



ROYAL COMMISSION
INTO THE BUILDING AND
CONSTRUCTION INDUSTRY

Demarcation Disputes in the Building and Construction Industry



DISCUSSION PAPER SIXTEEN

ROYAL COMMISSION INTO THE BUILDING AND CONSTRUCTION INDUSTRY
NOVEMBER 2002

Demarcation Disputes in the Building and Construction Industry

Discussion Paper 16

**Royal Commission into the Building and Construction
Industry**

2002

ISBN: 0 642 21074 8

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Abbreviations

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| Australian Industrial Relations Commission | AIRC |
| Australian Workers Unions | AWU |
| Australian Metal Workers Union | AMWU |
| Commonwealth | C'wth |
| Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union | CEPU |
| Construction, Forestry, Mining & Energy Union | CFMEU |
| Federated Engine Drivers' and Firemens' Association Division of the CFMEU | FEDFA |
| Workplace Relations & Other Legislation Amendment Act | WROLA |

1 Background

In his opening statement Commissioner Cole stated that baseline studies and background papers would be published for comment by interested parties. This, as the sixteenth paper, examines particular activity in the building and construction industry relating to demarcation disputes.

This paper has been developed for discussion purposes only. Although the paper has been read and considered by the Commissioner, and approved by him for release as a discussion paper, it should not be assumed that any of the views expressed represent the provisional or final views of the Commissioner. In particular, the reference in the discussion paper to particular evidence given, or submissions made, to the Commission does not indicate that any final view has been taken concerning their correctness. The discussion paper is designed to raise issues enabling responses to be taken into account in the development of the Commission's final report.

This paper provides key background information on the industry and the environment in which it operates. It identifies issues and questions that the Commission will need to consider. *Public input is sought on those issues.* The Commission welcomes comments on all aspects of this paper. Those writing submissions should feel free to comment on any issues relevant to the Commission's terms of reference and should not be confined by the specific issues raised in this paper.

All papers are available on the Commission's website at www.royalcombc.gov.au or by contacting Victoria Elliott on (03) 8650 3249.

Interested persons should provide any written submissions or comments on this paper to the Commission by 29 November 2002. Written submissions should be sent to:

*The Secretary
Royal Commission into the Building and Construction Industry
GPO Box 2577
Melbourne Victoria 3001*

Unless confidentiality is requested, all submissions will be treated as public documents. A submission with confidential information should have the confidential sections marked and separated. Two copies should be provided — one with the confidential sections and one suitable for public release. If the Commission considers that a submission does not warrant confidential treatment, it will advise the author of the submission of its decision. The author can then agree to publish or withdraw the submission.

1.1 The Royal Commission

By letters patent dated 29 August 2001 issued under the hand of the Governor-General, Commissioner Cole was appointed to inquire into certain matters relating to the building and construction industry. The Letters Patent requires him to inquire into and report on the following matters in relation to the building and construction industry:

- (a) the nature, extent and effect of any unlawful or otherwise inappropriate industrial or workplace practice or conduct, including but not limited to:
 - (i) any practice or conduct in relation to the *Workplace Relations Act 1996 (C'wth)*, occupational health and safety laws, or other laws relating to workplace relations; and
 - (ii) fraud, corruption, collusion or anti-competitive behaviour, coercion, violence or inappropriate payments, receipts or benefits; and
 - (iii) dictating, limiting or interfering with decisions whether or not to employ or engage persons, or relating to the terms on which they be employed or engaged.

- (b) the nature, extent and effect of any unlawful or otherwise inappropriate practice or conduct relating to:
 - (i) failure to disclose or properly account for financial transactions undertaken by employee or employer organisations or their representatives or associates; or
 - (ii) inappropriate management, use or operation of industry funds for training, long service leave, redundancy or superannuation.

- (c) taking into account your findings in relation to the matters referred to in the preceding paragraphs and other relevant matters, any measures, including legislative and administrative changes, to improve practices or conduct in the building and construction industry or to deter unlawful or inappropriate practices or conduct in relation to that industry.

For the purpose of the inquiry, a reference to the building and construction industry does not include the building or construction of single dwelling houses, unless part of a multi-dwelling development.

The Commission is seeking information through a range of sources, including:

- an extensive program of public hearings across the country;
- information provided to the Commission by individuals and organisations;
- private meetings with key stakeholders;
- the work of external consultants;
- investigation and research by Commission staff;
- submissions; and
- workshops on key issues.

Another important aspect of this information will be the submissions and comments provided to the Commission in response to these discussion papers.

