



FairWork  
Commission

10 July 2015

Mr John Setka  
State Secretary  
Construction, Forestry, Mining and Energy Union – Victoria Branch

via email: [queries@vic.cfmeu.asn.au](mailto:queries@vic.cfmeu.asn.au)

Dear Mr Setka

**Section 271 application for exemption from the financial reporting obligations of Part 3 of Chapter 8 of the Fair Work (Registered Organisations) Act 2009 for financial year ended 31 December 2014 (FR2014/469)**

I refer to your application pursuant to s271 of the *Fair Work (Registered Organisations) Act 2009* (RO Act), lodged in the Fair Work Commission (FWC) on 2 July 2015, in respect of the Victorian Branch of the Construction, Forestry, Mining and Energy Union (CFMEU Vic) for the financial year ended 31 December 2014.

I am satisfied that the CFMEU Vic is a reporting unit and that it did not have any financial affairs in the financial year which ended 31 December 2014. The attached certificate reflects this decision.

I take this opportunity to remind you of the importance of the reporting unit strictly complying with each applicable aspect of the legislative reporting requirements under the RO Act, the *Fair Work (Registered Organisations) Regulations 2009* and the Reporting Guidelines.

As you acknowledged in your correspondence lodged with FWC on 2 July 2015, an application pursuant to s271 of the RO Act is required to be filed within 90 days after the end of the financial year. In your application for a s271 certificate, you requested an extension of time in circumstances in which the application was being lodged approximately 3 months late and you referred to 'staff turnover' as being the reason for the request.

While I was by no means persuaded that reference to 'staff turnover' was a satisfactory explanation for a failure to comply with the identical statutory requirement for the second consecutive year, by correspondence dated 3 July 2015 I provided an opportunity for further submissions to be lodged to address the issue.

I acknowledge receipt of your further submission dated 9 July 2015 in which you provide more detailed information with respect to the circumstances you consider to surround the late lodgement. I have considered those circumstances and in particular, your statement that '*appropriate procedures have been implemented internally to ensure future obligations are met for the inactive entity in a timely manner*'.

Having considered the further material lodged and all of the relevant circumstances, in this instance I have allowed the application to be made more than 90 days after the end of the financial year.

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GPO Box 1994	Facsimile: (03) 9655 0401
Melbourne VIC 3001	Email: <a href="mailto:orgs@fwc.gov.au">orgs@fwc.gov.au</a>

I advise however that in all the circumstances, a third failure to comply with the statutory requirements with respect to an application for a s 271 certificate were there to be one, is very likely to be refused in the absence of particularly exceptional circumstances.

If you wish to discuss this matter, please contact Ms Joanne Fenwick on 03) 8661 7886 or by email to [joanne.fenwick@fwc.gov.au](mailto:joanne.fenwick@fwc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CE', with a large loop on the left and a vertical stroke on the right.

Chris Enright  
Director  
Regulatory Compliance Branch



# CERTIFICATE

*Fair Work (Registered Organisations) Act 2009*

s.271 - Reporting unit's exemption from requirements of Chapter 8, Part 3

**Construction, Forestry, Mining and Energy Union – Victorian Branch**  
(FR2014/469)

MR ENRIGHT

MELBOURNE, 10 JULY 2015

*Certificate of exemption from the requirements of Chapter 8, Part 3 of the Fair Work (Registered Organisations) Act 2009*

[1] On 2 July 2015 an application was made under s 271 (1) of the *Fair Work (Registered Organisations) Act 2009* (the Act) by the Victorian Branch of the Construction, Forestry, Mining and Energy Union for a certificate of exemption in respect of the financial year ended 31 December 2014.

[2] The application was lodged three months after the 90 day period ordinarily prescribed by sub-section 271(3) of the Act. The Branch sought an extension of time under sub-section 271(3) of the Act to allow a later period for lodgement. Further information was subsequently submitted to the Fair Work Commission on 9 July 2015 by the Victorian Branch of the Construction, Forestry, Mining and Energy Union in relation to the events surround the late lodgement and a commitment to ensure appropriate internal procedures are implemented to avoid the occurrence of future late lodgements.

