

IN FAIR WORK COMMISSION

Matter No: D2022/10

Application by Graham Patrick Kelly, withdrawal from amalgamated organisation

Agreed Submission of the Parties

1. The parties have agreed a process for the amendment of the rules proposed by the applicant, the withdrawal of the CFMMEU's objections (the **Objections**), and an agreed submission as to how the parties wish for the Commission to deal with the outstanding issues.
2. In summary the agreement reached between the parties involves:
 - a) the respective rules proposed by the applicant for the MEU and CFMMEU to be amended in a way which is mutually agreed between the parties;
 - b) subject to the Commission being satisfied that the proposed rules meet the requirements of s. 95A of the RO Act, the withdrawal the Objections from the CFMMEU; and
 - c) the making of submissions from the applicant that an order should be made under s. 100 of the RO Act for a ballot in the terms sought in the application.
3. As part of that settlement the applicant seeks leave to amend the application to file new documents in place of annexures 5 and 6 of the application.
4. As the terms of the proposed rules are central to the settlement reached between the parties and as the Commission is required under s. 100(1)(ba) to be satisfied that the proposed rules meet the requirements of s. 95A, the parties respectfully submit that the most efficient way for the Commission to deal with this matter would be to:
 - a) consider the proposed rules, and give the parties notice of any perceived issues with the proposed rules;
 - b) afford the parties an opportunity to respond to any perceived concerns, including by making any amendments necessary;

- c) give the parties notice whether any such response sufficiently addresses the perceived issues;
 - d) subject to the Commission's availability the parties request the application be listed for hearing for two days in late February 2023;
 - e) if the parties are able to address the Commission's concerns the applicant will make submissions on why an order should be made pursuant to s. 100 of the RO Act and the Commission will determine whether an order should be made;
 - f) if the parties are not able to address the Commission's concerns with the proposed rules, the parties agree that the CFMMEU will press the Objections at the hearing of the application. If necessary the parties agree and acknowledge that the CFMMEU is at liberty to remake the jurisdictional objections in the form of the Objections made 30 September 2022.
5. If the Commission is prepared to proceed in that manner, the CFMMEU withdraws the Objections and consents to an order being made pursuant to s. 94A today.
6. The parties confirm that Kelly does not seek an order or determination pursuant to s. 100(1)(a) of the RO Act until the hearing of the application in 2023.
7. In the event that the Commission does not accept the parties joint submission as to the disposition of this matter, and in particular if the Commission is not prepared to consider the requirements of s. 100(1)(ba) in advance of determining the matters required by s. 100(1)(a), the parties advise that they agree the settlement cannot proceed and the jurisdictional objections made by the CFMMEU need to be heard and determined today.

20 December 2022

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