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7 November 2008

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Assistant Director
Adjudication Branch
Australian Competition and Consumer Commission

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~~Private & Confidential~~ *ok 10/11/08*

Dear Madam

**Re: Application for Authorisation (A99103) by the
CFMEU (C & G Division, Queensland)
for collective negotiations by owner drivers with earthmoving
contractors in South-East Queensland.**

We enclose submission by the Transport Workers Union of Australia in relation to the Application for Authorisation by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-East Queensland.

We note the submissions are adopted by the Queensland Branch of the Transport Workers Union of Australia

Yours faithfully

**Michael Doherty
Senior Associate**

**Employment & Industrial Law Section
MAURICE BLACKBURN
(Enc)**

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Submission by the Transport Workers' Union of Australia

Re; Application for Authorisation (A99103) by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-East Queensland.

1. The Transport Workers' Union of Australia ("TWUA") makes the following submissions in relation to an Application for Authorisation (A99103) by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-east Queensland. ("**CFMEU Application**")
2. These submissions are also adopted by the Transport Workers' Union of Australia, Queensland Branch. ("**TWU QLD**")
3. The TWUA makes submissions on the discrete issues of;
 - The scope of the coverage rules of the CFMEU vis-à-vis the TWUA; and
 - The legislative framework for collective bargaining under the *Trade Practices Act 1974* (Cth); ("**TPA**") and
 - The public benefits and/or public detriment test as applied against the CFMEU Application.

Scope and Coverage Issues

4. The TWUA has been in existence as a trade Union for over 100 years. It currently represents over 85,000 members throughout Australia in the transport industry. A great many of these members are contract carriers or as they are commonly referred to "*owner drivers*".
5. The TWUA is an industrial association registered pursuant to schedule on of the *Workplace Relations Act 1996* (Cth). Annexure B of the Certified Rules of the TWUA set out the conditions of eligibility for membership. A copy of Annexure B to the TWUA Rules is marked "**Schedule 1**" to the Submissions.

6. Relevantly, Annexure B (A)(1)(a) of the TWUA Rules sets out the eligibility of persons who may seek membership of the TWUA. The paragraph states *“The Union shall consist of an unlimited number of persons employed or seeking to be employed in or connection with the industry or industries and/or occupation, and /or calling and/or vocations, and/or industrial pursuits of –*

The transport of persons and/or passengers and/or goods, wears, merchandise or any material whatsoever, by or animals or by aircraft or by motor, steam, oil, electric or other mechanically propelled contrivances..... in conjunction with the construction and excavation of earthworks: and.....”

7. Pursuant to Schedule B(B) of the TWUA Rules; *“The Union shall also consist of such independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for Membership of the Union”*

8. Therefore, broadly speaking, the TWUA is (as the name implies), is a Union for persons engaged in the calling of transportation including owner drivers.

9. In clause 1.2 of the Submissions by the CFMEU, it that under the Constitution of the CFMEU, owner drivers are allowed to be members of the CFMEU. The TWUA strongly disagrees with this proposition.

10. It is unclear from the CFMEU Submissions why it contends that it has the ability for persons who are clearly transport industry workers to conveniently belong to the CFMEU. Apart from an oblique reference to the Union's “Constitution”, there is no evidence in support of the assertion that transport workers (specifically owner drivers) may belong to the CFMEU.

11. The Registered Rules of the CFMEU (Construction and General Division) state in clause 2 in relation to membership eligibility;

“Every member who is a member of the union by virtue of Rule 2 Sub-rules (A), (B) and (N) of the National Rules shall belong to this Division.

Further, every member in the States and Territory of Queensland, New South Wales, South Australia, The Australian Capital Territory, Northern Territory, Tasmania,

Victoria, and Western Australia, who is a member of the Union by virtue of Rule 2 sub-rule (E) of the National Rules, shall also be eligible for membership of this Division.”

A copy of Rule 2 of the CFMEU Construction and General Division Rules is marked “**Schedule 2**” to the Submissions.

12. When the relevant National Rules of the CFMEU (*Rule 2 Sub-rules (A), (B) and (N)*) are examined, they reveal no basis for the contention by the CFMEU (Construction and General Division) that they have coverage of owner drivers engaged in earth moving. A copy of Rule 2 of the National Rules of the CFMEU is marked “**Schedule 3**” to the Submissions.
13. The TWUA Rules clearly provide for the coverage of the work sought to be included under the scope of the CFMEU Application (and owner drivers performing that work). No such provision exists in the National Rules of the CFMEU. The TWUA will expand upon the relevance of this matter in this submission when addressing the public detriment of the CFMEU Application.¹
14. The CFMEU Application is purported to be made by that Union on behalf of “...its owner driver members...”² However the CFMEU Application does not clearly set out the basis of the authority given to that Union by the 24 owner drivers to make the application. The only guidance on this issue is found in paragraph 2.1 of the CFMEU Application. When one considers paragraph 2.1, the only assumption that can be drawn is that the 24 owner drivers have authorised the CFMEU to make the Application on the basis of a relationship that flows from the 24 owner drivers’ purported membership of the CFMEU. Hence absent that relationship, there is no authority for the CFMEU to seek the Authorisation.
15. The CFMEU Application proposes that the parties to the proposed arrangements are “*Present and future owner driver members of the Union who provide earthmoving services in south east Queensland*”³. It necessarily follows that if owner drivers (including the 24 listed in Annexure A to the CFMEU Application) are not eligible to be members of the CFMEU, the Authorisation sought by the CFMEU will be a nullity as there will be no owner drivers to which the Authorisation could apply.

¹ Paragraph 33 to 36 of these submissions

² Paragraph 3.1 of the CFMEU Application;

³ Paragraph 3.2 (a) of the CFMEU Application;

16. The TWU submits that the CFMEU Rules do not permit owner drivers to be members of the CFMEU. Hence the CFMEU Application must fail at the very outset as the CFMEU does not have authority to make the application, nor are there any owner drivers to which the Authorisation could apply if granted.

The legislative framework for collective bargaining

17. The TWUA does not support the prohibition that currently exists in s. 93AB(9) of the TPA concerning use of collective bargaining by trade unions legitimately seeking to represent their membership. This approach is anathema to the proper operation of a democratic society and unfairly excludes the representative function of trade unions whereas any other legitimate or illegitimate organisation has a right of representation in such matters. This provision was opposed by the TWUA when it was introduced, and we maintain that opposition to s. 93AB(9).

18. Whilst the TWUA opposes the provisions of s. 93AB(9), the Union acknowledges the role of the federal Parliament as the supreme law making body in respect of the matters contained in the TPA. Hence they submit that the intention and effect of the CFMEU Application is at odds with prohibitions on collective bargaining by Trade Unions and/or associated Authorisations for an otherwise unlawful practice currently in existence pursuant to the TPA.

19. From a procedural perspective the CFMEU Application does no more than attempt to bypass the limitations on a trade union in respect of collective bargaining pursuant to the restrictions contained in s.93AB(9).

20. Although the CFMEU Application purports to seek authorisation for 24 members to form a committee to collectively bargain with earthmoving contractors, the experience of the TWUA is that most owner drivers do not have the expertise to engage in what are quite often complex and difficult issues in negotiation. Owner drivers are also generally time and resource poor, hence the TWUA is usually asked to be the representative of the owner drivers in disputes or negotiations with head contractors notwithstanding committees may have been formed. The Union plays a pivotal role in these negotiations not merely one of support albeit under instruction from the owner drivers.

