

IN THE FAIR WORK COMMISSION

MATTER NO.: D2022/10

**APPLICATION BY GRAHAME KELLY – WITHDRAWAL FROM
AMALGAMATED ORGANISATION – MINING AND ENERGY DIVISION –
CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION**

APPLICANT’S FURTHER SUBMISSIONS

1. These written submissions are filed in response to the request from the Commission that the parties file further submissions addressing whether the certificate annexed as GK-85 to Exhibit 3 (**the Exemption Certificate**) has continuing operation as an exemption under s.186 of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**RO Act**).
2. For the reasons explained below, the Applicant submits that the Exemption Certificate does have continuing operation as an exemption under s.186 of the RO Act.
3. The Exemption Certificate was granted on 2 May 1996 pursuant to an application under s.211(1) of the *Industrial Relations Act 1988* (Cth) (**IR Act**). The certificate was granted in accordance with s.213 of the IR Act.
4. The *Workplace Relations and Other Legislation Amendment Act 1996* (Cth) amended and renamed the IR Act as the *Workplace Relations Act 1996* (**WR Act**). Schedule 14 amended the provisions dealing with registered organisations, but nothing of relevance changed.
5. On 12 May 2003, the *Registration and Accountability of Organisations Schedule* (Schedule 1B of the WR Act) came into operation. The Schedule was inserted by the *Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002* (Cth). Schedule 1B replicated the majority of matters which had previously been addressed within the body of the WR Act concerning organisations. Section 211 became s.183 of Schedule 1B and s.213 became s.186 of Schedule 1B. There was no material

Filed on behalf of (name & role of party)	Grahame Kelly		
Prepared by (name of person/lawyer)	Phillip Pasfield		
Law firm (if applicable)	Slater & Gordon Lawyers		
Tel	02 8071 2749	Fax	02 8267 0650
Email	Phillip.Pasfield@slatergordon.com.au		
Address for service (include state and postcode)	Level 14, 55 Market Street, Sydney New South Wales 2000		

change to the wording of the provisions. They are corresponding provisions for the purposes of item 1(2) of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002* (Cth). Item 2 of that Schedule provides that a certificate made, given or granted under a repealed provision (eg: s.213) continues in force on and after the commencement as if it had been granted under Schedule 1B.

6. On 27 March 2006, Schedule 1B was renumbered as Schedule 1 to the post Work Choices WR Act. See item 2(2) of Schedule 5 to the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). Relevantly, there were no changes to sections 183 and 186.
7. In 2009, when the body of the WR Act was repealed, the provisions of Schedule 1 were retained and became the RO Act. Pursuant to Schedule 22, Part 9, section 621(1), item 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) the Exemption Certificate continued in force.
8. It is noted that much of the above legislative history is confirmed in Bromwich J's judgment in *Construction, Forestry, Maritime, Mining and Energy Union v Registered Organisations Commissioner* [2019] FCA 435 at [41]-[43] and [45].
9. In summary, the Commission should conclude that the Exemption Certificate has continuing operation as an exemption under s.186 of the RO Act, and thus the Commission has the power under s.102(1A) of the RO Act to permit a designated official to conduct the ballot.
10. The Applicant submits that the Commission ought to order that the ballot of members on the withdrawal from amalgamation be conducted by Mr Thompson.

27 March 2023

H Borenstein
Y Bakri
Counsel for the Applicant