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Details of Filing

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Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Dated: 31/03/2015 3:53:42 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)



Affidavit

No. _____ of 2015

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

Allen Hicks
Applicant

**Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing
and Allied Services Union of Australia**
Respondent

Affidavit of: **Allen Hicks**
Address: 1A Rickard Road, Oyster Bay, New South Wales
Occupation: Union Official
Date: 27TH March 2015

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1	Annexure AH1 being a copy of the Application for Approval of a Designated Presidential Member for Submission of a Scheme for Amalgamation to Ballot dated 3 February 1994 and executed by Peter Tighe, National Secretary of the EPU, and Paul Watson, National Secretary of the CWU as filed with the Australian Industrial Registry (the Amalgamation Application)	23	8
2	Annexure AH2 being a copy of the EPU & CWU Scheme of Amalgamation as filed with the Australian Industrial Registry, being Annexure "A" to the Amalgamation Application	24	9

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Daniela Foote JP 188619
Justice of the Peace / Solicitor /
Commissioner for Declarations

Filed on behalf of _____ the Applicant _____
Prepared by _____ John Payne _____
Law firm _____ Hall Payne Lawyers _____
Tel (07) 3017 2400 _____ Fax (07) 3017 2499 _____
Email general@hallpayne.com.au _____
Address for service _____ Ground Floor, 27 Peel Street, South Brisbane QLD 4101 _____
Ref: JWP:4141155 _____ [Version 2 form approved 09/05/2013]

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I, Allen Hicks of 1A Rickard Road, Oyster Bay, New South Wales, Union Official, affirm:

1. I am the applicant in these proceedings.



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2. The following statements are true based on either my own knowledge or to the best of my knowledge, information or belief based on my inquiries of relevant persons. Where I depose to matters on information and belief I state that.
3. I am the National Secretary of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ("**the CEPU**") and I was elected to this office on 18 September 2013.
4. I am also Divisional Secretary of the Electrical, Energy and Services Division of the CEPU ("**the Electrical Division**"). I was elected to this office by the Divisional Council of the Electrical Division on 22 July 2013. Prior to becoming Divisional Secretary, I was the Divisional Assistant Secretary of the Electrical Division and I held that office from 2 September 2011. Prior to becoming Divisional Assistant Secretary I was Branch Assistant Secretary of the Queensland and Northern Territory Branch of the Electrical Division, and prior to that an organiser with that Branch.
5. I am, and have at all relevant times been, a member of the CEPU or its predecessors.

Formation of the CEPU

6. I am aware of the following matters from my own knowledge as an official of the CEPU since 2000, and from a review of the historical records of the CEPU, which I have conducted.
7. In the late 1980s and early 1990s the Australian Council of trade Unions ("**ACTU**") had a policy of rationalising unions along industry lines, with the objective being to effect a reduction in the number of registered organisations in industries and workplaces. This began with the document entitled "Future Strategies for the Trade Union Movement" (ACTU, September 1987 (D229/87)) ("**Future Strategies**").
8. Unions were actively encouraged by the ACTU to amalgamate. The ACTU plan in 1993 was the creation of larger key unions, and in Future Strategies the ACTU outlined 18 categories that unions could fit into, as set out in the following excerpt from 5.1.10 of Future Strategies:

5.1.10 The solution seems obvious: unions need to amalgamate in order to form larger, more efficient, units! The most appropriate bases for each rationalisation appear to be broad industry categories. For example most existing unions could fit in the following categories:

1. *Textile, Clothing, Footwear*
2. *Shipping and Stevedoring*
3. *Rail and Tramway*
4. *Road Transport*
5. *Food and Transport*
6. *Airline Industry*
7. *Public Service Federation*
8. *Education*
9. *Post and Telecommunications*

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10. *Printing and Publishing*
11. *Local Government and Services*
12. *Large Union Amalgamation*
13. *Australian Government*
14. *Building Construction and Trade*
15. *Retail and Clerical*
16. *Banking and Insurance*
17. *Health Industry*
18. *Metal Industry*
 - *Vehicle Industry*
 - *Oil*

9. As part of the rationalisation process it was proposed that the Electrical Trades Union of Australia ("ETU") amalgamate with the Plumbers & Gasfitters Employees Union of Australia ("PGEU") and the Australian Telephone & Phonogram Officers Association ("ATPOA") amalgamate with the Australian Telecommunications Employees Association ("ATEA") and the Australian Postal & Telecommunications Union ("APTU").
10. The ETU was the national union for persons employed as:
 - (a) electrical trades workers, or workers performing work ancillary to such trades workers;
 - (b) electronic tradesworkers and technicians, and workers performing work ancillary to such trades workers and technicians;
 - (c) communications trades workers and technicians, and workers performing work ancillary to such trades workers and technicians; and/or
 - (d) in the electricity industry.
11. The ETU had branches operating nationally.
12. The PGEU was the national union for employees in the plumbing and gasfitting trades, and employees performing work ancillary to such trades workers. The PGEU operated nationally.
13. The ATEA was primarily the national union for employees working as linesmen and technicians in Australian Telecommunications Corporation ("**Telecom**"). The ATEA operated nationally.
14. The ATPOA was primarily the national union for non-technical employees of Telecom. The ATPOA operated nationally.
15. The APTU was primarily the national union for employees in the postal service. The APTU operated nationally.
16. The ETU and the PGEU amalgamated to form the Electrical, Electronic, Plumbing and Allied Workers Union ("**EPU**") on 17 March 1993 ("**the ETU/PGEU Amalgamation**").

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17. The ATEA and the ATPOA amalgamated to form the ATEA/ATPOA on 28 April 1987.
18. The ATEA/ATPOA and the APTU amalgamated to form the Communications Workers Union ("CWU") on 28 July 1992.
19. The Electrical Division of the EPU was a strong technically based union with coverage in the communications sector that placed it in competition with the CWU for membership.
20. In 1992, the monopoly over the provision of telecommunications services in Australia by Telecom came to an end when Optus Communications Pty Ltd became the first licensed carrier.
21. Peter Tighe was the former Electrical Trades Union of Australia National Secretary, CEPU ETU Divisional Secretary and National Secretary of the CEPU. I am informed by Peter Tighe of the following:
 - (a) As deregulation of the telecommunications sector occurred, and privatisation of Telecom was foreshadowed, the EPU and the CWU were increasingly in conflict with each other over membership and representational issues. To broadly summarise, the ETU and, subsequently, the Electrical Division of the EPU had coverage of private sector communications and the CWU (historically the ATEA) had coverage of public sector telecommunications works, although the Electrical Division of the EPU also had members in Telecom with competing coverage for the trades based telecommunications technicians.
 - (b) As a public sector union, the CWU was given specific legal rights to follow its membership base into Optus, despite the fact that Optus was a private sector telecommunications provider for which the ETU/EPU Electrical Division had coverage.
 - (c) As the private sector telecommunications industry expanded with more corporations entering the market, the potential for, and actual, conflict between the CWU and the EPU grew.
 - (d) As the unions, specifically the ETU/EPU Electrical Division and the CWU in relation to its Technical and Services Division, had a similar industrial outlook, it was considered appropriate by the respective management committees of the two unions for the EPU and the CWU to amalgamate to decrease demarcation issues and to gain from the economies of scale.
22. The ETU and the CWU commenced amalgamation discussions in December 1992, with these discussions continuing following the formation of the EPU.
23. I annex hereto and mark **AH1** a copy of the Application for Approval of a Designated Presidential Member for Submission of a Scheme for Amalgamation to Ballot, dated 3 February 1994 and executed by Peter Tighe, National Secretary of the EPU, and