21. Paragraph 3.5(d) of the CFMEU submissions makes reference to the proposal for the CFMEU to provide "advice and assistance as requested in the negotiations". In

consideration of the TWUA's experience as out in paragraph 20 above, this must be seen as an intention for the CFMEU to act on behalf of the owner drivers in something much more than an advisory capacity in any collective bargaining process. The TWUA submits that the when 88(1) is read in conjunction with the provisions of s. 93AB(9), the TPA does not permit this to occur.

22. The TWUA supports the concept of collective bargaining. It further supports the right of independent contractors (owner drivers) in the transport industry to have the ability to collectively bargain with contracting companies such as earth moving contractors, ready mix concrete suppliers and the like.
23. In NSW, where the legislation permits, the TWUA (and its state branches) has negotiated award like conditions on behalf of owner drivers in what is described as "*Contract Determinations*". These agreements are scrutinised and approved by the Industrial Relations Commission of NSW. They are industry based and set basic conditions of engagement. With respect to the excavated materials industry, a Contract Determination has been registered with the NSWIRC that sets basic rates for all contract carriers (owner drivers) performing cartage work for a contractor where the work involves any material that is removed from the earth at building and/or construction and/or demolition sites in NSW.⁴
24. Importantly, these Contract Determinations apply to all owner drivers who perform work in an industry within the Area of Incidence. There are no restrictions placed on these owner-drivers such as membership of a particular Union. Hence they do not place any individual owner driver at a disadvantage in the manner in which the CFMEU Authorisation (if approved) will create an unfair commercial advantage for a relatively small number of owner drivers who must be members of the CFMEU.
25. Following intense lobbying by the TWUA and its NSW Branch, the significance of Contract Determinations was recognised by the Howard Government when it introduced the *Independent Contractors Act*⁵. Unfortunately, Contract Determinations remain a creature of NSW and are not available in Queensland.
26. In Victoria, the Owner Drivers and Forestry Contractors Act authorises conduct that may be a breach of the TPA with the effect that industry wide negotiations for terms and

⁴ Transport Industry-Excavated Materials, Contract Determination.

⁵ s(2)(b)(i) of the *Independent Contractors Act 2006* (Cth).

conditions and rates may occur, including conduct preparatory to the entering of contracts. What would otherwise possibly constitute a restrictive trade practice is permitted by virtue of the legislative exemption constituted by the Act. No such legislative exemption from the provisions of the TPA exist in the State of Queensland.⁶

27. In consideration of the restrictions placed on collective bargaining by sections 45 and 47 of the TPA, absent a legislative right, the only method(s) of collective bargaining for contract carriers (owner drivers) was found in the TPA. The only alternatives were to seek an Authorisation pursuant to s.88 or issue a Notification pursuant to s.93. This much was noted by the TWUA in its submissions to the *Inquiry into Independent Contracting and Labour Hire Arrangements*.⁷

28. Following the amendments to s.93 by the Howard Government in 2007 which introduced inter alia s.93AB(9), trade unions were locked out of being able to act as they have traditionally acted; negotiating collective agreements on behalf of members.

29. In the Second Reading Speech to the Bill introducing the *Trade Practices Legislation Amendment Bill (No. 1) 2005*, the Honourable M Pearce said; "*In considering public benefit and detriment, the ACCC will have particular regard to the government's intention that the collective bargaining provisions not be used to pursue matters affecting employment relationships. The act is for the promotion of competition and fair trading and the provision of consumer protection, not the pursuit of employee entitlements. This is further reinforced by an amendment which makes a notification invalid if it is lodged on behalf of a small business by a trade union, its officers or a person acting on the direction of the trade union.*" As objectionable as this comment may be, nevertheless it is a clear indication that the then Howard Government sought to and indeed has locked Trade Unions out of collective bargaining in so far as the TPA is concerned, to the detriment of thousands of owner drivers in the transport industry who happen to reside in states other than NSW and Victoria.

30. It is noteworthy that there has been no amendment to s. 93AB(9) of the TPA since the election of the Rudd Labor Government. To the contrary, a letter from Graeme Samuel, Chairman of the Australian Competition and Consumer Commission to the Hon Dr Craig Emerson, MP, Minister for Small Business, Independent Contractors and the Service

⁶ s64 *Owner Drivers and Forestry Contractors Act 2005* (Vic).

⁷ Paragraph 5.70, *Making it Work, Inquiry into independent contracting and labour hire arrangements*, The Parliament of the Commonwealth of Australia, August 2005, p.109.

Economy dated 28 August 2008 states, "*Section 93AB(9) of the Act provides that a notification cannot be validly lodged on behalf of a corporation by a trade union, an officer of a trade union, or a person acting on the direction of a trade union. The restriction in section 93AB(9) of the Act is very limited in nature. It does not restrict the ability of trade unions to assist in the preparation of a collecting [sic] bargaining notification or restrict their participation in the negotiation process. A notification could, for example, be lodged on behalf of the parties to a collective bargaining group by one of the members of the group with the assistance of a trade union, provided it was not lodged on the direction of a trade union.*" A copy of this letter is marked "**Schedule 4**" to the Submissions.

31. On the basis of the letter from Graeme Samuel dated 28 August 2008 the CFMEU Application must *prima facie* be refused if only on the basis that the applicant is the CFMEU (C & G Division) Queensland. The CFMEU Application does not purport to be lodged on behalf of the collective bargaining group by one of its members with the assistance of the CFMEU (C & G Division, Queensland); rather it is an application by the CFMEU (C & G Division, Queensland). This goes one step beyond even being lodged at the direction of a trade union.
32. The TWUA urges the Rudd Federal Government to rectify the situation that presently exists whereby owner drivers in all states except NSW and Victoria are unable to have the assistance of their Union in an attempt to secure appropriate terms and conditions of employment and calls on the Federal Government to repeal s.93AB(9) immediately.

Public Benefit/ Public Detriment.

33. The TWUA submits that the CFMEU (C & G Division, Queensland) is not lawfully permitted to represent owner drivers.⁸ It also submits that the CFMEU Application is fundamentally flawed.⁹ If the Commission disregarded these submissions and granted the CFMEU Application, the Authorisation would create industrial unrest within the provision of tip-truck services in the excavation industry in Queensland and set a dangerous precedent for other states. This will clearly be a public detriment.
34. Further, should the Commission grant Authorisation to CFMEU members, it would create an unfair advantage to those members of the CFMEU over and above those owner drivers who are not members of the CFMEU and who may or may not be members of the

⁸ Paragraphs 4 to 16 above.

⁹ Paragraphs 14 to 16 and 31 above.

TWUA. This will clearly have an effect on competition which in turn will be to the public detriment.

35. TWUA submits that paragraph 4.6 (c) of the CFMEU Application cannot be correct. Clearly there would be an incentive for both owner drivers who were not union members, and those who were TWUA members to join the CFMEU to gain the ability to collectively bargain.
36. Putting aside the TWUA's primary submission that the CFMEU cannot have owner drivers as members¹⁰, the effect of the Commission granting the Authorisation to CFMEU members would be that the CFMEU would obtain an unfair advantage over the TWUA in attempts to entice owner drivers in the excavation industry to join the CFMEU. This would inevitably lead to industrial unrest and demarcation disputes between the Unions.
37. In *Re Larmont*¹¹ an Association of 62 owner drivers who were members of the ACT Branch of the TWUA sought Authorisation pursuant to s.88(1) for them to collectively bargain with major concrete producers in the ACT. The authorisation sought by the Owners Drivers was not dissimilar to what the CFMEU (C & G Division, Queensland) is seeking. It was held that any benefit was not public, but was a private benefit as any benefit was limited to the owner-drivers themselves. It is submitted that a similar situation exists in the circumstances of the CFMEU Application.
38. CFMEU Application inadequately defines the relevant market which is variously referred to in the Application as "the Brisbane area"¹², "a radius of 150km from the place where the truck is garaged"¹³, and "anywhere within one day [outside the 150km radius of areas between Bribie Island and down to the Gold Coast]"¹⁴. This lacks sufficient specificity for the ACCC to determine the exact nature and impact such an authorisation may have, nor the public benefit or public detriment of such authorisation.
39. In summary, the TWUA submits that granting of an authorisation to members of the CFMEU to collectively negotiate with earth moving contractors this would not be in the public interest as it would:-

¹⁰ Paragraphs 4 to 13 above.

