



DECISION

Fair Work (Registered Organisations) Act 2009

Fair Work Act 2009 (Cth)

s.323MC RO Act—Application for the FWC to grant a person a certificate to hold office

s.323 MD RO Act—Application for the FWC to grant a certificate to be employed or engaged by an organisation

s.177A FW Act—Application for the FWC to grant a person a certificate to be a bargaining representative

Applications by Melita Gillies

(R2025/178, R2025/190, R2025/191)

VICE PRESIDENT GIBIAN

SYDNEY, 18 DECEMBER 2025

Applications for certificates under s 177A of the Fair Work Act 2009 (Cth) and ss 323MC and 323MD of the Fair Work (Registered Organisations) Act 2009 (Cth) – Applicant a “removed person” as a result of administration of the Construction and General Division of the CFMEU– Whether applicant a “fit and proper person” to hold office in or be employed or engaged by an organisation or be a bargaining representative – Certificates issued.

Introduction and background

[1] Melita Gillies has applied to the Fair Work Commission for certificates under ss 323MC and 323MD of the *Fair Work (Registered Organisations) Act 2009 (Cth)* (the **RO Act**) and s 177A of the *Fair Work Act 2009 (Cth)* (the **FW Act**). The certificates for which she has applied would, respectively, permit her to hold office in an organisation registered under the RO Act, be employed or engaged by such an organisation and be a bargaining representative for a proposed enterprise agreement. Ms Gillies is a “removed person” for the purposes of the RO Act and the FW Act by reason of previously holding an office in the Construction and General Division of the Construction, Forestry and Maritime Employees Union (the **CFMEU**).

[2] The need for the applications to be made arises from provisions recently inserted into the RO Act relating to the administration of the Construction and General Division of the CFMEU and its branches. On 23 August 2024, Part 2A of the RO Act commenced operation. Those amendments were made by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024 (Cth)*. Among other things, s 323A(1) of the RO Act provides that the Construction and General Division, and each of its branches, is placed under administration when a determination of a scheme for the administration is made and an administrator appointed. Section 323B(1) permits the Minister to determine a scheme for the administration if satisfied it is in the public interest for the Division and its branches to be placed under

administration. If the Minister determines a scheme, the scheme must include provision for “suspension and removal of officers” and “declarations that offices are vacant”.¹

[3] Also on 23 August 2024, the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* (the **Determination**) was made. The Determination is an instrument made under s 323B(1) and determined a scheme for the administration of the Construction and General Division in the form set out in Annexure A to the Determination.² Clause 3(1)(a) of Annexure A to the Determination had the effect of declaring vacant the offices listed in Annexure B. Item 76 of Annexure B identified the position of “Delegate to Divisional Branch Council (Melbourne Metropolitan position 34)” then held by Ms Gillies as one of the positions declared vacant. The scheme appointed Mark Irving KC to be the administrator (the **Administrator**).

[4] As a result of the appointment of the Administrator and the vacation of the office she then held, Ms Gillies is now a “removed person” within the meaning of the FW Act and the RO Act.³ A “removed person” is prohibited from becoming a candidate for or being appointed to an office in an organisation or a branch of an organisation, starting to be employed in, or engaged by, an organisation or a branch, division or part of an organisation and being a bargaining representative in relation to a proposed enterprise agreement.⁴ Those consequences are lifted if the Commission grants a relevant certificate to the person.⁵

[5] The background to the application is, in short, as follows. Ms Gillies has worked in the union movement since 2006 and has held various positions in different unions over that time, including as a delegate, organiser, leader organiser and, most recently, an EBA organiser and Manager of the CFMEU EBA Team. Ms Gillies has also served on the Board of Directors of Brite Service (which provides supported employment to people with disabilities), served as a councillor on Merri-bek City Council in the inner north of Melbourne and is an active member of the Unitarian Church in West Melbourne and the Australian Cuba Friendship Society.

[6] When Ms Gillies was a CFMEU delegate working onsite, she was elected to be a delegate to the Division Branch Council. In 2021, she was employed by the CFMEU to work in its Enterprise Agreements team as an EBA Organiser and, in 2022, her role expanded when she was asked to manage the EBA team. When Mr Irving took over as the Administrator of the Construction and General Division of the CFMEU in 2024, Ms Gillies says she was interviewed by Mr Irving in relation to the EBA processes and procedures that were in place in the union and was informed that Mr Irving was impressed by her work.