[3] Having regard to the circumstances, I approve the extension requested under s 271 (3) of the Act.

[4] On the basis of the material provided in the application, I am satisfied that the applicant is a reporting unit that does not have any financial affairs in respect of the financial year which ended 31 December 2014.



DELEGATE OF THE GENERAL MANAGER

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9 July, 2015

Chris Enright  
Fair Work Commission  
Level 8  
80 William Street  
East Sydney, NSW 2011

Dear Chris Enright,

**Re: Fair Work (Registered Organisations) Act 2009 Inactive entity  
Section 271 -Application for Certificate**

I refer to your letter dated 3 July 2015 in response to our Section 271 application dated 12 June, 2015 and would like to give further information as requested in your letter dated 3 July 2015 regarding the application.

In last year's application we noted that the delay in lodging was due to the need to ensure proper authorisation of the Application having regard to the vacancy of the positions of CFMEU-Victorian Branch Officers. We noted that in the past a CFMEU State Branch Officer had made an appropriate application on behalf of the CFMEU State Branch. However, those positions were vacant and the subject of the election process and there was no Officer within the Victorian State Branch able to make application at the relevant time. Having regard to these vacancies last year's Application was made at the direction of the National Executive, in accordance with Rule 28 of the Unions Rules. Sometime was required to obtain the authorisation of the national Executive, contributing to the delay in lodging that application. I note that the issue that caused delay last year has now been rectified.

This year's application dated 29 of June was made in response to the reminder letter dated 12 June from Robert Pfeiffer addressed to:

- State Secretary Construction, Forestry, Mining and Energy Union-Victoria Branch

Once this letter was received our staff acted promptly and also investigated as to why an application had not been done sooner.

The investigation has brought to light that a letter addressed to

- Branch Secretary Construction ,Forestry, Mining and Energy Union-Victoria Branch

A letter dated 14 January had been received. That letter asked for accounts to be done .This request was confused, due to staff turnover, to be a request in relation to the active entity with a very similar name CFMEU Construction and General Division Vic/Tas Divisional Branch (which were well in hand).The reason for this misperception was that the reference to Branch Secretary rather than the correct State Secretary.

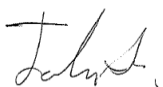
Additionally we note that in the past requests in relation to this inactive entity made reference to the inactivity. It has now been clarified with Robert Pfeiffer that correspondence to inactive entities will often have a reference to the inactivity but may not (as in this circumstance). Unfortunately in the absence of the Finance/Accounts manager being on leave, the appropriate staff did not become aware that this application was outstanding. The matter was also compounded by the prior year process not being straight forward and having taken part with significant contribution of staff in our National office (having to hold elections for the inactive entity).

The delay in the application in question has not been intentional but rather a genuine oversight and was promptly rectified after the receipt of the communication received on the 12 June. Appropriate procedures have been implemented internally to ensure future obligations are met for the inactive entity in a timely manner. To further assist in avoiding this circumstance happening in the future we ask that such correspondence be flagged for the attention of “Finance Department” of the CFMEU Construction and General Division Vic/Tas Branch, which has been asked by the State Branch to act on its behalf.

I note that the application under s271 of the Act is required to be filed within 90 days after the end of the financial year or within such longer period as the General Manager allows after the financial year and request that the application made be accepted.

