of approximately half the participation rate of the traditional method of election. Before I leave that requirement of the Act I was proposing to deal more fully with that in the other application.

10           THE REGISTRAR: Yes I think probably for the purposes of this application I have sufficient evidence for my own needs.

15           MR TYSON: Thank you Mr Registrar. The next requirement in section 198(3)(b)(2) is that the proposed rules will afford to members entitled to vote an adequate opportunity of voting without intimidation. In this regard I would refer you to paragraph 5 of Mr Watson's statutory declaration. In that paragraph he states that he believes that if the 198 exemption is granted the elections in the division and district branches will be conducted under the rules of the division of the Act and regulations and in particular, of relevance he states that:

20                   *By reason of the nature of the mining and energy ... (reads)... each mine and work site.*

25           The nature of the membership and employment within - particularly the coal mining industry is that it is a long term employment. There is a very stable membership. There is a very active membership and the lodge organisation, the rank and file lodge organisation of the union at lodge level is a very active and democratic organisation and it is our submission that this is reflected in the attitude of the membership towards elections. The fact that the traditional method and the level of participation gives them an understanding of the need to control these elections in a proper manner.

30           The next thing that Mr Watson states is that there is a high level of awareness by the overwhelming majority of members of the importance of proper conduct of elections within the organisation and the requirements of the rules and that there is a high level of awareness of the traditional election procedures and then sub paragraph (d) he states that:

35                   *The returning officer appointed under the rules and are prominent members of the division with many years of experience.*

I would also refer you to paragraph 6. To Mr Watson's knowledge, although elections have been keenly contested there has never been any allegation made

to the organisation or officers of intimidation of members during the conduct of elections and there has never been any application under section 179 of the Conciliation and Arbitration Act or section 218 of the Industrial Relations Act requesting an inquiry on the basis of an irregularity.

5 On the basis of that evidence I would submit that the - and the evidence of the rules themselves, voted rules themselves, I would submit that the members would be entitled to vote and members entitled to vote would have an adequate opportunity of doing so without intimidation in satisfaction of the requirement in 198(3)(b)(ii). Unless there is anything Mr Registrar, those are  
10 the submissions I would like to make.

THE REGISTRAR: Thank you Mr Tyson. You have covered all of the various provisions of the Act about which I am required to consider, whether or not I can be satisfied that those provisions will apply. I do not have any further questions at this stage for you. What I would like to do now is to  
15 adjourn for a short time and I will say on the record that on the material that has been presented to me this morning and on the papers that I have had available to me in regard to this matter, that I am satisfied that the requirements of the Act are met and it would be my intention to issue a certificate.

20 There is a certain procedural arrangement that I have to put in place and it will take a short time to do that so I would ask for you indulgence and we will take a short break and when I return I will provide you with a copy of the signed certificate. I have a full and consolidated set of the rules for you unfortunately but it will be a fact that rule 17 will have been amended on the  
25 signing of the certificate.

MR TYSON: Thank you Mr Registrar.

THE REGISTRAR: We will adjourn.

#### SHORT ADJOURNMENT

[11.09am]

30 THE REGISTRAR: Well we will formally recommence proceedings by - Deputy Registrar Buchanan has provided you with a signed certificate under section 198 of the Industrial Relations Act providing an exemption for the division from sub section 198(1). Having completed that part of the proceedings it is appropriate that we move to the nine applications under  
35 section 211 for exemption from the Australian Electoral Commission conducting the ballots for the division and the eight branches. Mr Tyson.

MR TYSON: Yes Mr Registrar, the first thing I should bring your attention to is that there are in fact nine district branches of the division. One is missing out of this group of applicants.

THE REGISTRAR: I see.

5 MR TYSON: That is the southern district branch.

THE REGISTRAR: All right.

MR TYSON: I think it is fair to say that the present intention of the southern district branch is to make a similar application but because of timing considerations and having regard to the fact that the division and the district  
10 branches are seeking to go to election in June/July, there was insufficient time to mount an application on behalf of the southern district branch.