1.2 Scope of this paper

In its Discussion Paper Three on Productivity and Performance in the Building and Construction Industry, the Commission invited views on:

- The nature and cause of demarcation disputes in the building and construction industry.
- The impact demarcation disputes are having on all sections of the industry.
- The role and status of demarcation agreements between unions and the effectiveness of dispute settlement procedures.
- Deficiencies in the way such disputes are dealt with in the industry, including any comments on inadequacies in the existing legislation.

Very few of the submissions which were received in response to this invitation dealt in any depth with the last two matters. The Commission considers that they require greater attention. This Discussion Paper develops these issues in order to give interested parties the opportunity of contributing their views prior to the completion of the Commission's final report.

2 Demarcation

Coverage by unions in the building and construction industry in Australia has, for many years, been an area of dispute between them with extensive disputes over the right to enrol and represent workers. Historically, the industry has been renowned for inter-union difficulties. More recently this level of disputation over demarcation issues has declined but has not been eliminated. Many examples which arose during the 1990s were considered by a Full Bench of the Industrial Relations Commission in *AWU v CFMEU*¹. These included disputes on major projects such as the Laminaria project in Western Australia and the CityLink project in Victoria. In most of the major disputes the principal combatants have been the Construction, Forestry, Mining and Energy Union (CFMEU) and the Australian Workers Union (AWU). Other unions have, to a lesser extent, also been involved. For example, disputes have arisen from time to time between plumbers (represented by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union, CEPU) and metal workers (represented by the Australian Metal Workers Union, AMWU) over the installation of pipework². Some of these disputes have led to major litigation in the Australian Industrial Relations Commission and in the Federal and High Courts. More commonly, however, the disputation has led to industrial action or the threat of industrial action at site level. Recent examples include the Shell Refinery extensions near Geelong in Victoria and the major North West Shelf expansion project on the Burrup Peninsula in Western Australia.

Such disputes are commonly referred to as ‘demarcation disputes’. The term is defined in s4(1) of the *Workplace Relations Act 1996 (C’wth)* as follows:

Demarcation dispute includes:

- (a) *a dispute arising between two or more organisations, or within an organisation, as to the rights, status or functions of members of the organisation or organisation in relation to the employment of those members; or*
- (b) *a dispute arising between employers and employees, or between members of different organisations, as to the demarcation of functions of employees or classes of employees; or*
- (c) *a dispute about the representation under this Act of the industrial interests of employers by an organisation of employees.*

The two most common forms of demarcation disputes in the building industry are:

- (a) disputes between unions over their right to recruit and/or represent members on large construction projects; and
- (b) disputes between union officials and union members as to which workers have the right to perform particular types of work on building and construction sites.

Disputes in the first category have the potential to cause serious economic damage to the national economy, the industry and to the principals who commission work.

Disputes in the second category do not, as a general rule, cause large financial losses but they do constitute a serious irritant. Time and energy which might be better directed towards productive work is taken up with negotiations to resolve the dispute. If the dispute leads to industrial action this can have wider ramifications, particularly if the action impinges on work which is on the critical path for a project.

2.1 Union coverage in the building and construction industry

The largest unions with members in the building and construction industry are the CFMEU, the AWU and the AMWU. The CFMEU has the strongest presence on capital city building projects. The AWU cover civil engineering projects. The AMWU has a presence in both the commercial construction and civil engineering sectors. Smaller tradesman's unions also span both sectors. These include the CEPU which represents electricians and plumbers.

2.2 Demarcation disputes in the building and construction industry

There appears to be a consensus that demarcation disputes in the building and construction industry are less frequent at present than they were in the recent past.³ This was recognised by the Productivity Commission in its report on Work Arrangements on Large Capital City Building Projects:

Demarcation disputes between different unions were a major problem in the 1980s. Inefficiencies arose because of unreasonable restrictions on what work could be done by each employee. Dispute related delays also occurred as unions competed to maintain or extend their coverage of employees. It appears that union amalgamation and award restructuring have reduced demarcation problems and facilitated multiskilling.⁴

The work of this Commission has identified two types of demarcation issues that still arise in the building and construction industry:

- attempts by individual unions to expand their coverage; and
- dual ticketing.

Attempts to expand union coverage

Underlying most, if not all, demarcation disputes are disagreements between unions as to the scope of their rules dealing with eligibility for membership. Sometimes eligibility rules overlap so that both unions can enrol certain classes of worker. In other cases unions assert an entitlement to enrol which is inconsistent with their rules. In the building and construction industry there is a history of disputation between the CFMEU and the AWU over eligibility to recruit workers in the civil construction area. Traditionally this area has been the preserve of the AWU but the CFMEU has begun to assert its presence. The problem is complicated by the fact that many workers and the contractors for whom they work move between commercial and high rise residential construction and the civil construction sectors. A worker who has

joined the CFMEU whilst working on a city office building site might next obtain employment on a major infrastructure project which brings him within AWU eligibility rules. The same sub-contractor may one day be working on a high rise apartment building and the next on an oil refinery. The contractor's workers will be eligible to join the CFMEU on the first day and the AWU on the second.

