

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/09/2020 1:13:55 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD914/2020  
File Title: IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD  
(ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Dated: 2/09/2020 3:26:05 PM AEST

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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Affidavit

No. NSD 914 of 2020

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED)  
 ACN 100 686 226 & ORS

**TRANSPORT WORKERS' UNION OF AUSTRALIA  
 AND OTHERS (AS SET OUT IN THE SCHEDULE)**

Plaintiffs

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD  
 HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF EACH  
 OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE  
 THIRD TO FORTY SECOND (AS SET OUT IN THE SCHEDULE)**

Defendants

Affidavit of: **James Higgins**  
 Address: Level 22, 181 William Street, Melbourne, Victoria 3000  
 Occupation: Solicitor  
 Date: 2 September 2020

I, James Higgins, of Level 22, 181 William Street, Melbourne, SOLICITOR, affirm:

1. I am a partner at the law firm Gordon Legal.
2. I have the care and conduct of this application on behalf of the plaintiffs.
3. On 21 August 2020, the Court (Middleton J) made orders to enable the plaintiffs to represent their members who are employees of the second to forty-second defendants (**Virgin companies**) and who did not otherwise seek to participate, in the second meetings of creditors of the Virgin Companies.
4. The plaintiffs now seek, orders that the names of members of the respective unions who are deemed to have appointed an attorney pursuant to section 75-155 by virtue of order 4 of the orders made on 21 August 2020 (**Relevant Members**) not be disclosed in the

Filed on behalf of (name & role of party)	Transport Workers Union of Australia and others <b>(Plaintiffs)</b>		
Prepared by (name of person/lawyer)	James Higgins		
Law firm (if applicable)	Gordon Legal		
Tel	(03) 9603 3035	Fax	(03) 9603 3050
Email	jhiggins@gordonlegal.com.au		
<b>Address for service</b>	Level 22, 181 William Street		
(include state and postcode)	Melbourne VIC 3000		

minutes of the Second Meetings, to be prepared under r 75-145(4) of the Insolvency Practice Rules (Corporations) 2016 (Cth) (**IPR**).

5. I make this affidavit in support of the application. I am authorised to make this affidavit on behalf of the plaintiffs. Except where I say otherwise, I make this affidavit from my own knowledge. Where I refer to information that has been provided to me, I believe that information is true.

### **Reasons for application**

6. The Second Meetings will take place on 2 September 2020. Following the Second Meetings, the administrators have an obligation under r 75-145(4) of the IPR to prepare a record of the persons present in person, by proxy or by attorney at the meetings and to keep that record as part of the minutes of the meeting prepared under 75-145 of the IPR.
7. Since the order was made, there have been discussions between representatives of the plaintiffs and representatives of the administrators of the Virgin Companies about giving effect to the orders. I have been involved in those discussions, in which an important topic has been keeping lists of union members that are provided to the administrators and for them ultimately to be destroyed.
8. On 1 September 2020, I received an email from Ms Cassandra Adams at Clayton Utz, the legal representatives of the administrators of the Virgin companies. . In the email, Ms Adams proposed the following procedure for the purpose of protecting the identity of Relevant Members in the course of the Second Meetings:
- (a) a Deloitte employee will be engaged, on a strictly confidential basis, to assist with the appointment of proxies for Relevant Members;
  - (b) by 3pm on Wednesday, 2 September 2020, the plaintiffs will provide password protected lists of their members (**Lists**) to the relevant Deloitte employee, together with a declaration from each union secretary that its respective List is correct;
  - (c) only the relevant Deloitte employee will have access to the Lists;
  - (d) the Deloitte employee will undertake an immediate cross-checking exercise against the "Halo" platform to be used for the Second Meetings and the Lists, to ensure the members exist;
  - (e) by 10am on Thursday, 3 September 2020, each plaintiff is to provide instructions on how their votes are to be recorded for the Relevant Members;
  - (f) at 12 pm on Thursday, 3 September 2020, the Deloitte employee will conduct a final cross-check of the Relevant Members identified on the Lists and allocate the




voting as directed and nominate the identified union representative as the proxy holder; and

- (g) by 5pm on Thursday, 3 September 2020, the union representatives will have access to the Halo platform and see all proxies held by them for Relevant Members.

Now shown to me and marked "JM~~H~~-1" is a copy of the email from Ms Adams. The process set out above remains the subject of discussions and some minor alterations.

9. In my experience, lists of union members are confidential. Further, unions have obligations to members to maintain privacy, including obligations under the *Privacy Act 1988* (Cth) and under each union's privacy policies.
10. I have been informed by representatives of each of the plaintiffs and believe that they plaintiffs are concerned to prevent the publication of lists of their members in any public forum. Whether a person is a union member is inherently personal information and such information should be protected to the extent possible by unions and employers.
11. Further to privacy concerns, and without casting aspersions on any single employer, in my experience of industrial law (in which I have practised for more than ten years), adverse action, including discrimination against union members remains prevalent. I am informed by Scott Connolly, Assistant Secretary of the ACTU that the maintenance of privacy as it relates to union membership during an uncertain economic environment is important for union members.
12. In the limited time since the orders of 21 August 2020 were made, it has not been possible for each union to seek permission from each individual union member to identify them as a union member under the process contemplated by the order.
13. I refer to the email from Cassandra Adams at Clayton Utz exhibited as JM~~H~~-1 to this affidavit. In that email, Ms Adams confirms that the defendants are supportive of the plaintiffs seeking confidentiality orders in relation to the identity of union members prior to the Second Meetings.

