

From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Sent: Friday, 24 March 2023 3:54 PM
To: Phillip Pasfield <Phillip.Pasfield@slatergordon.com.au>; J Bornstein <JBornstein@mauriceblackburn.com.au>; 'Jessica Dawson-Field (JDawson-Field@mauriceblackburn.com.au)' <JDawson-Field@mauriceblackburn.com.au>; Imogen Szumer <ISzumer@mauriceblackburn.com.au>
Subject: D2022/10 Application by Kelly - Correspondence from the Full Bench

Dear parties

Mr Kelly has applied under s 102(1A) of the *Fair Work (Registered Organisations) Act 2009* (RO Act) for an order that the withdrawal from amalgamation ballot of members of the M&E Division be conducted by an officer of the M&E Division. Mr Kelly contends that the M&E Division has had an exemption under s 186 of the RO Act allowing it to conduct its own elections. He has produced a document marked as GK-85 to his Fourth witness statement (third in the proceeding marked Exhibit 3), which is a copy of the exemption granted to the M&E Division on 2 May 1996. That is a certificate issued by the Industrial Registrar of the Australian Industrial Relations Commission under s 211 of the *Industrial Relations Act 1988* (IR Act).

The power under s 102(1A) of the RO Act is conditioned on there being in force an exemption under s 186.

The certificate annexed to Exhibit 3 will only meet that description if transitional provisions relating to the repeal of the IR Act and the enactment of the *Workplace Relations Act 1996* (WR Act), and subsequently to the enactment of Schedule 1 thereto, preserved the operation of such a certificate.

If transitional provisions were enacted and the certificate annexed to Exhibit 3 continued in operation under Schedule 1 of the WR Act, then it is possible that that certificate continues in force now by reason of Schedule 22, Part 9, item 622 (1) of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

The parties are directed to file submissions addressing the question whether the certificate annexed as GK-85 to Exhibit 3 has continuing operation as an exemption under s 186 of the RO Act by **5:00 pm Wednesday, 29 March 2023**.

Regards,
Caroline

Caroline Beasley
Associate to Justice Hatcher, President



Fair Work Commission

Australia's national workplace relations tribunal

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The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Gadigal Country.