Not surprisingly, this situation has given rise to considerable tension between the two unions. Long running and expensive litigation has followed an attempt by the CFMEU to amend its rules to give it the right to move into the civil construction sector.

Prior to 19 May 1997 the CFMEU, through its predecessors, was party to a series of demarcation agreements made with a number of the AWU's predecessors.⁵ For some time these agreements were generally accepted and approved by the parties.⁶ However, from about 1995, the CFMEU and AWU with increasing regularity, resiled from them.⁷ By letter dated 19 May 1997, the CFMEU advised the AWU that it was withdrawing from the agreements.⁸

On 25 July 1997 the CFMEU lodged an application under s204 of the *Workplace Relations Act 1996 (C'wth)* for consent to change its eligibility rules. The full text of the variation sought, as ultimately amended during the course of the hearing before the Australian Industrial Relations Commission (AIRC), is set out at attachment 1. However, for present purposes, it is sufficient to summarise the rule change by noting that, subject to a lengthy list of mainly piecemeal exceptions, the proposed rule change sought to extend the coverage of the CFMEU to include:

*...any worker (other than metal, electrical or plumbing tradespersons), engaged in any work in or connection with or incidental to the construction, repair, renovation, maintenance, ornamentation, alteration, removal or demolition of any building or structure or any other works or projects...*⁹

An extensive list of different types of civil construction projects was expressly included within this definition. The principal significance of the proposed rule change was that it sought to extend the CFMEU's coverage to non-tradesmen engaged on civil projects. In the absence of the proposed rule change, this was an area outside the scope of the CFMEU's existing eligibility rule, and within the scope of other unions' eligibility rules, including principally (as far as the building and construction industry is concerned) the AWU.

The current eligibility rule of the CFMEU is set out at attachment 2.

The AWU, a number of other unions and a number of employer associations objected to the proposed rule change. Some of these objections, including all objections from other unions apart from the AWU, were settled by agreement during the course of the hearing of the application.¹⁰

On 28 January 2000, SDP Williams consented to the CFMEU's application.¹¹

In so doing SDP Williams noted¹² his earlier decision in *Re National Tertiary Education Union* where he stated the effect of the *Workplace Relations and Other Legislation Amendment Act 1999* (the WROLA Act) in relation to registration and representation rights of employee organisations:

...the legislative objects which previously favoured a rationalisation of unions have been replaced with objects which promote freedom of choice. The underlying philosophy of the current legislation is that, not only are employees to be free to join or not to join an organisation should they choose to join an organisation, they should be able to join the organisation of their choice. Competition between organisations for membership and representative rights is no longer discouraged.

The changes made by the WROLA Act constitute, in my view, a fundamental change in approach to registration and representative rights of organisations, particularly organisations of employees. Unions are encouraged to be effective, not only so that they can retain and possibly exceed, their existing membership and representative rights, but also so that they can provide choices for employees. That is not to say that the potential adverse effects of competition are not recognised. Controls remain in place to prevent a proliferation of ineffective or unviable organisations. Competition leading to industrial action which is harmful to an employer's operations may be the subject of orders under the amended s118A. But the fact that overlapping coverage may lead to competition is not the barrier that it previously was to an eligibility rule extension.

Accordingly, and on the basis that he was satisfied on the evidence that the tendency of contractors and their employers to operate in both the building, the civil and the mechanical sections of the industry was increasing, SDP Williams stated that.¹³

Any requirement that ... the membership entitlement of the employees of such employers be determined from time to time by the sector of the construction industry in which the employer happens at the particular time to be working and/or that such employees be required to either change their union membership as the employer moves from one sector to another and then back again or else be "dual ticketed" is, in my view, in this day and age, unjustifiable and is contrary to the concept of freedom of choice of representation inherent in the current provisions of the WR Act.

On 28 February 2001, a Full Bench of the AIRC determined that SDP Williams had erred in his approach to the application of s204. Some of the errors identified by the Full Bench are of present relevance. The Full Bench held that, in reaching this decision, SDP Williams incorrectly identified the relevant class of employees for the purpose of assessing the proposed rule change. He had failed to discern that it was broad enough to apply to workers who were not employed on any work in or in connection with or incidental to the construction industry.¹⁴

The Full Bench held that SDP Williams erred in failing to identify the evidence which led him to conclude that the concerns expressed by employer objectors about the

potential for the proposed rule to lead to demarcation disputes were, in reality, concerns about the expansion in influence of the CFMEU at the possible expense of the AWU¹⁵ in circumstances where there was a substantial amount of evidence which was consistent with the employers' expressed concerns.