#### **Relief sought**

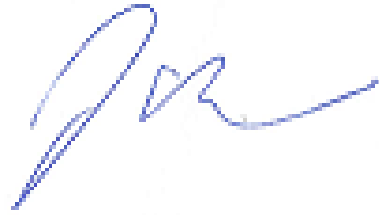
14. The relief sought by the application seeks to provide the administrators with the authority to prepare the minutes of the second meeting in a manner which does not identify individual union members subject to the order made 21 August 2020 from being identified as members of the plaintiffs.
15. I refer to the email from Cassandra Adams at Clayton Utz exhibited as JM~~H~~-1 to this affidavit. In that email, Ms Adams confirms that the defendants are supportive of the




plaintiffs seeking confidentiality orders in relation to the identity of union members prior to the Second Meetings.

Affirmed by the deponent  
at Melbourne  
in Victoria  
on 2 September 2020  
Before me:

)  
)  
)  
)  
)



Signature of deponent



Signature of witness

DANIEL STEPHEN WALDRON F.Inst.L.Ex.  
*of Level 22, 181 William Street Melbourne Victoria*  
*A fellow of the Institute of Legal Executives (Victoria)*  
ACN 004 670 928

Federal Court of Australia  
District Registry: New South Wales  
Division: General

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS

**TRANSPORT WORKERS' UNION OF AUSTRALIA  
AND OTHERS (AS SET OUT IN THE SCHEDULE)**

Plaintiffs

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND  
RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL  
ADMINISTRATORS OF EACH OF VIRGIN AUSTRALIA HOLDINGS LTD  
(ADMINISTRATORS APPOINTED) AND THE THIRD TO FORTY SECOND (AS  
SET OUT IN THE SCHEDULE)**

Defendants

**ANNEXURE "JMH-1"**

This is the annexure marked **JMH-1**, now produced and shown to James Higgins at the time of affirming his Affidavit before me this 2 September 2020.



Before me:.....

**DANIEL STEPHEN WALDRON F.Inst.L.Ex.**  
*of Level 22, 181 William Street Melbourne Victoria*  
*A fellow of the Institute of Legal Executives (Victoria)*  
**ACN 004 670 928**

Filed on behalf of (name & role of party)	Transport Workers Union of Australia and others <b>(Plaintiffs)</b>		
Prepared by (name of person/lawyer)	James Higgins		
Law firm (if applicable)	Gordon Legal		
Tel	(03) 9603 3000	Fax	(03) 9603 3050
Email	jhiggins@gordonlegal.com.au		
<b>Address for service</b> (include state and postcode)	Level 22, 181 William Street Melbourne, Victoria 3000		

**From:** "Adams, Kassandra" [REDACTED]  
**Date:** 1 September 2020 at 11:31:28 am AEST  
**To:** James Higgins <jhiggins@gordonlegal.com.au>  
**Cc:** "Sackar, Timothy" [REDACTED]  
**Subject:** Project Volar - Union Voting

Dear James,

Thank you for your time yesterday afternoon regarding the concerns and logistics of the proxy votes by the Unions at the second meeting of creditors.

## 1. Voting Process

It is proposed that the following occur:

1. Belinda Sippe at Deloitte will be engaged on a strictly confidential basis to assist with the appointment of proxies for employees who are members of Unions and who have not voted, appointed a proxy or indicated they will attend the meeting themselves by 12:00pm on Thursday 3 September 2020;
2. By 3:00pm Wednesday, 2 September 2020, Unions to have provided password protected lists of employees that they represent, to Belinda. The individual Union Secretaries to provide declarations that the lists provided are correct lists of current members of the individual unions;
3. Belinda will then undertake an immediate cross-checking exercise as against the Halo records and the Union records, to ensure the existence of members;
4. By 10:00am Thursday, 3 September 2020, each Union is to have provided to Belinda instructions on how their votes are to be recorded for the Identified Members as defined in point 5 below, to Belinda;
5. On Thursday, 3 September 2020 at 12:00pm Belinda will run the final cross-check on employees that are a member of a Union that appear on the lists and who have not voted, appointed a proxy or indicated they will attend the meeting themselves (**Identified Members**), and allocate the voting as directed and nominate the identified Union representative as proxy holder; and
6. By 5:00pm on Thursday 3 September the Union representatives should be able to access the Halo platform and see all the proxies they hold of the Identified Members.

At no point will anyone other than Belinda have access to the Union employee lists.

Belinda's contact details are:

**Belinda Sippe**  
Senior Manager | Risk Analytics  
123 Eagle Street, Brisbane, QLD, 4000  
[REDACTED] | [www.deloitte.com.au](http://www.deloitte.com.au)

If the respective lists, could please be provided as a matter of urgency so that Belinda is able to begin the process.

## 2. Confidentiality Orders

Further to our call this afternoon and after further discussion with the Administrators, the Administrators would be supportive of seeking the confidentiality order in relation to the Union employee lists prior to Friday's creditors' meeting.

If you have any further queries, please do let us know or if, a call with Deloitte would assist, we can also arrange.

Kind regards,

**Kassandra Adams, Senior Associate**  
**Clayton Utz**

Level 15, 1 Bligh Street, Sydney NSW 2000 Australia | [REDACTED]

[REDACTED] | [www.claytonutz.com](http://www.claytonutz.com)

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