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**MAKING OF ADMINISTRATION SCHEME
AND APPOINTMENT OF ADMINISTRATOR**

Industrial Relations Act 2016

1 Name

This instrument is the *Industrial Relations Act (CFMEUQ Construction and General Division Administration) Administration Notice 2024*.

2 Commencement

- (1) This notice is made on the basis that the requirements in sections 876A and 876E(1) of the *Industrial Relations Act 2016 (IR Act)* are satisfied.
- (2) Each provision of this instrument commences upon gazettal.

3 Authority

This instrument is made under Chapter 12, Part 15A of the IR Act.

4 Notice

Pursuant to section 876E of the IR Act, I, the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, hereby:

- (1) declare that I am satisfied the Construction and General Division of the CFMEU (federal), and its branches, have been placed under administration under the Commonwealth Registered Organisations Act.
- (2) declare that I am satisfied that it is in the public interest for the State Construction and General Division of the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland to be placed under administration.
- (3) establish the scheme for the administration of the C&G Division in the terms set out in this instrument.
- (4) appoint Mr Mark Irving KC as administrator of the administration scheme.

Administration Scheme

1 Definitions

In this instrument:

Administered Division means the Construction and General Division of the CFMEUQ.

Administrator means the person appointed under this scheme pursuant to section 876E(2)(b) of the IR Act.

CFMEUQ has the meaning given under section 876C of the IR Act.

CFMEUQ rules has the meaning given under section 876C of the IR Act.

C&G division has the meaning given under section 876C of the IR Act.

Scheme means the administration scheme established by and set out in this instrument.

Special Purpose Auditor means any independent auditor appointed by the Administrator pursuant to clause 12 of this Notice

Except where otherwise provided, words in this Scheme have the same meaning as in Chapter 12, Part 15A of the IR Act.

2 Person to be appointed administrator

- (1) For the purposes of section 876E(2)(b) of the IR Act, the person who is appointed as the Administrator of the Scheme is Mark Irving KC.
- (2) The Minister may terminate the appointment of the Administrator if the Administrator is proven to be unable to perform the duties of Administrator because of incapacity, misbehaviour, or the Administrator advises the Minister, in writing, that he resigns from the appointment.
- (3) As soon as practicable after the Minister terminates the appointment of the Administrator under subclause 2(2), the Minister must, in writing, appoint another person to be the Administrator of the Scheme. The Minister must be satisfied that the person is qualified for appointment, having regard to the person's knowledge and experience.
- (4) For the avoidance of doubt, in taking action under this section, the Minister must act in accordance with the requirements of Chapter 12, Part 15A of the IR Act.

3 Declaration that offices are vacant

- (1) On the establishment of the Scheme:
 - (a) all offices in the Administered Division are vacated and will remain vacated for the duration of the administration.
 - (b) to the extent that any person is an employee or paid official of the CFMEUQ by reason of that person holding an office vacated as a result of subclause (3)(1)(a), that employment or paid position is

terminated with effect from the date of commencement of the Administration by operation of this Scheme.

- (c) subclause (3)(1)(a) does not affect the continued employment of a person (including organisers) who is not employed or a paid official by reason of that person holding an office vacated as a result of subclause (3)(1)(a).
- (2) For the avoidance of doubt, the offices of the Management Committee Queensland of the CFMEUQ (other than any filled by officers of the Administered Division immediately prior to the establishment of the Scheme) and the offices of the Mining Energy and Ports District, are not vacated by the Scheme.
- (3) As soon as reasonably practicable, the Administrator will write to vacated office-holders to inform them of the vacation of their office and their obligations under this Scheme.

4 Rules and Resolutions

- (1) For the avoidance of doubt, and in accordance with section 876I of the IR Act, this Scheme and any action or power exercised by the Administrator under this Scheme operates notwithstanding anything in the CFMEUQ rules or a provision of Chapter 12, Part 15A, and prevails to the extent of any inconsistency with the CFMEUQ rules or a provision of Chapter 12, Part 15A.
- (2) Where an alteration of the CFMEUQ rules cannot be made in accordance with the IR Act (other than Chapter 12, Part 15A) because of the administration, the Administrator may alter the CFMEUQ rules, including to make new CFMEUQ rules or delete CFMEUQ rules, and must consult with the management committee (as defined in the IR Act) of any part of the CFMEUQ that is not the Administered Division, if it is affected by that alteration.
- (3) The Administrator must undertake any alterations to the CFMEUQ rules in accordance with section 876S of the IR Act.
- (4) During the period of the administration of the Administered Division, any resolution made prior to the commencement of the Administration, by the State Divisional Executive of the Administered Division, empowering any person to exercise powers, functions or duties of an officer of the Administered Division, does not have effect.