The Full Bench held that SDP Williams erred by concluding that, if the CFMEU's application were granted, the resultant potential for industrial disputation would be outweighed by the opportunity for the relevant employees to choose as their representative the organisation that they perceived would provide them with the most effective representation of their interests.¹⁶

The Full Bench then heard further argument as to how it ought to dispose of the CFMEU's application, before deciding on 13 June 2001, to quash the decision of SDP Williams and refuse the CFMEU's application.¹⁷

On 27 May 2002 the Full Federal Court, by majority, quashed the Full Bench's decision by writ of certiorari and issued a writ of mandamus to the members of the Full Bench directing them to reconsider the appeal from the decision of SDP Williams.¹⁸

On 31 July 2002 the Full Bench of the AIRC again decided to refuse the CFMEU's application.¹⁹ The Full Bench did so on the basis that the relevant employees (the class of employees affected by the rule change by reason of becoming, as a result of it, eligible for CFMEU membership) could more conveniently belong to the AWU.²⁰ The Full Bench held that the granting of consent to the proposed rule change would lead to demarcation disputes between the AWU and the CFMEU.²¹ This was a consideration that led to an exercise of the AIRC's discretion against granting the application.

Dual ticketing

The resolution of demarcation disputation often has implications for the rights of individual workers. Under the *Workplace Relations Act 1996 (C'wth)* workers are free to join or not to join a union and, if they choose to join, they can apply for membership of any union which has constitutional coverage of the type of work which they perform. One device for resolving demarcation disputes about which the Commission has heard a good deal of evidence is 'dual ticketing'. Typically, an asphaltting contractor will have a workforce whose members have chosen to join the AWU. When it is known that the contractor is to perform work on or adjacent to a building project which the CFMEU claims 'belongs' to it, the CFMEU will bring industrial pressure to bear with a view to preventing the contractor being allowed to perform the work. A 'commercial decision' is often made by the head contractor or the asphaltting contractor to pay the CFMEU for union membership tickets for the workers who are already members of the AWU. This type of arrangement frequently obviates threatened industrial action and allows the work to proceed.²² The consequence for the workers is that they are treated as members of the CFMEU even though they may have no wish to join that organisation.

Master Builders' Australia Inc has advised the Commission that it is not uncommon for contractors to have to pay for 3 or 4 different union membership tickets in order for their workers to be permitted to carry out their full range of duties on building construction sites.²³

2.3 Resolution of disputes

The *Workplace Relations Act 1996 (C'wth)* provides limited assistance to those involved in and affected by demarcation disputes. Section 118A relevantly provides:

- (1) *Subject to this section ... the Commission [AIRC] may, on the application of an organisation, an employer or the Minister, make the following orders in relation to a demarcation dispute:*
 - (a) *an order that an organisation of employees is to have the right, to the exclusion of another organisation or other organisations, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;*
 - (b) *an order than an organisation of employees that does not have the right to represent under this Act the industrial interests of a particular class or group of employees is to have that right;*
 - (c) *an order than an organisation of employees is not to have the right to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.*
- (1A) *The Commission [AIRC] must not make an order unless:*
 - (a) *it has decided under s100 not to refer to dispute for conciliation; or*
 - (b) *a conciliation proceeding in relation to the dispute is completed but the dispute has not been fully settled.*
- (1B) *The Commission [AIRC] must not make an order unless the Commission [AIRC] is satisfied that:*
 - (a) *the conduct, or threatened conduct, of an organisation to which an order would relate or of an officer, member or employee of the organisation;*
 - (i) *is preventing, obstructing or restricting the performance of work; or*
 - (ii) *is harming the business of an employer; or*
 - (b) *the consequences referred to in subparagraph (a)(i) or (ii); or*
 - (i) *have ceased, but are likely to recur; or*
 - (ii) *are imminent*

as a result of such conduct or threatened conduct.

