



# DECISION

*Fair Work Act 2009*  
s.512—Right of entry

## **Application by Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch** (RE2023/32)

DEPUTY PRESIDENT BINET

PERTH, 13 JUNE 2023

*Application for a right of entry permit for Edmond Margjini – Application granted.*

[1] On 17 January 2023, the Construction, Forestry, Mining and Energy Union - Construction and General Division, Western Australian Divisional Branch (**CFMMEU**) filed an application (**Application**) pursuant to section 512 of the *Fair Work Act 2009* (Cth) (**FW Act**) for a right of entry permit for Mr Edmond Margjini (**Mr Margjini**).

[2] The Application was allocated to my Chambers for determination on 15 February 2023.

[3] On 23 February 2023, notification was received from the Fair Work Ombudsman (**FWO**) indicating that it may wish to make submissions in respect of the Application pursuant to section 590 of the FW Act.

[4] Directions were issued on 28 February 2023 (**Directions**) requiring the CFMMEU to file submissions in relation to the Application and any additional evidence upon which it relied by 9 March 2023. The Directions invited the FWO to file any materials in reply by 16 March 2023.

[5] On 7 March 2023, the CFMMEU requested an extension of time to file their materials. Amended Directions were issued on 7 March 2023 (**Amended Directions**). The Amended Directions required the CFMMEU to file its materials by 14 March 2023. The Amended Directions invited the FWO to any materials in reply by 16 March 2023.

[6] On 14 March 2023, the CFMMEU requested a further extension of time to file their materials. Further Amended Directions were issued on 14 March 2023 (**Further Amended Directions**). The Further Amended Directions required the CFMMEU to file its materials by 20 March 2023. The Further Amended Directions invited the FWO to any materials in reply by 27 March 2023.

[7] The materials filed by the CFMMEU include:

- a. An outline of submissions dated 20 March 2023.

- b. A witness statement of Mr Edmond Margjini with annexures, dated 20 March 2023.
- c. A witness statement of Mr Kivraj Singh (**Mr Singh**) with annexures, dated 20 March 2023. Mr Singh is a solicitor employed by the CFMMEU.
- d. A report on training and instruction provided for officials of the CFMMEU in relation to responsibilities and obligations of permit holders under industrial, workplace and health and safety laws prepared by Mr Brian Lacy AO (**Mr Lacy**). Mr Lacy is a highly respected former Senior Deputy President of the FWC's predecessor.
- e. A report on training and instruction given to Mr Margjini prepared by Mr Lacy.

[8] The Amended Directions stated that if either the CFMMEU or FWO sought to make oral submissions in respect of the Application, they should advise Chambers by 3 April 2023. The Directions stated that if neither the CFMMEU nor FWO wished to make oral submissions in respect of the Application, a conclusion may be made on the basis of the written materials filed in accordance with the Further Amended Directions.

[9] On 27 March 2023, the FWO advised that it would not be filing any materials in relation to the Application.

[10] The Application was listed for a conference on 2 June 2023 during which Mr Margjini provided additional details of his past, his understanding of the rights and responsibilities of a permit holder and his motivations to ensure that if a permit is granted he does not do anything which might put the permit in jeopardy.

[11] The FWO has not sought to be heard orally in relation to the Application. The evidence adduced by the CFMMEU in support of the Application for an entry permit for Mr Margjini is unchallenged and not inherently incredible. Mr Margjini appeared as a honest and genuine witness. There are no other circumstances which suggest the evidence adduced by the CFMMEU in support of the Application should be rejected. I therefore accept the evidence adduced by the CFMMEU.<sup>1</sup>

[12] In reaching my decision, I have considered all the submissions made and the evidence tendered, even if not expressly referred to in these reasons for decision.

