
From: Phillip Pasfield <Phillip.Pasfield@slatergordon.com.au>
Sent: Thursday, 10 November 2022 4:46 PM
To: Chambers - Hatcher VP
Cc: 'Jessica Dawson-Field (JDawson-Field@mauriceblackburn.com.au)'; J Bornstein; Justin Go
Subject: FW: D2022/10 - Application by Kelly [S+G-ACTIVE.7592.M659724.FID4985938]
Attachments: Amended F52 10 November 2022.pdf; 2022.11.10 Draft Order(74730520.1).docx

Dear Associate

I refer to the email below and the attached Amended Application and draft order.

I advise that Mr Kelly opposes the Amended Application and wishes to be heard.

The legal representatives of the CFMMEU have been copied into this email.

Regards

Phillip Pasfield
National Practice Group Leader
Industrial and Employment Law



**Slater
Gordon**
Lawyers

SLATER AND GORDON LAWYERS

Level 14, 55 Market Street, Sydney New South Wales 2000
D +61 2 8267 0613 | T +61 2 8071 2790 |
M +61 419 295 492 | F (02) 8267 0650
W slatergordon.com.au

From: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>
Sent: Thursday, 10 November 2022 4:41 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>; Phillip Pasfield <Phillip.Pasfield@slatergordon.com.au>
Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>; Justin Go <justingo@mauriceblackburn.com.au>
Subject: RE: D2022/10 - Application by Kelly [S+G-ACTIVE.7592.M659724.FID4985938]

This Message Is From an External Sender

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Dear Associate

We refer to the above matter.

The parties have not been able to reach agreement on all categories sought by the CFMMEU. We attach an amended F52 Application for filing.

We request that the order is made as soon as possible.

Kind regards

Jessica Dawson-Field
Senior Associate

T 03 9605 2809

F 03 9258 9613

E JDawson-Field@mauriceblackburn.com.au

mauriceblackburn.com.au

Naarm

Level 21, 380 La Trobe Street

Melbourne VIC 3000

From: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>

Sent: Tuesday, 8 November 2022 5:38 PM

To: 'Phillip Pasfield' <Phillip.Pasfield@slatertgordon.com.au>

Cc: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>; Josh Bornstein <JBornstein@mauriceblackburn.com.au>

Subject: RE: D2022/10 - Application by Kelly [S+G-ACTIVE.7592.M659724.FID4985938]

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OFFICIAL

Dear Mr Pasfield,

I have brought your email to the attention of the Vice President. The Vice President grants your request that Mr Kelly be provided with additional time to respond to the application for the order to produce once you have received a response from the CFMMEU's representatives.

Kind regards,
Caroline

Caroline Beasley
Associate to Vice President Hatcher



Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.vp@fwc.gov.au

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011

www.fwc.gov.au

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.

From: Phillip Pasfield <Phillip.Pasfield@slatertgordon.com.au>

Sent: Tuesday, 8 November 2022 4:57 PM

To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>

Cc: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>; 'JDawson-Field@mauriceblackburn.com.au' <JDawson-Field@mauriceblackburn.com.au>; J Bornstein <JBornstein@mauriceblackburn.com.au>

Subject: RE: D2022/10 - Application by Kelly [S+G-ACTIVE.7592.M659724.FID4985938]

Dear Associate

I refer to your email below.

I advise that I have this afternoon forwarded a letter to the lawyers for the CFMMEU which may avoid the Commission having to deal with the Application.

They have advised that they are currently taking instructions in relation to the letter.

I respectfully request that my client be given further time to respond to the Application as directed once a response from the lawyers for the CFMMEU is received.

The lawyers for the CFMMEU have been copied into this email and were given notice of it being sent.

Regards

Phillip Pasfield

National Practice Group Leader
Industrial and Employment Law

SLATER AND GORDON LAWYERS

Level 14, 55 Market Street, Sydney New South Wales 2000
D +61 2 8267 0613 | T +61 2 8071 2790 |
M +61 419 295 492 | F (02) 8267 0650
W slatergordon.com.au

From: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>

Sent: Monday, 7 November 2022 11:59 AM

To: 'JDawson-Field@mauriceblackburn.com.au' <JDawson-Field@mauriceblackburn.com.au>; J Bornstein <JBornstein@mauriceblackburn.com.au>; Phillip Pasfield <Phillip.Pasfield@slatergordon.com.au>

Cc: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Subject: RE: D2022/10 - Application by Kelly

This Message Is From an External Sender

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OFFICIAL

Dear parties,

I refer to the above matter and the application for a an order to produce documents filed by the CFMMEU. This application has been allocated to Vice President Hatcher. The Vice President directs Mr Kelly to provide any response to the application for the order **by 5:00pm tomorrow (Tuesday 8 November 2022)**.

Kind regards,
Caroline

Caroline Beasley
Associate to Vice President Hatcher



Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.vp@fwc.gov.au

Level 11, Terrace Tower, 80 William Street, EAST SYDNEY NSW 2011
www.fwc.gov.au

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.

From: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>
Sent: Monday, 7 November 2022 10:59 AM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>; J Bornstein <JBornstein@mauriceblackburn.com.au>; Phillip Pasfield <Phillip.Pasfield@slatertgordon.com.au>
Subject: D2022/10 - Application by Kelly

Dear Associate

Please see attached application.

Kind regards

Jessica Dawson-Field
Senior Associate

T 03 9605 2809

F 03 9258 9613

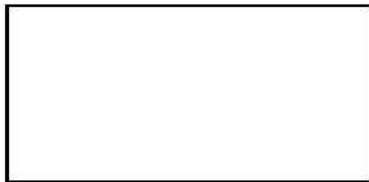
E JDawson-Field@mauriceblackburn.com.au

mauriceblackburn.com.au

Naarm

Level 21, 380 La Trobe Street

Melbourne VIC 3000



Maurice Blackburn acknowledges the traditional custodians of the lands on which we work, and pays respect to their Elders, past and present.

We are a leading Australian law firm certified to the international ISO 9001:2015 quality standard.

We are proudly carbon neutral and committed to a sustainable environment. Please provide requested documentation in electronic format and consider the environment before printing this email.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error please notify the sender by reply email, delete the email, destroy any printed copy and do not disclose or use its information in any way. For additional information regarding Maurice Blackburn's privacy policy, [click here \(mauriceblackburn.com.au/privacy\)](http://mauriceblackburn.com.au/privacy)

From: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Sent: Wednesday, 2 November 2022 12:25 PM
To: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>; Josh Bornstein <JBornstein@mauriceblackburn.com.au>; 'Craig.Rawson@ags.gov.au' <Craig.Rawson@ags.gov.au>; Phillip Pasfield <Phillip.Pasfield@slatertgordon.com.au>
Subject: D2022/10 - Transcript - Hearing 25 October 2022

CAUTION: This email originated from outside of the organisation . Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Parties,

Please see attached the transcript of the Hearing on 25 October 2022. The transcript will shortly be published to the Commission's website.

Kind regards,

Madeleine Castles (she/her)

Associate to the Hon. Justice Ross AO
President



Fair Work Commission
Australia's national workplace relations tribunal

T 03 8656 4645

E madeleine.castles@fwc.gov.au

Level 4, 11 Exhibition Street, Melbourne, VIC, 3000
PO Box 1994, Melbourne, Vic, 3001

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 Wurundjeri Woi Wurrung Country.

Slater and Gordon Lawyers - <http://www.slatergordon.com.au>

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About the F52 application form

Application for an order for production of documents, records or information to the Commission

About orders for the production of documents etc to the Fair Work Commission

The [Fair Work Act 2009](#) allows the Fair Work Commission (Commission) to inform itself in relation to a matter before it by requiring a person to provide copies of documents or records, or to provide any other information to the Commission. A party can apply for an order requiring a person to produce documents, records or other information to the Commission.

The application must be accompanied by a draft order. The template for the draft order is attached to this form.

A person is only required to produce documents which are in their possession, custody or control; they are not required to create documents to comply with an order.

If the Commission makes the order, you must serve a signed copy of the order upon the person who is required to produce the documents, records or other information and, unless the order has been published on the Commission's website, upon every other party in the matter. For information about orders for production of documents, records or information to the Commission, see the [Practice note for Orders to attend and orders to produce](#) on the Commission's website.