¹¹ *Re Lamont* on behalf of Owners in the Pre in the Pre-mixed Concrete industry (1990) ATPR 41-035

¹² Paragraph 1.3 of CFMEU Application.

¹³ Paragraph 2.7 of CFMEU Application.

¹⁴ Paragraph 2.8 of CFMEU Application.

- (i). Create an unstable industrial landscape that may give rise to demarcation disputes between the TWUA and CFMEU over coverage of tip-truck owner drivers working in the excavation industry;
- (ii). Result in the CFMEU obtaining an increase in membership to the detriment of the TWUA;
- (iii). Create an unfair advantage in terms of pricing of services for members of the CFMEU over the vast majority of tip-truck owner drivers working in the excavation industry;
- (iv). Create a private benefit for those 24 owner drivers;
- (v). The CFMEU Application inadequately defines the relevant market hence exact nature and impact such an authorisation cannot be ascertained.
- (vi). Potentially create a situation that is at odds with the nature of the Union coverage in the transport industry for the last 100 years.

Alternative Submission.

40. As an alternative submission, if the Commission is minded to grant the Authorisation to the CFMEU (C & G Division, Queensland) in the terms proposed, the TWUA submits that in accordance with s.91(3) of the *Trade Practices Act*, a condition must be placed upon the Authorisation that it is not to become effective until such time as the Commission has considered any application that may be made by the TWUA and/or the TWU (QLD) for an Authorisation for members of the Union(s) to also engage in a similar activity to that being proposed by the CFMEU Application.

7 November 2008

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Senior Associate
Maurice Blackburn Lawyers.

Submission by the Transport Workers' Union of Australia

Re; Application for Authorisation (A99103) by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-East Queensland.

"SCHEDULE 1"

ANNEXURE B - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP

- (5) Except as specifically provided for in this rule, rules 59, 59A and 60 shall otherwise apply to the conduct of the 2006 elections.
- (6) This rule will have no further effect after the completion of the 2006 elections.

ANNEXURE A - DESCRIPTION OF INDUSTRY IN CONNECTION WITH WHICH THE UNION IS REGISTERED

- (a) In or in connexion with road or aerial transport, delivery of milk, sanitary carting, mechanical excavation of earthworks and mechanical or animal-power haulage or driving industries but not so as to include the industries of transport by water, transport by Railways (except the despatch to or from railways of goods and the necessary loading or unloading operations connected therewith and shunting operations by horse-power), tramways passenger transport, driving of stationary engines, driving of passenger lifts, and driving of agricultural machines and implements in use for agricultural pursuits.

AND the industry of chauffeurs, conductors, and attendants on or about motor vehicles and employees engaged in and about garages, motor stables, and other similar places in the repair and maintenance of motor vehicles or as attendants.

- (b) (i) the production, sale and distribution of
 - (1) gas including refined and residue oil gas, and
 - (2) by-products of that industry and goods from the products of that industry, including coke, tar, pitch fuel, sulphate of ammonia and benzol;
- (ii) In bottling, packing, delivering, installing and maintaining all or any types of gas, including liquified petroleum gas, propane and butane used for all purposes;
- (iii) In the production, piping, reticulation, distribution and sale of all or any types or forms of natural gases.

ANNEXURE B - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP

- (A) (1) The Union shall consist of an unlimited number of persons employed or seeking to be employed in or in connexion with the industry or industries, and/or occupation, and/or calling, and/or vocations, and/or industrial pursuits of:
 - (a) The transport of persons and/or passengers, and/or goods, wares, merchandise, or any material whatsoever, by or on vehicles or animals or by aircraft or by motor, steam, oil, electric or other mechanically-propelled contrivances; drivers, assistants and conductors of same, and stable work wheresoever performed, including the work of attendance on horses and other beasts of burden, whether in stables or otherwise; all yard and garage cleaning and other work in connexion with driving and transport, including, washing, greasing, oiling, cleaning, polishing, tyre-fitting and general attendance on horse or mechanically-propelled vehicles and mechanical contrivances, training and breaking-in of horses, loading and unloading on to and/or from any vehicle; shunting by horse-power, supervising and collecting moneys, or washing cans in connexion with the distribution of milk, working in pits, tarring and washing pans, ploughing in of night soil, digging trenches and burying soil in connexion with sanitary work, ploughing in conjunction with the construction and excavation of earthworks; and

- (b) All driving; and
 - (c) Chauffeurs, Conductors, and Attendants on or about motor vehicles, and employees engaged in and about Garage, Motor Stables, and other similar places in the repair and maintenance of motor vehicles, or as attendants.
- (A) (2) For the purposes of this rule a person shall be deemed to be employed in one or more of the specified industries, occupations, callings, vocations or industrial pursuits if:
- (i) his usual occupation is that of an employee in one or more of the specified industries, occupations, callings, vocations or industrial pursuits; or
 - (ii) he is a person employed in one or more of the specified industries, or engaged in one or more of the specified industrial pursuits in the State of New South Wales, Queensland, South Australia or Western Australia who-
 - (a) in the case of a person so employed or engaged in New South Wales - is, or is able to become, a member of an industrial union of employees within the meaning of the Industrial Arbitration Act 1940 of that State or that Act as amended from time to time up to and including 30 April 1984;
 - (b) in the case of a person so employed or engaged in Queensland - is an employee for the purposes of the Industrial Conciliation and Arbitration Act 1961-1976 of that State or that Act as amended from time to time up to and including 31 December 1981;
 - (c) in the case of a person so employed or engaged in South Australia - is an employee for the purposes of the Industrial Conciliation and Arbitration Act 1972-1975 of that State or that Act as amended from time to time up to and including 31 December 1981;
 - (d) in the case of a person so employed or engaged in Western Australia - is an employee for the purposes of the Industrial Arbitration Act 1979 of that State or that Act as amended from time to time up to and including 31 December 1981.
- (A) (3) Until amalgamation be effected with other organizations or associations of employees engaged in transport all persons engaged in the following classes of work shall not be eligible for membership in the organization, namely-
- (i) Transport on water;
 - (ii) Transport on railways other than despatching of goods to railway goods sheds, depots, stations and other like places, taking delivery of goods from such places, handling of goods, such as loading and unloading into and from railway trucks, store yards, or wharves, and shunting operations by horse power;
 - (iii) Tramways passenger transport;
 - (iv) The driving of stationary engines;
 - (v) The driving of passenger lifts; and
 - (vi) The driving of agricultural machines and implements in use for agricultural pursuits.
- (B) The Union shall also consist of such other persons as are elected officers of the Union and admitted as members thereof.