## **Background**

[13] Mr Margjini is currently 45 years old and is employed by the CFMMEU as an Organiser in the Perth metropolitan area. His areas of responsibility are construction sites in the Perth metropolitan area, the mobile crane hiring industry in the Perth metropolitan area and yards ancillary to construction sites such as formwork contractor yards, scaffolding contractor yards, concrete pumping contractor yards and paint shops.<sup>2</sup>

[14] He was born in Albania to a family of limited means and only completed primary school before fleeing the then war-torn country at the age of 16 with a cousin. His cousin was fatally shot as they endeavoured to cross the border into Greece.<sup>3</sup>

[15] He struggled for food and accommodation in Greece until he found employment as a grave digger. He was badly beaten for accepting low wages for the work prompting him to

learn kickboxing. He eventually earned enough money competitively kickboxing to move to Czechoslovakia where he met and married his first wife, an Australian citizen.<sup>4</sup>

[16] In 1998 he and his then wife, moved to Australia and they had a son together. When he arrived in Australia he could not speak, read or write in English. The marriage broke down in 2003. Mr Margjini turned to attending boxing gyms, competing in martial arts and consuming illicit substances including cocaine as solace, becoming embroiled in a subculture that subsequently led him to become involved in criminal activity for a period of time.<sup>5</sup>

[17] Since 2004, Mr Margjini has worked exclusively in the construction industry as an employee in a vast array of roles and as an employer running a concrete formwork company.<sup>6</sup> Prior to that he also worked as a doorman and bouncer.<sup>7</sup>

[18] Between 2004 and 2017, Mr Margjini was convicted of and fined for numerous criminal offences including assault, breaching bail, driving while under the influence, trespass, stealing a car, driving without a licence, criminal damage, possession of a weapon and breach of a restraining order. He was jailed in 2017 for a period of 10 months for reckless driving.<sup>8</sup>

[19] According to Mr Margjini, the majority of these offences occurred when he was under the influence of drugs and alcohol. Mr Margjini also says that on many occasions he simply pleaded guilty to charges he was not guilty of rather than contest the charges due to poor English skills, a lack knowledge of Australian laws, a lack of legal representation and poor judgement as a result of drug use.<sup>9</sup>

[20] The period in prison dramatically changed Mr Margjini's direction in life. He stopped using drugs and set about rehabilitating himself.<sup>10</sup> He says of this period:<sup>11</sup>

*“38. I served the full 10 months in prison. It was awful. It's something I never want to experience again. I felt there was no future for me and that I was a disappointment to myself and others, particularly my family. I grew up in a Roman Catholic family which formed me into a family-oriented person. Every day I was in prison, I was 'beating myself up' and constantly thinking about the ways I had let down my family. I was confronted by what I saw as a tragic waste of human potential in gaol and was surrounded by people that had hit 'rock bottom'. Due to the isolation of prison, I had little else to reflect on other than what I saw around me and the choices I had made in life. I don't want to see myself or anyone else around me turn into what I saw in prison.*

*39. I didn't decide to turn my life around just to avoid the punishment of prison again, although that weighed heavily on me, but because I realised the lifestyle that leads someone to prison is empty and sad. I wanted to start a family again and be someone who I could be proud of and whom my family could be proud of. I am proud to say that since completing this term of imprisonment, I did in fact change my life and my criminal history since has been entirely clean.”*

[21] In 2018, Mr Margjini married his second wife and has since had two children with her. According to Mr Margjini:<sup>12</sup>

*“Since becoming a husband and a father again, I have gained a sense of purpose, stability and family which I haven’t felt before. I have absolutely no desire to engage in criminal activity or anti-social behaviour anymore but now also have every reason not to because of my overriding responsibility to look after my children and ensure they get a chance at life that I didn’t get when I was growing up. I am also committed to being a positive role model for them.”*

[22] In recent years Mr Margjini has also become very active in the Albanian community in Western Australia assisting other Albanians assimilate to life in Australia. In 2020 he was elected President of the Albanian Community of Western Australia an achievement of which he says he is very proud.<sup>13</sup>

[23] Over the last two years Mr Margjini says he has focussed on charity work for bushfire and flood victims and assisting the homeless living in the City of Perth.<sup>14</sup>

[24] Since 2022, Mr Margjini has been seeing a psychologist who has assisted him deal with the trauma he has experienced in his life and to equip him with the coping mechanisms to move forward successfully.<sup>15</sup>

[25] Mr Margjini has received right of entry training on two occasions. He completed an ACTU online course approved by the FWC. Most recently on 10 October 2022, he attended a course delivered by Mr Brian Lacy AO, a former Senior Deputy President of the FWC. Mr Margjini says as a result of this training he clearly understands his role and duties as a permit holder. He was able to articulate these without prompting during the Conference.

