

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.



APPLICANT'S GENUINE STEPS STATEMENT

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: FAIR WORK**

NO VID OF 2024

**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

This genuine steps statement is required by section 6 of the *Civil Dispute Resolution Act 2011* (Cth.).

STEPS TAKEN TO TRY TO RESOLVE THE ISSUES IN DISPUTE

The following steps have been taken to try to resolve the issues in dispute between the applicant and the respondents in the proceeding:

1. On 15 July 2024 the Applicant wrote to the First Respondent stating that FWC staff had been instructed to analyse the issues being raised in the media regarding the union, and providing the First Respondent with information about the support and expertise available if the National Executive intended to reconstitute the Victoria-Tasmania Branch (**Vic-Tas Branch**) of the Construction & General Division (**C&G Division**).
2. On 16 July 2024 the Applicant wrote to the First Respondent urgently seeking information regarding the process by which the National Executive had resolved to put its Vic-Tas Branch into administration following media reports of the same.
3. On 16 July 2024, the First Respondent wrote to the Applicant advising that on 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:

Filed on behalf of the Applicant, General Manager of the Fair Work
Commission

File ref: 24006449

Prepared by: Abigail Cooper
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

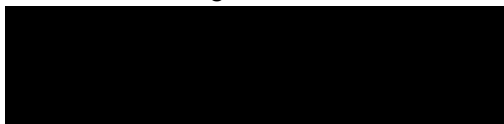
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- a) appoint the National Secretary, Zachary Smith, to investigate and take any action he considers necessary to resolve any and all matters arising out of, or in connection with recent media allegations including in relation to the conduct of any members holding a position within the Vic-Tas Branch, and to take any steps he considers necessary to secure the day-to-day administration of the Branch
 - b) confer upon Mr Smith powers and functions necessary to perform this role, including those of the Branch Secretary office and the authority to appoint, control and dismiss staff within the Branch;
 - c) direct and oblige each member of the Vic-Tasmania Divisional Branch Management Committee to do all things necessary to give effect to any directions, decisions and/or recommendations given by Mr Smith, including by exercising any powers conferred on them either individually or collectively under the Rules (including calling meetings, passing any necessary further resolutions and implementing decisions and recommendations).
4. On 17 July the First Respondent wrote to the Applicant requesting information regarding reports in the media that the Applicant was seeking advice on making an application under s 323 of the *Fair Work (Registered Organisations) Act 2009* (**FWRO Act**) for reconstitution of a part of an organisation and which parts of the union the Applicant would seek to reconstitute.
 5. On 22 July 2024 the Applicant wrote to the First Respondent confirming that the Applicant was seeking advice on making application under s 323 of the FWRO Act and considering which parts of the C&G Division should be subject to reconstitution.
 6. On 22 July 2024 the First Respondent wrote to the Applicant seeking a meeting to discuss any potential application by the Applicant in the Federal Court seeking that an administrator be appointed to manage the affairs of the First Respondent.
 7. On 23 July 2024 the Applicant wrote to the First Respondent seeking that it disclose specified information regarding officeholders and delegates and, in particular, the individuals alleged in the media to have been stood down in relation to links to organised crime.
 8. On 24 July 2024 the Applicant wrote to the First Respondent requesting that it advise whether it would be prepared to consent to an application under s.323 of the FWRO Act seeking an order in the Federal Court for reconstitution, and enquiring as to the scope of a proposed scheme for administration to which the First Respondent might consent.
 9. On 26 July 2024 the First Respondent wrote to the Applicant stating that Mr Smith had appointed senior counsel and junior counsel to conduct an investigation, and engaged qualified persons to review policies and procedures, issue interim policies and to review compliance with them. The letter also advised that Mr Smith wished to meet with the Applicant to discuss the Applicant's proposed scheme and consider it.

10. On 29 July 2024 the Applicant wrote to the First Respondent advising that the information sought on 23 July 2024 was necessary before the Applicant would be in a position to meet with Mr Smith to discuss a proposed scheme. The letter also requested that the Respondent clarify whether the National Executive had taken steps in response to allegations reported in the media about officials, delegates or other persons connected with other Divisional Branches and, if not, the reasons for limiting the response to the Vic-Tas Branch.
11. On 29 July 2024 the First Respondent wrote to the Applicant in relation to the Applicant's request for information regarding officeholders and delegates, and seeking certain information from the Applicant before providing the information that was sought.
12. On 1 August 2024 the First Respondent wrote to the Applicant asking, if the Applicant had reasonable grounds for suspicions regarding the conduct of officials outside Victoria and Tasmania, that the Applicant notify Mr Smith and stating Mr Smith would consider his response. The letter also stated that the First Respondent was embedding voluntary compliance, and confirmed Mr Smith's willingness to meet with the Applicant.
13. Having considered the information provided by the First Respondent, the Applicant is of the view that the C&G Division and several of its divisional branches have ceased to function effectively and that there are no effective means under the rules of the First Respondent or the C&G Division by which it can be enabled to function effectively, and that it is appropriate that a Scheme be put in place under s 323(2) of the FWRO Act, and that an Administrator be appointed and other orders be made, in the terms sought in the Originating Application of today's date, for the reasons summarised in the Concise Statement of today's date.
14. Having formed the view set out in the paragraph above, and in circumstances where a Scheme under s 323(2) of the FWRO Act cannot be put in place, and an Administrator cannot be appointed under s 323 of the FWRO Act, without Orders being made by the Federal Court of Australia upon the making of an application under s 323(1), and having regard to the steps described in the correspondence summarised above, the Applicant has formed the view that the matters cannot be resolved without the commencement of proceedings.

Date: 2 August 2024



Abigail Cooper
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant