

[2025] FWC 3196

The attached document replaces the document previously issued with the above code on 24 October 2025.

Mr McQuaid's name was corrected in paragraphs 17 and 18.

Associate to Vice President Gibian

4 November 2025



DECISION

Fair Work Act 2009

s.512 - Renewal by existing permit holder for same organisation

Construction, Forestry and Maritime Employees Union for an entry permit for Gerard Anthony McQuaid (RE2025/905)

VICE PRESIDENT GIBIAN

SYDNEY, 24 OCTOBER 2025

Application for a right of entry permit for Gerard Anthony McQuaid – Whether fit and proper person to hold entry permits under the Fair Work Act 2009 (Cth) – Consideration of the “permit qualification matters” in s 513(1) – Mr McQuaid is a “removed person” for the purposes of the Fair Work (Registered Organisations) Act 2009 (Cth) – Relevance of status as “removed person” – Commission satisfied Mr McQuaid is a fit and proper person – Permit issued.

Introduction

[1] This decision deals with an application made by the Construction, Forestry and Maritime Employees Union, Construction & General Division (Victoria/Tasmania Branch) (the **CFMEU**) for a new of a right of entry permit to be issued to Gerard Anthony McQuaid pursuant to s 512 of the *Fair Work Act 2009* (Cth) (the **FW Act**).

[2] Mr McQuaid has been employed as an organiser for the CFMEU since July 2015 and was appointed as Lead Civil Organiser in around 2018. In 2019, Mr McQuaid was elected as a delegate to the Divisional Branch Council and, in the same year, as a delegate to the Divisional Conference. On 23 August 2024 and by virtue of the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* (the **Determination**), the offices held by Mr McQuaid of delegate to the Divisional Branch Council and Divisional Conference were declared vacant.¹ As a consequence of the offices held by Mr McQuaid being vacated, he became a “removed person” for the purposes of s 177A of the FW Act and s 323MA of the *Fair Work (Registered Organisations) Act 2009* (Cth) (the **RO Act**).

[3] After the CFMEU was placed in administration in August 2024, Mr McQuaid was appointed as a coordinator by the National Secretary of the CFMEU and the Divisional Secretary of the Construction & General Division, Zach Smith. That appointment was approved by the administrator of the CFMEU, Mark Irving KC. Mr McQuaid has remained employed by the CFMEU in this position since that time. Mr McQuaid has held a right of entry permit since 2016 and continued to hold a permit after the commencement of the administration of the CFMEU.

[4] The application filed by the CFMEU discloses Mr McQuaid’s status as a “removed person” for the purposes of the RO Act when asked to disclose if there were any other matters that may be relevant to whether he is a fit and proper person to hold a permit. The application states:

Mr McQuaid is also a “removed person” for the purposes of s177A of the FW Act and s323MA of the *Fair Work (Registered Organisations) Act 2009* (Cth) (FWRO Act). Mr McQuaid’s status in this respect has arisen automatically and solely pursuant to s 177A(1)(a)(i) of the FW Act and s323MA(1)(a)(i) of the FWRO Act respectively, upon the commencement of operation of the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* on 23 August 2024. To be clear, the [sic] Mr McQuaid’s status as a removed person is not attributable to any specified conduct on his part. The application does not consider this to be strictly relevant to this application, however it is included in the interests of full disclosure.

[5] The CFMEU appears to regard Mr McQuaid’s status as a “removed person” to be irrelevant to the question posed by s 512 of the FW Act, namely, whether he is a fit and proper person to hold an entry permit. That is a matter which it will be necessary to consider for the purposes of determining the application.

Procedural background

[6] On 4 September 2025, the CFMEU filed two applications in relation to Mr McQuaid’s right of entry permit. The first application was an application under s 512 of the FW Act seeking that Mr McQuaid be issued with a new entry permit to replace his existing permit which was due to expire on 5 October 2025. The second application was an application under s 516(2) of the FW Act to extend the period before the expiry of Mr McQuaid’s existing entry permit until such time as Mr McQuaid’s application for a new permit is determined.

[7] On 23 September 2025, my chambers directed the CFMEU to file any submissions and evidence it sought to rely upon in support of the application for renewal of Mr McQuaid’s permit. Further on 23 September 2025, my Chambers wrote to the Fair Work Ombudsman (the **FWO**) requesting confirmation as to whether the FWO sought to be heard in relation to the application made by Mr McQuaid. On 30 September 2025, the FWO responded informing the Commission that it did not wish to be heard in relation to the application.

[8] On 1 October 2025, the CFMEU indicated that it did not seek to file any submissions or evidence in support of the application. The applications were then listed for a case management hearing on 2 October 2025. Following the case management hearing, the CFMEU were directed to file a statutory declaration of Mr McQuaid in order to provide relevant information concerning his employment history with the CFMEU. On 2 October 2025, I made an order extending Mr McQuaid’s existing entry permit until 30 October 2025.² On 9 October 2025, the CFMEU filed a statutory declaration of Mr McQuaid.

Statutory Provisions

[9] Section 512 of the FW Act provides that the Commission may issue an entry permit to an official of an organisation if satisfied that the official is a fit and proper person to hold a permit. Section 513(1) provides that, in deciding whether the official is a fit and proper person,

the Commission must take into account the “permit qualification matters”. The relevant part of that section is 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.

[10] The Commission may issue a permit under s 512 only if it is satisfied that Mr McQuaid is a fit and proper person to hold an entry permit, and to exercise the powers, functions and responsibilities attached to the holding of a permit.³ The phrase “fit and proper person” in s 512 is directed at an inquiry as to fitness and propriety for the purposes of holding an entry permit.⁴ Although any conduct that casts light on the general integrity, conduct or personal characteristics of the official may be relevant to whether he or she is a fit and proper person to hold an entry permit,⁵ conduct in relation to the obligations of a permit holder or under industrial laws generally are likely to be most relevant.

[11] Each of the “permit qualification matters” listed in s 513(1) must be taken into account in assessing whether an application is a fit and proper person to hold a permit. Those matters must be given “proper, genuine and realistic consideration and appropriate weight” and treated as matters of significance in the decision-making process.⁶ However, there is no statutory prescription of the weight to be attached to each matter and it is for the decision-maker to

determine the appropriate weight to be given to each in assessing whether the official is a fit and proper person to hold an entry permit.⁷

[12] Division 2 of Part 2A of Chapter 9 of the RO Act is entitled “Persons Removed from Office etc. as a result of Scheme of Administration”. Section 323MA contains a definition of “removed person” in the following terms:

323MA Application of this Division

(1) A person is a *removed person* if:

(a) any of the following events has happened as a result of a scheme determined under subsection 323B(1):

(i) the person is removed (however described and including by having their office vacated) or suspended as an officer, or the person’s role as an officer otherwise comes to an end;

(ii) the person’s employment, as a person employed by the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or any of its branches, is terminated or otherwise comes to an end, or is suspended;

(iii) the person is removed (however described) or suspended as a workplace delegate (within the meaning of the Fair Work Act), or the person’s role as a workplace delegate otherwise comes to an end; and

(b) if the event involves suspension—the suspension has not ended.

(2) A person is also a *removed person* if:

(a) on or after 1 July 2024 and before the Construction and General Division and its branches are placed under administration by force of subsection 323A(1), the person, by the person’s own choice:

(i) ceases to be an officer (within the meaning of this Act) of the Construction and General Division or any of its branches; or

(ii) ceases to be a person employed by the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or any of its branches; or

(iii) ceases to be a workplace delegate for members of the Construction and General Division or any of its branches; and

(b) during the period of the administration, the administrator formed the opinion that, if the person had not made the choice, the administrator would have taken action under the scheme of administration to ensure the person ceased to be an officer, employee or workplace delegate (as applicable).

(3) This Division does not limit the operation of Part 4 of Chapter 7 (disqualification from office).

[13] Section 323MB of the RO Act limits the capacity of removed persons to hold office or be employed without a certificate being granted. In short, a removed person must not become a candidate for election to an office in any organisation, be appointed to an office in an organisation and must not “start to be employed in, or engaged by, an organisation or a branch, division or part of an organisation”. Those prohibitions do not apply if the Commission grants a certificate to the person under ss 323MC or 323MD.