The effect would be that if the present applications are successful, the southern district branch would have an attendance ballot, pursuant to the new ballot rule 17 but that would have to be conducted by the Electoral Commission.

15 THE REGISTRAR: Yes I must say I was not - that had not occurred to me Mr Tyson to be honest. In terms of the documentation that the division whose branch has organised and resolutions passed and so on, was the southern branch not included in that process or was there any administrative reason why they are not in the same position to be ready as the other branch?

20 MR TYSON: It is an administrative reason. The division and the district branches operate in a very democratic way. Each resolution by the board of management of any of the district branches or the division has to go to the rank and file for endorsement by an aggregate the majority of lodge votes.

25 There is a vote by the - I think the situation is that there was a vote by the southern district which misconstrued the nature of the board resolution. The board has since resolved I think that they should make an application but that has not gone to the rank and file so it is not a binding resolution therefore could not be submitted in the application. There would not have been time to advertise it as required by the Act and it simply did not fit within the  
30 timeframe imposed by the upcoming elections.

In fact I have just been handed a letter where the southern district branch indicates that it supports the application but unfortunately for administrative reasons, we were unable to get an application in, in time. The aggregate - the  
35 vote by the rank and file could not take place in time to put it in with the rest of the applications and they had to go in with the rest of the applications to give the Registry time to advertise to have it before you today.

THE J. REGISTRAR: As required. In terms of the southern branch, what number of members are we talking about?



MR TYSON: 2700 out of 23,000 at 18 lodges, 18 work sites.

THE J.REGISTRAR: So it is 18 work sites. The Australian Electoral Commission will be interested in the decision I have made this morning.

5 MR TYSON: I think they have confronted this issue before. At one stage in discussions it had whereby the 198 application alone was going to be made, that did create some difficulty for the Electoral Commission but the way it has turned out, it would appear that they were - if we are successful in the 211, they would have to deal with an attendance ballot of about 18 work sites.

10 THE REGISTRAR: Yes, we will deal with that in due course Mr Tyson. What I was proposing with the nine 211 applications, there is obviously a significant amount of the evidence, that one you have already read and two, that we will need to - does relate to all of them. Were you proposing to handle them as a group or individually as applications?

15 MR TYSON: I was proposing to handle them as a group. Again because the central focus of the application is the now new ballot rule 17 which applies - -

THE REGISTRAR: To all of them.

MR TYSON: To all of them.

20 THE REGISTRAR: For the record then I think it is important that is very clear that the applications we are dealing with relate to the division which is case 20017. The Tasmania District branch which is 20018. The Western District branch, 20019. The Western Australian District branch 20020. The Queensland District branch which is 20021. The Northern District branch which is case 20022. The New South Wales Energy District branch which is 25 20023. The North Western Australian Pilba District branch, 20024 and the South Australia District branch is 20025.

30 MR TYSON: Thank you Mr Registrar. Perhaps if I could start by dealing a little with the historical background of the mining and energy division to put the traditional of method of election that we have been talking about into context. The division was formed as a result of a number of amalgamations. It has its genesis in the Australasian Coal and Shale Employees Federation which is known generally as Miners Federation which was first registered I think in or about the 1920s and substantially covered coalminers.

35 The Miners Federation in 1990 amalgamated with the Federated Mine Mechanics Association to form the United Mineworkers Federation. The Mine Mechanics constitutional coverage was also limited to coalminers. Persons employed in coal mines and the UFMAs coverage was similarly limited to coalminers.

5 Between 1992 and 1994 as a result of a number of amalgamations the Construction Forestry Mining and Energy Union came into being. The most important of those amalgamations for present purposes were the amalgamation which took place on 10 February '92 between the ATAIU, BWIU Amalgamated Union and the UFMA and a subsequent amalgamation between the CFMEU and the Federated Engine Drivers and Firemens Association on 23 September '92.