By subsection (2) the AIRC is required to have regard to the wishes of employees who are affected by the dispute and various other matters if it considers it appropriate to do so when exercising its powers under the section. By subsection (4) the AIRC's powers may only be exercised by a Full Bench or a Presidential Member. Organisations which are subject to an order under this section are bound to obey the order.²⁴ Orders are enforceable through the Federal Court.²⁵

The various preconditions that are prescribed by the section all tend against a speedy resolution of demarcation disputes. Before any orders can be made:

- (a) a dispute must have arisen;
- (b) the AIRC must refer the dispute for conciliation;
- (c) the AIRC must determine that conciliation has not fully settled the dispute;
- (d) it must be demonstrated that the dispute is affecting the performance of work or the business of the employer; and
- (e) the AIRC must assess and form a view about the wishes of the employees concerned.²⁶

Needless to say these processes inevitably take time to implement and, while the matter is proceeding before the AIRC, work is often impeded. The AIRC is unable to pre-empt disputes arising; it can play no part until a dispute exists.

As a result, the parties look upon formal proceedings to resolve demarcation issues as lacking practical utility. Moreover, such proceedings have the potential to be expensive for all those involved. For these and other reasons most demarcation disputes are resolved at site level following industrial action or the threat of industrial action.

3 Impact of Demarcation Issues

Despite the reduction in the number of demarcation disputes in recent years they continue to be of concern to employer groups, particularly when they lead to industrial action or are resolved by the employer having to pay for union membership tickets.

General concerns remain about demarcation within the building and construction industry. For example:

- In 1994, the Report of the Economic Development Committee in Victoria cited examples of demarcation disputes continuing in that State and the Committee found that trade union amalgamations had not significantly alleviated demarcation disputes in Victoria.²⁷
- The Northern Territory Government, in 1996, specifically raised demarcation issues as a concern when it opposed the expansion of the CFMEU into the Territory.²⁸
- Submissions to the Commission have raised concerns about demarcation disputes causing on-going problems particularly in Victoria.²⁹

The CFMEU has, on the other hand, submitted that ‘demarcation disputes in the industry are no longer a common occurrence’.³⁰

As has already been noted, demarcation disputes have the potential adversely to affect the building and construction industry in a number of ways.

- They frequently lead to industrial action such as bans and other limitations on work which, in turn, delays the completion of projects. In 1997 5.5 per cent of industrial action in the building industry was attributable to ‘trade unionism’, the category which covers, among other things, demarcation disputes in Australian Bureau of Statistics publications. In 1998 this figure had risen to 13.7 per cent. In 1999, the latest year for which figures are available, there had been a further rise to 15.9 per cent.³¹
- They limit the scope of work which can be undertaken by individual workers. A multi-skilled worker may not be able to contribute his full potential because he is capable of doing work covered by two or more unions but is only a member of one.
- Overmanning occurs because two workers must be employed to do work which one multi-skilled employee could do.

Such restrictions reduce productivity levels in the industry.

Where industrial action is taken or threats of industrial action are made arising from demarcation disputes such action will, usually, be unlawful. For example, depending on the circumstances, it may constitute an interference with contractual relations or intimidation.

Employers find demarcation disputes particularly difficult to manage. The disputants are unions and the issues are beyond the control of the employers. Nonetheless the employer's business is prejudicially affected and pressure is often brought to bear to require the employer to take action which will lead to one union prevailing over another. The employer might, for example, be threatened with industrial action unless it dismisses an employee or confines the employee to performing a narrow range of duties.

Similarly workers are prejudicially affected. They may be prevented from performing work for which they are qualified and maintaining their skill levels. Their right to freedom of association may be denied by demands that they join a union or multiple unions or by their enrolment in a union by their employer without their knowledge or approval.

4 Reform Options

Demarcation disputes have a prejudicial impact on the building and construction industry in Australia. Currently, available procedures are not providing an adequate or coherent response to the multiple problems to which such disputes give rise.

When demarcation disputes do arise they should be settled by some orderly established process. There should be no occasion for industrial action to be taken or threats of industrial action to be made. It has been suggested that such conduct should be proscribed.

It has also been suggested that, where an employee and a union or unions have entered into an agreement under s170LL of the *Workplace Relations Act 1996 (C'wth)* in respect of a particular project other unions should not be permitted to demand the right to represent members working on that project or to incite, take or threaten industrial action in support of such a demand. Workers who choose to accept employment on a greenfields site do so in the knowledge that a certified agreement has been negotiated which will regulate the terms of their employment. The current freedom of association provisions require that they be free to join or not to join one of the unions which is a party to the agreement. They are free to remain a member of another union which does not have the capacity to represent their interests on the particular project.

Where other forms of industrial regulation apply to work being performed on a site and a demarcation dispute arises there could be a statutory obligation imposed on the parties to that dispute to refer it to an independent tribunal and to abide by that tribunal's determination as to which union should have representational rights. The tribunal would be provided with statutory guidance as to the criteria which it should apply in making its determination.