Who can use this form

Use this form if you are a party to a matter currently before the Commission and you want the Commission to make an order for production of documents, records or other information to the Commission.

Lodgment and service of your completed form

1. **Lodge this application and draft order** and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your state or territory.

2. Unless the Commission orders otherwise, **as soon as practicable** after this form is lodged with the Commission, **serve a copy** of this application on:
 - the person who is required to produce the documents, records or information to the Commission **and**

- unless the application has been published on the Commission’s website, every other party in the matter.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for the purpose of dealing with the application for an order requiring production of documents, information or records to the Commission. The information will be included on the case file, and the Commission may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Form F52 – AMENDED Application for an order for production of documents, records or information to the Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission (Commission) for an order under s.590(2)(c) of the Fair Work Act 2009 requiring a person to produce documents, records or other information to the Commission.

The Applicant



These are the details of the party that is making this application.

If the Applicant is an individual, provide the following details:

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is not an individual, provide the following details:

Legal name	Construction, Forestry, Maritime, Mining and Energy Union (National Office)
ACN (if a company)	
ABN (if applicable)	46 243 168 565

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Trading name or registered business name (if applicable)	Construction, Forestry, Maritime, Mining and Energy Union (National Office)		
Contact person	Chris Cain		
Postal address	Level 6, 540 Elizabeth Street		
Suburb	Melbourne		
State or territory	VIC	Postcode	3000
Phone number	<u>03 9274 9201</u>	Fax number	
Email address	<u>ccain@cfmeu.org</u>		

Which party is the Applicant?

Applicant

Respondent

Other

If you answered **other** – Provide details.

--

The Commission matter that this application relates to



These are the details of the main matter that the proposed order relates to.

Matter name	Application by Grahame Patrick Kelly – withdrawal from amalgamated organisation – Mining and Energy Division – Construction, Forestry, Maritime, Mining and Energy Union
-------------	--

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Matter number	D2022/10
---------------	----------

1. The Application

1.1 What documents, records or other information are being sought?



Using numbered paragraphs, identify the documents, records and information you want produced to the Commission.

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
9. A copy of the membership roll of the Mining & Energy Division as at 15 September 2022;
10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

1.2 Why are the documents, records or other information being sought?



Using numbered paragraphs, explain why each document, record or piece of information is sought. This might include, for example, explaining the evidence that is contained in a document or how a document is relevant to the main matter

1. The documents requested are relevant to determining whether the former UMFA is separately identifiable as the Mining and Energy Division of the amalgamated organization and therefore a “constituent part” for the purpose of s 94 and s 94A of the Fair Work (Registered Organisations) Act 2009, and whether the application has been made in accordance with s 94(3).
2. The documents requested are relevant to determining the application in respect of the alternative constituent part has been authorized by the required members.
3. The documents in paragraph 3, 6, 7 and 8 are also referred to in Mr Kelly’s statement of 24 October 2022.
4. The documents in category 9 and 10 are relevant for the purpose of reconciling the roll with the instruments of authority filed with the Application, and also for the purpose of interrogating the analysis the subject of category 11.

1.3 How will the documents, records or other information assist the Commission in reaching a decision?



Using numbered paragraphs, explain how each document, record or other piece of information could assist the Commission in deciding the main matter.

1. The information will assist the Commission in determining the matters identified at [1] and [2] of part 1.2 of the form.



You must complete the draft order attached to this form.

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Signature	
Name	Jessica Dawson-Field
Date	10 November 2022
Capacity/ Position	Lawyer for the Respondent
	If you are not the Applicant and are completing this form on the Applicant's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



FairWork
Commission

DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 11 November 2022

Date: 4pm

Place: Fair Work Commission, Melbourne Registry

Member

- Note:
- This order has been issued at the request of [*party applying for order*].
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
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10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).



FairWork
Commission

DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

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Time: 11 November 2022

Date: 4pm

Place: Fair Work Commission, Melbourne Registry

Member

- Note:
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 - You can apply to have this order set aside or varied.
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- If you have any queries in relation to this order please contact the associate to [member] on [chamber's email].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
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4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
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10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).