10 Now as a result of all those amalgamations the CFMEU was reorganised into divisions, one of which is the present mining and energy division. The structure of the mining and energy division and the rules of the division are with minor, irrelevant exceptions, the structure and rules of the old Miners Federation.

[11.19am]

15 THE REGISTRAR: So there is an historical linkage then back to your lodge system for all of those currently subject of the application?

20 MR TYSON: That is correct and this lodge system goes back to the twenties. The division, the mining and energy division now covers all persons otherwise entitled to membership of the CFMEU in the mining, exploration and energy industries, however the substantial majority of the membership is employed in mines. I understand that to be something like 90 to 90 per cent of the membership so the link with the mining history has continued all the way through.

THE REGISTRAR: And the figure you mentioned before, 23,000 is around your current membership?

25 MR TYSON: Yes that is correct. Now throughout the history of the Miners Federation until the introduction of the current Industrial Relations Act, elections within the organisation have been conducted by form 10 of this ballot and to understand the way that those ballots were conducted it is necessary to understand the way that the Miners Federation and the current division is structured.

30 The organisation of the Miners Federation was based on lodges. The membership of the Federation and the current provision is attached to lodges at each individual work site or mine. Each lodge has its own officers but I hasten to add that they are not officers within the meaning of the Act, they are local officers within the organisation. And the organisation is very much a bottom up organisation. The activity within the union takes place at lodge level. This is partly historical part, where geographically obviously the organisation consists of miners who are geographically scattered in small communities around particular mine sites, rather than perhaps the traditional trade union which is centred in large metropolitan cities.

This strong locum rank and file organisation is in part the reason for the growth of the traditional method of election. I understand that there are currently approximately 168 lodges within the division.

THE REGISTRAR: Each one of those related to a mine site?

5 MR TYSON: Mostly. With the energy classifications there are some employers where there are too few members and they are organised in lodges over localities but the vast majority are. Now the essential steps in the traditional ballot process and I will call Mr Maitland shortly to give further detail about this but the essential steps were the appointment of a returning officer by the division or the district branch as maybe relevant depending on  
10 the nature of the election.

The appointment of local returning officers at each lodge. The dispatch by the returning officer, two local returning officers of ballot papers sufficient for the membership at the particular lodge. The provision by the local returning officer or as he was known in the past, the lodge returning officer of a ballot  
15 paper to each member and the provision of a means whereby each member could record a vote in secret and that was done at the work site and finally the return of the ballot papers by the local returning officer to the returning officer and that is in very simple form how the traditional method operated.

20 I think before moving on to the requirements of the Act, I think it might be appropriate if I now called Mr Maitland to give further evidence on that.

**JOHN WILLIAM MAITLAND, sworn:**

MR TYSON: Now Mr Maitland, you are presently the general president of the CFMEU Mining and Energy Division and also the joint national president  
25 of the CFMEU?---That's correct.

I think you first commenced employment in the coal industry in 1968?---Yes that's correct.

Who was that with?---Collinsvale.

When was the - approximately when did you first take on a lodge position?---  
30 Approximately 1971.

And do you recall who that was with?---Yes was that Collinsvale - no sorry, that would have been in Blackwater at Sirius Creek. It was a Clutha Development project.

And that was in Queensland?---That was in Queensland, yes.

And I think in October 1979 you were elected district branch secretary of the Queensland District branch?---Yes approximately then.

And that is a full time position?---Yes that's correct.

5     Between 1970 and 1979 you held a number of different lodge positions?---I did.

Included in those lodge positions were you ever appointed a lodge returning officer?---Yes I was.

10    And then in 1 January 1985 you were elected general president and you have remained in that position ever since?---That's correct.

So in total you have been in the coal industry for some 28 years and been acted for almost all of those?---I have.

15    During that period you have had an opportunity to observe and participate in the conduct of elections of the old Miners Federation and UFMA and in the division?---Yes that's correct.

And in particular you have observed and participated in the conduct of what has been called the traditional method of election?---Yes.

20    Could you briefly describe from a lodge perspective how the traditional method of election operated?---Sure. At the conclusion of each term which if I can recall before moving through the amalgamation process, was a three year term. We would be notified of the intention to call nominations by the national returning officer. That returning officer had been appointed generally by central council which was a supreme bulk policy making body of the organisation. We were advised then of the new term and the fact that  
25    applications were called for nominations to the various positions. At the local lodge after the secretary of the lodge received that correspondence generally a lodge meeting was called at which nominations would be called for the position of returning officer and also for the position of scrutineer. Once those positions were filled by a ballot of the lodge, if there were more than  
30    two candidates then the lodge actually voted on which of the two or more candidates was the most satisfactory in the eyes of the membership. That person then was given the responsibility of preparing a roll of local membership and putting in place the necessary arrangements to be able to conduct the ballot once the returning officer at local level was notified by  
35    either the district returning officer or the national returning officer of the number of ballots that had to take place. Obviously there were positions called for at district and national positions, boards of management, central council, etcetera and etcetera and in some cases they had to conduct a series of ballots for positions. When the particular ballot date was notified and I

might add that in those days we voted on one day, one single day. We were notified that that was the day upon which all ballots had to take place. The returning officer and the scrutineer would proceed to conduct I suppose we could call it, site ballot, workplace ballot - - -

5 Just stopping you there. How was it that the local returning officer received the ballot papers?---By registered mail.

And that was from the returning officer?---By the returning officer who obviously was aware of the roll of members at that mine and sufficient ballot papers would be sent by registered mail for each of the members to be able to vote plus a number of spares just in case some ballot papers were spoilt in the process.

[11.29am]

So we have reached the situation where the ballot papers have been received by the local returning officer?---Yes.

15 How was the ballot conducted in a physical sense?---Well the ballot was then conducted at the work site. In an industry which has consistently had shiftwork, generally three shifts, day, afternoon and night, the local returning officer and the scrutineer would go to the mine at the commencement or at the finish of each of the shifts. For example they would attend the workplace in the morning and try to get the night shift who were finishing work and the day shift who were commencing work to vote and their names would be crossed off the roll as they participated in the ballot and then the same would apply for the end of day shift and the commencement of afternoon shift and at that stage the local returning officer and the scrutineer would go through the list to see who had attended for work that day and if there were numbers of people who hadn't attended for work, then they would contact their home and if they were home ill or incapacitated in some way, they would attend to their place of residence to have them vote. Now that could be done because you know we lived in generally mining communities and certainly in my experience in Collinsvale it was a town which was completed dedicated to the operation of the mine.

So far as the actual recording of the vote how was that done. Was a container supplied for that purpose?---Yes locked ballot box was held by each of the lodges and each member upon completion of filling in the voting card or voting paper, slip would lodge their ballot paper in the locked ballot box.

And then once the voting had been completed what happened to the contents of the box?---The box was opened by the returning officer, the local returning officer and the scrutineers. The numbers of ballot papers were counted. There would obviously then be a form which was supplied by the district or the national returning officer which would be filled out and that form would require the returning - the local returning officer to indicate how many votes

had been recorded and how many ballot papers would be returned either - well yes, how many votes had been recorded and how many ballot papers would be returned to the returning officer. In addition, I think if I can recall in those days we also used to record the number of formal and informal votes from the local level but obviously that was then reassessed by the district or the national returning officer and then I think there was another - if I can recall correctly there was another space for indicating whether or not there were spoiled ballot papers because on some occasions you would hand a ballot paper out to an individual and they would come back and say, well they had marked it wrong and they wanted another ballot paper so you would record that two or three had been spoiled or whatever it may have been. So there was a proper record kept of the results of the ballot. They didn't count ballots in terms of the candidates themselves. It was simply an overall count of the number of ballot papers that had been used. The unused ballot papers, the formal and informal votes and any spoiled ballot papers.