ANNEXURE B - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP

- (C) The Union shall also consist of such members who have been granted honorary membership after being elected to parliamentary or local government positions or after twenty years good standing in the Union, provided that the persons referred in both categories are not then engaged in the industry.
- (D) The Union shall also consist of such independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for Membership of the Union.
- (E) The Union shall also consist of such persons (other than employees) who:
- (a) are, or are able to become, members of an industrial Union of employees within the meaning of the Industrial Arbitration Act, 1940, of New South Wales;
 - (b) are employees for the purposes of the Industrial Conciliation and Arbitration Act 1961 of Queensland;
 - (c) are the employees for the purposes of the Industrial Relations Act 1979 of Western Australia; or
 - (d) are employees for the purpose of the Industrial conciliation and Arbitration Act, 1972 of South Australia.

and who if they were employees would otherwise be eligible for membership of the Transport Workers Union of Australia.

- (F) The Union shall also consist of an unlimited number of persons not eligible to be members of the Union under paragraphs (A)-(E) inclusive of Annexure B, wheresoever employed in the Gas Industry throughout the Commonwealth of Australia -
- (i) In or in connection with the production, sale and distribution of-
 - (a) gas including refined and residue oil gas, and
 - (b) by-products of that industry and goods from the product of that industry including coke, tar, pitch fuel, sulphate of ammonia and benzol;
 - (ii) In bottling, packing, delivering, installing and maintaining all or any types of gas, including liquified petroleum gas, propane and butane used for all purposes;
 - (iii) In the production, piping, reticulation, distribution and sale of all or any types or forms of natural gases.

Submission by the Transport Workers' Union of Australia

Re; Application for Authorisation (A99103) by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-East Queensland.

"SCHEDULE 2"

CONSTRUCTION AND GENERAL DIVISION RULES

1 - NAME

The name of the Division shall be "the Construction and General Division".

2 - ELIGIBILITY FOR DIVISION

Every member who is a member of the union by virtue of Rule 2 Sub-rules (A), (B) and (N) of the National Rules shall belong to this Division.

Further, every member in the States and Territory of Queensland, New South Wales, South Australia, The Australian Capital Territory, Northern Territory, Tasmania, Victoria, and Western Australia, who is a member of the Union by virtue of Rule 2 sub-rule (E) of the National Rules, shall also be eligible for membership of this Division.

3 - DEFINITIONS

Unless the context otherwise indicates, in these Rules:

"BRANCH" shall mean a Branch of the Union set up in accordance with the rules of the Union.

"CONSTRUCTION AND GENERAL DIVISIONAL BRANCH" or "DIVISIONAL BRANCH" shall mean a branch of this division established in accordance with these rules.

"FINANCIAL MEMBER" shall mean any member who has paid all subscriptions, fines, levies and dues in accordance with the rules of the Union and in relation to Construction and General Division is a member of this Division.

"MEMBER" shall mean a member of Construction and General Division and membership shall have a corresponding meaning.

"MEMBERSHIP YEAR" shall, for the purpose of Divisional Rule 19 herein, mean the period encompassing the two consecutive six month periods to which membership contributions are ordinarily attributable (i.e. 1 April to 30 September and 1 October to 31 March).

"C.O.M." (Committee of Management) or "Executive" shall be synonymous and shall mean in relation to a divisional branch the controlling and administrative body of such Divisional Branch.

"PREFERENTIAL VOTING" shall mean a system of voting in which the voter shall place the number 1 in the square opposite the name of the candidate for whom the member votes as first preference and shall place the number 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the members preference for them.

In a ballot by the preferential system the valid ballot papers shall be separated into separate parcels, each such parcel containing all those papers on which a first preference is indicated for the same candidate.

If on the first count a candidate receives an absolute majority of first preference votes of total valid votes cast the candidate shall be declared elected.

If no candidate has received an absolute majority of first preference votes the candidate with the fewest first preference votes shall be excluded and the ballot papers on which a first preference is indicated for such candidate shall be counted to the remaining candidates next in the voters' order of preference.

Submission by the Transport Workers' Union of Australia

Re; Application for Authorisation (A99103) by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-East Queensland.

"SCHEDULE 3"

2 - CONSTITUTION

1 - NAME

The name of the Union shall be the "Construction, Forestry, Mining and Energy Union".

2 - CONSTITUTION

(A)(A) The following unlimited number of persons, whether male or female, are eligible to be members of the Union

- (1) employed in, usually employed in or qualified to be and desirous of being employed in or seeking to be employed in or in connection with the industry or industries, and/or occupations, and/or calling, and/or vocations and/or industrial pursuits of

and/or
- (2) who, otherwise than as employees or employers, follow an occupation in or in connection with the industry or industries of:

and/or
- (3) who, otherwise than as employees or employers, are engaged in the industrial pursuit or pursuits of:
 - (i) carpenters or joiners (including foremen and sub-foremen) and carpenters or joiners employed in the States of New South Wales, Tasmania and Western Australia or in the Australian Capital Territory on bridges, wharves, jetties or piers or employed in the State of Victoria on bridges, wharves, jetties or piers which are wholly or substantially built of concrete and in respect of which the performance of formwork requires the exercise of a substantial amount of the knowledge and skill of a tradesman carpenter, or employed in one of the said States or in the State of Queensland or the said Territory on dams, ship carpenters or joiners (including foremen and sub-foremen) or tilayers, including without limiting the meaning of the word tilayers, persons employed in the laying or fixing of tiles, faience, mosaic, ceramic, opalite and the like not exceeding in measurement .093 square metres when such opalite and the like is fixed with cement composition or stonemasons, marble masons, polishers, machinists, sawyers and all other persons engaged in the dressing and preparation and/or erection of stone, marble or slate also those engaged in the preparation and/or erection of terrazzo or similar compositions, or bricklayers, tuckpointers, or in a trade or calling of a slater, roof tiler, shingler, ridger or cement tiler, fixer of roofing sheets of asbestos, fibro, fibrolite or cement mixtures and accessories, malthoid sisalkraft or bituminous roofing materials and all accessories made of the same materials and without limiting the meaning of the above they shall be deemed to include terra cotta, glazed, semi-glazed roofing tiles, cement tiles, slates, fibro slates, tiles, asbestos, fibro fibrolite, fibrous mixtures, cement and any mixtures that may replace or be used in conjunction with the foregoing or any materials incidental thereto or in place thereof, or in New South Wales journeymen and other labour engaged in the plate, sheet and ornamental glass trade, or apprentices or trainees to or in any of the foregoing trades together with such other persons whether employees in the industry or not as have been appointed officers of the Union and admitted as members thereof PROVIDED however that notwithstanding the foregoing:-
 - (a) In the States of Western Australia, South Australia, Tasmania and Queensland and in the Australian Capital Territory, nothing in paragraph (A)(i) of this rule shall render eligible for membership any employee

engaged in tilelaying as defined in this sub-rule;

