



STATEMENT AND DIRECTIONS

Fair Work (Registered Organisations) Act 2009

s.94(1) RO Act - Application for ballots for withdrawal from amalgamated organisation

Application by Michael O'Connor – withdrawal from amalgamated organisation – Manufacturing Division – Construction, Forestry, Maritime, Mining and Energy Union
(D2022/11)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 16 SEPTEMBER 2022

Application for withdrawal from amalgamated organisation – Manufacturing Division – Construction, Forestry, Maritime, Mining and Energy Union.

Background

[1] Mr Michael O'Connor has applied under s.94 of the *Fair Work (Registered Organisations) Act 2009 (RO Act)* for a ballot to be held to decide whether the Manufacturing Division of the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) should withdraw from the CFMMEU (**the Application**). The Applicant has applied for an order that pursuant to s.100(3) of the RO Act that the ballot be conducted in part as an attendance ballot and in part as a postal ballot.

[2] The Application and accompanying documents were lodged on 15 September 2022 and comprised:

- a completed Form 2 Application for ballot under Part 3 of Chapter 3 of the RO Act;
- a copy of a resolution by the Divisional Executive Committee of the Manufacturing Division authorising Mr O'Connor to make the Application;
- a written outline of the proposal for the Manufacturing Division to withdraw from the CFMMEU;
- a copy of the name and rules proposed for the organisation to be registered by the Manufacturing Division once the proposed withdrawal from amalgamation takes effect; and
- a copy of the name and altered rules for the amalgamated organisation, the CFMMEU, once the proposed withdrawal from amalgamation takes effect.

[3] For the Commission to order that a vote of the constituent members be taken by secret ballot to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation, it must be satisfied of the matters in s.100(1) of the RO Act. This provides:

100 Orders for ballots

- (1) The FWC must order that a vote of the constituent members be taken by secret ballot, to decide whether the constituent part of the amalgamated organisation should withdraw from the organisation, if the FWC is satisfied that:
 - (a) the application for the ballot is validly made under section 94; and
 - (b) the outline under section 95 relating to the application:
 - (i) is a fair and accurate representation of the proposal for withdrawal from the organisation; and
 - (ii) addresses any matters mentioned in paragraph 95(1)(b) or prescribed for the purposes of paragraph 95(1)(c) in a fair and accurate manner; and
 - (ba) the material required by section 95A complies with the requirements of that section; and
 - (c) the proposal for withdrawal from the organisation complies with any requirements specified in the regulations.

[4] Section 100(1)(a) requires the Commission to be satisfied that the application for the ballot is validly made under s.94. That section provides:

94 Applications to the FWC for ballots

- (1) An application may be made to the FWC for a secret ballot to be held, to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation, if:
 - (a) the constituent part became part of the organisation as a result of an amalgamation under Part 2 or a predecessor law; and
 - (b) the amalgamation occurred no less than 2 years prior to the date of the application; and
 - (c) the application is made before the period of 5 years after the amalgamation occurred has elapsed.
- (2) However, an application cannot be made if:
 - (a) during the last 12 months, the FWC has rejected an application for a ballot to be held in relation to the constituent part of the organisation; or
 - (b) a ballot was held that rejected the withdrawal of the constituent part.
- (3) The application may be made by:
 - (a) the prescribed number of constituent members; or
 - (aa) a person authorised to make the application by the prescribed number of constituent members; or
 - (b) a committee of management elected entirely or substantially by the constituent members, whether by a direct voting system or a collegiate electoral system; or
 - (c) if the application relates to a separately identifiable constituent part—the committee of management of that part; or

- (d) a person who is:
- (i) either a constituent member or a member of a committee of management referred to in paragraph (b) or (c); and
 - (ii) authorised to make the application by a committee of management referred to in paragraph (b) or (c).
- (4) The application must be in the prescribed form and must contain such information as is prescribed.
- (5) A constituent member of an amalgamated organisation who is not a financial member is taken not to be a constituent member for the purposes of subsection (3).
- (6) The regulations may prescribe the manner in which an authorisation for the purposes of paragraph (3)(aa) and subparagraph (3)(d)(ii) must be made.

[5] In summary, s.94 requires the application to be made:

- in respect of a ‘constituent part’ of an ‘amalgamated organisation’;¹
- more than 2 years but less than 5 years after the amalgamation occurred,² but an application cannot be made if, during the last 12 months, the Commission has rejected an application for a ballot to be held in relation to the constituent part, or a ballot was held that rejected the withdrawal of the constituent part.³ The Commission does however have discretion to accept an application made more than 5 years after the date of amalgamation pursuant to s.94A of the RO Act;
- by a person or persons who is entitled to make an application;⁴
- in the form and containing the information prescribed by the *Fair Work (Registered Organisations) Regulations 2009*.⁵

[6] In considering whether to order a ballot to be held, the Commission may hear from the applicant, the amalgamated organisation, a creditor of the amalgamated organisation, and any other person who would be affected by the withdrawal of the constituent part from the amalgamated organisation.⁶

Next steps

[7] This matter is listed for Mention at **10:15 AM on Wednesday, 21 September 2022** via Teams. A Notice of Listing with details for attendance will be sent to parties shortly.

[8] Interested parties are directed to submit draft directions by no later than **2.00 pm on Tuesday, 20 September 2022**.

[9] The Applicant and the CFMMEU are directed to confer and, if possible, reach agreement in relation to the proposed directions, including on any preliminary/jurisdictional issues to be decided.

Other matters – keep informed

[10] The Commission has established a dedicated Major Cases webpage for this matter.

[11] The Commission's subscription service will be used to notify interested parties of updates during this matter such as deadlines for the filing of submissions and evidence, notices of listing and when any decisions or statements are issued. A dedicated subscription service called 'Ballot for withdrawal of ME Division from CFMMEU' has been established. Interested parties are encouraged to subscribe to receive notifications on the [subscription services page](#) on our website. Any questions about the subscription service can be sent to ros@fwc.gov.au.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR745943>

¹ RO Act, s.94(1). See s.93 for the definitions of 'amalgamated organisation' and 'constituent part'.

² RO Act, s.94(1).

³ RO Act, s.94(2).

⁴ RO Act, s.94(3).

⁵ RO Act, s.94(4).

⁶ RO Act, s.100(2).