FAIR WORK AUSTRALIA

20 September 2012

Mr Brian Parker
State Secretary
New South Wales Branch
Construction, Forestry, Mining and Energy Union
Locked Bag 1
LIDCOMBE NSW 1825

Dear Mr Parker

s.271 Certificate of Exemption - Construction, Forestry, Mining and Energy Union, New South Wales Branch - for year ending 31 December 2011 (FR2011/2853)

I refer to the application dated 17 August 2012 and to your further correspondence dated 17 September 2012 which were lodged with Fair Work Australia on 17 August and 17 September 2012 respectively for a certificate of exemption under section 271 of the *Fair Work (Registered Organisations) Act 2009* (the Act) in respect of the New South Wales Branch of the Construction, Forestry, Mining and Energy Union for the financial year ending 31 December 2011.

Section 271(3) of the Act requires an application under subsection 271(1) to be made within 90 days after the end of the financial year, or such longer period as the General Manager allows. Given that its financial year ended on 31 December 2011, the reporting unit was required to lodge its application under subsection 271(1) by 31 March 2012. The initial application was not lodged with FWA until 17 August 2012.

Given that a formal request for an extension of time was included within the application, and that the reason for such a request was provided on 17 September 2012, I have granted an extension of time under subsection 271(3) of the Act on this occasion. I trust that the remedial procedures which are referred to in your letter have been put into place to ensure future applications are lodged within time.

The certificate is enclosed.

In accordance with section 233(2) of the Act I also request that you confirm the date on which changes to the office holders that are referred to in your letter became effective.

Yours sincerely

Ailsa Carruthers
Delegate of the General Manager
Fair Work Australia

Terrace Towers
80 William Street
East Sydney NSW 2011

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Facsimile: (02) 9380 6990
Email: sydney@fwa.gov.au

CERTIFICATE

Fair Work (Registered Organisations) Act 2009
s.271 – Exemption from requirements of Part 3 in respect of financial year

Construction, Forestry, Mining and Energy Union
(FR2011/2853)

AILSA CARRUTHERS MELBOURNE, 20 SEPTEMBER 2012

s. 271 Certificate

[1] On 17 August 2012, an application was made under section 271 of the *Fair Work (Registered Organisations) Act 2009* for a certificate of exemption by the New South Wales Branch (the NSW Branch) of the Construction, Forestry, Mining and Energy Union (CFMEU), in respect of the financial year ending 31 December 2011, including a request for an extension of time for lodgement.

[2] The application was signed by Mr Brian Parker as Secretary of the NSW Branch of the CFMEU. On 21 August 2012, Fair Work Australia (FWA) wrote to Mr Parker stating that the information the CFMEU had lodged with FWA in its 2012 annual return indicated that the Secretary of the NSW Branch of the CFMEU was Mr Tulloch, and that Mr Parker's capacity in the NSW Branch was 'State Joint Vice President'. The correspondence also requested the reason why the application had not been lodged within 90 days of the financial year ending 31 December 2011 as required by s. 271(3) of the Act.

[3] On 17 September 2012, Mr Parker replied by correspondence stating that Mr Tulloch had officially resigned from his offices and that the NSW Construction and General Divisional Branch Management Committee had appointed Mr Parker to Mr Tulloch's offices, including as State Secretary of the NSW Branch of the CFMEU, in accordance with rule 48(ii) of the CFMEU's federal rulebook. Mr Parker stated that the reason for the late lodgement was due to a change of personnel and that the Branch leadership had been unaware the application had not been attended to. Mr Parker submitted that procedures had now been put into place to ensure that future lodgements would be lodged on time.

[4] I allow an additional period of time for the application to be made up to the date on which the application was lodged.

[5] I CERTIFY that I am satisfied that the branch did not have any financial affairs in the financial year ending 31 December 2011.

DELEGATE OF THE GENERAL MANAGER
FAIR WORK AUSTRALIA

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CONSTRUCTION FORESTRY MINING AND ENERGY UNION
NEW SOUTH WALES BRANCH

17 September, 2012

Fair Work Australia,
Statutory Services Branch
Level 8
80 William Street
East Sydney
NSW 2011

ATTENTION: Stephen Kellett/David Vale

Dear Sir,

Re: Fair Work (Registered Organisations) Act 2009
Section 271
Application for Certificate
FR 2011/2853

I refer to the above application and your correspondence of 21 August 2012.