- (b) In the States of New South Wales, Victoria, South Australia, Queensland and Tasmania nothing in paragraph (A)(i) of this rule shall render eligible for membership, any employee engaged in tilelaying as defined in this sub-rule who is eligible for membership of The Federated Furnishing Trade Society of Australasia;
 - (c) In the Australian Capital Territory and the State of Tasmania nothing in paragraph (A)(i) of this rule shall render eligible for membership persons engaged in the fixing of corrugated asbestos cement roofing sheets;
 - (d) Nothing in paragraph (A)(i) of this rule shall render eligible for membership any person who is a member of or eligible for membership of The Plumbers and Gasfitters Employees' Union of Australia;
 - (e) In the States of Victoria, South Australia, Queensland, Tasmania and the Australian Capital Territory nothing in paragraph (A)(i) of this rule shall render eligible for membership any employee engaged in the plate, sheet and ornamental glass industries as defined in this sub-rule who is eligible for membership of The Federated Furnishing Trades Society of Australasia.
- (ii) the process or trade or business as a: plasterer, fixer, shophand, and caster, or employed in internal and/or external plastering, and/or cementing, including rendering with all forms of plaster, asbestos fibre, and including the performance of the aforementioned duties or processes by manual or mechanical means, (excepting employees engaged in manufacture of cement and/or concrete, and/or fibrolite articles) including wood, paper and metal lathing and/or top dressing of all concrete work finished in cement, and/or fibrous plaster fixing work, including sackett board and similar substances, defined as being fixing and finishing of fibrous work, as done by plasterers or fibrous plaster fixers, or employed in underground sewer or tunnel plastering, granolithic floor laying, i.e., floors laid with material or aggregate consisting of granite chips, blue stone toppings, crushed slag, cement floors, including magnesite and/or composition floors, marble mosaic paving, terrazzo and similar work, and/or press cement work, including shophands' work, being defined to include the interpretation of plans and details, and to work from them in the preparation of the ground work for the modeller, and also the cutting and mounting of moulds and casters' work, which shall include cornice and moulding and other plaster castings, and the casting of plain or ornamental plaster sheets by mechanical or manual means (excepting the manufacture of paper-backed wallboard from plaster of paris at Colonial Sugar Refining Company Ltd in New South Wales). Excepting in the State of New South Wales and Victoria the laying or fixing to floors or walls, tiles of terra cotta or pottery ware, faience, ceramic (excepting where such work is done in connection with bricklaying work) opalite tiles not exceeding in measurement .093 square metres, tiles made of plastic substances or other materials in substitution thereof, excepting metal, together with all persons as have been appointed officers of the Federation, and admitted members thereof. All persons employed assisting shophands, casters and/or fixers.

All junior shophands, casters and fixers and all persons apprenticed to any such branch of the plastering trades. Apprentices to the tilelaying trade other than in the States of New South Wales and Victoria. In the State of Victoria nothing in

paragraph (A)(i) of this rule shall render eligible for membership any employee

- (a) engaged upon the laying or fixing of tiles faience or ceramic blocks or tiles;
 - (b) engaged on press cement work;
 - (c) engaged upon the manufacture of plaster sheets by mechanical or manual means;
 - (d) engaged in assisting shophands, casters and/or fixers.
- (iii) In the State of Victoria any process, trade or business in or of the plaster industry. Without limiting the generality of the term, the plaster industry shall include:
- (a) the making of fibrous plaster and platerglass board;
 - (b) the fixing or stopping of fibrous plaster, platerglass board or gypsum plasterboard sections and shapes or any other work connected therewith;
 - (c) the making of architectural ornaments composed wholly or mainly of fibrous plaster, platerglass, plaster cement or fibreglass;
 - (d) the fixing of architectural ornaments composed wholly or mainly of fibrous plaster, platerglass, plaster cement or fibreglass or any other work therewith;
 - (e) the making of moulds for use in the making of such architectural ornaments;
 - (f) architectural modelling;
 - (g) the manufacturing of Plaster of Paris and the excavating or preparing of the raw materials for Plaster of Paris;
 - (h) the making and fixing of gypsum beam blocks and/or castings;
 - (i) the making of all forms of gypsum plasterboard sections, shapes and systems;
 - (j) the preparation of material for, and the making and fixing of acoustic tiles;
 - (k) the erection of suspended ceilings where the ceiling is to be of fibrous plaster sheets or tiles, gypsum plasterboard, platerglass board or other material having a plaster content, including the fixing of battens, tracks or channels to which the plaster content materials are attached;
 - (l) the making and fixing of plaster walls, partitions and systems;
 - (m) the making, colouring and decorating of plaster models, the assembling or finning of models when taken from moulds, and any other work connected therewith;
 - (n) the making of moulds from chemically blended or compounded substances in substitution for plaster, fibrous plaster, or cement, the using of such moulds in the making of articles from plaster, fibrous plaster or cement or fibreglass for use in the building industry, and the fixing of such articles in the said industry;

- (o) the making of articles composed of chemically blended or compounded substances for use in the building industry and the fixing of the said articles;
 - (p) the assembling, stacking and preparation for distribution of:

fibrous plaster, platerglass board, architectural ornaments composed wholly or mainly of fibrous plaster, platerglass, plaster, cement or fibreglass, Plaster of Paris, gypsum beam blocks and/or casting, gypsum plasterboard, acoustic tiles, plaster walls and partitions, plaster models and chemically blended or compounded substances for use in the building industry;
 - (q) the manufacturing of chalk, crayon or other articles from mineral earth;

and includes in Victoria the occupation of plasters' labourer and a person assisting a tradesperson in the Plaster Industry.
- (A)(b) Without limiting the generality of any other subrule or paragraph or being limited thereby an unlimited number of persons employed in or seeking to be employed in or in connexion with all or any of the industry and/or occupations and/or callings and/or vocations and/or industrial pursuits of the painting and decorating industry in connexion with buildings and structures, plant, machinery and equipment, fences and posts, (commercial, residential, industrial or otherwise), general and ship painting, shall be eligible to be members of the Union including the following:
- (a) on ships the painting of all accommodation and appurtenances thereto provided for passengers and ships complement, hospitals and pharmacies wherever situated, chart rooms, wheel houses and other navigational offices aboard ships including naval ships of every kind, and the painting of prefabricated ships and prefabricated parts of ships of every kind, and in the State of West Australia in accordance with the State Demarcation Board's decision number 32 of 1945 contained in the West Australia Industrial Gazette, published 30th June, 1947, Vol. XXVIII, page 130;
 - (b) the painting of launches and boats of every kind and the painting of prefabricated launches and boats and the prefabricated parts of launches and boats of every kind;
 - (c) the painting of or in connexion with all buildings and structures, plant, machinery and equipment, fences and posts, (commercial, residential, industrial or otherwise), the painting of or in connexion with prefabricated buildings and structures, plant, machinery and equipment, (commercial, residential, industrial or otherwise) and any prefabricated or other parts of prefabricated buildings and structures as aforementioned;
 - (d) the painting of the exterior of pipe lines on or above the surface of the earth, conduits, valves, condensers, cocks, control and/or regulating stations or sub-stations, and/or pumping, suction, syphon or booster stations or sub-stations, and/or storage holders, pressure regulating holders and/or trestles, bridges, viaducts, pylons, and any other supports, and all machinery and appurtenances relating to the foregoing on water, land, or sea, used or to be used for the purposes of storing and/or regulating and/or conveying liquids or gases including natural oils and gases;
 - (e) glazing, glass cutting, glass processing, cutting and fixing vitrolite or like material, the fixing of glass by any means in any place prepared for its reception, fitting and fixing glazing bars (but excepting in the State of Victoria, South Australia and Tasmania only, any person who is eligible for membership of the Federated Furnishing Trade Society of Australasia);

