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23 November 2022

Caroline Beasley
Associate to Acting President Hatcher
Level 11, Terrace Tower, 80 William Street
EAST SYDNEY NSW 2011

By email: Chambers.Hatcher.VP@fwc.gov.au

Dear Associate,

Application by Kelly

We refer to our earlier correspondence of 18 November 2022, Vice President Hatcher's orders of 18 November 2022 requiring production by the applicant of certain documents and the email of Mr Pasfield dated 22 November 2022.

We note that the applicant concedes that Maurice Blackburn, the solicitors for the CFMMEU, and any counsel engaged by them, should have access to the documents. We note that if granted access, our office proposes to have an external provider, Law In Order, copy and digitise the documents. The digitisation of the documents will assist in the process of reviewing the documents and will save members money because it will reduce the number of copies that need to be made. Of course, the digital copies will be the subject of the same undertaking as the physical copies.

The only remaining issue is whether that access should be extended to two solicitors employed by the CFMMEU directly?

At [3] of Mr Pasfield's email, reference to various rules identifying the responsibility of administrative units of the Mining & Energy Division to maintain rolls and to the Divisional Autonomy Rule is made. With respect, those rules are irrelevant. There is only one legal entity, the CFMMEU. No issue as to privacy can arise in circumstances where the members concerned have joined the CFMMEU and where the CFMMEU seeks access to records about their membership. The mere fact that one administrative unit of the CFMMEU is charged with maintaining those rolls, does not mean that information is not information which belongs to the CFMMEU. Accordingly, there is no substance in the asserted privacy concerns.

Putting aside the absence of any merit in the applicant's contention, the CFMMEU has sought to address that concern by the giving of undertakings and the restricting of access to its external legal representatives and legal officers employed by the Union. The correspondence from Mr Pasfield appears to suggest that the applicant has some concern

that the employed solicitors might somehow misuse the information. That is a grave allegation and there is no basis for it to be made.

There also appears to be some suggestion that there might be some attempt to evade the substance of the undertaking given by the making of copies and the distribution of those copies. *Firstly*, there is no basis to suggest that the lawyers for the CFMMEU or its employed solicitors would engage in conduct designed to defeat the undertaking given. *Secondly*, such a contention is not available on a plain reading of the undertaking proposed. *Thirdly*, for the avoidance of any doubt, the employed solicitors and the external legal representatives are prepared to agree to an undertaking which would prevent such conduct from occurring.

The documents produced pursuant to Vice President Hatcher's order are directly relevant to the proceeding and the CFMMEU is entitled to have its legal representatives review those documents. The fact that two of its legal representatives are employed internally does not mean that they are not entitled to review that material. In circumstances where they are officers of the court and have offered an undertaking, there is no basis for the assertion that the "privacy" of the members would be adversely affected by them having access to the documents.

In those circumstances, the CFMMEU maintains its application to access to the documents by its external lawyers *and* the two nominated internal lawyers.

Mr Pasfield for the applicant has been cc'd on this correspondence.

Yours faithfully



Jessica Dawson-Field (Enquiries: Justin Go - 03 9605 2809)
Senior Associate
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MAURICE BLACKBURN