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Paul Watson, National Secretary of the CWU as filed with the Australian Industrial Registry ("**the Amalgamation Application**").

24. I annex hereto and mark **AH2** a copy of the EPU & CWU Scheme of Amalgamation as filed with the Australian Industrial Registry, being Annexure "A" to the Amalgamation Application.
25. I annex hereto and mark **AH3** a copy of the certificate of the electoral officer of the Australian Electoral Commission who conducted the amalgamation ballot in relation to the amalgamation of the EPU and the CWU.
26. The amalgamation of the EPU and CWU took effect on 1 August 1994 with the registration of the resultant industrial organisation the CEPU ("**the CEPU Amalgamation**").

Structure of the CEPU

27. The CEPU is a registered industrial organisation with a set of rules which are arranged as follows:
 - (a) Section A of the CEPU Rules relates to the CEPU nationally ("**Section A**");
 - (b) Section B of the CEPU Rules relates to the Electrical Division ("**Section B**");
 - (c) Section B2 of the CEPU Rules relates to the New South Wales branch of the Electrical Division ("**Section B2**");
 - (d) Section C of the CEPU Rules relates to the Plumbing Division ("**Section C**"); and
 - (e) Section D of the CEPU Rules relates to the Communications Division ("**Section D**").
28. I annex hereto and mark **AH4** a copy of the rules of the CEPU, following the CEPU Amalgamation, as at 1 August 1994.
29. I annex hereto and mark **AH5** a copy of the rules of the CEPU as at the date of the execution of this affidavit by me.
30. Pursuant to rule 6 of Section A, the CEPU has three divisions, being the:
 - (a) Electrical Division;
 - (b) Plumbing Division; and
 - (c) Communications Division.(together "**the Divisions**")
31. The constitutive unions, the ETU, the PGEU and the CWU are reflected in the divisional structure of the CEPU, being:
 - (a) the ETU to the Electrical Division;
 - (b) the PGEU to the Plumbing Division; and

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- (c) the CWU to the Communications Division.
32. Pursuant to its rules, the governance structure of the CEPU consists of:
- (a) National;
 - (b) Divisional; and
 - (c) Branch,
- levels.
33. The national governance structures of the CEPU, as established under the Section A rules, are:
- (a) the National Council - rule 7;
 - (b) the National Executive - rule 7A; and
 - (c) the National Executive Officers - rule 8,
- and these governance structures operate across, or to put it another way, "overarch" the Divisions.
34. Rule 7.1.1 provides for the general power of the National Council, stating:
- 7.1.1 The National Council of the Union shall have exclusive power to deal with matters affecting more than one division and the general control and conduct of the business and affairs of the Union having regard to the requirements of divisional autonomy provided for in these rules.*
35. Rule 7.1.2 sets out certain further powers of the National Council, stating:
- 7.1.2 Without limiting the generality of sub-rule 7.1.1 the National Council shall have exclusive power to:-*
- 7.1.2.1 determine and implement policy on matters affecting more than one division;*
 - 7.1.2.2 subject to rule 21 "New Rules and Alterations to Rules", make, amend or rescind rules of the Union;*
 - 7.1.2.3 in a matter affecting more than one division authorize the National Secretary or a Divisional Secretary to make an application or file an objection pursuant to section 204 of the Act or to oppose an application or make an application pursuant to section 118A or successive sections of the Act and direct that any expenses incurred be met by a division or divisions;*
 - 7.1.2.4 in a matter affecting more than one division authorize the National Secretary or a Divisional Secretary to initiate proceedings or defend any proceedings in any court or tribunal when the matter affects more than one division;*
 - 7.1.2.5 resolve disputes between divisions;*


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- 7.1.2.6 *in matters affecting more than one division authorize the National Secretary or other national officer or member of the Union to represent the union at the ACTU and on other bodies and to provide policy advice to such representatives;*
- 7.1.2.7 *to determine matters affecting only one division which are referred to National Council by the relevant Divisional Council;*
- 7.1.2.8 *authorise a division to purchase or lease real property using funds controlled by the division, branch or divisional branch or to sell, mortgage or otherwise deal in real property controlled by the division, branch or divisional branch;*
- 7.1.2.9 *subject to rules 24 "Suspension or Removal of Officers" and 25 Offences, Charges and Penalties", to receive and process a charge laid by any member against any other member in relation to any matter covered by Section A of these rules and to impose appropriate penalties including the removal from office of a member of the National Council or National Officer who in the course of his/her duties as a member of National Council or National Officer is found guilty of:-*
- (1) misappropriation of the funds of the Union;*
 - (2) substantial breach of the Union's Rules;*
 - (3) gross misbehaviour; or*
 - (4) gross neglect of his/her duty.*
- 7.1.2.10 *authorise the expenditure of monies by the National Secretary for the performance by the National Secretary, other National Executive Officer or the National Council of their duties under the Rules;*
- 7.1.2.11 *ensure adherence to Section A of these rules by any division or divisional branch;*
- 7.1.2.12 *appoint and remove National Council auditors;*
- 7.1.2.13 *appoint a National Council Returning Officer.*


Structure of the Electrical Division

36. Pursuant to Section B, the Electrical, Energy & Services Division has a divisional governance structure of a:
- (a) Divisional Council – rule B 7; and
 - (b) Divisional Executive – rule B 8.
37. The Division is divided into branches, being the:
- (a) New South Wales and Australian Capital Territory Branch ("**Electrical NSW**");
 - (b) Queensland and Northern Territory Branch ("**Electrical Qld**");
 - (c) South Australia Branch ("**Electrical SA**");

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- (d) Tasmania Branch ("**Electrical Tas**");
 - (e) Victorian Branch ("**Electrical Victoria**"); and
 - (f) Western Australia Branch ("**Electrical WA**").
38. This structure has been consistent since amalgamation, save for a period when Electrical Victoria and Electrical Tas were merged as "the Southern States Branch". The merged branch was reconstituted as two separate branches in 2008.

Structure of the Plumbing Division

39. Pursuant to Section C, the Plumbing Division has a divisional governance structure of a:
- (a) Divisional Council – rule C 19; and
 - (b) Divisional Executive – rule C 33.
40. The Division is divided into branches, being the:
- (a) Victorian Branch ("**Plumbing Victoria**");
 - (b) New South Wales Branch ("**Plumbing NSW**");
 - (c) Queensland Branch ("**Plumbing Qld**"); and
 - (d) Western Australia Branch ("**Plumbing WA**").
41. At the time of amalgamation the Plumbing Division also had branches in Tasmania and South Australia. These branches have subsequently been merged into respectively Electrical Tas and Electrical SA of the Electrical Division.
42. Plumbing WA was, for a period, merged into Electrical WA, but was reconstituted in 2014.


Structure of the Communications Division

43. Pursuant to Section D, the Communications Division has a divisional governance structure of a:
- (a) Divisional Conference – rule D 5; and
 - (b) Divisional Executive – rule D 11.
44. The Division is divided into branches, being the:
- (a) Victorian Postal and Telecommunications Branch ("**Victorian P&T**");
 - (b) Victorian Telecommunication and Services Branch ("**Victorian T&S**");
 - (c) New South Wales Postal and Telecommunications Branch ("**New South Wales P&T**");
 - (d) New South Wales Telecommunication and Services Branch ("**New South Wales T&S**");

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- (e) Queensland Branch;
 - (f) South Australian Branch;
 - (g) Western Australia Branch; and
 - (h) Tasmanian Branch.
45. The Communications Division is further divided into Divisional Groups called the Telecommunication and Information Technology Industry Group and the Postal Services Industry Group, broadly reflecting the historical ATEA/APTOA and APTU divide. These sections remain for operational and structural purposes, at least to some extent, throughout the Communications Division including in states, for example Queensland, where the Division has a consolidated branch.

Rules Alterations

46. The CEPU rules immediately following the CEPU Amalgamation provided at rule 7.17:

7.17 Carrying of National Council Resolutions

Except as provided by rule 21 "New Rules and Alterations to Rules", a resolution put to the National Council is carried if a majority of votes are cast in favour and at least 40% of the votes of each of the Electrical and Plumbing Divisions and 40% of each Divisional Group of the Communications Division are also cast in favour.

47. For a number of specific rules each Divisional Council also had to ratify the alteration of those rules:

21 – NEW RULES & ALTERATIONS TO RULES

...

21.4 Any amendment or rescission of rules 6.1.4 relating to the "Establishment of Divisions", 6.2 "Autonomy of Divisions", 7.17 "Carrying of National Council Resolutions" and this rule (rule 21) shall be of no effect unless ratified by each of the Divisional Councils."

48. Rule 21.4 was the subject of litigation in proceedings titled *MacFadyen v CEPU*. However, that proceeding was resolved by compromise between the parties to the litigation. The outcome of the compromise was consent to the amendment of rule 7.17, which was certified on 17 March 2005 as follows:

Except as provided by rule 21, "New Rules and Alterations to Rules", a resolution put to National Council is carried if sixty per cent (60%) of votes are cast in favour of the resolution.


49. Rule 7.17 has not been further amended since its certification as referred to in the preceding paragraph.

50. Rule 21 of Section A provides:

21.1 Except as provided in this rule, the National Council shall have the exclusive power to make, amend or rescind the rules of the Union.



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- 21.2 *Divisional rules (set out in sections B, C and D) shall not be made, amended or rescinded by the National Council without the prior approval of the appropriate Divisional Council.*
- 21.3 *Rule 28.2 "Dissolution of a Division" may not be amended or rescinded without an affirmative ballot of members of the appropriate Division.*
- 21.4 *Any amendment or rescission of rules 6.1.4 relating to the "Establishment of Divisions", 6.2 "Autonomy of Divisions", 7.17 "Carrying of National Council Resolutions" and this rule (rule 21) shall be of no effect unless ratified by each of the Divisional Councils.*

51. Rules 6.1.4 and 6.2 are:

- 6.1.4 *Membership of a division shall be determined in accordance with the following sub-rules:*
- 6.1.4.1 *Electrical, Energy and Services Division*
New South Wales and Victoria – membership pursuant to sub-rules 2.1 and 2.2;
Queensland – membership pursuant to sub-rules 2.1, 2.2 and 2.4.5;
Western Australia – membership pursuant to sub-rules 2.1, 2.2 and 2.3, and in
Tasmania and South Australia – membership pursuant to sub-rules 2.1, 2.2 and 2.4 excluding 2.4.5.
- 6.1.4.2 *Plumbing Division*
New South Wales, Victoria, Queensland, Western Australia – membership pursuant to sub-rule 2.4 excluding sub-rule 2.4.5;
- 6.1.4.3 *Communications Division*
All States – membership pursuant to sub-rules 2.5 to 2.21 inclusively.
- 6.2 *Autonomy of Divisions*
- 6.2.1 *Each division shall have the autonomy to decide matters which do not directly affect the members of another division. Such matters include but are not limited to:*
- 6.2.1.1 *the industrial interests of its members;*
- 6.2.1.2 *matters arising from the occupational interests of its members;*
- 6.2.1.3 *matters of policy pertaining solely to the Division;*
- 6.2.1.4 *the election of officers within the Division;*
- 6.2.1.5 *responsibility and accountability for managing the funds held by that Division, including ensuring that the Division in accordance with its rules has made full provisions for all employment entitlements of Officers and employees of the Division and its Divisional Branches, such provisions may be held at Divisional or Divisional Branch level. Each Division shall provide*

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a report annually to National Council, based on the audited accounts of the Division and Divisional Branches, of each Division's provisions and liability for those entitlements; and

6.2.1.6 matters pertaining solely to members covered by sub rules 2.5 to 2.21, which shall be dealt with by the Communications Division unless otherwise decided by that Division.

6.2.2 Where a matter directly affects members of both the Electrical, Energy and Services Division and the Plumbing Division who are eligible to be members pursuant to rule 2.4, each Divisional Secretary and each Divisional Branch Secretary of a Branch with members affected, shall give written notice and particulars of the matter to the Divisional Secretary and Branch Secretary of a Branch with members affected in the other Division as soon as practicable and in the event of a dispute between the Divisions in respect of the matter, the Divisional Secretaries of each Division shall meet to try to resolve the matters in dispute.

If the Divisional Secretaries fail to resolve the matter/s they shall prepare a report for the consideration of a nominee or nominees of the Divisional Executive of each Division who shall meet and try to resolve the matter/s.