[7] Ms Gillies continued to be employed in her role as EBA Organiser and EBA Team Manager until the Administrator offered voluntary redundancy packages to all staff across the branch in 2025. Ms Gillies applied for a voluntary redundancy and her application was accepted in May 2025. Ms Gillies gave two months’ notice to give the branch an opportunity for her to pass on her knowledge to, and assist in training, the EBA team prior to leaving the union. Her employment with the CFMEU ended on 25 July 2025. Ms Gillies has communicated to the Commission that she wishes to take up alternative employment as soon as she can. She states that she is waiting on a decision in relation to the present applications for certificates to then assess the job opportunities she is able to pursue. Ms Gillies has not yet secured employment.

[8] On 19 November 2025, directions were issued for the Administrator and the Fair Work Ombudsman to indicate whether they wished to be heard in relation to Ms Gillies' applications. They both indicated they did not wish to be heard in relation to the applications. I have taken into account that neither the Ombudsman or the Administrator were in a position to provide information to the Commission which suggests that Ms Gillies is not a fit and proper person to hold office in or be employed by an organisation or to be a bargaining representative. On 28 November 2025, directions were issued for Ms Gillies to file materials in support of her application. On 2 December 2025, Ms Gillies filed a statutory declaration in support of her application.

[9] For the reasons that follow, I am satisfied that Ms Gillies is a fit and proper person to hold office in a registered organisation for the purposes of s 323MC(2), be employed or engaged by an organisation for the purposes of s 323MD(2) and be a bargaining representative for a proposed enterprise agreement for the purposes of s 177A(7).

Statutory provisions

[10] Ms Gillies' has applied for certificates under ss 323MC and 323MD of the RO Act and s 177A of the FW Act. Sections 323MC and 323MD are contained within Division 2 of Part 2A of the RO Act which 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).

[11] A definition in the same terms is found in s 177A(1) and (2) of the FW Act. There is no dispute that Ms Gillies is a “removed person” for the purposes of s 323MA(1)(a)(i) of the RO Act and s 177A(1)(a)(i) of the FW Act.

[12] Section 323MB limits the capacity of removed persons to hold office or be employed without a certificate being granted and provides:

323MB Removed person must not become an officer or employee etc. in organisation without a certificate

Standing for election or being appointed as officer in an organisation

(1) A removed person must not:

- (a) become a candidate for election to an office in an organisation or a branch of an organisation; or
- (b) be appointed to an office in an organisation or a branch of an organisation.

Civil penalty: 600 penalty units.

(2) Subsection (1) does not apply if the removed person holds a certificate granted under section 323MC.

Being employed or engaged by organisation

(3) A removed person must not start to be employed in, or engaged by, an organisation or a branch, division or part of an organisation.

Civil penalty: 600 penalty units.

(4) Subsection (3) does not apply if the removed person holds a certificate granted under section 323MD.

Evidential burden

(5) A removed person bears an evidential burden in relation to the matters in subsections (2) and (4).

[13] Section 323MC deals with holding office in an organisation and provides:

323MC Certificate to hold office

(1) The FWC may, on application in writing by a removed person, grant the removed person a certificate to hold office.

(2) The FWC may grant the certificate if satisfied that the removed person is a fit and proper person to hold office in an organisation.

(3) In deciding whether the removed person is a fit and proper person to hold office in an organisation, the FWC must have regard to the following matters:

- (a) the reasons the removed person was removed from office, including whether the removed person engaged or allegedly engaged in a kind of conduct described in subparagraph 141(1)(c)(i), (ii) or (iii);
- (b) whether the removed person has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving:
 - (i) fraud or dishonesty; or
 - (ii) intentional use of violence against another person; or
 - (iii) intentional damage or destruction of property;
- (c) the general character of the removed person;
- (d) the fitness of the removed person to be involved in the management of organisations.

(4) The FWC may also have regard to any other matters the FWC considers relevant.

(5) The FWC must not grant the certificate:

- (a) if the removed person has been disqualified under a scheme determined under subsection 323B(1) and the period of the disqualification has not ended; or
- (b) at any time while the removed person is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation under subsection 215(1).

[14] To issue a certificate under s 323MC, the Commission is required to have regard to the matters specified in s 323MC(3) and “any other matters the FWC considers relevant” for the purposes of s 323MC(4).

[15] Section 323MD deals with a removed person being employed or engaged by an organisation and provides:

323MD Certificate to be employed or engaged by an organisation

(1) The FWC may, on application in writing by a removed person, grant the removed person a certificate to be employed or engaged by an organisation.

(2) The FWC may grant the certificate if satisfied that the removed person is a fit and proper person to be employed or engaged by an organisation.

(3) The FWC must not grant the certificate:

- (a) if the removed person has been disqualified under a scheme determined under subsection 323B(1) and the period of the disqualification has not ended; or
- (b) at any time while the removed person is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation under subsection 215(1).