I wish to advise that Mr Tulloch has formally resigned from his positions within the CFMEU, including as Divisional Branch Secretary of the CFMEU Construction and General Division NSW Divisional Branch (the Divisional Branch) and the CFMEU (NSW Branch) (the Branch). Following the resignation of Mr. Tulloch as Divisional Branch Secretary, I was appointed as his replacement in that position by the Divisional Branch Management Committee of the NSW Divisional Branch.

Rule 48(ii) of the Rules of the CFMEU provides:-

> *(ii) Where, in accordance with the Rules of the Union, an officer of a Divisional Branch within a Branch area ceases to hold office as an officer of the Divisional Branch such officer shall at the same time cease to hold office as a State officer in accordance with this rule. Provided that the member who replaces such a Divisional Branch officer in the office in the Divisional Branch shall also fill the vacancy created in the position of State officer only until such time as the State officer's position can be filled in accordance with the rules governing casual vacancy, or, if the vacancy occurs within 12 months of an ordinary election, by the ordinary election.*

By operation of the above rule and by virtue of my appointment as Divisional Branch Secretary, I understand that I presently occupy the position of Secretary of the Branch and am able to make the present application in that capacity. I therefore seek to press the application for exemption made in my correspondence of 17 August, 2012 and rely on the matters set out in that correspondence in support of that application.

Construction Forestry Mining and Energy Union New South Wales Branch | **Brian Parker** State Secretary **Rita Mallia** State President | 12 Railway Street LIDCOMBE | Locked Bag 1 LIDCOMBE NSW 1825 | T: +61(2) 9749 0400 F: +61(2) 9649 7100 W: cfmeunsw.asn.au E: enquiries@nsw.cfmeu.asn.au

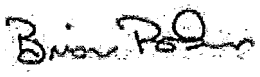
Your correspondence has however drawn to our attention an error in the 2012 list of office holders for the Branch. Because of changes which took place at the Divisional Branch level at the end of December 2011 and the operation of rule 48 as referred to above, the return should specify me rather than Mr. Tulloch as the Branch Secretary, Ms Rita Mallia as State Senior Vice-President and Mr. Rob Kera as State Joint Vice President. This appears to have been the result of an administrative oversight in the preparation of the return and I would ask that this information be amended to reflect the position as at the date specified in the return.

In relation to the request for an extension of time in which to make this application I advise that in addition to the departure of Mr. Tulloch there have been other changes of personnel within the Branch (and the Divisional Branch) which included the departure of persons who had previously had the responsibility for the preparation and filing of these applications. The General Manager of the Divisional Branch was on extended long service leave and unavailable during the period in which these applications are customarily made and has since formally resigned from that position. The current Branch leadership was unaware that the application had not been attended to by those previously responsible.

Once the current leadership and new General Manager were aware that the requisite application had not been lodged we took steps to lodge the application as soon as possible. I have now discussed the issue with the appropriate officers and employees to put in place procedures to ensure that these matters are attended to in a timely fashion in the future.

I trust this information is sufficient and thank you for your assistance with this matter.

Yours faithfully,



Secretary
CFMEU
New South Wales Branch.

FAIR WORK AUSTRALIA

21 August 2012

Mr Brian Parker
State Joint Vice President
New South Wales Branch
Construction, Forestry, Mining and Energy Union
Locked Bag 1
LIDCOMBE NSW 1825

Also by fax: (02) 9649 7100

Dear Mr Parker

Re: s271 Certificate of Exemption - Construction, Forestry, Mining and Energy Union, New South Wales Branch - for year ending 31 December 2011 (FR2011/2853)

I refer to your application dated 17 August 2012 which was lodged with Fair Work Australia on 17 August 2012 for a certificate of exemption under s271 of the *Fair Work (Registered Organisations) Act 2009* in respect of the New South Wales Branch of the Construction, Forestry, Mining and Energy Union (**CFMEU**) for the financial year ending 31 December 2011.

I note that you have signed the application under the title of Secretary of the New South Wales Branch (the reporting unit) of the CFMEU. However, according to the CFMEU's 2012 Annual Return, your office within the reporting unit is 'State Joint Vice President'. Accordingly, could you please lodge an amended application under the title of 'State Joint Vice President' of the NSW Branch of the CFMEU, or submit one signed by the Secretary of the reporting unit, which according to the CFMEU's 2012 Annual Return is Mr Mal Tulloch, with his correct title.

