

## NOTICE OF FILING

### Details of Filing

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File Title:	GENERAL MANAGER OF THE FAIR WORK COMMISSION v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION AND ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



## Concise Statement

No. VID of 2024

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

### General Manager of the Fair Work Commission

Applicant

**Construction, Forestry and Maritime Employees Union** and others named in the Schedule to the Originating Application

Respondents

### CONCISE STATEMENT OF THE APPLICANT

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Filed on behalf of (name & role of party) General Manager of the Fair Work Commission, the Applicant  
Prepared by (name of person/lawyer) Abigail Cooper  
Law firm (if applicable) Australian Government Solicitor  
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### Summary of relief sought from the Court

1. The Applicant seeks the declarations and orders set out in the Originating Application, pursuant to s 323 of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**).
2. The declarations sought are that the Construction and General Division (**C&G Division**) (excluding the Western Australian Divisional Branch and ACT Divisional Branch) of the Construction, Forestry and Maritime Employees Union (**CFMEU**) (**Administered Division**), and its divisional branches for each of Victoria-Tasmania, New South Wales, Queensland-Northern Territory and South Australia (**Administered Divisional Branches**), have ceased to function effectively and that there are no effective means under the rules of the CFMEU by which they can be enabled to function effectively: s 323(1).
3. The proposed orders are for the appointment of an Administrator of, the approval of a Scheme as set out in Annexure A to the proposed orders (**Scheme**) for, and the vacation of offices in, the Administered Division and each of the Administered Divisional Branches, and related orders: s 323(2) and (3).
4. The Applicant also seeks orders for service and the giving of notice of the application and the Court's orders, and regarding the service and advertisement of such notice: s 323(5).
5. The proposed orders would have effect in spite of anything in the National Rules of the CFMEU or the Divisional Rules of the C&G Division: s 323(6).

### Parties to the proceeding

6. The Applicant holds the office of General Manager of the Fair Work Commission, pursuant to ss 656 and 660 of the *Fair Work Act 2009* (Cth) (**FW Act**).
7. The Applicant has a sufficient interest in relation to the CFMEU, and therefore has standing to make an application under s 323(1) of the FWRO Act. The Applicant's statutory functions<sup>1</sup> include to:
  - a. promote efficient management of organisations and high standards of accountability of organisations and their office holders to their members: s329A(1)(a)(i) of the FWRO Act;
  - b. monitor acts and practices to ensure they comply with the provisions of the FWRO Act providing for the democratic functioning and control of organisations: s 329A(1)(b);
  - c. do anything incidental to or conducive to the performance of the above functions: s 329A(1)(c); and
  - d. seek to embed within organisations a culture of good governance and voluntary compliance with the law: s 329A(2).
8. Parliament's intention in enacting the FWRO Act included to assist employees to promote and protect their economic and social interests through the formation of employee organisations, by providing for their registration, and according rights and privileges to them once registered: s 5(4). Parliament thereby recognised and respected the role of employee organisations in facilitating the operation of the workplace relations system: s 5(5).

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<sup>1</sup> See also s 657(1A)(b) of the FW Act.

9. The CFMEU is an organisation of employees registered under the FWRO Act. It is a body corporate: s 27(a). The C&G Division and its divisional branches are part of the federally registered CFMEU, and do not have their own separate legal personality.<sup>2</sup>
10. The CFMEU (including its C&G Division and its divisional branches) has important objects concerning the protection and advancement of the interests, welfare and safety of its members.<sup>3</sup>
11. The Second to 224<sup>th</sup> Respondents are officeholders of the Administered Division and the Administered Divisional Branches (**Officeholders**). They exercise powers and duties under the National Rules of the CFMEU and under the Divisional Rules of the C&G Division (which rules are made and apply under the FWRO Act). The Officeholders will be affected by the making of the proposed orders.
12. The 225<sup>th</sup> to 252<sup>nd</sup> Respondents, and the 253<sup>rd</sup> to 269<sup>th</sup> Respondents, are officeholders of the Western Australian Divisional Branch and the ACT Divisional Branch respectively, who are not otherwise Officeholders referred to in paragraph 11 above. They will be affected, or potentially affected, by the making of the proposed orders.

### **Important facts giving rise to the claim**

13. In the construction industry, since 2003, the CFMEU has been the subject of findings of contraventions of federal workplace laws on more than 1,500 occasions (plus 1,100 contraventions by its officeholders, employees, delegates and members) in approximately 213 proceedings, resulting in total penalties ordered against the CFMEU of at least \$24 million plus at least \$4 million ordered against its office holders, employees, delegates and members.
14. The Applicant has become aware, via media reporting in July 2024, of serious allegations of criminal conduct and other unlawful conduct, by current and former Officeholders, employees and other representatives of the Administered Division and various Administered Divisional Branches, including:
  - a. appointing as officeholders and/or delegates persons with criminal associations;
  - b. making agreements with, and/or supporting the appointment to projects, of construction industry participants with criminal associations;
  - c. encouraging construction industry participants to employ, or enter into business arrangements with, persons with criminal associations ;
  - d. threats and intimidation of construction industry participants, including in relation to the signing of enterprise agreements, and in relation to the engagement of particular persons;
  - e. persons held out to be delegates or other representatives of the CFMEU forcing construction industry participants to employ and pay union delegates who do not attend work;
  - f. dealings with third party consultants who allegedly solicited the payment of bribes to CFMEU officials in return for CFMEU support to win work on particular projects, and who stated that the CFMEU encourages construction industry participants to invoice clients for “ghost” shifts (shifts that are not worked despite workers being rostered);

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<sup>2</sup> In some States, there is an organisation registered under State legislation, but those State-registered organisations are not the subject of this proceeding under s 323 of the FWRO Act.

<sup>3</sup> CFMEU National Rules, rule 4.

- g. making enterprise agreements with companies on the basis of the payment of bribes, or otherwise soliciting or receiving bribes;
  - h. receiving the benefit of free labour and supplies for personal building projects;
  - i. threatening physical violence against construction industry participants who had agreements with unions other than the CFMEU;
  - j. threatening that construction industry participants that did not have enterprise agreements with the CFMEU would be banned from building projects;
  - k. threatening to close down projects unless particular construction industry participants were removed from the project;
  - l. harassment of workers because they had previously been employed by construction industry participants that had enterprise agreements with unions other than the CFMEU; and
  - m. threats and intimidation of officers of other Divisions of the CFMEU seen not to be aligned with the C&G Division.
15. The steps that have been taken by the CFMEU in relation to these serious allegations, since the media reporting in July 2024, are limited in nature:
- a. the CFMEU has indicated that Mr John Setka (holder of various offices including Divisional Vice President of the C&G Branch, and Branch Secretary of both the Vic-Tas Divisional Branch and of the SA Divisional Branch) and Mr Marty Albert (Divisional Branch Management Committee of the Vic-Tas Divisional Branch) have resigned with effect from 12 July 2024 from all such offices;
  - b. on or about 15 July 2024 at a meeting of the C&G Divisional Executive, a resolution was passed under r 9(15)(j) of the C&G Divisional Rules to, amongst other things, appoint Mr Zachary Smith (Divisional Secretary of the C&G Division, and National Secretary of the CFMEU since 12 July 2024) to investigate and take action in relation to the Vic-Tas Divisional Branch, confer upon Mr Smith powers and functions including those of Branch Secretary of the Vic-Tas Divisional Branch, and to direct and oblige each member of the Vic-Tas Divisional Branch Management Committee to do all things necessary to give effect to any directions, decisions and/or recommendations given by Mr Smith;
  - c. on or about 16 July 2024 the Vic-Tas Divisional Branch Management Committee passed a resolution, among other things, confirming support for the resolution referred to in paragraph 15.b above;
  - d. in or about mid July 2024, it was reported that Mr Smith had taken action to dismiss eight delegates of the Vic-Tas Divisional Branch who are members of outlaw motorcycle gangs or closely affiliated with them;
  - e. on 26 July 2024, Mr Smith informed the Applicant that he had “*appointed a suitably qualified senior counsel and junior counsel to conduct an investigation and make findings of fact*”, was “*undertaking a review of relevant policies and procedures*”, intends to “*issue interim and revised policies and procedures promptly*” and that “*two suitably qualified individuals have been engaged in order to scrutinise and advise me as to the content of those policies and procedures, and to review compliance with them*”;
  - f. except as summarised above, it appears that to date no other action has been taken by the CFMEU, the C&G Division or the Vic-Tas Divisional Branch, to remove any other Officeholders of the Vic-Tas Divisional Branch;

- g. it appears that no action has been taken in relation to the Officeholders of the NSW Divisional Branch and the Qld-NT Divisional Branch;
  - h. it appears that Officeholders, or previous Officeholders, of the Vic-Tas Divisional Branch remain as Officeholders of the SA Divisional Branch; and
  - i. under Schedule 1 of the Divisional Rules of the C&G Division, no later than 2 January 2025, the SA Divisional Branch will be amalgamated with the Vic-Tas Divisional Branch to become the Victoria-Tasmania-South Australia Divisional Branch of the C&G Division.
16. On or about 21 June 2023, the Vic-Tas Divisional Branch lodged with the Fair Work Commission a Statement of Loans, Grants and Donations which disclosed 10 payments totalling \$186,583.10 (including GST) made by the Branch to a commercial printing company in the financial year ended 31 March 2023, with the description “*in-kind donations for Diana Asmar’s HWU in-house election*”. It is not apparent which object of the CFMEU, as set out in its National Rules of the CFMEU r 4, is achieved by such transactions.
17. In circumstances where a number of Officeholders of the Administered Divisional Branches also hold offices in one or more other decision-making bodies of the CFMEU and/or the C&G Division, under the National Rules of the CFMEU and/or the Divisional Rules of the C&G Division, the exercise of powers including those of:
- a. the National Conference under r 13(x), including r 13(x)(g) and (j), of the National Rules of the CFMEU;
  - b. the National Executive under r 15(j) of the National Rules of the CFMEU;
  - c. the C&G Divisional Conference under r 8(xi) and (xvii) of the C&G Divisional Rules;
  - d. the C&G Divisional Executive under r 9(15) of the C&G Divisional Rules; and
  - e. the CFMEU State Branches under r 28 of the National Rules of the CFMEU,
- will be subject to decision-making by some or all of the same Officeholders who are alleged to have engaged in conduct referred to in paragraphs 13 to 16 above.
18. Because the C&G Divisional Secretary’s exercise of powers under r 13(ii) of the C&G Divisional Rules is subject to decisions of the Divisional Conference, Divisional Executive, National Conference and National Executive, and for the reasons in paragraph 17 above, the actions of the C&G Divisional Secretary will be subject to decision-making by some or all of the same Officeholders who are alleged to have engaged in conduct referred to in paragraphs 13 to 16 above.
19. On or about 17 July 2024, the Australian Council of Trade Unions (**ACTU**) (the peak body for Australian unions) passed a resolution to suspend the C&G Division of the CFMEU from the ACTU until such time that the ACTU is “*satisfied that the C&G Division is free of criminal elements and upholds standards of behaviour that align with union values.*”<sup>4</sup>

### **The primary legal grounds for the relief sought**

20. An essential element of the effective functioning of a registered organisation is complying with the law and responding promptly and appropriately to serious allegations of criminal and other unlawful conduct of the kind described in paragraph 14 above.
21. In the circumstances alleged in paragraphs 13 to 20 above, the Court should be satisfied that the Administered Division, and each of the Administered Divisional Branches, have ceased to function effectively: FWRO Act s 323(1).

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<sup>4</sup> ACTU’s statement issued 17 July 2024.

22. Those circumstances should further satisfy the Court that that there are no effective means under the rules of the CFMEU by which the Administered Division and each of the Administered Divisional Branches can be enabled to function effectively: s 323(1).
23. The appointment of an Administrator to the Administered Division and each of the Administered Divisional Branches, the approval of the Scheme, and the making of the orders sought, will enable the Administered Division and each of the Administered Divisional Branches to function effectively: s 323(2)(b).
24. The proposed orders, including the appointment of an Administrator and the approval of the Scheme, would not do substantial injustice to the CFMEU or any member of the CFMEU: s 323(4).
25. To the extent that the proposed orders provide for elections for offices of the Administered Division and the Administered Divisional Branches, the scheme provides for the elections to be held by a direct voting system or a collegiate voting system: s 323(7).

**Alleged harm caused by the cessation of the C&G Division to function effectively**

26. The conduct alleged herein harms, or has the potential to harm:
  - a. the members of the C&G Division and each of the Administered Divisional Branches, whose interests the CFMEU exists to advance and protect;
  - b. other workplace participants in the construction industry; and
  - c. the public interest.
27. In enacting the FWRO Act, Parliament intended and considered that relations within workplaces between employers and employees are enhanced, and the adverse effects of industrial disputation are reduced, if registered organisations are required to meet the standards set out in the FWRO Act: ss 5(1), (2). Those standards, among other things:
  - a. ensure that registered employee organisations are representative of and accountable to their members, and are able to operate effectively: s 5(3)(a);
  - b. encourage members to participate in the affairs of organisations to which they belong: s 5(3)(b); and
  - c. encourage the efficient management of organisations and high standards of accountability of organisations to their members: s 5(3)(c).
28. Those statutory objectives are defeated by alleged conduct of the kind described in paragraphs 13 to 18 above, and by the Administered Division and the Administered Divisional Branches ceasing to function effectively.
29. It is in the interests of the CFMEU and its members, other workplace participants, and the public interest, that the Court appoint an Administrator and approve a Scheme, to enable the Administered Division and the Administered Divisional Branches to function effectively.

Date: 2 August 2024



Signed by Abigail Cooper

AGS Lawyer

For and on behalf of the Australian  
Government Solicitor

Lawyer for the Applicant

This Concise Statement was prepared by Jonathan Kirkwood SC, Brendan Avallone and Daniel Fawcett of counsel



### **Certificate of lawyer**

I, Abigail Cooper, certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the concise statement.

Date: 2 August 2024



Signed by Abigail Cooper

AGS Lawyer

For and on behalf of the Australian  
Government Solicitor

Lawyer for the Applicant