[16] To issue a certificate under s 323MD, the Commission must be satisfied that “the removed person is a fit and proper person to be employed or engaged by an organisation” for the purposes of s 323MD(2). This section does not specify any matters to which the Commission must have regard in deciding whether a removed person is a fit and proper person to be employed or engaged by an organisation.

[17] Section 177A of the FW Act now prevents a removed person from being a bargaining representative for a proposed enterprise agreement unless the person is granted a certificate to do so. Section 177A provides:

177A Restrictions on removed persons being bargaining representatives

(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) of the Registered Organisations Act (a scheme for the administration of the Construction and General Division of the CFMEU and its branches):

(i) the person is removed (however described and including by having their office vacated) or suspended as an officer (within the meaning of this Act), 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, or the person's role as a workplace delegate otherwise comes to an end; and

(b) if the event involved 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) of the Registered Organisations Act, 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).

Removed person must not be bargaining representative without a certificate

(3) A removed person must not do any of the following, whether in their personal capacity or any other capacity:

(a) be a bargaining representative of an employee or employer;

(b) purport to be a bargaining representative of an employee or employer;

(c) hold out that the person is a bargaining representative of an employee or employer.

Note: This subsection is a civil remedy provision (see Part 4 - 1).

(4) Subsection (3) does not apply if the removed person holds a certificate granted under subsection (7).

(5) If, in proceedings for a pecuniary penalty order against a removed person for a contravention of subsection (3), the person wishes to rely on the exception in subsection (4), the person bears an evidential burden in relation to the matter.

(6) Subsection (3) has effect despite subsection 176(1) and section 177. However, subsection (3) does not prevent an employee who will be covered by the agreement concerned from appointing themselves under paragraph 176(1)(c) as their own bargaining representative for the agreement.

Certificate to be a bargaining representative

(7) The FWC may, on application in writing by a removed person, grant the person a certificate to be a bargaining representative, if satisfied that the person is a fit and proper person to be a bargaining representative.

(8) In deciding whether the removed person is a fit and proper person to be a bargaining representative, the FWC must have regard to the following matters:

- (a) the reasons the person became a removed person, including whether the person engaged or allegedly engaged in a kind of conduct described in subparagraph 141(1)(c)(i), (ii) or (iii) of the Registered Organisations Act;
- (b) whether the person has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving:
 - (i) fraud or dishonesty; or
 - (ii) intentional use of violence against another person; or
 - (iii) intentional damage or destruction of property;
- (c) the general character of the person.

(9) The FWC may also have regard to any other matters the FWC considers relevant.

(10) The FWC must not grant the certificate:

- (a) if the removed person has been disqualified under a scheme determined under subsection 323B(1) of the Registered Organisations Act and the period of the disqualification has not ended; or
- (b) at any time while the removed person is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation under subsection 215(1) of the Registered Organisations Act.

(11) Nothing in this section affects the operation of Part VIIC of the Crimes Act 1914 (which includes provisions relieving persons from requirements to disclose spent convictions).

(12) In this section:

“CFMEU” has the same meaning as in the Registered Organisations Act.

“Construction and General Division” has the same meaning as in the Registered Organisations Act.

[18] To issue a certificate under s 177A, the Commission is required to have regard to the matters specified in s 177A(8) and “any other matters the FWC considers relevant” for the purposes of s 177A(9).

[19] In *Application by William Kane Lowth* [2025] FWC 1095, which was the first application for a certificate under ss 323MC and 323MD of the RO Act and s 177A of the FW Act to be decided, I described the statutory context in which such an application is required to be considered as follows (references omitted):⁶

[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.

[20] The matters to be considered in deciding whether to grant a certificate under s 323MC(1), s 323MD(1) and s 177A(7) is whether, for the purposes of s 323MC(2), s 323MCD(2) and s 177A(7) respectively, the removed person is a fit and proper person to be employed or engaged by an organisation. In *Lowth*, I said the following in relation to the “fit and proper person” test (again omitting references):⁷

[35] The requirement about which the Commission must be satisfied under ss 323MC(2) and 323MD(2) and s 177A(7) before the relevant certificate can be granted is that the applicant is a “fit and proper person” to hold office in an organisation, to be employed or engaged by an organisation respectively or to be a bargaining representative. The description “fit and proper person” in the relevant provisions is not defined and has no precise meaning. Some guidance is provided by the judgments in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321. Toohey and Gaudron JJ, for example, said:

The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of “fit and proper” cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

[36] The expression “fit and proper person” is generally used as a measure of the suitability of a person to perform or carry out a particular function, to be appointed to a particular position or to be given a particular right or privilege. The expression is intended to give the widest scope for judgment and for rejection. The concept of fitness and propriety should not be narrowly construed or confined.

