



President's statement

Further update on applications for approval of enterprise agreements in the Building and Construction Industry

Justice Hatcher, President

Sydney, 11 September 2024

[1] This statement provides a further update as to the Fair Work Commission's approach to the approval of enterprise agreements in the building and construction industry.

[2] In July 2024, allegations were reported in the media concerning the making of enterprise agreements in the building and construction industry which potentially involved conduct contravening the *Fair Work Act 2009* (Cth) (FW Act) and impacting upon satisfaction of the genuine agreement requirements for approval of enterprise agreements in Part 2-4 of the FW Act. Following these media reports, I directed that the Commission take additional measures in relation to enterprise agreement approval applications in this building and construction industry. These measures included:

- allowing interested parties to provide additional information to the Commission as a part of its consideration of these applications;
- the establishment of a dedicated webpage identifying details of each enterprise agreement approval application and a copy of the proposed enterprise agreement; and
- seeking additional information where required, including documentary evidence of the steps taken in relation to the agreement-making process.

[3] These measures applied to the following enterprise agreement approval applications made under the FW Act:

- s 185 applications for approval of a greenfields, single or multi enterprise agreement, and
- s 210 applications for approval of a variation of an enterprise agreement

in the building and construction industry where the Construction, Forestry and Maritime Employees Union (CFMEU) or any branch in its Construction and General Division was an applicant, employee bargaining representative, or signatory.

[4] I announced that the Commission would be taking the above steps in a statement published on 30 July 2024. In that statement, I indicated that these additional measures might impact on the timeliness of the approval of enterprise agreements in the building and construction industry and that some degree of patience would be required as the Commission looked to balance the need for timely approval with the requirement to ensure statutory compliance.

[5] Effective from 23 August 2024, the Construction and General Division of the CFMEU was placed under administration for a period of up to five years in accordance with

the provisions of the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth). The scheme of the administration is contained in the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024*. Mr Mark Irving KC has been appointed and has taken office as Administrator pursuant to this scheme.

[6] On 4 September 2024, I wrote to Mr Irving advising him of the status of some 104 building and construction industry agreement approval applications currently on foot, including as to some particular issues which had arisen in respect of those applications following the removal of a number of CFMEU officials from office. I also advised him that, in respect of current and future applications for approval of agreements in the building and construction industry, the Commission intended generally to request the provision of the following information and documents:

- Documentary evidence of the distribution of the notice of employee representation rights.
- Documentary evidence of the distribution of the agreement and any incorporated material to the relevant employees.
- Any documentary explanatory material and other material relevant to the explanation of the agreement.
- Documentary evidence of the notification of the ballot for the agreement.
- Documentary evidence of the occurrence and manner of conduct of the voting process.
- Full disclosure of any fee paid by the employer or a third party to the CFMEU in connection with the making of the agreement or the application for approval of this agreement, including full particulars of the arrangements supporting the fee and any documents pertaining to such arrangements.

[7] I also stated in my letter to Mr Irving:

Consistent with what I have earlier stated, the Commission does not wish the measures identified above to cause any unnecessary delay in the approval of legitimate enterprise agreements. In order to maintain both the integrity and the timeliness of the approval process, I invite you and the relevant officers of the CFMEU Construction and General Division to enter into a consultative process with the Fair Work Commission to discuss means by which the above matters may be addressed in the most efficient way possible.

[8] Pursuant to the above invitation, a consultative process has been established between Mr Irving and his administration staff and the Commission's agreement approvals team, led by Deputy President Masson. This process has enabled an open and cooperative dialogue about the issues which must be addressed in the enterprise agreement approval applications currently on foot and is facilitating the provision by the CFMEU of the documents and information required by the Commission in a timely way.

[9] As a result of the establishment and progress of this consultative process, I do not anticipate that there will need to be any further undue delay in the determination of agreement approval applications in the building and construction industry. The appropriate level of Member resources has been assigned to dealing with these applications. I consider

that the steps taken are appropriate to maintain both the integrity and the timeliness of the Commission's agreement approval process in the building and construction industry.

PRESIDENT