5 Return of property

- (1) Within seven days of the establishment of the Scheme, those persons whose offices are vacated as a result of subclause 3(1)(a) must:
 - (a) return to the Administrator, or person nominated by the Administrator, all property (including without limitation cars, building/security passes, credit cards, devices such as mobile phones and laptops, passwords or other access requirements for email accounts, social media accounts or other communication

- channels) of the CFMEUQ, or the Administered Division, as the case may be, in their possession, custody, power or control;
- (b) effect to have transferred into the name of the Administrator any property held by that person on trust for or on behalf of the CFMEUQ or the Administered Division; and
 - (c) deliver up to the Administrator, or person nominated by the Administrator, any documents, whether hard copy, electronic or otherwise, relating to the affairs of the CFMEUQ or the Administered Division, or any association related to the CFMEUQ, as are in their possession, custody, power or control; and
 - (d) deliver up to the Administrator, or person nominated by the Administrator, a list of all members and delegates of the Administered Division, including current residential and postal addresses, telephone and mobile numbers, and email addresses in their possession, custody, power or control.

6 Powers, functions and duties of the Administrator

- (1) The Administrator:
 - (a) has and may exercise all of the powers and duties of the State Divisional Council or State Divisional Executive of the Administered Division as are conferred on those bodies under the CFMEUQ rules, and the IR Act;
 - (c) has all of the powers and duties of all offices in the Administered Division under the CFMEUQ rules, and the IR Act, including the power to exercise voting rights attaching to such offices in decision-making bodies of the CFMEUQ and the Administered Division;
 - (d) has the power, without limiting anything in this Scheme, to appoint one or more persons as Divisional Trustee of the Administered Division, and at or after the time of such appointment to transfer into the name of that person any property held by the Administrator on trust for or on behalf of the CFMEUQ, or the Administered Division;
 - (e) has the power, without limiting anything in this Scheme, to terminate the appointment of an auditor of the Administered Division, and appoint another person as auditor of the Administered Division;
 - (f) has the power, without limiting anything else in this Scheme, to suspend, remove or expel officers or delegates, in accordance with clause 11;
 - (g) has the power, without limiting anything else in this Scheme, to terminate the employment of employees of the CFMEUQ who work in the Administered Division, in accordance with clause 11;
 - (h) has the power to refer the conduct of current or former officers, officials, shop-stewards, delegates or employees (howsoever described) of the Administered Division, to any body established, or officeholder appointed, by or under any law of the Commonwealth or of a State or Territory. Nothing in this Scheme limits the Administrator from also referring allegations or other information about unlawful conduct, or conduct requiring further investigation, of any other person, business, entity, organisation, to appropriate law enforcement agencies, regulators or decision-makers;

- (i) has the power to commence and discontinue (including by way of settlement) proceedings in the name of the CFMEUQ, including for the recovery of any funds and/or property of the CFMEUQ, the Administered Division, to make rule changes, and for the imposition of penalties and the awarding of compensation or any other remedy as may be available under the IR Act or any other law; and
 - (j) may request the Minister exercise their power to vary or revoke this Scheme.
- (3) The Administrator may, in writing, delegate to a person nominated by the Administrator, any of the powers, functions or duties of the Administrator under this Scheme or any powers or functions the Administrator may exercise under the IR Act.

7 Offices that are not vacated by this Scheme

- (1) Where a person continues to hold office or employment in the Administered Division, the Administrator may exercise all the powers and functions afforded to the person by the rules of the CFMEUQ, the IR Act, and this Scheme, in respect of that person, including (but not limited to) directing that person—
- (a) to take any leave to which that person is entitled, subject to that direction being made in accordance with relevant workplace laws or any instrument made under relevant workplace laws; and / or
 - (b) to perform no, or different, work; and / or
 - (c) not to attend the premises, or to access any property, information or system, of the Administered Division; and / or
 - (d) to return any property or information of the Administered Division; and / or
 - (e) not to hold themselves out as acting or speaking for or on behalf of the Administered Division

for such time as the Administrator considers appropriate (but no later than the date upon which the Administrator ceases to act under this Scheme in respect of the Administered Division).