So the counting for the purpose of determining the results, was done by the returning officer?---Was conducted by either the district returning officer or the national returning officer.

You mentioned the scrutineer, the scrutineer was not a scrutineer appointed by candidates?---Yes.

But rather a scrutineer appointed by the local lodge?---By the local lodge to assist I suppose - to be quite frank I suppose, it was to make sure that the returning officer carried out his duties as required by the organisation.

Over the many years of your experience have you ever been made aware or do you know of any allegations of or any irregularity in the conduct of a traditional ballot?---No.

The ballot conducted in that way leads to a very high participation rate?---Very high.

What would you estimate it be?---We'd be very disappointed in certainly the days that I was back at the lodge if we didn't get 90 per cent. We used to aim for higher than 90 per cent and any lodge that didn't achieve 90 per cent would be questioned as to why.

The applications which are before the Registrar at the moment, they have come about have they not as a result of a degree of rank and file pressure to return to the traditional method?---Very much so, in fact right from our first proposal to amalgamate, when people were aware of the fact that amalgamation votes and then future elections had to be conducted under the auspices of the Electoral Commission by postal ballot, there was some dissent and we gave indications very early on even before the first amalgamation with the Federated Mine Mechanics that we would seek exemptions from those provisions as soon as it was practicable, having to understand that there were

some amalgamations that we had to go through that would require us to participate by way of postal ballots conducted by the Electoral Commission.

5 Now so far as the position of returning officer is concerned it has been the practice of the organisation as a whole to appoint people who are prominent members of the division with years of experience, people of high integrity?---  
Yes that's correct. I mean we generally appoint people who have held some form of office in the organisation, whether it was at local level, district level or national office and has remained active by moving into our Retired Mineworkers Association.

10 In the case of elections to be staged should this application be successful, I think it was the intention initially and in fact some discussions were held with the Electoral Commission with a view to seeking the Electoral Commission to act in the role as returning officer rather than conducting the election but  
15 act as returning officer, is that correct?---Yes that is correct and I think - not I think, I know we did that. I mean there was an intention behind it and that was to demonstrate that we didn't have any problems with the Electoral Commission supplying returning officers because we were absolutely impartial that the Electoral Commission could easily fulfil that role.

20 And it appears as a result of those discussions that that is not going to be possible?---No that is right so I mean not that that really matters to us. I mean it would have been nice but you know we have quite a number of eminently suitable people who are available to us.

25 And in those circumstances I think an approach has been made to a particular senior member or retired member of the organisation, Mr Bill Whiley to act in the role as at least national returning officer and he has accepted?---That is correct. It is also interesting to note that the returning officer that we used in the eighties when we were conducting our own ballots is still around but he is quite on in years and I'm not so certain that the strain of conducting the  
30 ballot would be in his best interests so we have looked at somebody a little younger and we have approached one of our former activists, a guy by the name of Bill Whiley who has been retired for now eight years so he is 68 years of age. He has held quite a number of positions within the organisation on committees of management. He has carried out a number of tasks for the national organisation. He has had 35 years in the industry. He has actually  
35 conducted a number of ballots as a local and district returning officer so he is quite familiar with the process and he is currently the secretary/treasurer of the New South Wales Retired Mineworkers Association.

40 And I think all or nearly all of the district branches have indicated a willingness to also appoint Mr Whiley as a district returning officer for the purpose of the coming election?---Yes there is only one branch that hasn't yet indicated and that is because we haven't been in contact with them. All other branches of the ones that have made application today who are part of this application today, have indicated their support for his appointment.

I have no further questions Mr Registrar.