[26] If granted, this would be the first right of entry permit issued to Mr Margjini.<sup>16</sup>

### **Consideration**

[27] The provisions concerning entry permits are found in Part 3-4 of the FW Act.

[28] Part 3-4 of the FW Act provides a framework within which officials of organisations may gain access to premises of employers and occupiers to represent members of organisations in the workplace, to hold discussions with members and potential members, and to investigate suspected contraventions of the FW Act, Fair Work instruments and State or Territory occupational health and safety laws.

[29] The object of Part 3-4 is set out in section 480 of the FW Act:

**“480 Object of this Part**

*The object of this Part is to establish a framework for officials of organisations to enter premises that balances:*

- (a) *the right of organisations to represent their members in the workplace, hold discussions with potential members and investigate suspected contraventions of:*

- (i) *this Act and fair work instruments; and*
- (ii) *State or Territory OHS laws; and*
- (b) *the right of employees and TCF award workers to receive, at work, information and representation from officials of organisations; and*
- (c) *the right of occupiers of premises and employers to go about their business without undue inconvenience.”*

**[30]** In *Maritime Union of Australia v Fair Work Commission*<sup>17</sup>, the Full Court of the Federal Court (North, Flick and Bromberg JJ) observed:

*“Section 480 ... sets out that the object of Part 3-4 is to establish a framework that balances the right of organisations to represent their members, the right of employees to receive information and representation, and the right of occupiers of premises and employers to go about their business without undue inconvenience. The rights conferred by Part 3-4, including to enter premises and interview persons about suspected contraventions and to hold discussions with employees, have thus been assessed by the legislature as an appropriate balance between the rights of organisations, employees and occupiers. The rights conferred, however, are not “untrammelled” and are subject to both express and implied constraints: Australasian Meat Industry Employees’ Union v Fair Work Australia [2012] FCAFC 85 at [56], [2012] FCAFC 85; (2012) 203 FCR 389 at 405 per Flick J (Tracey J agreeing). The exercise of rights conferred upon a “permit holder” renders lawful that which would otherwise be unlawful: cf. Federal Commissioner of Taxation v Australia and New Zealand Banking Group Limited [1979] HCA 67; (1979) 143 CLR 499 at 540 per Mason J.”*<sup>18</sup>

**[31]** Section 512 of FW Act states that:

***“512 FWC may issue entry permits***

*The FWC may, on application by an organisation, issue a permit (an entry permit) to an official of the organisation if the FWC is satisfied that the official is a fit and proper person to hold the entry permit.”*

**[32]** In *The Maritime Union of Australia*,<sup>19</sup> a Full Bench considered the question of whether a person is a fit and proper person in the context of the right of entry regime established by Part 3–4 of the FW Act and observed that:

*“...the relevant question, in determining whether the Commission is permitted to exercise the discretion to issue an entry permit to an official of an organisation under s.512, is whether the official “is a fit and proper person to hold an entry permit”. The description “fit and proper person” in s.512 is not defined and standing alone, it carries no precise meaning. Generally though, the description is used as a measure of suitability to perform or carry out a particular function, to be appointed to a particular position or to be given a particular right or privilege. However, the description will take its meaning from its context, from the activities in which the person to be assessed is or will be engaged and*

*the ends to be served by those activities. Taking into account context, the structure of s.512 and the activities to be engaged in by an official if an entry permit will issue, it seems to us clear that that description is to be applied by reference to the suitability of the official “to hold the entry permit”.*<sup>20</sup>

[33] Section 513(1) of the FW Act sets out the matters that are to be taken into account in determining whether a proposed permit holder is a fit and proper person to hold a right of entry permit (**Permanent Qualification Matters**) as follows:

**“513 Considering application**

- (1) *In deciding whether the official is a fit and proper person, the FWC must take into account the following permit qualification matters:*
- (a) *whether the official has received appropriate training about the rights and responsibilities of a permit holder;*
  - (b) *whether the official has ever been convicted of an offence against an industrial law;*
  - (c) *whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country, involving:*
    - (i) *entry onto premises; or*
    - (ii) *fraud or dishonesty; or*
    - (iii) *intentional use of violence against another person or intentional damage or destruction of property;*
  - (d) *whether the official, or any other person, has ever been ordered to pay a penalty under this Act or any other industrial law in relation to action taken by the official;*
  - (e) *whether a permit issued to the official under this Part, or under a similar law of the Commonwealth (no matter when in force), has been revoked or suspended or made subject to conditions;*
  - (f) *whether a court, or other person or body, under a State or Territory industrial law or a State or Territory OHS law, has:*
    - (i) *cancelled, suspended or imposed conditions on a right of entry for industrial or occupational health and safety purposes that the official had under that law; or*

(ii) *disqualified the official from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under that law*

(g) *any other matters that the FWC considers relevant.”*

[34] Section 515 of the FW Act allows the FWC to impose conditions on entry permits. It relevantly provides as follows:

*“515 Conditions on entry permit*

- (1) The FWC may impose conditions on an entry permit when it is issued.*
- (2) In deciding whether to impose conditions under subsection (1), the FWC must take into account the permit qualification matters.*
- (3) The FWC must record on an entry permit any conditions that have been imposed on its use (whether under subsection (1) or any other provision of this Part)”*

[35] The Permit Qualification Matters delineated by section 513(1) of the FW Act are mandatory considerations. Each of the Permit Qualification Matters must be considered and given appropriate weight. There is no statutory indication that any particular Permit Qualification Matter should be given more weight than any other.<sup>21</sup>

[36] Whilst the weight to be accorded to any of the Permit Qualification Matters is ultimately a matter for the FWC, a permit qualification matter will not be ‘taken into account’ by being discarded and determined to be irrelevant. It will for instance, be just as relevant that the official has never been convicted of an offence against industrial law or has completed appropriate training, as it is that pecuniary penalties have been imposed on the official or another person as a result of actions taken by the official.<sup>22</sup>

[37] The question of whether a proposed permit holder is a fit and proper person to hold an entry permit will require consideration of the rights the holder of an entry permit may exercise, the limitations and conditions attached to the exercise of those rights and the responsibilities that must be discharged in the exercise of those rights.<sup>23</sup>

[38] Consideration of Permit Qualification Matters is to be directed to the personal characteristics of the proposed permit holder pertinent to the discharge of the functions and the exercise of the rights associated with holding a permit.<sup>24</sup>

[39] The Permit Qualification Matters must be considered in the context of whether the proposed permit holder is a fit and proper person to hold an entry permit, not whether the proposed permit holder is a fit and proper person per se.<sup>25</sup>

[40] The temporal focus is on the present fitness and propriety of a permit holder to hold an entry permit. Whilst the past conduct of a permit holder may inform the assessment of their present fitness and propriety, the FWC’s jurisdiction under section 512 is not punitive and is directed to whether or not at the time the application is determined it is satisfied that the official is a ‘fit and proper person’ to hold an entry permit.<sup>26</sup>

[41] If the FWC identifies deficiencies with an official's fitness and propriety to hold a permit, it must consider whether these can be addressed by the imposition of appropriate conditions. Conditions can be only be imposed if they are capable of assisting the FWC to achieve the state of satisfaction that the official is a fit and proper person to hold an entry permit.<sup>27</sup>

***Permit Qualification Matter One – Appropriate training (s. 513(1)(a))***

[42] In relation to the Permit Qualification Matter set out in section 513(1)(a) of the FW Act, Mr Margjini produced evidence that he successfully completed the Australian Council of Trade Unions Federal Right of Entry Training Course on 1 August 2022.<sup>28</sup> This has previously been held to constitute 'appropriate training' for the purposes of section 513(1)(a) of the FW Act.<sup>29</sup>

[43] Additionally, Mr Margjini undertook training with Mr Lacy AO on 10 October 2022. Mr Lacy reports that Mr Margjini was engaged and showed interest in the training provided. Mr Lacy says he questioned Mr Margjini in light of his history of assault and how he would respond if faced with provocation or abuse in the course of discharging his duties as a permit holder. Mr Margjini's response was that he was 25 years old at the time of he was convicted of assault, and he would react differently now. According to Mr Lacy, Mr Margjini understands the industrial, workplace, and health and safety laws. Mr Lacy says that it appeared to him that Mr Margjini has reformed since marrying for a second time and taking on responsibility for his young children and is now committed to complying with the law in future.<sup>30</sup>

[44] There was no evidence to suggest that Mr Margjini has completed training in relation to the Textile, Clothing and Footwear (TCF) right of entry provisions under Subdivision AA of Division 2 of Part 3-4 of the FW Act. On 17 January 2023, the CFMMEU consented to a condition in the event that Mr Margjini is granted a permit that he must not exercise any entry rights under the TCF right of entry provisions, until evidence of completion of the relevant training has been filed with the FWC.

[45] I accept that Mr Margjini has completed appropriate training about the rights and responsibilities of a permit holder in accordance with section 513(1)(a), with the exception of the training in relation to the TCF right of entry provisions. This weighs in favour of his fitness and propriety to hold an entry permit.

***Permit Qualification Matter Two – Offences against industrial laws (s. 513(1)(b))***

[46] In relation to the Permit Qualification Matter set out in section 513(1)(b), Mr Margjini has declared that he has not been convicted of any offence against an industrial law.<sup>31</sup> There is no evidence before me that Mr Margjini has been convicted of an offence against an industrial law.<sup>32</sup>

[47] This weighs in favour of his fitness and propriety to hold an entry permit.

***Permit Qualification Matter Three – Criminal Offences (s. 513(1)(c))***

[48] Between 2004 and 2017 Mr Margjini was convicted of and fined for numerous criminal offences including, assault, breaching bail, driving while under the influence, trespass, stealing



a car, driving without a licence, criminal damage, possession of a weapon and breach of a restraining order. He was jailed in 2017 for a period of 10 months for reckless driving.<sup>33</sup>

[49] Mr Margjini has been open and honest about the extent of his antisocial and criminal behaviour. Notwithstanding that not all of the criminal offences of which he has been convicted fall within the scope of section 513(1)(c) Mr Margjini has provided his complete criminal record to the FWC.

[50] The convictions relevant to section 513(1)(c) are assault offences which occurred between 2003 to 2005, trespass offences which occurred between 2012-2013 property offences which occurred between 2012 and 2015 and the breach of a restraining order in 2015. He was charged fines of between \$500 and \$2000 for these offences.<sup>34</sup>

[51] In his witness statement, Mr Margjini does not seek to minimise or excuse his behaviour but instead provides context of the circumstances in which his conduct occurred.

[52] According to Mr Margjini the majority of the offences for which he has been convicted occurred when he was under the influence of drugs and alcohol. Mr Margjini also says that on many occasions he simply pleaded guilty to charges he was not guilty of rather than contest the charges due to poor English skills, a lack knowledge of Australian laws, a lack of legal representation and poor judgement as a result of drug use.<sup>35</sup> For example he says that he was a passenger not the driver in the stolen car which he was charged with stealing and says that the firearms for which he was charged with possession belonged to his flatmate but decided that the likely fine to be imposed would be less than the cost to contest the charge. In relation to the reckless driving offence for which he was jailed Mr Margjini insists that he was not the driver of the car. He says that his lack of legal representation led to a wrongful conviction.