If a resolution still cannot be reached, the matters shall be dealt with by the National Executive.

52. Following the National Council approving an alteration to rules 6.1.4, 6.2, 7.17 or 21, each Divisional Council must ratify the alteration and without the ratification of each the alteration has no effect.
53. In the case of the Communications Division, the Divisional Council is, by rule 4.8 of Section A, to be the Divisional Conference.

Amalgamation


54. Section A rules 7.1.1, 7.1.2.8 and 19.1 that I have referred to above remain in the same terms as they were proposed in the amalgamation.

Membership of Divisions

55. On 1 June 1994, in D No 30006 of 1994 ("the amalgamation ballot"), the Returning Officer conducting the amalgamation ballot for the Australian Electoral Commission (the AEC) certified that the total number of persons on the roll of voters, that is, members eligible to vote, were as follows:



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	Number of members 01.06.1994	% of total membership 01.06.1994
Plumbing Division - EPU	15,046	11.9
Electrical Division - EPU	42,487	33.7
CWU	68,550	54.5
Total	126,083	

56. I annex hereto and mark **AH3** a copy of the "Certificate Showing Particulars of the Ballot" issued by the AEC Returning Officer, Lee Jones, on 1 June 1994.
57. The accuracy of the membership figures for the ballot is supported by financial membership figures submitted by the branches of each Division at the first annual National Council meeting held, following the amalgamation, on 24-25 November 1994.
58. There is an Annual Conference of the CEPU, which is provided for by rule 7.4:

7.4 Annual Meetings of National Council

National Council shall meet every year at a date and place to be determined by the National Executive Officers. This meeting shall be known as the Annual Meeting of National Council.

59. Membership figures were required to determine the allocation of votes on the National Council:

7.14.1 Voting power shall be in proportion to the number of financial members attached to a divisional branch;

7.14.2 The number of members of a divisional branch shall be the actual number of financial members at the end of the financial year preceding the date of the vote being taken. This number will be verified by a certificate from the relevant divisional branch auditor published in the branch financial statements.


7.14.3 The voting power of divisional branches shall be endorsed by the National Council and become effective on 1st June each year provided that on any question which may be in the course of postal voting at the 1st June, the voting power shall be that applying at the time the question was moved.

60. A table was produced (each year) by the former National Secretary, for the purposes of allocating votes to each of the Divisions, and which showed the number of financial members for each Division for the financial year. This table was based on the membership material submitted by each of the Divisions (in relation to their respective Divisional Branches) for the annual National Council meeting. This table was utilised to allocate votes. I have not been able to locate the table from the first National Council

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meeting of the CEPU and the first table that I can locate is that of the National Council meeting held on 2-3 November 1995.

61. I annex hereto and mark **AH6** a copy of the table showing the number of financial members for each Division at the end of the financial year in 1994/1995.
62. As at 31 December 2013, the total financial membership of the CEPU was 112,049 with 17,074 being members of the Plumbing Division, 71,272 being members of the Electrical, Energy and Services Division and 23,703 being members of the Communications Division.
63. I annex hereto and mark **AH7** an excerpt from the annual return filed with the Fair Work Commission 7 March 2014, engrossing a table showing the number of financial members of the CEPU Electrical, Energy & Services Division as 71,272 and the CEPU Plumbing Division as 17,074 as at 31 December 2013.
64. I annex hereto and mark **AH8** an excerpt from the annual return filed with the Fair Work Commission 28 February 2014, engrossing a table showing the number of financial members of the Communications Division of the CEPU as 23,703 as at 31 December 2013.
65. I have caused to be prepared, from the information set out above, a table as follows:

	Number of members 01.06.1994	% of total membership 01.06.1994	Number of members 31.12.2013	% of total membership 31.12.2013
Plumbing Division	15,046	11.9	17,074	15.2
Electrical, Energy and Services Division	42,487	33.7	71,272	63.6
Communications Division	68,550	54.5	23,703	21.2
Total	126,083		112,049	

66. The membership of the Communications Division has decreased since the time of the amalgamation to form the CEPU. The relative proportion of the membership of the Communications Division as part of the CEPU has decreased since the time of the amalgamation to form the CEPU.
67. In 1994/1995 the relative voting shares of each Division were the Plumbing Division accounting for 12.5% of the votes; the Electrical, Energy & Services Division accounting for 39.1% of the votes and the Communications Division accounting for 48.4% of the votes.

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68. By 2014 these voting shares had changed, particularly with the Plumbing Division accounting for 13.18% of the votes, the Electrical, Energy & Services Division accounting for 64% of the votes and the Communications Division accounting for 22.8% of the votes.
69. The entitlement to votes is derived from the National Council Voting Entitlement tables produced for each annual meeting of the National Council.
70. I annex hereto and mark **AH9** a copy of the voting entitlement tables extracted from the conference books prepared for each annual meeting of the National Council for the period 2009 to 2013.
71. I have caused to be prepared a graph showing the change in the relative voting shares of each Division for the period 2009 to 2013.
72. I annex hereto and mark **AH10** using the figures from the voting tables, a graph showing the change in the relative voting shares of each Division for the period 2009 to 2013.

Income from Membership Fees

73. Income from membership fees for the Communications Division has decreased since the time of the amalgamation to form the CEPU.
74. To illustrate this I have caused to be extracted from the annual auditor's statement lodged with the Fair Work Commission (or FWA as the case may be) by each branch of the Communications Division since 2009 to 2013, the total income from members' contributions for the Communications Division, which I set out as a total:

Year	Income from members' contributions
2009	\$9,725,386
2010	\$9,450,348
2011	\$9,400,553
2012	\$9,301,336
2013	\$9,305,811

75. I annex hereto and mark **AH11** the relevant excerpts from each of the financial years for each branch of the Communications Division.
76. The figures are raw figures only and are not adjusted to take account of the increases in fees each year nor have they been adjusted to take account of inflation for the period 2009 to 2013.

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77. I have reviewed the financial information contained in the auditors' reports of the CEPU, which discloses the income from contributions for each Division for the period 2009 to 2013.
78. I annex hereto and mark **AH12** excerpts from the auditors' reports of the CEPU filed with the Fair Work Commission (or the AIRC as the case may be), which excerpts disclose the income from contributions for each Division for each of the financial years ending 2009 to 2013.
79. I have caused to be prepared a graph utilising the financial information contained in the auditors' reports of the Divisions and Divisional Branches, a graph showing the income from contributions for each Division for the period 2009 to 2013.
80. I annex hereto and mark **AH12A** using the figures provided in these auditors' statements, a graph showing the income from contributions for each division from 2009 to 2013.