5 THE REGISTRAR: Thank you Mr Tyson. Perhaps if I could just ask some questions Mr Maitland. In terms of the traditional voting process, obviously the secret ballot not postal system would have been a more recent method, presumably back in the twenties. Would it have still been by a secret ballot or it would have been attendance in hands?---No we have had the process of secret ballot in since the thirties actually.

10 Yes. In terms of the practicalities of actually conducting the ballots at the mine sites, presumably there is no difficulty with any of the companies because presumably you are going to come onto their premises to actually do this or you are going to do it at the gate or I mean what is the normal process?---We have never experienced any difficulties with companies, in fact we have sought their assistance so that we could use their facilities. Generally the practice was to conduct the between shift ballots at either surface  
15 cribsrooms in the case of underground mines or in the bathhouses in the open cut mines where it does you know, enable you to give the individual member some privacy in terms of casting their ballot. I really haven't thought about asking the companies about it because we just took it for granted that they would not be opposed to it.

20 If you had a problem presumably you could still do a ballot but it would be simply outside premises I suppose?---It would have to be at the entrance to the particular workplace. That wouldn't create a problem. Certain facilities could be provided.

25 In terms of the privacy for your individual member, I mean obviously the local returning officer has got a ballot, has got a roll, he clearly marks off and identifies who people are. How long in a practical sense do you give that individual the privacy to just mark his ballot box?---By using one of the rooms, as I indicated the crib camp where the returning officer and the scrutineer would set up a table outside the crib camp and would give the  
30 individual a ballot paper. That person would go into the crib then, fill out their ballot paper and then come out before anyone else was allowed to go in.

In terms of identifying the people on the roll, presumably that is done by simple statement of name and address or - - -?---Everyone is very well known to each other at the work site and it is simply very similar to what is done  
35 with any of the state or federal elections where the roll is there, the ruler is used to cross through the name, the ballot paper is given, initialled by the local returning officer and then the individual folds the ballot paper and puts in the locked ballot box.

40 You mentioned that the identification of the local returning officer is done in the traditional system by the lodge itself, what sort of membership turn up would you get to that kind of a voting process. I mean you do not always get most of your members at meetings I would imagine but - - -?---No the



5 meetings are generally conducted between shifts in the morning and between shifts in the afternoon. Not everyone loves to be part of the process. I would estimate that generally at those meetings you would get two thirds or more of lodge participating because they are at the work site. So I mean it is a little bit of a case that they can't escape us you know.

In terms of the question, is it Mr Whiley, I was going to ask these questions as we came to the various aspects of the Act?---Sure.

But if you are comfortable for me to do that now Mr Tyson I would like to.

MR TYSON: Yes.

10 THE REGISTRAR: Probably one of the most important things from my point of view is if you like the independence and the knowledge level of the returning officer and from what you are saying, you are actually proposing that the returning officer for each of the branches and the division, would be the one individual?---That's correct.

15 And from what you were saying Mr Whiley would know your rules well and the requirements of a returning officer?---Yes.

And you did mention I think that he has conducted elections before?---Yes.

He has been a returning officer before?---Yes he has acted as district and lodge returning officer in the past.

20 In the past. I think Mr Tyson and I might have to talk about the question of the missing branch. I am not quite sure how we will deal with that but we might handle it as we get to that process. I thank you for your time Mr Maitland. That has been very helpful to me.---Thank you Mr Registrar.

#### THE WITNESS WITHDREW

25 [11.47am]

30 MR TYSON: If I can now turn to the formal requirements of the Act Mr Registrar. Firstly dealing with the requirements in relation to the making of the application which are set out in section 211. Section 211(2) requires that the committee of management of an organisation or branch resolve to make the application. I think in each of the applications lodged there is a statutory declaration by the secretary of the branch or the general secretary of the division setting out the circumstances in which the resolution required by section 211(2)(a) was made and attaching a copy of that resolution.

THE REGISTRAR: Yes I can confirm that in each of the applications before me that those documents are on the file.