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- (f) paperhanging, applying and/or fixing wall hangings or coverings, decorating, kalsomining, distemping, plastic relief and texture work, graining, marbling, gilding, enamelling, varnishing and lacquering;
- (g) signwriting, designing and/or lettering of price tickets and showcards;
- (h) pictorial or scenic painting or production of signs or posters by means of stencils, screens or like methods or any other work incidental thereto including cut-out displays of all descriptions, pictorial, scenic or lettering;
- (i) in the State of West Australia the work of enamelling, lining, spraying and writing on cycles;
- (j) in the State of Queensland leadlight and metal glazing including cutting glass, assembling and fixing such glass by means of lead and/or metal sections;
- (k) employees who mix and/or apply and/or fix paint or like matter or substitutes or mixtures or compositions or compounds for texture or plastic coatings and finishes or other decorative or protective coatings and/or finishes, or putty, stopping, caulking mixtures, compositions or compounds, oils, varnishes, water-colours, lacquers, stains, wallpapers, wall hangings or coverings, coatings (coatings shall not be read and construed to include the applying and fixing of lagging, or the work of applying or fixing of coatings consisting of plaster and/or lime and/or cement and/or aggregate when such substances are mixed or blended with water or the coating of pipes with bitumen and/or wrapping with burlap or hessian or in the State of Victoria only work covered by the description of industry in connexion with which the Victorian Plasterers Society is registered as at 1st November, 1962, but shall include any subsequent coats of paint or other like material for the purposes of protection or decoration) or other materials used in any of the callings specified in Rule 2, Constitution hereof, (other than mixing of paint, paint mixtures, protective coatings and/or plastic coatings and/or finishes and/or mixtures, putty, putty mixtures, stopping, caulking mixtures, compositions or compounds, oils, oil mixtures, varnishes, varnish mixtures, water colours, water colour mixtures, lacquers, lacquer mixtures, stains and removers, stain removal mixtures in paint and chemical factories) and/or other materials used in the painting and decorating trade with a brush, spray, roller or other tool or remove paint or like matter or substitutes or mixtures or compositions or compounds for texture or plastic coatings and finishes or other decorative coatings and/or finishes or putty, stopping or caulking mixtures, compositions or compounds, oils, varnishes, water colours, lacquers, stains, wallpapers, wall hangings or coverings, coatings, or other materials used in the painting and decorating trade by heat, flame, water, solvents, electrical, mechanical, airpowered or hand tools, or by grit, shot, or other abrasives or by any other means;
- (l) persons engaged in preparing the work and materials required in any of the aforementioned branches of the trade; together with such other persons whether engaged in any industrial pursuit or not who have been appointed officers of the Union or its branches and admitted as members thereof but shall not include persons employed in connexion with the production or preparation of manufactured goods, plant, machinery, equipment, packages or containers for sale or purposes of distribution.
- (2) For the purposes of this Rule a person shall be deemed to be employed in one or more of the specified industries, occupations, callings, vocations or industrial pursuits if:
 - (i) his usual occupation is that of an employee in one or more of the specified industries, occupations, callings, vocations or industrial pursuits, or

- (ii) he is a person employed in one or more of the specified industries, or engaged in one or more of the specified industrial pursuits in the State of New South Wales, Queensland, South Australia or Western Australia who -
 - (a) in the case of a person so employed or engaged in New South Wales - is an employee for the purposes of the Industrial Arbitration Act 1940 of that State or that Act as amended from time to time;
 - (b) in the case of a person so employed or engaged in Queensland - is an employee for the purposes of the Industrial Conciliation and Arbitration Act 1961-1976 of that State or that Act as amended from time to time;
 - (c) in the case of a person so employed or engaged in South Australia - is an employee for the purposes of the Industrial Conciliation and Arbitration Act 1972-1975 of that State or that Act as amended from time to time;
 - (d) in the case of a person so employed or engaged in Western Australia - is an employee for the purposes of the Industrial Arbitration Act 1979 of that State or that Act as amended from time to time;
- (3) A person who is a member of or who is eligible for membership of The Printing and Kindred Industries Union, shall not be eligible to be or be a member of The Operative Painters and Decorators Union of Australia.
- (B) Without limiting the generality of the foregoing, or being limited thereby the Union shall also consist of:-
 - (1) workers (other than tradesperson), on any work in or in connection with or incidental to the erection, repair, renovation, maintenance, ornamentation, alteration, removal or demolition of any building.

For the purpose of this sub-rule (B) building shall include a building-type structure for the purpose of housing persons, goods or workshop equipment (other than mechanical or electrical plant) on a Civil or Mechanical Engineering Site.
 - (2) without limiting the generality of the foregoing, persons eligible for membership of the Union shall include any worker:
 - (i) assisting any bricklayer, mason, plasterer, carpenter, or other tradesperson engaged on the work described in Part (1) of this sub-rule; or
 - (ii) employed on any making or contracting job in wood, stone, brick, concrete, iron or steel, or combination of these or other materials incidental to any of the work described in Part (1) of this sub-rule, and in particular as
 - Bricklayers Labourer
 - Plasterers Labourer
 - Concrete Finisher
 - Dump Cart Operator
 - Scaffolder
 - Powder Monkey
 - Foundation Shaftsmen
 - Steel Fixer (including Tack Welder)
 - Assistant Powder Monkey
 - Demolition Worker

Gear Hand
Jackhammerman
Mixer Driver (Concrete)
Steel Erector
Aluminium Alloy Worker Structural Erectors
(whether prefabricated or otherwise)
Cement Gun Operator
Concrete Cutting and Sawing Machine Operator
Concrete Gang worker (including Concrete
Floater)
Roof Layer (Malthoid or similar material)
Underpinner
Concrete Formwork Stripper
Builders Labourer
Tackle Hand
Floor Sanding and/or Smoothing Machine
Operators
Leading Hand Labourer
Labourer on Refractory work
Labourer excavating ground for foundations
or basements of building or levelling
ground on a proposed building site
or doing concrete work, tar paving or
asphalt work or mortar or concrete mixing
in connection with or incidental to the
construction, repair, demolition or
removal of buildings
Rigger performing rigging work that is an
integral part of, or is incidental to, a
tradesman's work
Assistant Rigger assisting a rigger
specified in immediate preceding
classifications
Drilling Machine Operator except in the
mining or mineral exploration or
hydrocarbon industries

Provided that, nothing in this sub-rule (B) shall render eligible to join the Union any person employed:-

- (3) In the State of Victoria as a bricklayer's labourer, a bricklayer's labourer-refractory brickwork, a plasterer's labourer assisting a fibrous plasterer, a plasterers labourer assisting a solid plasterer, a concrete finisher, or labourer whose sole function is to assist a roof slater and tiler or whose sole function is to operate a dump cart;
- (4) A drainer or person employed as a plumber's labourer;
- (5) On a building or structure which building or structure is for the purpose of housing mechanical or electrical plant on a Civil or Mechanical Engineering Site;
- (6) In the installation, repair or maintenance of lifts, escalators or air-conditioning plant;
- (7) In that area of Queensland situated north of a line commencing at the sea coast with the twenty second parallel of south latitude, thence by that parallel of latitude due west to a hundred and forty seven degrees of east longitude thence by that meridian of longitude due

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south to twenty two degrees thirty minutes of south latitude, thence by that parallel of latitude due west to the western border of the State.