Union Assets

81. The assets of the Communications Division have reduced since the time of the amalgamation to form the CEPU.
82. I have reviewed the financial information submitted by each Division to the first meeting of the National Council following the amalgamation to form the CEPU, which discloses the assets held by each Division and Branches of each Division at that time.
83. I annex hereto and mark collectively **AH13** excerpts from the financial information submitted by each Division to the first meeting of the National Council following the amalgamation to form the CEPU, which excerpts disclose the assets for each Division for the financial year ending 1994.
84. I have reviewed the financial information submitted by each Division to annual meetings of National Council for the period 2009 to 2013, which discloses the assets held by each Division and Branches of each Division. I have further reviewed the various auditors' reports of the Branches, Divisions and the CEPU National Office itself as filed with the Fair Work Commission (or FWA as the case may be) for the period 2009 to 2013, which discloses the assets for each Division.
85. I annex hereto and mark collectively **AH14** excerpts from these auditors' reports, which excerpts disclose the assets for each Division for each of the financial years ending 2009 to 2013.
86. I have caused to be prepared a graph utilising the financial information contained in the auditors' reports of the Divisions showing the net assets of each Division for the period 2009 to 2013 and I annex hereto and mark **AH15** that graph.

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87. I have caused to be prepared, utilising the financial information contained in the auditors' reports of the Divisions, a graph showing the proportion of the total net assets held by each Division for the period 2009 to 2013 and I annex hereto and mark **AH16** that graph.
88. I have caused to be prepared, utilising the financial information contained in the auditors' reports of the Divisions, pie charts showing the proportion of the total net assets held by each Division for the period 2009 to 2013 and I annex hereto and mark **AH17** those pie charts.

Financial Contributions by each Division

89. Rule 19.2 of the National rules provides that each Division shall pay to the National Council a fee, on a basis proportionate to the financial membership of each respective Division in relation to the financial membership of the CEPU as a whole:

19.2 National Council Funding

19.2.1 Each Division shall pay to the National Council, on a basis proportionate to the respective financial membership of each Division, an amount that is determined by National Council.

19.2.2 All money received by the National Council shall be paid to the credit of the Union into a current account with a bank or financial institution approved by National Council. No funds may be withdrawn without the signed authorisation of two National Executive Officers who shall not be from the same Division.

19.2.3 The funds of the National Council shall be invested and expended only in accordance with the directions and/or decision of the National Council.

19.2.4 Subject to 19.3.1, payments made in furtherance of any of the objects of the Union shall be deemed to be part of the ordinary expenses of the Union.

90. I have reviewed the financial information contained in the various auditors' reports of the Branches, Divisions and the CEPU National Office itself, which discloses the financial contributions made by each Division for the period 2009 to 2014.
91. I annex hereto and mark **AH18** a copy of the excerpts from these auditors' reports, which discloses the financial contributions made by each Division for the period 2009 to 2014.

Evidence as to Operation of rule 21.4

92. As referred to above, Rule 21.4 of the National Rules provides that no alterations of rules 6.1.4, 6.2, 7.17 or to rule 21 itself can be made without the alteration also being ratified by each of the Divisional Councils, effectively granting each Division a veto on such alterations.
93. This "veto" power has been exercised twice since I commenced attending meetings of National Council in 2012, namely in respect of an:



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- (a) alteration to effect an amalgamation of the Tasmanian Branch of the Communications Division with the Tasmanian Branch of the Electrical Division; and
- (b) alteration that would permit Branches to "transfer" between Divisions.

The merger of the Tasmanian Branches of the Electrical & Communications Divisions

- 94. The long-term viability of CWU Tasmania, the Tasmanian Branch of the Communications Division, has been a source of concern within the CEPU for some time. For over a decade there has been a consistent decline in the membership of the CWU Tasmania, with a correlative worsening of its finances. I am concerned that the CWU Tasmania cannot continue indefinitely in its present state. In my view, in order to effectively represent CEPU members in Tasmania, the CWU Tasmania must merge with the Tasmanian Branch of the Electrical Division ("**the ETU Tasmania**"). Such a merger will allow for economies of scale, resulting in better resourcing of industrial campaigns and servicing of member issues.
- 95. I am informed by Peter Tighe that similar concerns were previously held with respect to the Plumbing Division's Tasmanian Branch. Due to those concerns, that Branch was merged into the corresponding branch of the Electrical Division.
- 96. I annex hereto and mark collectively **AH19** excerpts from the auditors' reports of CWU Tasmania, which excerpts disclose the assets for CWU Tasmania for each of the financial years ending 2003 to 2013.
- 97. At the 2012 National Council meeting held in Melbourne on 12 and 13 March 2013, the National Council passed the following resolution in favour of a merger between the Tasmanian Branch of the Electrical, Energy and Services Division and the Tasmanian Branch of the Communications Division:

That National Council, having heard the report of the National Secretary on this matter, endorses the proposal to merge our two Tasmanian branches as outlined in the report by no later than 1 September 2013. National Council is of the view that such a merger is in the interests of all CEPU members.


Further National Council directs the Communication Division to discontinue all litigation involving the Tasmanian Branch by the Communications Division and strongly recommend the Communications Division further waive all outstanding capitation fees as a part of the merger process to allow a newly merged single branch every opportunity to succeed in the interest of all CEPU members in Tasmania.

- 98. I annex hereto and mark collectively **AH20** an excerpt from my National Secretary's report, for the National Council meeting held 12 and 13 March 2013, which deals with my concerns in relation to CWU Tasmania.
- 99. I annex hereto and mark **AH21** an extract from the minutes of the National Council meeting held 12 and 13 March 2013 detailing this resolution.

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100. In support of the proposal and to progress the merger at its 2013 annual meeting, held on 22 to 24 July 2013, the Divisional Council of the Electrical, Energy & Services Division passed rules alterations to merge Electrical Tasmania and CWU Tasmania.
101. I annex hereto and mark **AH22** an extract from the minutes of the annual meeting of the Divisional Council the Electrical, Energy and Services Division held 22 to 24 July 2013 detailing this resolution approving the rules alterations necessary to effect the merger.
102. I understand that on 2 August 2013, the then National Secretary, Mr Peter Tighe; the Electrical Tasmania Branch Secretary, Mr Trevor Gauld; the CWU Tasmania Branch Secretary, Peter Miller; the Divisional Secretary of the Communications Division, Mr Dan Dwyer; and an Assistant Divisional Secretary of the Communications Division, Ken Hardisty, all met at the CEPU National Office to discuss the merger. During this meeting, Mr Dwyer requested the opportunity to meet with the Branch Committee of Management of the CWU Tasmania ("**the Tasmanian BCOM**") in order to determine if the Branch wanted to amalgamate with Electrical Tasmania.
103. On 30 October 2013 Mr Dwyer and I attended a meeting of the Tasmanian BCOM. In attendance were:
- (a) seven (7) members of the Tasmanian BCOM;
 - (b) Mr Hardisty;
 - (c) Mr Gauld
 - (d) Mr Miller;
 - (e) Mr Ken Mayes, the Branch President of the ETU Tasmania; and
 - (f) Mr Michael Anderson, an organiser engaged by the ETU Tasmania.
104. It was apparent to me at that meeting that the members of the BCOM were frustrated with the delay in the process and overwhelmingly supported the consolidation of both Divisional Branches in Tasmania. One member in particular, whose name I do not know, was particularly vocal in expressing this view. He was strongly supported by three of the other rank and file members.
105. Mr Dwyer advised he believed the branch was still viable and, to achieve this viability, proposed that:
- (a) the sale of the premises owned by the CEPU out of which both the CWU Tasmania and Electrical Tasmania operate;
 - (b) the position of Branch Secretary of the CWU Tasmania be made honorary secretary;
 - (c) an organiser or industrial officer be recruited to assist the honorary secretary;