[53] Further, Mr Margjini states that the 2013 trespass conviction arose because he pleaded guilty to avoid disclosing that he was having an illicit relationship with a woman after being found in her house by her boyfriend. He says that the 2012 property damage conviction arose when he booked a hotel room for his brother who was visiting Australia from overseas and his brother and his friends damaged the hotel room. He says the 2014 property offence occurred when he reversed his car to leave a situation which had become violent. He says that the breach of the restraining order occurred when he was discovered at the home of his then partner after their relationship had been rekindled.<sup>36</sup>

[54] The assault charges between 2004 and 2005 occurred in the course of him performing duties as a bouncer at a nightclub at which violence by patrons was not unusual. He acknowledges that on the occasions in question his response to that violence was excessive. Sensibly Mr Margjini left the industry as soon as he was able.<sup>37</sup>

[55] While his offences are adverse to the assessment of whether Mr Margjini is a fit and proper person to hold an entry permit, they do not necessarily militate a conclusion that Mr Margjini is presently a fit and proper person to be issued an entry permit.

***Permit Qualification Matter Four – Penalties Imposed (s. 513(1)(d))***

[56] In relation to the Permit Qualification Matter set out in section 513(1)(d) of the FW Act, Mr Margjini has declared that neither he nor the CFMMEU has been ordered to pay a penalty under the FW Act or any other industrial law in relation to action taken by him.<sup>38</sup>

[57] There is no evidence before me that Mr Margjini has been convicted of such an offence. This weighs in favour of Mr Margjini's fitness and propriety to hold an entry permit.

***Permit Qualification Matter Five – Federal permits (s. 513(1)(e)) and Permit Qualification Matter Six – State Permits (s. 513(1)(f))***

[58] Given that Mr Margjini has not previously held a state or federal entry permit, the Permit Qualification Matters set out in s 513(1)(e) and (f) are neutral considerations.

***Permit Qualification Matter Seven – Other relevant matters (s. 513(1)(g))***

[59] Section 513(1)(g) of the FW Act requires the FWC to take into account any other matter it considers relevant. A matter will be relevant if it can rationally affect the assessment of whether the proposed permit holder is a fit and proper person to hold an entry permit. Matters that may be relevant and therefore fall to be considered under s 513(1)(g) are matters that relate to the personal characteristics of the proposed permit holder and are pertinent to the discharge of the functions and exercise of the rights and privileges associated with holding a permit.<sup>39</sup>

[60] Between 2004 and 2017 Mr Margjini was convicted of, and fined for, numerous criminal offences in addition to those considered in relation to section 513(1)(c) including breaching bail, driving while under the influence, stealing a car, driving without a licence and possession of a weapon. He received fines of between \$100 and \$3000 for these offences.<sup>40</sup> He was jailed in 2017 for a period of 10 months for reckless driving.<sup>41</sup>

[61] Mr Margjini has been open and honest about these offences. In his witness statement, he does not seek to minimise or excuse his behaviour but instead provides context of the circumstances in which his conduct occurred.

[62] According to Mr Margjini the majority of these offences occurred when he was under the influence of drugs and alcohol. For example, he says that the driving offences occurred while he was under the influence of illicit drugs. He says the same drug use resulted in him failing to attend court leading to the breach of bail conviction and to fail to renew his driver's licence leading to the driving without a licence convictions. He says poor judgement arising from drug use led him to have replica weapons in his possession.

[63] Mr Margjini also says that on many occasions he simply pleaded guilty to charges he was not guilty of rather than contest the charges due to poor English skills, a lack knowledge of Australian laws, a lack of legal representation and poor judgement as a result of drug use.<sup>42</sup> For example he says that he was a passenger not the driver in the stolen car which he was charged with stealing and says that the firearms for which he was charged with possession belonged to his flatmate but decided that the likely fine to be imposed would be less than the cost to contest the charge. In relation to the reckless driving offence for which he was jailed Mr Margjini insists that he was not the driver of the car. He says that his lack of legal representation led to a wrongful conviction.

[64] While these offences are also adverse to the assessment of whether Mr Margjini is a fit and proper person to hold an entry permit, they also not necessarily militate a conclusion that Mr Margjini is presently a fit and proper person to be issued an entry permit.

### **Conclusion**

[65] The object of Part 3-4 is to establish a framework that balances the right of organisations to represent their members, the right of employees to receive information and representation, and the right of occupiers of premises and employers to go about their business without undue inconvenience.