In addition, s271(3) states that an application for an exemption from the requirements of Part 3 of the Act must be made within 90 days after the end of the financial year. The application you have made for a certificate of exemption is outside the permissible period for making such an application as the application should have been lodged no later than 31 March 2012. Under the Act the General Manager may allow a longer period for an application to be lodged but is not compelled to do so.

Could you, or whichever office holder lodges the amended application, please provide reasons why the lodgment was not made within the prescribed period in accordance with s271(3) of the Act.

Yours sincerely

David Vale
Manager, Organisations, Research and Advice - NSW
Fair Work Australia

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East Sydney NSW 2011

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CONSTRUCTION FORESTRY MINING AND ENERGY UNION
NEW SOUTH WALES BRANCH

Fair Work Australia,
Statutory Services Branch
Level 8
80 William Street
East Sydney
NSW 2011
ATTENTION STEPHEN KELLETT

Dear Sir,

Re: Fair Work (Registered Organisations) Act 2009
Section 271
Application for Certificate

I am Secretary of the Construction, Forestry, Mining and Energy Union New South Wales Branch (the Branch).

Pursuant to section 271 of the *Fair Work (Registered Organisations) Act* 2009 (the Act), I hereby apply for a certificate of exemption for the Branch in respect of the financial year ending 31st December 2011 (the financial year).

In support of this application I submit as follows:

1. The CFMEU consists of a number of Divisions.

2. There exists a number of Divisional Branches (or in the case of the Mining and Energy Division, District Branches) within these Divisions. Such Divisional (or District) Branches function within a designated geographical area, in most cases being the State or Territory in which they are established.

3. The CFMEU and each Division and Divisional (or District) Branch thereof submit annual financial returns in accordance with Chapter 8 of the Act.

4. CFMEU State Branches, including the Branch, consist of the members and officers of each Divisional (or District) Branch in each State or Territory.

5. The Branch has not had an account with a bank or any other financial institution nor has it had custody of any real property or monies during the financial year.

6. The Branch had no reason to keep accounting records and did not have any financial affairs during the financial year.

7. The Branch has not traded or carried out financial transactions of any kind and has not expended economic resources or incurred any financial obligations to conduct its activities during the financial year.

Construction Forestry Mining and Energy Union New South Wales Branch | Brian Parker State Secretary Rita Mallia State President | 12 Railway Street LIDCOMBE | Locked Bag 1 LIDCOMBE NSW 1825 | T: +61(2) 9749 0400 F: +61(2) 9649 7100 W: cfmeunsw.asn.au E: enquiries@nsw.cfmeu.asn.au

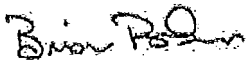
8. The various Divisional/District Branches within the State of New South Wales expend their own economic resources and incur financial obligations so that the Branch may conduct its activities.

9. No person or body corporate or trust expends its own economic resources or incurs financial obligations so that the Branch may conduct its activities.

10. Notwithstanding the above, the Branch has functioned in accordance with the rules of the CFMEU including the rules relating to Branches.

Pursuant to s 271(3), I would request an extension of time to the date of lodgement of this correspondence for the making of the application contained herein.

Yours faithfully,



Secretary
CFMEU New South Wales Branch.
17/08/2012

FAIR WORK AUSTRALIA

16 July 2012

Mr Andrew Ferguson
Secretary, New South Wales Branch
CFMEU
Locked Bag 1
LIDCOMBE NSW 1825

Dear Mr Ferguson

Lodgement of Financial Documents for year ended 31 December 2011 - Fair Work (Registered Organisations) Act 2009 ['FW(RO) Act'] - New South Wales Branch (FR2011/2853)

The FW(RO) Act requires audited financial accounts and statements to be lodged with Fair Work Australia within 6 months and 14 days of the end of its financial year. Where a reporting unit wishes to seek an exemption under section 271, it must ordinarily do so within 90 days of the end of the financial year, that is, where the financial year ends on 31 December, by 31 March. However this office has no record of lodgement of an application for exemption under s271 by the New South Wales Branch constituted under rule 28(i) of the Federal rules of the Construction, Forestry, Mining and Energy Union.

You must lodge an application for exemption without further delay, with an explanation as to why the application was not lodged earlier within the prescribed period, and with a request to the General Manager for the exercise of her discretion to allow a later time for lodgement, pursuant to subsection 271(3).

Failure to seek an exemption means the obligation to lodge audited financial accounts remains, in which case, I must draw your attention to the civil penalty provisions of the FW(RO) Act [see section 305(2)(ze)]. You should also be aware of the provisions of Part 1 of Chapter 9 of the FW(RO) Act which set out general duties of officers and employees of organisations and their branches in relation to financial management.

You may lodge the application electronically by sending an email with the documents attached to sydney@fwa.gov.au or you may send the documents by fax to (02) 9380 6990.

Yours sincerely,

Stephen Kellett
Organisations, Research & Advice Branch
Fair Work Australia

Fair Work Australia
80 William Street
EAST SYDNEY NSW 2011

Telephone: (02) 8374 6666
Facsimile : (02) 9380 6990
Internet : www.fwa.gov.au

FAIR WORK AUSTRALIA

13 January 2012

Mr Andrew Ferguson
State Branch Secretary, New South Wales Branch
Construction, Forestry, Mining and Energy Union
10-12 Railway Street
LIDCOMBE NSW 2141

Dear Mr Ferguson

Financial Reporting – New South Wales Branch, Construction, Forestry, Mining and Energy Union - for year ended 31 December 2011 (FR2011/2853)

This is a letter to remind you of the financial reporting obligations under the *Fair Work (Registered Organisations) Act 2009* in respect of the New South Wales Branch of the federally registered Construction, Forestry, Mining and Energy Union, that is, as established under the National rules and not to be confused with the Divisional Branch of the Construction and General Division.

In past years an application under s271 of the Act - for an exemption on the basis of no financial affairs - has been made. If you intend applying for an exemption, you should do so within 90 days, that is, by 31 March 2012.

Unless an application under s271 is made and granted, the obligation to lodge a financial return in accordance with the Act in respect of this Branch remains.

Relevant references may be found at **http://www.fwa.gov.au/index.cfm?pagename=regorgsfrguidelines** and **http://www.fwa.gov.au/index.cfm?pagename=legislationfwroact**. If you are in any doubt as to the requirements or wish to clarify any aspect of the relevant legislation, or anticipate any difficulty in complying with the requirements, do not hesitate to contact Fair Work Australia.

Yours sincerely,

Stephen Kellett

Organisations, Research and Advice Branch

Terrace Towers
80 William Street
East Sydney NSW 2011

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TIMELINE/ PLANNER

Financial reporting period ending:	

1. Prepare financial statements and Operating Report.		
1(a) A Committee of Management Meeting must consider the financial statements, and if satisfied, pass a resolution declaring the various matters required to be included in the Committee of Management Statement. 1(b) A #designated officer must sign the Committee of Management Statement which must then be forwarded to the auditor for consideration as part of the General Purpose Financial Report (GPFR).	/ /	*As soon as practicable after end of financial year* *This step must be completed and the Statement signed at a first meeting*
2. Auditor's Report prepared and signed and given to the Reporting Unit - s257	/ /	*Within a reasonable time of having received the GPFR* *(NB: Auditor's report must be dated on or after date of Committee of Management Statement*
3. Provide full report free of charge to members – s265 The full report must include: • the General Purpose Financial Report (which includes the Committee of Management Statement); • the Auditor's Report; and • the Operating Report.	/ /	*(a) if the report is to be presented to a General Meeting the report must be provided to members 21 days before the General Meeting,* *or* *(b) if the report is presented to a Committee of Management meeting*, the report must be provided to members within 5 months of end of financial year.*
4. Present full report to second meeting: (a) General Meeting of Members - s266 (1),(2); OR (b) where the rules of organisation or branch allow* - a Committee of Management meeting - s266 (3)	/ / / /	*Presentation occurs at a 'second' Meeting* *A second meeting which is a General Meeting must take place within 6 months of end of financial year* *A second meeting which is a meeting of the Committee must take place within 6 months of end of financial year*
5. Lodge full report with Fair Work Australia, together with the #Designated Officer's certificate++ – s268	/ /	*Within 14 days of presentation at second meeting*

* The full report may only be presented to a committee of management meeting if the rules of the reporting unit provide that a percentage of members (not exceeding 5%) are able to call a general meeting to consider the full report.

The Committee of Management Statement and the Designated Officer's certificate must be signed by the Secretary or another officer who is an elected official and authorised under the rules (or by resolution of the organisation) to sign the statement or certificate – s243.

++ The Designated Officer's certificate must state that the documents lodged are copies of the documents provided to members and presented to a meeting in accordance with s266 – dates of such events must be included in the certificate. The certificate cannot be signed by a non-elected official.