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- (d) the CWU Tasmania leases office space to house the full time officer or industrial officer; and
 - (e) the Communications Division would then work closely with the Electrical Division to assist members in Tasmania.
106. I believed from all that happened at the meeting that there was genuine support from the Tasmanian BCOM to progress the merger as soon as possible in preference to Mr Dwyer's proposal.
107. On 18 and 19 November 2013, the CEPU held the annual meeting of its National Council, and on 18 November, I moved the following resolution, seconded by Mr Jim MacFadyen:
- That National Council, having heard the report of the National Secretary on this matter, hereby directs the Divisional Secretary and Divisional President of the Communications Division by no later than 28 November 2013 to:*
- 3. *convene a meeting of the Communications Division's Divisional Conference, whether by correspondence or otherwise, to be held no later than December 2013; and*
 - 4. *submit the following resolution to the Conference for its consideration:*
- The Divisional Conference ratifies the rules changes to the Section A rules of the CEPU as detailed in Attachment A to this resolution.*
- Should the Communications Division's Divisional Conference pass this resolution, the Communications Divisional Secretary is further directed to take all steps necessary for this decision to be ratified in accordance with rule 36.*
108. This resolution was carried.
109. I annex hereto and mark **AH23** an extract from the minutes of the National Council meeting held 18 November 2013 detailing this resolution and a copy of the "Attachment A" referred to in the resolution.
110. As the rules alterations involved amending rule 6.1.4, rule 21.4 required ratification of the alteration by each of the Divisional Councils.
111. The alterations were ratified by the Divisional Council of the Electrical, Energy & Services Division.
112. The alterations were ratified by the Divisional Council of the Plumbing Division.
113. I am advised by Mr Dwyer that the Communications Division has not ratified this rule change. Consequently, the alterations cannot be lodged with the Fair Work Commission and the merger cannot proceed, and has not proceeded.


The Branch Transfer Alterations

114. From my position as National Secretary, I am aware that, for a considerable time, there has been disputation between two factions within the Communications Division. This disputation has been deleterious to the Division, and the CEPU more broadly, by:

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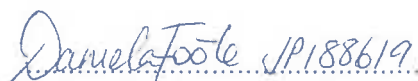


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- (a) preventing the proper functioning of the Division's governance organs;
 - (b) preventing the passage of audited financial statements (a requirement under the *Fair Work Act*);
 - (c) creating unfavourable media coverage of the CEPU;
 - (d) spawning a suite of litigation by individuals within the Division;
 - (e) significantly distracting Divisional Officers from their primary function of advancing members' interests; and
 - (f) significantly distracting National Officers from their primary function of advancing members' interests in the National Officers' efforts to resolve the disputation.
115. A key aggravator of the situation is that, under the rules of the Communications Division, a sixty per cent majority is required to pass resolutions at its Divisional Executive (rule 16(b) of the Section D rules) or Divisional Conference (rule 5(h) of the Section D rules). Neither faction holds a sixty per cent majority.
116. Elections for the various offices within the Communications Division are due to be held this year. I have no confidence that these elections will resolve the disputation.
117. Given both the damage being caused to the CEPU as a whole and the apparent inability of the Communications Division's internal governance to resolve the issues, I considered it appropriate for the CEPU's National Council to intervene and on 19 November 2013, National Council directed the various officers (in disputation) within the Communications Division to attend a mediation. I annex hereto and mark **AH24** an extract of the minutes recording this resolution.
118. The National Office engaged the Honourable Rod Madgwick QC as mediator. This mediation process was unsuccessful. I annex hereto and mark **AH25** a copy of the report prepared by Mr Madgwick as delivered to me.
119. Following the failure of the mediation process to resolve the issues within the Communications Division, I considered it appropriate to seek an alternate means of rectifying the situation. Consequently, I caused to be drafted a proposed rules alterations, the intent of which was to allow, as opposed to compel, branches to transfer between Divisions provided certain criteria were met.
120. Although having a wider potential application, I believed, and continue to believe, that such a rules alteration would result in one or more branches from the Communications Division transferring to either the Electrical or Plumbing Division. A consequence of such a transfer would be twofold, namely it would:
- (a) ensure the proper governance of any transferring branch by placing them within a properly functioning Division; and
 - (b) likely result in one of the two factions obtaining the sixty per cent majority required to pass resolutions at the Divisional Executive and Conference.




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121. At a special National Council meeting held 21 March 2014, I tabled a proposal to alter various Section A rules to allow for the transfer of branches between Divisions. I annex hereto and mark **AH26** a copy of this proposal.
122. Following some discussion, it was agreed by National Councillors that more time was needed to consider this proposal. Accordingly, the National Council resolved that there would be a review period of one week after the meeting during which Councillors would consider the rules alterations and communicate their any feedback to the National Secretary. The National Council further resolved that at the conclusion of the review period, I would submit the matter to the Council for a decision by correspondence, which was to close 7 April 2014.
123. I annex hereto and mark **AH27** an extract of the minutes of the Special National Council meeting held 21 March 2014.
124. Immediately subsequent to the close of this meeting, whilst Mr Dwyer and I were still in the meeting room, I asked Mr Dwyer whether he consented to the proposed rules alterations (inclusive of any amendments) being put to National Council via postal vote. Mr Dwyer advised that he did so consent.
125. On 21 March 2014, at 3:46pm, I caused an email to be sent to the National Council attaching a covering letter drawing Councillors attention to the outcome of the special National Council meeting which resulted in a review period to the rules alterations and seeking their feedback and concerns regarding the rules alterations. I also attached to the email the resolution of the Special National Council meeting and the rules alterations.
126. I annex hereto and mark **AH28** a copy of the email I sent 21 March 2014 to the National Council.
127. On 25 March 2014, at 2:57pm, I sent an email to Mr Dwyer and Mr Setches, Secretary of the Plumbing Division, asking if they would like to discuss the rules alterations during the review period.
128. I annex hereto and mark **AH29** a copy of the email sent to Mr Dwyer and Mr Setches.
129. On 26 March 2014, at 12:11pm, I received an email from Mr Dwyer, which he asked to be also sent to all National Councillors, stating that the rules alterations were complex, that a week was insufficient time to consider the effect of the alterations and seeking deferral of voting on the matter.
130. I annex hereto and mark **AH30** a copy of the letter received from Mr Dwyer sent by email.
131. On 26 March 2014, at 1:20pm, I received a further email from Mr Dwyer, stating that he was happy to discuss the rules alterations but that he had limited availability.
132. On 27 March I responded to Mr Dwyer suggesting we discuss the matter by phone given his limited availability.