One view is that there is a need for a statutory scheme to be devised which would operate in the building and construction industry in order to prevent or resolve demarcation disputes, and determine the extent of compensation to be paid in the event that industrial action is taken by any union involved in such disputes which causes loss.

The CFMEU contends that demarcation issues are best dealt with by the AIRC.³² On the other hand, the Master Builders Australia Inc has submitted that the 'current legal system cannot respond quickly enough [to demarcation disputes] or provide adequate compensation.'³³ Master Builders Australia Inc proposed that, in order to discourage industrial action by unions in support of demarcation demands, unions should be required to provide financial security in respect of projects in which their members are involved and that employers and workers who suffer as a result of industrial action should have resort to such funds in order to recover losses.³⁴

The Commission has a number of proposals under consideration.

- One option would be to set up a specialist tribunal within the Australian Industrial Relations Commission to deal with building and construction issues. This option has been suggested to the Commission to deal with a range of industrial relations issues. If such a tribunal were established it could address demarcation issues as one of its functions. In these circumstances the Commission would need to consider the responsibilities of such a tribunal. The following questions would require attention.
 - Should there be scope for or a requirement for, the tribunal to make binding decisions on demarcation issues, at the request of relevant parties, prior to any dispute arising?
 - Should there be scope for or a requirement for, the tribunal to intervene in existing demarcation disputes at the instigation of an interested party, the Minister, the proposed Taskforce or of its own motion?
 - If it is recommended that a tribunal be established, then what procedures would need to be developed to ensure that the tribunal acted with the utmost speed consistent with the requirements of natural justice? Should the tribunal have the power to make interim orders?
 - What criteria should the tribunal apply in resolving competing claims in demarcation disputes?
- The Commission is interested in views on other possible reforms for example, should:
 - there be a requirement that no industrial action take place or be threatened in an endeavour to have any demarcation dispute resolved in particular way;
 - it be made unlawful for any employer directly or indirectly to pay for union membership tickets for its employees or the employees of another contractor, or make other payments generally for the purpose of seeking to resolve a demarcation dispute;
 - it be made unlawful for a union or an officer, member or employee of a union to demand payment by an employer for membership tickets or to organise or engage in or threaten to organise or engage in industrial action against an employer with intent to coerce the employer to make such a payment in order to resolve a demarcation dispute; and
 - any losses caused to contractors or workers (other than those involved) arising from industrial action, taken in support of demarcation issues, should be compensated for by payment by the union or unions responsible?

The Commission invites views on:

- the best way of preventing and settling demarcation disputes in the building and construction industry, and
- any specific comments on the options above.

Submissions should not be restricted to matters referred to in this paper.

Attachment 1 Amended Variation of its Rules Sought by CFMEU in Proceeding D No. 20004 of 1997 in the Australian Industrial Relations Commission

Without limiting the generality of the foregoing and without being limited thereby, persons eligible for membership of the union shall include any worker (other than metal, electrical or plumbing tradespersons) engaged on any work in or in connection with or incidental the construction, repair, renovation, maintenance, ornamentation, alternation, removal or demolition of any building or structure or any other works or projects including but not limited to:-

- (i) civil and/or mechanical engineering projects
- (ii) power transmission, light, television, radio, communication, radar, navigations, observation towers or structures
- (iii) powerhouses, chemical plants, hydrocarbons and/or oil treatment plants or refineries
- (iv) silos
- (v) sports and/or entertainment complexes, showgrounds
- (vi) car parks, pavements, paved areas
- (vii) roads, motorways, freeways, causeways, underpasses, overpasses
- (viii) railways, tramways
- (ix) bridges, drains, dams, weirs, channels, waterworks, tunnels, pipe tracks, water and sewerage works, conduits, shafts, pipelines
- (x) airport runways or taxiways, aerodromes.

Provided that nothing sub-rule (B)(3) herein shall render eligible for membership any worker performing work in the State of Queensland.

Further provided that in the State of Western Australia nothing in sub-rule (B)(3) herein shall render eligible for membership any person eligible for membership of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Australia as at 28 January 2000.

Further provided nothing in sub-rule (B)(3) herein shall render eligible for membership of this union any person eligible for membership of the Australian Liquor, Hospitality and Miscellaneous Workers Union as at 24 July 1997, engaged in the provision of cleaning and/or security and/or gardening and/or property services (other than where related to the provision of building trades services) with respect to the maintenance of any completed structure or project as referred to in B(3) herein.

Provided further that nothing in sub-rule (B)(3) herein shall render eligible for membership any person or persons eligible for membership of APESMA as at 16 September, 1997. Further provided that for the purposes of this exclusion only, the reference to “professional capacity” in rule 3.11 Professional Officers of the Rules of APESMA shall be taken to mean professional engineers, scientists, managers and other professional persons of the kind referred to in Rule 3 of APESMA’s rules at 16 September, 1997.