[14] Mr McQuaid became a “removed person” for the purposes of s 323MA(1)(a)(i) by virtue of his position as a delegate to the Divisional Branch Council and Divisional Conference being vacated by the Determination. Mr McQuaid did not apply for a certificate pursuant to s 323MD(1) to be employed or engaged by an organisation. The CFMEU submits, and I accept, that Mr McQuaid was not required to do so because the prohibition in s 323MB(3) is only that a removed person must not “start to be employed or engaged by” an organisation. Mr McQuaid continued his existing employment. In that regard, clause 3(1)(c) of the Determination provides that the vacation of an office held by a person “does not affect the continued employment of a person (including organisers) who is not employed or a paid official by reason of that person holding an office vacated as a result of subclause (3)(1)(a)”.

Consideration

[15] In deciding whether Mr McQuaid is a fit and proper person to hold an entry permit, I am required to take into account each of the “permit qualification matters” listed in s 513(1) of the FW Act.

[16] In relation to s 513(1)(a), Mr McQuaid was granted an entry permit by Deputy President Gostencnik. With respect to training, the Deputy President said:⁸

[13] Mr McQuaid has received training about the rights and responsibilities of a permit holder by undertaking a course of training on the subject of a federal right of entry conducted on 22 July 2022.¹² However, the course undertaken did not include training in relation to the exercise of entry rights under Subdivision AA of Division 2 of Part 3-4 of the Act, which deals with entry to investigate suspected contraventions relating to TCF award workers. Although Mr McQuaid is an official of Construction and General Division of the CFMMEU, the rules of the CFMMEU since the amalgamation of the formerly registered Textile, Clothing and Footwear Union of Australia and the Maritime Union of Australia with the formerly named Construction, Forestry, Mining and Energy Union, cover TCF award workers. As such, the grant of an unconditional entry permit to Mr McQuaid would permit him to exercise those rights without having undertaken relevant training. I am therefore not satisfied, given the breadth of the CFMMEU’s rules, that Mr McQuaid has received appropriate training about the rights and responsibilities of a permit holder. This matter weighs against a conclusion that Mr McQuaid is a fit and proper person to hold an unconditional right of entry permit.

[14] However as the training undertaken by Mr McQuaid is otherwise appropriate training about the rights and responsibilities of a permit holder (that is a permit holder who would not exercise rights under Sub-division AA of Division 2 of Part 3-4 of the Act), and since I am otherwise satisfied that Mr McQuaid is a fit and proper person to hold an entry permit, I propose imposing a condition on the entry permit when issued to the effect that the permit holder must not exercise rights under Sub-division AA of Division 2 of Part 3-4 of the Act until appropriate training in relation to that subdivision has been completed and a copy of the training completion certificate has been filed in the Commission.

[17] Deputy President Gostencnik granted Mr McQuaid an entry permit subject to a condition that he must not exercise rights under Subdivision AA of Division 2 of Part 3-4 of the FW 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. The CFMEU confirmed by email to my chambers that Mr McQuaid has not undertaken further right of entry training referred to in the condition imposed by Deputy President Gostencnik. It is appropriate

the same condition be imposed on any new permit. I am otherwise satisfied that Mr McQuaid has received appropriate training about the rights and responsibilities of a permit holder pursuant to s 513(1)(a) of the Act. This weighs in favour of a finding that Mr McQuaid is a fit and proper person to hold an entry permit subject to the same condition.

[18] Section 513(1)(b)-(d) relate to offences and penalties. As part of the application, Mr McQuaid has declared that he has never been convicted of an offence against an industrial law or any offence against a law involving entry onto premises, fraud or dishonesty, or the intentional use of violence against another person or intentional property damage and destruction. The application also sets out that Mr McQuaid has not been the subject of a penalty under the FW Act or any other industrial law and that no other person has been ordered to pay a penalty in relation to action taken by him. These factors weigh in favour of Mr McQuaid being a fit and proper person to hold an entry permit. In relation to s 513(1)(e), the application set out that Mr McQuaid has never had a permit issued which has been revoked, suspended or made subject to conditions. Mr McQuaid has also not been disqualified from exercising or applying for a right of entry as set out in s 513(1)(f). These matters weigh in favour of Mr McQuaid being a fit and proper person to hold an entry permit.