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133. I annex hereto and mark collectively **AH31** a copy of the email sent by Mr Dwyer to me and my response to that email.
134. On 28 March 2014, at 11:01am, I received an email from Mr John O'Donnell, Branch President of the Western Australian Branch of the Communications Division, expressing his concern over a number of internal matters, some of which were related to the process of altering the rules currently being considered by the National Council.
135. I annex hereto and mark collectively **AH32** copies of this correspondence.
136. Subsequent to receiving this email I telephoned Mr O'Donnell and discussed his concerns with him.
137. On 28 March 2014, at 2:35pm, I caused an email to be sent to all National Councillors reminding them that the review period was closing that day and thanking Councillors for their input regarding the rules alterations. I also attached Mr Dwyer's correspondence referred to above.
138. I annex hereto and mark **AH33** a copy of the email sent by me to all National Councillors.
139. On 29 March 2014, Mr Jim Metcher, Secretary of the New South Wales Postal and Telecommunications Branch of the Communications Division, contacted me to discuss various aspects of the proposed rules alterations.
140. On 30 March 2014, at 7:30am, Mr Metcher and I held further discussions regarding the rules alterations.
141. On 31 March 2014, at 12:30pm, I received an email from Ms Joan Doyle, the Secretary of the Postal and Telecommunications Victorian Branch of the Communications Division, attaching a letter in which Ms Doyle maintained that the rules alterations fell into three groups and requested that they be split into at least three groups so they could be voted upon individually. Ms Doyle also stated that the rules alterations would not accomplish the purpose of allowing branch transfers and would create unintended but unspecified legal difficulties. Further, Ms Doyle explained her absence for a time from the Special National Council meeting of 21 March.
142. I annex hereto and mark **AH34** a copy of the email and attached letter received by me on 31 March 2014 from Ms Doyle.
143. On 31 March 2014, at 4:59pm, I caused an email to be sent to all National Councillors explaining that during the review period I had a number of discussions with various Councillors, correspondence had been received and amendments had been suggested regarding the proposed alterations. I advised that in view of this feedback, in accordance with the National Council decision, I had amended the proposed alterations. Further, given that the review period had expired, again in accordance with the National Council decision, I attached to this correspondence a decision by correspondence (NCD 7_2014). The return date for the vote was 5pm 7 April 2014.


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144. I annex hereto and mark collectively **AH35** a copy of the email sent to National Councillors on 31 March 2014 attaching:
- (i) the covering letter;
 - (ii) the voting form NCD 7_2014; and
 - (iii) the proposed amendments to Section A rules;
 - (iv) a document showing the amendments to the proposed rules following the review period.
145. On 31 March 2014, at 6:09pm, I received an email from Mr O'Donnell, stating that he was satisfied that the postal ballot of National Council should go ahead as planned.
146. I annex hereto and mark **AH36** a copy of the email received from Mr O'Donnell.
147. On 1 April 2014, at 1:07pm, Mr Stephen Butterworth, Branch President of the South Australia and Northern Territory Branch of the Communications Division, emailed me, stating that the rules alterations were complex and accordingly he requested more time to consider the rules alterations.
148. I annex hereto and mark collectively **AH37** a copy of the email received from Mr Butterworth.
149. On 1 April 2014, at 2:45pm, Mr Alex Jansen, a National Councillor and Secretary of the New South Wales Technical and Services Divisional Branch of the Communications Division, wrote to me expressing his concerns on behalf of the branch over the short time in which he had to vote. Mr Jansen further advised that he would not be voting and asked that the return date for the vote be changed.
150. On 2 April 2014, at 3:55pm, I replied to Mr Butterworth advising that, as the timeframe for the ballot had been determined by National Council, I was not in a position to grant an extension of time.
151. I annex hereto and mark **AH38** a copy of the email sent to Mr Butterworth.
152. On 2 April 2014, at 3:51pm, I replied by email to Mr Jansen. I referred Mr Jansen to the opportunity he had been given during the review period to raise issues with the resolution, and reminded him of his duties as a National Councillor to attend to the business of the Council and asked him to reconsider his decision not to vote. I also advised him I could not change the date for the return of the vote as the date for voting had been set by the National Council and as National Secretary it was not in my power to alter that decision.
153. I annex hereto and mark **AH39** a copy of the email sent to Mr Jansen.
154. On 4 April 2014, at 9:32am, Mr Jansen replied to my email, thanking me for my response and reiterating the he believed that the consultation time was too short. Mr Jansen further advised that he was now intending to vote on the matter.



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155. I annex hereto and mark **AH40** a copy of the email received from Mr Jansen.
156. On Friday, 4 April 2014, I caused an email to be sent to all National Councillors, reminding Councillors that all votes were to be returned by the following Monday 7 April 2014 at 5pm.
157. I annex hereto and mark **AH41** a copy of the email sent to all National Councillors reminding them to vote.
158. On Tuesday, 8 April 2014, I reviewed the votes that had been returned. It was apparent to me that the resolution had been carried.
159. I annex hereto and mark collectively **AH42** a copy of the returned votes.
160. On 30 April 2014, I caused an email to be sent to all National Councillors, notifying them of the outcome of the decision by correspondence to approve the rules alterations and advising them that the ballot had approved the rules alterations. I included a copy of the voting summary form. It can be seen from the voting summary form that a small number of Councillors voted against the proposal to alter the rules.
161. I annex hereto and mark **AH43** a copy of the email forwarded to the National Councillors.
162. On 12 June 2014, at 2:39pm, in my capacity as Divisional Secretary of the Electrical, Energy & Services Division, I caused an email to be sent to all Divisional Councillors of the Electrical, Energy & Services Division attaching a decision by correspondence to approve the alterations of Section A rules 6.1.4 and 6.2.
163. I annex hereto and mark **AH44** a copy of the email sent 12 June 2014 to the Electrical, Energy & Services Divisional Council.
164. On 20 June 2014, at 12:14pm, I caused an email to be sent to all Divisional Councillors of the Electrical, Energy & Services Division, advising that the Divisional Council had unanimously approved the alterations to Section A rules 6.1.4 and 6.2.
165. I annex hereto and mark **AH45** a copy of the email sent 20 June 2014 to the Electrical, Energy & Services Divisional Council.
166. I am advised that the Divisional Council of the Plumbing Division ratified the alterations.
167. The Communications Division has not ratified, as at the date of this affidavit, the alterations
168. The way in which the Communications Division has dealt with the alterations to date has been considered by His Honour Buchanan J of the Federal Court in *Baxter v Dwyer & ors* [2015] FCA 74. I annex hereto and mark **AH46** a true copy of the decision.
169. In a postal vote closing on 1 September 2014, 51.1% of the Divisional Conference of the Communications Division voted in favour of ratifying the alterations to Section A rules 6.1.4 and 6.2.