Nothing in this rule shall be taken or construed as restricting or limiting the eligibility rule of APESMA in any way.

Provided further that nothing in sub-rule (B)(3) herein shall render eligible for membership any person or persons who are members, or are eligible for membership of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia as at 24 July 1997, other than riggers in the State of Western Australia.

Provided further that nothing in sub-rule (B)(3) herein shall render eligible for membership any worker who is a member of or eligible for membership of the Transport Workers' Union as at 24 July 1997, other than persons eligible under sub-rule (F) of the rules of the TWU who are employed by a construction company and who are engaged on major gas related construction projects including gas transmission pipelines. Provided further that persons eligible for membership of the TWU under sub-rule (F) of the rules of that union employed by a gas distribution company or a contractor engaged to perform work on the metropolitan mains distribution system within the city gate shall not be eligible for membership of the CFMEU pursuant to sub-rule (B)(3) herein.

Further provided that:

1.(a) Nothing in sub-rule (B)(3) shall render eligible for membership persons eligible for membership of the ASU as at 13th November, 1998.

(b) For the purpose of sub-clause (a) above, the reference to business equipment in Rule 5 b Part V (a) of the rules of the ASU shall be taken to mean equipment of the kind referred to in the last sentence of that sub-rule.

2. Notwithstanding Clause 1 above, and subject to clause 4 below, employees of contractors referred to in Rule 5 B Part 1 I of the rules of the ASU, who are otherwise within the scope of this sub-rule (B)(3), shall be eligible for membership of the CFMEU pursuant to this sub-rule (B)(3) except where:

(a) such employees were, prior to the contracting out of services, employees of the relevant Councils, Authorities, Boards, Corporations, Commissions or Trusts; or

(b) such employees are employed by contractors who work predominantly for any of the relevant Councils, Authorities, Boards, Corporations, Commissions or Trusts, and are employed on any work for any of the relevant Councils, Authorities, Boards, Corporations, Commissions or Trusts; or

(c) such employees are employed by contractors on work predominantly for any of the relevant Councils, Authorities, Boards, Corporations, Commissions or Trusts.

3. Notwithstanding Clause 1 above, and subject to clause 4 below, employees of corporations referred to in Rule 5 Part 1 I of the rules of the ASU, who are otherwise within the scope of this sub-rule (B)(3), shall be eligible for membership of the CFMEU pursuant to this sub-rule (B)(3) except where such employees are employed by corporations which are appointed to carry out or appointed to be entrusted with the

carrying out of works, operation or functions which were previously or usually performed by or on behalf of a Municipal or Shire Council or other Local Government Authority prior to their appointment.

4. Nothing in clause 2 or 3 of this rule shall operate to render ineligible for membership of the CFMEU employees engaged on new construction work in connection with services which have not passed to the relevant Council, Authority, Board, Corporation, Commission or Trust which on completion of such construction work is responsible for the provision and maintenance of those services.

Attachment 2 Current Eligibility Rule of CFMEU

(A)(A) The Union shall consist of an unlimited number of persons whether male or female

- (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 tilelayers, including without limiting the meaning of the word tilelayers, 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 tiling 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 plasterglass board;
 - (b) the fixing or stopping of fibrous plaster, plasterglass 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, plasterglass, plaster cement or fibreglass;
 - (d) the fixing of architectural ornaments composed wholly or mainly of fibrous plaster, plasterglass, 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, plasterglass 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, plasterglass board, architectural ornaments composed wholly or mainly of fibrous plaster, plasterglass, 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 plasterers' 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 the Union shall consist of 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, 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);
- (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;

- (1) 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 plasterer's 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 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:
- (i) The Union shall also consist of 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 wagon 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 wagon 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) The Union shall also consist of 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) The Union shall also consist of 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 the Union shall also consist of 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.
- (E) Without limiting the generality of the foregoing and without being limited thereby the Union shall consist of:-
 - (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.

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 Union shall also consist of 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. 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 subrule or paragraph or being limited thereby the Union also shall consist of an unlimited number of members who are employed in, or competent to be employed in or in connexion with the following industries or trades: 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 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, the Union shall consist of 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.
- (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:
- 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 Haughton 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,
- 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 Union shall consist of 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.

