

D2022/11

FAIR WORK COMMISSION

APPLICATION BY MICHAEL O'CONNOR

**WITHDRAWAL FROM AMALGAMATED ORGANISATION – MANUFACTURING
DIVISION – CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY
UNION**

APPLICANT'S OUTLINE OF REPLY SUBMISSIONS

ON THE JURISDICTIONAL OBJECTION

1. These submissions are made in reply to the submissions of the Respondent dated 21 November 2022 (**RS**).
2. These Submissions adopt the definitions used in the Applicant's Outline of Submissions dated 24 October 2022 (**AS**).
3. At RS paragraph 12, the Respondent accepts that the Manufacturing Division is a separately identifiable constituent part within the meaning of paragraph (c) of the definition in section 93 of the Act.
4. The only issue which the Respondent raises in its jurisdictional objection is whether the Manufacturing Division became a part of the CFMMEU as a result of the 2018 amalgamation.
5. The Respondent's submissions on this objection are based on one argument. That argument is explained in RS paragraph 14. It is that the effect of the 2018 amalgamation was simply to rename the FFPD to the Manufacturing Division and to make some changes to the rules of the Division. It is argued that no new Division was being created but the existing Division was simply being renamed.

6. This argument should be rejected as being based on an artificial and simplistic view of the requirements of the legislation and the actual facts of the 2018 amalgamation. It also requires the changes made to the FFPD in the 2018 amalgamation to be regarded as insignificant and inconsequential, which is not open on the objective facts.
7. Firstly, at RS [14] the Respondent submits that the “*facts recounted above reveal that the Manufacturing Division has been part of the CFMMEU since the initial amalgamation between the BWIU and the ATAIU*”. Those facts include those in RS [9], the second sentence of which misstates the facts. The Scheme for Amalgamation did not provide that the TCFUA was to “merge into” the FFPD. Paragraph 6.2¹ of the Scheme states that the amalgamation would, *inter alia*, be effected by the merger of the TCFUA with the FFPD, whilst Paragraph 19² states that the TCFUA will be merged into the existing CFMMEU and shall form part of the Manufacturing Division of the Proposed Amalgamated Organisation. There is no reference in the Scheme to the TCFUA merging “into the FFPD”. It is the merger with the former FFPD as a result of the 2018 amalgamation that formed the Manufacturing Division as a result of the 2018 amalgamation.
8. Secondly, the numerous changes which are set out in AS Part C.2 are substantial and effected a significant restructure of the former FFPD. The changes were to the structure, governance, membership and rules of the FFPD which existed immediately prior to the 2018 amalgamation. Those changes were implemented by changes to the rules of the CFMMEU and the FFPD as part of the 2018 amalgamation. This was a matter which was of significance to the Full Court in *Kelly v CFMMEU* in the passage extracted in AS [42]. The Applicant does not submit that the Full Court has ruled on the issue in this application, but he does say that the reasoning of the Full Court is apposite in this application.
9. It may also be inferred that the new name of the Division, which dropped the reference to the forestry, furnishing and building products, was a recognition and

¹ Page 2 of JDF-10 to the Statement of Jessica Margaret Dawson-Field dated 21 November 2022.

² Page 5 of JDF-10 to the Statement of Jessica Margaret Dawson-Field dated 21 November 2022.

acknowledgment of the changed profile and coverage of the new Division after the 2018 amalgamation.

10. The changes referred to in the preceding two paragraphs occurred as a result of the 2018 amalgamation and thus the Applicant submits the Manufacturing Division, as it now is, can properly be described as having become a part of the CFMMEU as a result of the 2018 amalgamation.
11. The Manufacturing Division, as it was after the 2018 amalgamation was not part of the CFMMEU before that amalgamation.
12. Contrary to RS paragraph 16, that the former members of the FFPD remained as part of the new Manufacturing Division is not to the point. Similarly with the Respondent's reliance on Rule 44(xiii). These administrative details for giving effect to the merger should not distract from the substantive effect of the merger on the previous FFPD as a result of the 2018 amalgamation.
13. The submission in RS [17] that the FFPD was to continue unaffected "subject to the addition of new members and offices" is inherently contradictory as well failing to acknowledge all of the structural changes outlined in AS Part C.2, for example the establishment of a TCF Sector and TCF Sector Council. The relevant point is that the FFPD was structurally and substantively changed as a result of the 2018 amalgamation which merged the TCFUA with the FFPD, after which, in its new form, it was identified and known as the Manufacturing Division.
14. For the reasons outlined in the AS, it is submitted that the commission should find that the Manufacturing Division became part of the amalgamated union as a result of the 2018 amalgamation.

DATED: 5 December 2022

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