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170. Rule 5(h) of the Communications Division rules requires, however, a 60% majority decision of the Divisional Conference. Subsequent to the ballot of the Divisional Conference a request for a plebiscite was made to the Communications Divisional Executive by a majority of Communications Division's Branches.

171. This request was rejected on various grounds, with the rejection subsequently being the subject of the proceedings in *Baxter v Dwyer*.

172. Judgment was delivered on 13 February 2015, with the Court ordering:

1. *The respondents (other than the 22nd respondent) and each of them perform and observe the rules of the Communications Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ("the CEPU") and, in particular, Rule 35, as soon as practicable by taking the opinion of the whole of the financial membership of the Communications Division of the CEPU by submitting to a plebiscite of those members the question that the alterations to National Rules 6.1.4 and 6.2 made by the National Council by decision NCD7-2014 on 7 April 2014 be ratified by the Divisional Conference as a matter of urgency.*
2. *The respondents (other than the 22nd respondent) direct the 22nd respondent, as Divisional Returning Officer, to conduct the plebiscite of the whole of the financial membership of the Communications Division of the CEPU on the question that the alterations to National Rules 6.1.4 and 6.2 made by the National Council by decision NCD7-2014 on 7 April 2014 be ratified.*
3. *The 22nd respondent conduct the plebiscite of the whole of the financial membership of the Communications Division of the CEPU on the question that the alterations to National Rules 6.1.4 and 6.2 made by the National Council by decision NCD7-2014 on 7 April 2014 be ratified, and take all steps necessary to conclude the plebiscite as soon as practicable.*
4. *The respondents take all other steps necessary to enable the plebiscite of the whole of the financial membership of the Communications Division of the CEPU on the question that the alterations to National Rules 6.1.4 and 6.2 made by the National Council by decision NCD7-2014 on 7 April 2014 be ratified to be taken as soon as practicable.*

173. On 20 February 2015 a Full Bench of the Fair Work Commission (comprised of Vice President Hatcher, Justice Bolton, Senior Deputy President and Commissioner Bull) considered an appeal of a decision of the Delegate, Mr Enright, in relation to a rule amendment of the CEPU. The Full Bench:

- (a) determined that the Delegate adopted an erroneous interpretation of rule 7.11 as imported by rule 7.7.3. And that on the proper interpretation of those provisions, a ballot under the procedure provided for by rule 7.7, was invalid if a majority of National Councilors representing a particular Division did not cast a vote;



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- (b) held that in the case of the relevant ballot, a majority of National Councilors from the Communications Division did not cast a vote, with the result that the ballot to approve the proposed rules alterations was not valid;
- (c) upheld the appeal; and
- (d) quashed the decision of the delegate.

The appeal decision of the Full Bench of the Fair Work Commission is annexed hereto and marked **AH47**.

Rule 21.4, or the Rules as a whole, contravene s 142(1)(a) and/or (c) of the *Fair Work (Registered Organisations) Act*

Section 142(1)(c)

174. In all of the circumstances set out above I say that rule 21.4 of the rules of the CEPU, or the rules as a whole, contravene section 142(1)(c) of the Act in that they impose upon members of the CEPU, conditions, obligations or restrictions that are oppressive, unreasonable or unjust.

Oppressive

175. In the present circumstances rule 21.4, or the rules as a whole, provides for an equal veto power to be held by each of the divisions of the CEPU in circumstances where there is a significant imbalance between membership in each of those divisions. That is an outcome that is harsh or wrongful and therefore oppressive within the meaning in s.142(1)(c).

176. The operation of rule 21.4, or the rules as a whole, is made more harsh or wrongful by the fact that within the Communications Division of the CEPU, the Divisional Conference is only able to approve proposals with a 60% affirmative vote. In those circumstances:

- (a) the wishes of the majority of the CEPU may depend on the approval of the minority of the members of the CEPU; and
- (b) within that minority (if it is the Communications Division) a further minority may be able to defeat the wishes of the majority.

177. Further, whilst rule 16 of the Rules of the CEPU provides for a ballot of members in relation to certain matters, any ballot of members directing the National Council to approve amendments of the type contemplated by rule 21.4 would still be subject to the veto provided for by rule 21.4. In other words, the ballot provided for by rule 16 does not overcome the harsh and wrongful operation of rule 21.4, or the rules as a whole.

Unreasonable

178. For the reasons set out above at paragraphs 175-177. The condition, obligation or restriction imposed by rule 21.4, or the rules as a whole, is inappropriate and therefore unreasonable within the meaning in s.142(1)(c).

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Unjust

179. For the reasons set out above at paragraphs 175-177. The condition, obligation or restriction imposed by rule 21.4, or the rules as a whole, is contrary to right and justice and to ordinary standards of fair play, and accordingly unjust within the meaning in s.142(1)(c).

Section 142(1)(a)

180. In all the circumstances set out above I also say that rule 21.4 of the Rules of the CEPU, or the Rules as a whole, contravene section 142(1)(a) of the Act in that they are contrary to, or fail to make a provision required by the Act; namely they fail to provide for the control of committees of the organisation and its branches respectively by the members of the organisation and branches.

181. For the reasons set out above at paragraphs 175-177, rule 21.4, or the Rules as a whole, results in a circumstance where the members of the CEPU do not have the proper control of the committees of the CEPU and its branches.

182. In all of the circumstances set out above I respectfully seek the orders set out in the Originating application accompanying this affidavit.

Affirmed by the deponent
at Sydney
in New South Wales
on 27th March 2015
Before me:

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Signature of deponent

Daniela Foote JP188619

Signature of witness

A Justice of the Peace/Solicitor/ Commissioner for Declarations