[19] Section 513(1)(g) requires that the Commission, when determining whether an official is a fit and proper person to hold a permit, must take into account “any other matters that the FWC considers relevant”. Any matter that could rationally bear upon whether the official is a fit and proper person to hold a permit will be a “relevant matter” and must be taken into account.⁹ The CFMEU submits that the fact Mr McQuaid is a removed person for the purposes of s 177A of the FW Act and 323MA of the RO Act is not relevant to whether he is a fit and proper person to hold an entry permit.

[20] The records of the Commission indicate that a number of persons employed by the CFMEU who are removed persons for the purposes of the FW Act and RO Act have been issued with new entry permits after the commencement of the administration. It is unclear in most instances whether it was disclosed as part of the application that the officials concerned is a removed person. Only one decision appears to have referred to the fact that the application for a permit disclosed that the official concerned was a removed person. That decision concerned applications with respect to Jason Deans. In that matter, Commissioner Connolly indicated that Mr Deans attested in his declarations to the Commission that there has been no specified conduct on the part of Mr Deans with respect to his status as a removed person.¹⁰ The Commissioner did not otherwise discuss the significance of the fact Mr Deans was a removed person to the permit application,

[21] For my part, I consider that the fact an individual is a removed person for the purposes of the FW Act and the RO Act could rationally bear upon whether the official is a fit and proper person to hold a permit such that it is a matter which should be disclosed on a permit application and must be considered by the Commission. In *Application by William Kane Lowth* [2025] FWC 1095, which dealt with an application for a certificate under ss 323MC and 323MD of the RO Act and s 177A of the FW Act, I described the statutory purposes of the provisions dealing with “removed persons” as follows (references omitted):¹¹

[31] The restrictions imposed on removed persons by Part 2A of the RO Act, particularly in s 323MB, are substantial. A removed person is prevented from being a candidate for or holding office in any organisation or being employed or engaged by an organisation. Those restrictions

have the potential to interfere with the capacity of a removed person to earn a living and pursue their chosen line of work, and to constrain the freedom of association of the removed person and members and officials of other organisations.

[32] Parliament enacted those restrictions as a result of serious concerns which have been identified about the conduct of at least some officials of the Construction and General Division and the culture of the Division more generally. The Revised Explanatory Memorandum to the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) explained:

The restrictions regarding ‘removed persons’ are necessary to address serious allegations made against elements of the Division, that members and associates of the Division are not respecting Australian laws. These restrictions would ensure that the actions taken by an administrator are effective and durable, and that alleged non-compliance and poor governance within the Division would be properly addressed if it was the Minister’s view that it was in the public interest for a scheme of administration to be determined. The restrictions are necessary to ensure the integrity of the bargaining process and the role of organisations under the Fair Work framework more broadly, whether within the Division or elsewhere. They would ensure that, in these circumstances, an administrator could quickly address issues contributing to a culture of alleged non-compliance within the Division and would ensure it cannot be transferred elsewhere (for example, by ‘removed persons’ simply moving to another registered organisation). The measure is proportionate, because it would be time-limited, and would enable removed persons to apply (to an impartial umpire, the Commission) for an exemption on grounds they are fit and proper.

[33] As the Revised Explanatory Memorandum recognises, the operation of the prohibitions in s 323MB and s 177A are subject to an exemption if a removed person applies to the Commission for a certificate on grounds that they are a fit and proper person.

[34] The statutory scheme implicitly acknowledges that the fact a person satisfies the definition of being a “removed person” does not necessarily mean it is not appropriate for them to hold office in or be employed or engaged by an organisation or be a bargaining representative. That is a natural consequence of the provisions which have been enacted. A person might have been removed from office or had their employment terminated simply as a result of the administration. The establishment of the administration does not necessarily entail that an adverse finding has been made about the character or conduct of each individual official, or that each individual has contributed to the state of affairs that the Minister assessed justified the Division, and its branches, being placed into administration.