Please take into consideration that this State Branch has never been financially active and having regard to the lack of financial activity in the Branch, no prejudice would be caused to any member of the Union by the grant of extension of time for the request

Yours faithfully,



John Setka

**State Secretary**

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



3 July 2015

Mr John Setka  
State Secretary  
Construction, Forestry, Mining and Energy Union  
Victoria Branch  
500 Swanston Street  
CARLTON VIC 3053

via email: [queries@vic.cfmeu.asn.au](mailto:queries@vic.cfmeu.asn.au)

Dear Mr Setka,

**Application by Victoria Branch of CFMEU for a certificate under s 271 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) - FR2014/469**

I refer to your application which was received on the 2 July 2015 addressed to 'Fair Work Australia' [sic] in which for the reasons set out in your application you seek the following:

- (a) the issue of a certificate under s 271 of the RO Act exempting the Victoria Branch of the CFMEU as a reporting from certain reporting obligations; and
- (b) an extension to the statutory obligation to make the s 271 application within 90 days after the end of the relevant financial year.

The purpose of this correspondence is to advise you that as the Delegate of the General Manager, I propose to carefully consider this application and the circumstances in which it has been made. Some of the relevant circumstances which I will be considering include the following:

- The application for a certificate has been made approximately three (3) months after the date on which the application should have been made in order to comply with the RO Act;
- The application contained a request for an extension to file approximately 3 months after it was already overdue;
- The Regulatory Compliance Branch (RCB) of the Fair Work Commission (FWC) wrote to you on 14 January 2015 formally reminding you as the Branch Secretary of your reporting obligations with respect to financial reporting;
- The similarities of this application and request for an extension to the previous financial year in which you lodged a similar obligation which was two months late; and
- Whether, after considering such circumstances (if any) as are prescribed, that the reporting unit did not have any financial affairs in a financial year.

In recent years, the RCB has been particularly focusing on assisting registered organisations to achieve high levels of voluntary compliance and our letter of 14 January 2015 to remind you of the relevant reporting obligations, 3 months in advance of the due date, was part of that focus.

It is disappointing to note that for the past two financial years, reminder correspondence designed by the RCB to assist you in achieving voluntary compliance has been of such limited utility.

I understand from your correspondence that the explanation for the Branch failing to meet the identical statutory obligation for the second consecutive year is contained within your reference to the words '*staff turnover*'.

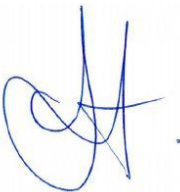
While I am not persuaded that the words '*staff turnover*' sufficiently explain the failure by the Branch to meet its statutory obligations for two consecutive years, I am prepared to allow the Branch a further week (until Friday 12 July 2015) to provide any further submissions it might like to make.

I advise that in the event I do not allow the extension applied for, the reporting unit will be required to adhere to the requirements set out in Chapter 8, Part 3 of the RO Act.

Finally, I advise that in January 2013, the organisation previously known as 'Fair Work Australia' became the Fair Work Commission.

In the meantime, if you have any questions or would like to discuss the matter further, please contact Ms Joanne Fenwick on 03) 8661 7886 or by email [joanne.fenwick@fwc.gov.au](mailto:joanne.fenwick@fwc.gov.au).

Yours Sincerely



**Chris Enright**

**Director**

**Regulatory Compliance Branch**

**Fair Work Commission**

**03 8661 7818**

**0417 311380**

**[chris.enright@fwc.gov.au](mailto:chris.enright@fwc.gov.au)**



29 June, 2015

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



Dear Sir/Madam

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

I refer to your letter dated 12 June, 2015 and make the following request for this entity. 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 ended 31 December, 2014.

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.
8. The various Divisional/District Branches within the State of Victoria 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.

I note that an application pursuant to S271 of the Act is required to be filed within 90 days after the end of the financial year or within such longer period as the General Manger allows after the end of the financial year. In relation this application the relevant financial year ended on 31 December 2014 and I ask that you allow a longer period for the lodgment of this application. We note that the reason for the delay was staff turnover. In addition we note that having regard to the lack of financial activity in the Branch as noted at points 5-9, no prejudice would be caused to any member of the Union by the grant of an extension of time by the period necessary.

Yours faithfully,



John Setka

State Secretary

Construction, Forestry, Mining and Energy Union, Victoria Branch