5 MR TYSON: Thank you Mr Registrar. That same statutory declaration attaches a text of or attaches a page of the union's or the division's journal, the Common Cause in which notice to the membership of the fact of the resolution was given to the membership.

10 THE REGISTRAR: Now that complies with regulation 55. Do I take it that from an earlier material that you provided that resolutions are actually considered that each lodge so that the entire membership actually votes upon them after they have been past by the committees of management?

MR TYSON: That is correct Mr Registrar. In each of the divisional and the district branch rules there is a provision. In the divisional rules it is rule 8(iv) which provides that:

15 *All business transacted by a central council shall be ...(reads)...  
branches and lodges of the division.*

20 And then it goes on to provide that each lodge has to vote on a resolution and that the resolution of council only becomes binding policy or council or management as the case may be, only becomes binding policy if an aggregate majority of members of the division or district branch voted in the lodge meetings, vote in favour of the resolution.

25 So each resolution, not only this resolution has to go to an aggregate meeting. An aggregate vote sorry. That would seem to be a far more certain method of getting the fact of the resolution before the membership than the publication in the Common Course. However the Act requires the publication in Common Course and the statutory declaration on behalf of each of the applicants sets out the way in which that is satisfied.

Section 212 of the Act provides for objections to be lodged. I understand that no such objections have been lodged to any of the applications.

30 THE REGISTRAR: Yes I confirm that the notice was publicised and I will just check when that was, 30 March - the notice setting the details of the applications were published and just for the record they were published in the Sydney Morning Herald, the Adelaide Advertiser, Brisbane Courier Mail, the Hobart Mercury and the Perth West Australian and I confirm there were no objections lodged.

35 MR TYSON: Thank you Mr Registrar. Moving to perhaps the most important provision, section 213. That requires that you be satisfied firstly that the rules of the organisation or branch comply with the requirements of the Act relating to the conduct of elections. Those matters have been dealt with in the 198.

THE REGISTRAR: Rather than put you through the process of going through sections 197, 199 and section 200 covers casual vacancies, I will record for the record that all of those provisions are covered appropriately within the rules.

5 MR TYSON: Thank you Mr Registrar. Section 213(b) requires that the elections will be conducted under the rules of the organisation or branch as the case may be and the Act and in a manner that will afford members entitled to vote at such elections and adequate opportunity of voting without intimidation. The submissions that we would make in this regard are as follows:

10 In the long history of the Miners Federation and you have heard evidence that this mode of election has been conducted since the thirties at least, there is not to the knowledge of the current officers, there has never been an allegation of ballot irregularity. Certainly within the 28 years of Mr Maitland's experience with the organisation there has not been such an allegation.

15 The membership of the Miners Federation and its successor, the division have a strong and comparatively stable membership organised at lodge level. There is perhaps a greater understanding of the operation of the organisation than one might find in other registered organisations. There is as you have heard, a much greater participation in the organisation's affairs and the understanding  
20 of its traditions including the election process and a much greater understanding of the requirement of the rules in this regard.

The process itself as demonstrated by rule 17 allows a prospective elector to vote in secret and without intimidation and the ballot itself is to be controlled - has traditionally been controlled and will be controlled by returning officers  
25 who are senior members of the organisation with experience of the rules, who have actively participated in the organisation's affairs over many years and who can be relied upon to ensure that so far as practicable, no irregularity will occur. In these circumstances we would submit that the application should be granted.

30 THE REGISTRAR: Mr Tyson, if I can come back to the question of the returning officer. Mr Maitland has given evidence that Mr Whiley has been approached for the division and of the eight applicants in these proceedings, seven of them have indicated support for him being nominated as the returning officer.

35 MR TYSON: Yes.

THE REGISTRAR: What is it you propose to do about it. I forget which one of the branches had not - - -

MR TYSON: Queensland.

THE REGISTRAR: Queensland. Part of my obligation is to be satisfied, particularly in regard to that issue of the members being able to vote without intimidation and the processes be followed appropriately, I would really like to know who it is proposed is the returning officer for Queensland?