Endnotes

- 1 Reasons for Decision of Full Bench of AIRC, PR 923067 31 July 2002, paras. 174-182.
- 2 There have also been intra-union disputes between the Construction and General and FEDFA Divisions of the CFMEU, Australian Industry Group 2002, *Submission by the Australian Industry Group in Response to Discussion Papers 1-5 to the Royal Commission into the Building and Construction Industry*, 30 June, Exhibit 778, para.5.8.
- 3 Master Builders Australia Inc 2002, *Submission by Master Builders Australia Inc, Discussion Paper 2, to the Royal Commission into the Building and Construction Industry*, 14 June, Exhibit 771, p.6; Australian Industry Group, op cit (n 2), para.5.8; and Construction, Forestry, Mining and Energy Union 2002, *Further Submission into the Building and Construction Industry*, November, Exhibit 1807, p.8.
- 4 Productivity Commission 1999, *Work Arrangements on Large Capital City Building Projects, Labour Market Research Report*, Ausinfo, Canberra, p.136.
- 5 Reasons for Decision of Williams SDP, AIRC, Print S 2640, 28 January 2000, para.84.
- 6 Reasons for Decision of Williams SDP, AIRC, Print S 2640, 28 January 2000, para.103.
- 7 Ibid, para.104.
- 8 Ibid, para.102; Reasons for Decision of Full Bench of AIRC, Print PR 901486, para.113.
- 9 See attachment 1 - Amended variation of its Rules by CFMEU in Proceeding D, No. 20004 of 1997 in the AIRC.
- 10 Reasons for Decision of Williams SDP, AIRC, Print S 2640, 28 January 2000, see paras.4-9 for more information regarding the objections lodged to the rule change and their disposition.
- 11 Reasons for Decision of Williams SDP, AIRC, Print S 2640, 28 January 2002.
- 12 Ibid, para.31.
- 13 Ibid, para.70.
- 14 Reasons for Decision of Full Bench of AIRC, Print PR 901486, 28 February 2001, paras.46 and 79.
- 15 Ibid, para.101.
- 16 Ibid, para.139.
- 17 Reasons for Decision of Full Bench of AIRC, Print PR 905003, 13 June 2001.
- 18 (2002) 114 IR 185, per Gray, Moore and Merkel JJ.
- 19 Reasons for Decision of Full Bench of AIRC, Print PR 9230670, 31 July 2002.
- 20 Ibid, paras.12-18.
- 21 Ibid, paras.19-21.
- 22 This example is drawn from evidence received by the Commission in relation to the Charles Grimes Bridge Project and the Globex Site from A C Johnston 2002, *Royal Commission into the Building and Construction Industry Transcript 14 May*, pp.6508-9 and 6510-1.
- 23 Master Builders Australia Inc, op cit (n 3), p6.
- 24 *Workplace Relations Act 1996 (C'with)* s118A(5).
- 25 *Workplace Relations Act 1996 (C'with)* s118A(6).
- 26 *Workplace Relations Act 1996 (C'with)* s118A(1A), (B) and (2); see also *South Corp Australia Pty Ltd v National Union of Workers* (1998) 43 AILR 3-741; *Application by Diamond Offshore General Company* (1998) 78 IR 85.
- 27 Economic Development Committee 1994, "Third Report to Parliament: Productivity, *Inquiry into the Victorian Building and Construction Industry*, L.V. North Government Printer, Melbourne, p.36.
- 28 Record of Decision Print N6661, AIRC.

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- 29 Master Builders Australia Inc, op cit (n 3), pp.5-6; Australian Industry Group, op cit (n 2), para.5.8.
30 CFMEU, op cit (n 3), p.8.
31 Australian Bureau of Statistics, Industrial Disputes, Catalogue No. 6322.0.
32 CFMEU, op cit (n 3), p.8.
33 Master Builders Australia Inc, op cit (n 3), p.6.
34 Id.

Bibliography

Australian Bureau of Statistics, *Industrial Disputes*, Catalogue No. 6322.0.

Australian Industry Group 2002, *Submission by the Australian Industry Group in Response to Discussion Papers 1-5 to the Royal Commission into the Building and Construction Industry*, 30 June, Exhibit 778.

Construction, Forestry, Mining and Energy Union 2002, *Further Submission into the Building and Construction Industry*, November, Exhibit 1807.

Economic Development Committee 1994, "Third Report to Parliament: Productivity, *Inquiry into the Victorian Building and Construction Industry*, L.V. North Government Printer, Melbourne.

Master Builders Australia Inc 2002, *Submission by Master Builders Australia Inc, Discussion Paper 2, to the Royal Commission into the Building and Construction Industry*, 14 June, Exhibit 771.

Productivity Commission 1999, *Work Arrangements on Large Capital City Building Projects, Labour Market Research Report*, Ausinfo, Canberra.