- (2) The term of any unvacated office that ends during the period of Administration may be extended, for a period of time set by the Administrator.
- (3) An election may not be held in respect of any office that is not vacated by virtue of subclause 3(1)(a) without the written authorisation of the Administrator.
- (4) For the avoidance of doubt, any exercise of power or function by the Administrator, as provided for under the IR Act or this Scheme, will prevail to the extent of any inconsistency with the CFMEUQ or actions taken by a person who continues to hold office or employment in the Administered Division.

- (5) For the avoidance of doubt, and whilst the Administration continues in respect of the Administered Division, and notwithstanding any provisions of the CFMEUQ rules, the Administrator may appoint any person deemed suitable to them as a proxy to represent them at any meeting of the CFMEUQ. Each such instrument may provide instructions to the proxy as to how the proxy should vote and must do so in the event of a vote being required on any matter that, in the opinion of the Administrator, may adversely affect the interests of the members of the Administered Division. To avoid doubt, any such instructions may include a direction to abstain from voting.

8 Engagements and delegation by the Administrator

- (1) The Administrator has the power to employ or otherwise engage persons, at the expense of the Administered Division, to assist in performing the Administrator's functions.
- (2) The Administrator may, by written notice, appoint a person to undertake one or more duties of the Administrator. The Administrator may provide for their roles, responsibilities and functions in their appointment notice.
- (3) The Administrator shall have the power to delegate to any person any power, duty or function conferred on the Administrator, including but not limited to the power, function or duty of an officer whose office has been declared vacant.

9 Responsibilities of the Administrator

- (1) The Administrator:
 - (a) may undertake investigations into past and/or current practices of the Administered Division;
 - (b) may make any changes to the CFMEUQ rules the Administrator considers necessary and appropriate to:
 - (i) ensure the lawful and effective operation of the Administered Division;
 - (ii) encourage members to participate in the affairs of the Administered Division to which they belong;
 - (iii) encourage the democratic functioning and control of the Administered Division;
 - (c) may establish and implement policies to ensure the Administered Division will:
 - (i) be representative of and accountable to its members;
 - (ii) be able to operate lawfully and effectively;
 - (iii) encourage members to participate in the affairs of the Administered Division to which they belong; and
 - (iv) encourage the democratic functioning and control of the Administered Division;
 - (d) may cause to be kept and maintained, a copy of the register of members of the CFMEUQ as it relates to the Administered Division, including to record any person joining or resigning from any of the

Administered Division after the commencement of the administration and their financial status;

- (e) must comply with any obligations for the Administrator to cooperate with any inquiry into conduct of the CFMEUQ, or officers or employees or former officers or employees of the CFMEUQ or any of its branches, divisions or parts, being undertaken by any law enforcement agency or regulator (including the Fair Work Ombudsman or the Fair Work Commission).

10 Written report to Minister

- (1) The Administrator must give the Minister reports about the administration of the Scheme as and when required by section 876L of the IR Act.
- (2) Nothing in this Scheme prevents the Administrator from including in a report to the Minister any additional information or observations the Administrator considers appropriate.
- (3) For the avoidance of doubt, the timing of reporting to the Minister under this section is intended to align broadly with reporting requirements under the Federal Scheme of administration.

11 Disciplinary action

- (1) Notwithstanding anything in the CFMEUQ Rules:
 - (a) the Administrator has the power to suspend, remove, expel or disqualify—
 - (i) a member
 - (ii) an office holder or former office holder of the Administered Division whom the administrator is satisfied is of bad character or for misconduct.
 - (b) the Administrator has the power to suspend or terminate the employment of any employee or suspend or remove any delegate of the Administered Division;
 - (c) the power in subclause 11(a) may be exercised in relation to conduct that occurred before or after the commencement of this Scheme;
 - (d) the process governing the exercise of the power in subclauses 11(a) may be determined by the Administrator, provided the process affords procedural fairness;
 - (e) any member expelled from membership by the Administrator, in accordance with subclause 11(a), is not entitled to apply for re-admission as a member of the CFMEUQ for a period determined in expelling the member so long as the period is not greater than a period of 5 years.
- (2) In exercising a power referred to in this section, the Administrator is not required to follow any process or procedure set out in the CFMEUQ Rules.