5 MR TYSON: Queensland has not rejected the proposal, they just have not responded.

THE REGISTRAR: Is that likely to be a long process?

[11.57am]

10 MR TYSON: No. No it is not likely to be a long process Mr Registrar and in fact a further inquiry could be made almost immediately.

15 THE REGISTRAR: I would suggest that it is probably a good idea. Certainly the credentials of Mr Whiley as presented in evidence here do meet what I believe to be the appropriate requirements for such an individual in this kind of process and if it were confirmed that he were the returning officer for all of the branches then I am still able to treat all of the applications concurrently which I would prefer to do. Could I suggest we adjourn to allow you the opportunity to pursue that?

MR TYSON: Yes thank you Mr Registrar.

THE REGISTRAR: All right. We will stand adjourned.

20 SHORT ADJOURNMENT

[12.11pm]

THE REGISTRAR: Mr Tyson.

25 MR TYSON: Mr Registrar, during the adjournment we have managed to contact the relevant officials in the Queensland District branch and I can indicate to you that the Queensland District branch has also acceded to the suggestion that the one returning officer be appointed to the division in each of the district branches and that being Mr Whiley.

30 THE REGISTRAR: Thank you Mr Tyson. That virtually completes I think the requirement I have for material and evidence to be presented in this matter. As you would appreciate from the work that you have done with Deputy Registrar Buchanan, there is a significant amount of work that was done on the material prior to this proceeding and with the evidence from Mr Maitland and also the material that you have presented, I am in a position to indicate to you that I am satisfied as I am required by the Act that the rules

of the division and district branches comply with the requirements of the Act in the conduct of elections.

5 That elections will be conducted in my view under the rules of the division and district branches and the Act and in a manner that will afford members entitled to vote at such elections an adequate opportunity voting without intimidation. It is my intention to issue a certificate and I would propose to do that today in regard to of course those branches that are the subject of the application and your surprise to me about the southern branch will be a matter that I will have to take up with the Electoral Commission.

10 I will publish reasons at a later date but I will not allow that to delay the issue of a certificate and as I do understand the timetable you have in mind for the conduct of the elections and therefore a certificate today would assist in that process. Also I will be able to make available at the Registry a certified copy of the rules as they now stand as at today incorporating the new rule 17. You  
15 will probably have to give us a little bit of time to do that but I would suggest perhaps early after lunch would be a good opportunity to collect those documents.

MR TYSON: Thank you Mr Registrar.

20 THE REGISTRAR: That being the case, if there is no further business, the matter is adjourned.

**AT 12.13 PM THE MATTER WAS ADJOURNED  
INDEFINITELY**

Industrial Relations Act 1988

s.198(2) application for exemption from postal ballots

**Construction, Forestry, Mining and Energy Union  
(R No. 20016 of 1996)**

CERTIFICATE

On 19 February 1996, the Mining and Energy Division (the Division) of the Construction, Forestry, Mining and Energy Union lodged in the Industrial Registry an application for an exemption from subsection 198(1) of the Industrial Relations Act 1988 (the Act), including particulars of proposed alterations to rule 17 of the rules of the Mining and Energy Division.

I am satisfied that: -

- (i) the proposed alterations of the rules of the Division comply with and are not contrary to this Act (other than subsection 198(1)) and awards, are not otherwise contrary to law and have been made under the rules of the Division.
- (ii) the conduct of elections under the rules of the Division as proposed to be altered is likely to result in a fuller participation by members of the Division in the ballot than would result from a postal ballot; and
- (iii) the conduct of the elections under the rules of the Division as proposed to be altered will afford to members entitled to vote an adequate opportunity of voting without intimidation.

I therefore grant to the Division an exemption from subsection 198(1) of the Act.



*Mike Kelly*

MIKE KELLY  
INDUSTRIAL REGISTRAR

2 May 1996