[22] The view of Parliament is that restrictions on the activities permitted to be engaged in by removed persons are necessary to address serious allegations made against elements of the Construction and General Division of the CFMEU. The restrictions include being employed or engaged by or holding office in any organisation or being a bargaining representative. In that context, the fact an official is a removed person might be relevant to whether they are a fit and proper person to hold an entry permit. Whether that fact is significant in the overall assessment required by s 512 will depend on the circumstances. If the evidence establishes that the person became a removed person not as a result of any conduct they engaged in personally or in which they were involved, the fact of being a removed person might have little weight. It is, however, relevant to the assessment.

[23] It is appropriate that I have regard to the fact Mr McQuaid is a removed person by reason of having been a delegate to the Divisional Branch Council and Divisional Conference.

However, Mr McQuaid has declared that he is not aware of any allegations of wrongdoing against him or of any investigation that might allege he had engaged in any misconduct in performing his functions for the CFMEU. There is no contrary evidence before the Commission or any other reason not to accept Mr McQuaid's declaration. In those circumstances, the fact that Mr McQuaid is a removed person does not weight significantly against finding that he is a fit and proper person to hold an entry permit. I am fortified in that view by the fact that Mr McQuaid has been an organiser for the CFMEU, and held entry permits, for approximately ten years and has not been subject of findings that he contravened industrial laws generally or requirements relating to the exercise of entry permits in particular.

[24] Having considered the permit qualification matters set out in this decision, I am satisfied that Mr McQuaid is a fit and proper person to hold an entry permit with the following condition:

Gerard Anthony McQuaid 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.

[25] The application by the CFMEU for an entry permit to be issued to Mr McQuaid is granted. A permit with the above condition will be issued separately.



VICE PRESIDENT

Appearances:

N Grealy and I Baxter for the CFMEU.

Hearing details:

2 October 2025.

Sydney (using Microsoft Teams).

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¹ *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration Division)*, clause 3(1)(a) and Annexure B (Item 75 and 284).

² PR79238.

³ *Re Maritime Union of Australia* [\[2014\] FWCFB 1973](#); (2014) 241 IR 216 at [23].

⁴ *Maritime Union of Australia v Fair Work Commission* [2015] FCAFC 56; (2015) 230 FCR 15 at [18] (North, Flick and Bromberg JJ); *Re Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [\[2015\] FWC 1522](#) at [32].

⁵ *Maritime Union of Australia v Fair Work Commission* [2015] FCAFC 56; (2015) 230 FCR 15 at [19]-[25] (North, Flick and Bromberg JJ).

⁶ *Edwards v Guidice* (1999) 94 FCR 561 at [5] (Moore J); *Re 4 Yearly Review of Modern Awards — Penalty Rates* [\[2017\] FWCFB 1001](#); (2017) 265 IR 1 at [115].

⁷ *Friends of Hinchinbrook Society Inc v Minister for Environment (No 3)* (1997) 77 FCR 153 at 187-188 (Hill J); *Re Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia*, [\[2015\] FWC 1522](#) at [32].

⁸ *Construction, Forestry, Maritime, Mining and Energy Union re Gerard Anthony McQuaid* [\[2022\] FWC 2678](#) at [13]-[14].

⁹ *Application by the Construction, Forestry and Maritime Employees Union for an entry permit for Joshua Thompson and Dylan Howard* [\[2025\] FWC 1177](#) at [22]. See also *Redbubble Ltd v Hells Angels Motorcycle Corporation (Australia) Pty Ltd* [2024] FCAFC 15; (2024) 303 FCR 100 at [131] (Perram and Downes JJ).

¹⁰ *Construction, Forestry and Maritime Employees Union-Construction and General Division, Victoria-Tasmania Divisional Branch* [2024] 3405 at [16].

¹¹ *Application by William Kane Lowth* [\[2025\] FWC 1095](#) at [31]-[34].