12 Appointment of Special Purpose Auditor

- (1) The Administrator may, at any time during the administration of the Administered Division, appoint a Special Purpose Auditor to undertake a special purpose audit and prepare independent reports into the affairs of the Administered Division.
- (2) If the Administrator intends to make a request to the Minister to vary or revoke the administration, the Administrator may appoint a Special Purpose Auditor to provide reports to the Minister as to:
 - (a) the financial position of the Administered Division; and
 - (b) any significant financial risk identified by the Special Purpose Auditor relating to the Administered Division.
- (3) If the Administrator appoints a Special Purpose Auditor under subclause 12(1), the Administrator may require the Special Purpose Auditor to prepare and provide to the Administrator, as soon as practicable and within a period determined in writing by the Administrator, an independent report into the financial position and governance of the Administered Division. For the purposes of any such request, the Administrator may require the report to:
 - (a) set out the financial position of each of the Administered Division; and / or
 - (b) advise on any significant financial risk(s) identified by the Special Purpose Auditor relating to the Administered Division.
- (4) The Administrator, and all office holders and employees of the CFMEUQ in the Administered Division must cooperate fully with the conduct of the audits and preparation of reports.
- (5) The Administered Division must pay the fees and expenses of any Special Purpose Auditor in relation to the preparation of reports.
- (6) For the avoidance of doubt, the appointment of the Special Purpose Auditor will not disturb or vacate the appointment of any other person as an auditor of the Administered Division under the CFMEUQ Rules, or this Scheme.

13 Timing of elections of officers

- (1) The Administrator has the power, without limiting anything in this Scheme, to arrange for the conduct of elections for offices in respect of the Administered Division that are vacant.
- (2) The Administrator must ensure that elections for offices in respect of the Administered Division that are vacant are conducted before the administration of the Administered Division ends in accordance with the IR Act.

14 Obligation to cooperate

Without limiting any other obligation (including in this Scheme and under the IR Act), the Administrator, and all office holders and employees of the

CFMEUQ in the Administered Division must cooperate fully with the conduct of audits and preparation of reports referred to in this Scheme.

15 Indemnification of Administrator

- (1) The CFMEUQ shall indemnify the Administrator in respect of any and all claims, proceedings, or complaints made in connection with the Administrator's exercise or non-exercise of any of the functions, powers and duties under this Scheme, including in relation to the cost of defending such claims, proceedings or complaints, and in relation to the payment of any compensation, penalties or other amounts awarded or paid in the determination, settlement, or other resolution, of such compensation, penalties or other amounts.
- (2) For the avoidance of doubt, the indemnification provided for in subclause 15(1) above will continue after the Administrator ceases to act as Administrator under this Scheme, as long as the relevant exercise or non-exercise of functions, powers and duties occurred at a date when the Administrator still had functions, powers and duties under this Scheme.

16 Administrator's Remuneration

- (1) The Administrator is entitled to receive remuneration for necessary work properly performed by the Administrator in relation to the administration as a cost of the administration in accordance with section 876R of the IR Act.
- (2) The remuneration is to be paid from the funds of the C&G division.
- (3) The Registrar may, in writing, make any notice the Registrar considers appropriate to provide for and in relation to remuneration the Administrator is entitled to receive for necessary work properly performed by the Administrator in relation to the administration.
- (4) In making a notice under subclause 16(3), the Registrar must have regard to whether the remuneration is reasonable, taking into account:
 - a. the period during which the work is likely to be performed by the Administrator; and
 - b. the complexity (or otherwise) of the work likely to be performed by the Administrator; and
 - c. if the remuneration is worked out wholly or partly on a time-cost basis—the time likely to be properly taken by the Administrator in performing the work; and
 - d. any other matters the Registrar considers relevant.
- (5) Nothing in this Scheme requires the Administrator to keep timesheets or other records of hours worked.

(6) A notice made by the Registrar under this section may also provide for, and in relation to, allowances.

(7) A notice made under this section is not a legislative instrument.