- (C) Without limiting the generality of the foregoing and without being limited thereby the following are eligible to be members of the Union:
- (i) All persons who are employed or are usually employed in any position on or in or in connection with (a) saws and wood working machines; (b) handling and treating timber and articles manufactured therefrom; (c) sawmills, timber yards, box and case factories, saw makers shops, joiners workshops, car and waggon shops, coach builders workshops, coopers workshops, furniture factories wooden sporting goods factories and veneer and plywood factories; (d) the preparing of woodwork for joiners, carpenters, builders, implement makers, coachbuilders, car and waggon builders, furniture factories, box and case factories, wooden sporting goods factories, veneer and plywood factories and coopers shops; (e) falling splitting and hewing timber.
- Provided that millwrights, blacksmiths and maintenance engineers employed as such elsewhere than in bush sawmills, and fitters and/or turners, other than wood turners, shall not be eligible for membership unless covered by the provisions of paragraph (ii) hereof.
- In these Rules, the words "wood and/or timber" without in any way limiting the ordinary meaning of the words, shall also be deemed to include any artificial or laminated or manufactured material now in existence or hereafter coming into existence from whatever materials made or constructed or manufactured, which is or can or may be used in the place of wood or timber, and which can be handled and/or treated and/or machined and/or worked in a similar way and with similar machines and/or tools, as in the case of wood or timber and
- (ii) An unlimited number of males and females engaged or usually engaged in any occupation connected with manufacture, processing and supply of pulp, paper, paper board, strawboard, plastic materials (obtained from the wood and cooking chemicals in establishments where the organisation has as members persons coming within any other sections of this constitution) paper bags or any similar commodity, excepting employers of labour and
- (iii) Such other persons who may be appointed from time to time to any office.
- (D) Without limiting the generality of the foregoing and without being limited thereby an unlimited number of employees engaged in or in connection with the coal and shale industries together with such other persons whether employees in the industries or not as have been appointed officers and admitted as members are eligible to be members of the Union.
- (E) Without limiting the generality of the foregoing and without being limited thereby the following are eligible to be members of the Union:-
- (a) An unlimited number of all classes of engine drivers, firemen, crane drivers, mobile crane drivers, forklift drivers, tow motor drivers, excavator drivers, pump attendants, pile drivers, motor drivers or attendants, greasers, cleaners, trimmers and any other workers assisting in and about the work incidental to any engine, boiler or machinery connected with the production or utilisation of power on land or any harbour or river, and boiler attendants attending boilers not generating steam for power purposes and such persons as have been elected or appointed as paid officers of the Union or a branch of the Union or whilst financial members of the Union are elected as representatives of any working-class organisation to which the Union or a branch thereof is affiliated, or as a working-class member of Parliament.

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Provided that mobile crane drivers, operators of fork lifts and/or tow motors engaged on the waterfront upon such work being that of a waterside worker or engaged in the transport of goods by road, or motor truck drivers wherever employed, shall not be eligible for membership.

- (b) Further, provided that, without limiting the generality of the foregoing the following classes of workers engaged in or in connection with or incidental to the erection, repair, renovation, maintenance, ornamentation, alteration, removal or demolition of any building are eligible to be members of the Union. For the purposes of this sub-rule (b) building shall include a building-type structure for the purpose of housing persons, goods or workshop equipment (other than mechanical or electrical plant) on a civil or mechanical engineering site.

Dogman
Hoist or Winch Driver
Gantry Hand or Crane Hand
Crane Chaser
Dogman/Crane Hand
Trainee Dogman/Crane Hand
Pile Driver
Pile Driver Assistant
Rigger performing rigging work that is an integral part of, or is incidental to, crane operations
Assistant Rigger
Drilling Machine Operator
Dump Cart Operator in respect of Victoria only

Provided that, nothing in sub-rule (b) shall render eligible to join the Union any person employed:

- (1) on a building or structure which building or structure is for the purpose of housing mechanical or electrical plant on a civil or mechanical engineering site.
 - (2) In that area of Queensland situated north of a line commencing at the sea coast with the twenty second parallel of south latitude, thence by that parallel of latitude due west to a hundred and forty seven degrees of east longitude thence by that meridian of longitude due south to twenty two degrees thirty minutes of south latitude, thence by that parallel of latitude due west to the western border of the State.
 - (3) in the mining or exploration or hydro-carbons industries.
- (F) Without limiting the generality of any other sub-rule or paragraph or being limited thereby an unlimited number of persons who are employed in, or competent to be employed in or in connection with the following industries or trades are eligible to be members of the Union: Piano and piano-player makers and tuners, organ-makers, and makers of gramophones and all other musical instruments, cabinet-makers, wood-carvers, billiard table makers and fitters, clock-case makers, coffin-makers, 3-ply veneer workers, chair and couch makers, or other articles of sitting accommodation, sewing machines, upholsterers, carpet and linoleum planners and all floor covering layers, outdoor hands, measuring, fixing, soft furnishings, blind cutting, making, painting, fixing, french-polishers, enamellers, spraying machine operators, makers of wireless instrument cases or cabinets, woodturners, mantel-piece makers, overmantel-makers, mattress-makers, wire-weavers, picture-frame makers, bedding-makers, quiltmakers (including eiderdown), venetian and wire-blind makers, bamboo pith and cane and wicker workers, packers of crockery and furniture mantle-pieces, pictures, carpets, drapery, plate and sheet glass in warehouses, shops, factories or stores, glass bevellers, glass benders, glass worker (excepting those on spectacles, lenses or frames and

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employees in firms where such employees are engaged on work connected with the manufacture or repair of scientific, precision or other instruments such as binoculars, microscopes, military, aircraft and naval instruments), glass lampshade workers, safety glass workers, toy makers and/or toy repairers in establishments where the chief product or products or one of the chief products manufactured in such establishments is otherwise provided for herein; cutters, silverers, glaziers, glass polishing, cutting, painting, cementing, leadlight glaziers and cutters, and all woodworking or other machinists, and operators of other mechanical devices preparing material for above employees; millwright's baby carriage makers, upholstresses, new and second-hand carpet, drapery, table and lampshade hands; flock-workers, rag-pickers and fumigators; timber stackers, yardmen, and labourers, and all other employees working in new and secondhand furniture factories, piano factories, organ factories, mantel-piece factories, billiard-table factories, overmantel factories, bedding-factories, mattress factories, venetian and wire-blind factories, picture-frame factories, plate-glass factories, luxfer glazing factories, bamboo pith cane; Reed-tex, Hytex, and wicker-work factories, sewing machine factories, flock factories, window background workers, display article workers, refrigerator workers, incubator workers, together with such other persons, whether employees engaged in the industries or not, as have been appointed officers of the Union and admitted as members thereof, provided that a branch may issue a clearance to any member whom it may be considered should not retain his membership on the ground that he is working in an industry not governed by any awards of the Society.

- (G) Without limiting the generality of sub-rules (A), (B), (C), (D) (E) and (F) above, and without being limited thereby, employees other than managerial, supervisory, administrative, professional and clerical employees and trades persons employed by Comalco Aluminium Limited at its operations at Weipa in the State of Queensland are eligible to be members of the Union.
- (H) Without limiting the generality of sub-rules (A), (B), (C), (D) and (F) above and without being limited thereby, nothing in sub-rule "E" shall make eligible for membership of the union any person employed by Queensland Alumina Limited in its operations at Gladstone in the State of Queensland.
- (I) Without limiting the generality of sub-rules (A), (B), (C), (D) and (F) above and without being limited thereby, nothing in sub-rule (E) above shall make eligible for membership of the Union any person employed by the following employers in metalliferous mining in Tasmania or South Australia:
- Aberfoyle Resources Ltd
 - Beaconsfield Gold Mines Ltd
 - Mt Lyell Mining & Railway Co. Ltd
 - Pasminco Mining
 - Renison Ltd
 - Tasmania Mines Ltd
 - Western Mining Corporation
 - Adelaide Chemical Company
 - Boral Resources (SA) Pty Ltd
 - Penrice Soda Products Pty Ltd
 - Mt Gunson Mines Ltd
 - Commercial Minerals (SA) Pty Ltd
- (J) Without limiting the generality of Sub-Rules (A) to (F) herein or being limited thereby, independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be eligible for membership of the Union, shall be eligible for membership of the Union.
- (K) 1. For the purposes of this sub-rule:

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- 1.1 "employees" shall mean and include employees of employers engaged in the operations of sugar mills, refineries, distilleries, terminals and sugar storage facilities in the milling, refining, distilling, terminal, storage and other sectors of the sugar industry in Queensland and/or in any by-product or tourism operations conducted by an employer but shall not mean and include -
- 1.1.1 persons employed to perform office clerical and tradespersons' work, or
 - 1.1.2 in the case of CSR Limited, persons who are from time to time members of the CSR Ltd Officers' Association or who are from time to time salaried staff of CSR Limited eligible for membership of the CSR Ltd Officers' Association, or
 - 1.1.3 persons who are contractors or subcontractors engaged by employers, and
- 1.2 "employers" shall mean and include -
- 1.2.1 Australian National Power Alcohol Company Proprietary Limited,
 - 1.2.2 Babinda Sugar Limited,
 - 1.2.3 Bingera Sugar Pty Ltd,
 - 1.2.4 The Bulk Sugar Terminal Operations,
 - 1.2.5 Bundaberg Distilling Company Pty Limited,
 - 1.2.6 Bundaberg Sugar Ltd,
 - 1.2.7 CSR Limited,
 - 1.2.8 CSR Plane Creek Pty Ltd,
 - 1.2.9 The Houghton Sugar Company Pty Limited,
 - 1.2.10 Isis Central Sugar Mill Co Limited,
 - 1.2.11 Mackay Sugar Co-operative Association Limited,
 - 1.2.12 Millaquin Sugar Pty Ltd,
 - 1.2.13 Moreton Sugar Ltd,
 - 1.2.14 Mossman Central Mill Company Pty Ltd,
 - 1.2.15 Pioneer Sugar Mills Limited,
 - 1.2.16 Proserpine Co-operative Sugar Milling Association Limited,
 - 1.2.17 Schumer Pty Ltd,
 - 1.2.18 South Johnstone Mill Limited,
 - 1.2.19 The Maryborough Sugar Factory Limited,
 - 1.2.20 Mulgrave Central Mill Co Limited,

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1.2.21 Tully Sugar Limited, and

1.2.22 W H Heck & Sons Pty Ltd.

2. Employees (as defined) of employers (as defined) shall not be eligible to join the union.
- (L) Employees of Thiess Services Pty Ltd employed as maintenance workers at South Eastern Water pursuant to the Australian Workers Union Construction and Maintenance Award 1989 and the Thiess Environmental Services Pty Ltd Victorian Maintenance and Construction Services Enterprise Agreement 1995-1997 shall not be eligible for membership.
- (M) Persons employed or to be employed by Energy Developments Limited and/or its subsidiaries or related companies shall not be eligible for membership of the union pursuant to any rule of the union, and the union shall not have the right to represent under the Act the industrial interests of such persons.
- (N) Without limiting the generality of the foregoing and without being limited thereby, the following are eligible to be members of the Union: an unlimited number of persons whether male or female throughout the Commonwealth who are employed or usually employed in the Brick, Tile and Pottery Industry and without limiting the generality of the foregoing, shall include persons employed or usually employed within the said industry in the manufacture of Abrasive wheels and stones (otherwise than at Australian Abrasives Pty. Ltd., Auburn and at Carborundum Pty. Ltd., Thomastown), Architectural terracotta facing materials, Building bricks of every description (including sand and lime bricks), Bristolware, Ceramics, Chinaware, Conduits and Insulators, Earthenware, Ceramic flooring tiles, Pottery and porcelain ware, Refractory materials, Roofing tiles and accessories including cement tiles only in the State of Western Australia, Stoneware pipes and sanitary fittings, Terracotta ware and wall tiles, together with such persons, whether engaged in the industry or not, who have been elected full time paid officers of the Clay and Ceramics Industry Divisional Branch pursuant to the relevant rules relating to the election of officers.

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- (A) The employment of persons:
- (1) employed or seeking to be employed in or in connection with the industry or industries, and/or occupations, and/or calling, and/or vocations, and/or industrial pursuits of:
- and/or
- (2) who, otherwise than as employees or employers, follow an occupation in or in connection with the industry or industries of:
- and/or
- (3) who, otherwise than as employees or employers, are engaged in the industrial pursuit or pursuits of:
- (i) the industries in connection with which the Union is formed are the carpentry, joinery, ship carpentry, ship joinery, bricklaying, tuckpointing, tilelaying and stonemasonry industries, including the industries of persons employed in the laying or fixing of tiles, faience, mosaic, ceramic, opalite and the like not exceeding in measurement .093 square metres when such opalite and the like is fixed with cement composition or, as stone masons, marble masons, polishers, machinists, sawyers and other persons engaged in the dressing, preparation and/or erection of stone marble, or slate, and other persons engaged in the preparation

Submission by the Transport Workers' Union of Australia

Re; Application for Authorisation (A99103) by the CFMEU (C & G Division, Queensland) for collective negotiations by owner drivers with earthmoving contractors in South-East Queensland.

"SCHEDULE 4"

C08/4054



**Australian
Competition &
Consumer
Commission**

EXECUTIVE OFFICE

Our Ref: C2003/496
Contact Officer: David Hatfield
Contact Phone: (02) 6243 1132

MINISTER FOR SMALL BUSINESS, INDEPENDENT CONTRACTORS AND THE SERVICE ECONOMY	
<input checked="" type="checkbox"/>	Reply by Minister (SB, IC&SE)
<input type="checkbox"/>	Reply by Minister (IIS&R)
<input type="checkbox"/>	Reply by Adviser/COS.....
Date 28 AUG 2008	
Received	
<input type="checkbox"/>	Reply by Departmental Officer
<input type="checkbox"/>	For appropriate action
<input type="checkbox"/>	For information (NFA)
<input type="checkbox"/>	Prepare brief advising Minister
<input type="checkbox"/>	Referral to.....

GPO Box 3131
Canberra ACT 2601
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28 August 2008

The Hon. Dr Craig Emerson, MP
Minister for Small Business, Independent Contractors
and the Service Economy
Parliament House
CANBERRA ACT 2600

JPSB DIV

Dear Minister

Union involvement in notified collective bargaining

Following on from our meeting yesterday, I write to provide you with advice about the prohibition on trade unions lodging collective bargaining notifications under the *Trade Practices Act 1974* (the Act).

Small businesses wishing to collectively bargain can lodge a collective bargaining notification with the Australian Competition and Consumer Commission (ACCC) to obtain immunity from legal action under the competition provisions of the Act. A notification can be lodged by one or more members of the collective bargaining group or by a nominated representative acting on behalf of the members of a collective bargaining group, provided the notification is lodged with the express consent of each of the parties in the group.

Section 93AB(9) of the Act provides that a notification cannot be validly lodged on behalf of a corporation by a trade union, an officer of a trade union, or a person acting on the direction of a trade union.

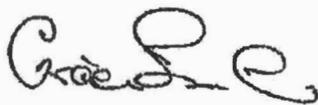
The restriction in section 93AB(9) of the Act is very limited in nature. It does not restrict the ability of trade unions to assist in the preparation of a collective bargaining notification or restrict their participation in the negotiation process. A notification could, for example, be lodged on behalf of the parties to a collective bargaining group by one of the members of the group with the assistance of a trade union, provided it was not lodged on the direction of a trade union.

The ACCC has a number of publications that explain the collective bargaining notification process including detailed checklists and example notifications to help small businesses lodge a collective bargaining notification. These publications are available from the ACCC's website at www.accc.gov.au.

The Act includes a number of technical requirements for a valid collective bargaining notification to be lodged and small businesses considering lodging a notification are encouraged to contact the ACCC so that ACCC staff can assist them with the notification process.

If you would like to discuss any aspect of the collective bargaining notification process, please do not hesitate to contact David Hatfield, Acting General Manager, Adjudication Branch on (02) 6243-1132.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graeme Samuel', is written over a light grey rectangular background.

Graeme Samuel
Chairman
Australian Competition and Consumer Commission