[66] There is no doubt that Mr Margjini has a significant criminal record which weighs against a finding that he is a fit and proper person to hold a permit. However, the offences in the most part occurred for reasons, and in circumstances, which he is unlikely to confront in the discharge of his duties as a permit holder.

[67] It appears from the evidence of Mr Lacy AO and my discussions with Mr Margjini that Mr Margjini clearly understands the scope and limitations of those duties and the responsibilities which attach to them.

[68] Mr Margjini has faced significant challenges in his life since childhood which while not excusing criminal activity do provide a context for it. He has had very limited formal education. Since his teenage years, he has had to support himself in foreign countries where he did not initially speak, read or write the local language. In order to support himself, and subsequently his dependents, he has had to turn his hand to a variety of roles, from grave digging, to kickboxing to scaffolding. Ever since he was a child, he has had to make his way in life without the structure, guidance, or support of close family. Regrettably for a period of time, he found solace in drugs and companionship amongst those living on the fringes of society.

[69] Mr Margjini's use of cocaine following his divorce and loss of access to his eldest son appears to have directly led to downward spiral of increasingly more serious antisocial and criminal behaviour between 2012 and 2016.

[70] Critically the triggers for his offending have now been removed. The period in prison dramatically changed Mr Margjini's direction in life. He has ceased taking illicit drugs, has remarried, obtained secure stable employment with the CFMMEU and sought professional counselling.

[71] Mr Margjini has expressed remorse for his prior offending. He has sought to atone his offending by giving back to the community via his charitable activities.

[72] He has the motivation and is receiving treatment to not reoffend. He is now a community leader and has a wife and very young children dependent on him financially and as a role model. He is the sole breadwinner for his family. A lack of a permit or the loss of a permit would jeopardise his employment and the financial security of his family. It would also deny him the opportunity which he appears to be passionate about to assist those entering the

building and construction industry who like himself face language, financial and cultural challenges.

[73] Most relevantly he has not reoffended since 2016.

[74] The Permit Qualification Matters must be considered in the context of whether the proposed permit holder is a fit and proper person to hold an entry permit, not whether the proposed permit holder is a fit and proper person per se.<sup>43</sup>

[75] Whilst the past conduct of a permit holder may inform the assessment of their present fitness and propriety, the FWC's jurisdiction under section 512 is not punitive and is directed to whether or not at the time the application is determined it is satisfied that the official is a 'fit and proper person' to hold an entry permit.<sup>44</sup>

[76] Mr Margjini has made a conscious decision since 2016 to follow a different pathway than the one which led him to jail. Having demonstrated through effluxion of time his genuine commitment to a different way of life he should be given the chance to continue this journey so that he might provide the opportunities for his son and baby daughter that he was denied as a child.

[77] Taking into account the permit qualification matters, for the reasons stated earlier, I am satisfied that Mr Edmund Margjini is a fit and proper person to hold an entry permit with the following condition:

*1. Edmond Margjini must not exercise rights under Subdivision AA of Division 2 of Part 3-4 of the Act until he has completed appropriate training in relation to that subdivision and he has filed a copy of the training completion certificate in the Commission.*

[78] An order<sup>45</sup> to this effect will be issued separately.



DEPUTY PRESIDENT

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- <sup>1</sup> *Ashby v Slipper* [2014] FCAFC 15 at [77].
- <sup>2</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [47].
- <sup>3</sup> Witness Statement of Edmond Margjini dated 20 March 2023 [2]-[6].
- <sup>4</sup> Witness Statement of Edmond Margjini dated 20 March 2023 [7]-[8].
- <sup>5</sup> Witness Statement of Edmond Margjini dated 20 March 2023 [9]-[11], [14].
- <sup>6</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [12]-[13], [15]-[17].
- <sup>7</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [12]-[17].
- <sup>8</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[39].
- <sup>9</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[39].
- <sup>10</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [38]-[39], [44].
- <sup>11</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [38]-[39].
- <sup>12</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [40].
- <sup>13</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [41]-[42].
- <sup>14</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [43].
- <sup>15</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [45].
- <sup>16</sup> Form F42 – Application for an entry permit dated 17 January 2023.
- <sup>17</sup> [2015] FCAFC 56.
- <sup>18</sup> *Maritime Union of Australia v Fair Work Commission* [2015] FCAFC 56 at [15].
- <sup>19</sup> [2014] FWCFB 1973.
- <sup>20</sup> *Maritime Union of Australia* [2014] FWCFB 1973 at [23]
- <sup>21</sup> *Construction, Forestry, Mining and Energy Union – Construction and General Division, Victoria and Tasmanian Divisional Branch* [2018] FWC 1325 at [27]; *Construction, Forestry, Mining, Maritime and Energy Union for a right of entry permit to be issued to Mr Michael Kenneth Robinson* [2018] FWC 1777 at [39].
- <sup>22</sup> *CFMEU—Construction and General Division* [2023] FWC 582 at [5]; *Construction, Forestry, Maritime, Mining and Energy Union—Construction and General Division, WA Divisional Branch* [2023] FWC 287 at [7].
- <sup>23</sup> *Re Australian Salaried Medical Officers Federation* [2017] FWC 3282 at [11] citing *Re Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2015] FWC 1522 at [32].
- <sup>24</sup> *Re Australian Salaried Medical Officers Federation* [2017] FWC 3282 at [11] citing *Re Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2015] FWC 1522 at [32]. *CFMMEU, Construction and General Division, Victoria-Tasmania Divisional Branch (Re Mark Travers)* [2023] FWC 410 at [3].
- <sup>25</sup> *Re Australian Salaried Medical Officers Federation* [2017] FWC 3282 at [11] citing *Re Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2015] FWC 1522 at [32]. *CFMMEU, Construction and General Division, Victoria-Tasmania Divisional Branch (Re Mark Travers)* [2023] FWC 410 at [3].
- <sup>26</sup> *CFMEU—Construction and General Division* [2023] FWC 582 at [2].
- <sup>27</sup> *Maritime Union of Australia v Fair Work Commission* (2015) 230 FCR 15; *Application by Construction, Forestry, Maritime, Mining and Energy Union – Construction and General Division, Australian Capital Territory Divisional Branch* [2019] FWC 4087 at [59].
- <sup>28</sup> Witness statement of Mr Edmond Margjini dated 20 March 2023 at [53], Certificate of Completion of “On Demand: Federal Right of Entry” dated 1 August 2022.
- <sup>29</sup> *Construction, Forestry, Mining and Energy Union—Construction and General Division, New South Wales Divisional Branch* [2018] FWC 379 at [16]-[18].
- <sup>30</sup> Report on Training and Instruction Given to Mr Edmund Margjini by Mr Brian Lacy AO dated 10 October 2022.
- <sup>31</sup> Form F42 – Application for an entry permit dated 17 January 2023.
- <sup>32</sup> Form F42 – Application for an entry permit dated 17 January 2023.
- <sup>33</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[39].

<sup>34</sup> Form F42 – Application for an entry permit dated 17 January 2023.

<sup>35</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[39].

<sup>36</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[36].

<sup>37</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [21]-[22].

<sup>38</sup> Form F42 – Application for an entry permit dated 17 January 2023.

<sup>39</sup> *Construction, Forestry, Maritime, Mining and Energy Union-Construction and General Division, WA Divisional Branch* [\[2023\] FWC 287](#) at [8].

<sup>40</sup> Form F42 – Application for an entry permit dated 17 January 2023.

<sup>41</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[39].

<sup>42</sup> Witness Statement of Edmond Margjini dated 20 March 2023 at [18]-[39].

<sup>43</sup> *Re Australian Salaried Medical Officers Federation* [\[2017\] FWC 3282](#) at [11] citing *Re Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [\[2015\] FWC 1522](#) at [32].  
*CFMMEU, Construction and General Division, Victoria-Tasmania Divisional Branch (Re Mark Travers)* [\[2023\] FWC 410](#) at [3].

<sup>44</sup> *CFMEU—Construction and General Division* [\[2023\] FWC 582](#) at [2].

<sup>45</sup> [PR762873](#).