[37] Evidence as to the past conduct, general character and reputation of the individual concerned is likely to be relevant to the assessment of whether they are a “fit and proper person”. In another context, the Supreme Court of South Australia said in *Teachers Registration Board of South Australia v Edwards* (2013) 117 SASR 246:

[103] The cases show in my view that although the expression “fit and proper person” takes its meaning from the content of the legislation, there are nevertheless certain consistent notions which emerge in the relevant decisions.

[104] These are that a consideration of whether a person is fit and proper looks to the suitability and eligibility to hold a position. The suitability in turn is viewed against a consideration of the person’s previous conduct and their general reputation.

[38] The nature of the rights and responsibilities associated with the position or authority for which permission is being considered is significant. In the context of s 512 of the FW Act, for example, it has been said that the question of whether a person is a fit and proper person to hold an entry permit necessarily requires a consideration of the rights which may be exercised by the holder of such a permit, the limitations on the exercise of those rights and the responsibilities to be discharged in the exercise of those rights.

[39] The statutory context, and the objects of the RO Act and FW Act, provide important context to inform the assessment. The intention of Parliament in enacting the RO Act was to “enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation” by requiring associations of employers and employees to meet the standards set out in the RO Act. The standards for which

the RO Act provides include ensuring that organisations are representative of and accountable to members, encouraging efficient management and high standards of accountability and providing for the democratic functioning and control of organisations.

[40] The passage from the Revised Explanatory Memorandum to the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) set out above discloses a particular concern that a culture of non-compliance and poor governance alleged to have existed in the Construction and General Division is not “transferred elsewhere”. That suggests that the likelihood of compliance with the obligations of officials of an organisation, and the standards of conduct expected of them, will be important. The obligations imposed on officials by the RO Act include that officers exercise their powers and functions with care and diligence, in good faith and for a proper purpose and not improperly gain an advantage for themselves or someone else or cause detriment to the organisation.

[21] The statute also outlines a number of matters the Commission must have regard to in the case of a certificate to hold office⁸ and a certificate to be a bargaining representative.⁹ In *Application by William Kane Lowth* [2025] FWC 1095, I said the following in relation to the matters which the Commission must have regard to (again omitting references):¹⁰

[42] In the case of a certificate to hold office, s 323MC(3) requires the Commission have regard to a number of specific matters being the reasons the person was removed from office, whether the person has been convicted of certain offences, the general character of the person and the fitness of the person to be involved in the management of organisations. A similar set of considerations must be taken into account in case of a certificate to a bargaining representative. In case of a certificate to be employed or engaged by an organisation, s 323MD does not specify any particular matters that must be taken into account. That presumably reflects an acknowledgment that particular matters must be relevant to holding office or being a bargaining representative. That is not to suggest that the matters referred to in s 323MC(3) will not often also be relevant to whether an applicant is a fit and proper person to be employed or engaged in an organisation for the purposes of s 323MD(2).

Applications by Ms Gillies

[22] It is then necessary to consider the applications made by Ms Gillies. As I have observed, it is necessary that I separately turn my mind to whether Ms Gillies is a fit and proper person to hold office in and to be employed by an organisation and to be a bargaining representative and I have done so. There is, obviously enough, a degree of overlap between the considerations relevant to each application and they can be conveniently addressed together initially by reference to the considerations set out in s 323MC(3) and s 177A(8).

[23] With respect to s 323MC(3)(a) and s 177A(8)(a), Ms Gillies became a removed person purely as a result of the Determination being made. There is nothing before the Commission to suggest that Ms Gillies became a removed person because of any conduct on her own part at all much less conduct of a type referred to in s 141(1)(c)(i), (ii) or (iii) of the RO Act. The reasons Ms Gillies was removed from office do not suggest that she is not a fit and proper person for relevant purposes.

[24] With respect to s 323MC(3)(b) and s 177A(8)(b), Ms Gillies has declared that she has never been convicted of any offence against a law of the Commonwealth, a State, a Territory or a foreign country involving fraud or dishonesty, intentional use of violence against another

person or intentional damage or destruction of property. I have no reason not to accept Ms Gillies' declaration. This consideration favours a conclusion that Ms Gillies is a fit and proper person for relevant purposes.

[25] With respect to s 323MC(3)(c) and s 177A(8)(c), there is nothing before the Commission to suggest that Ms Gillies is other than of general good character. Ms Gillies has included in her statutory declaration an overview of her work history and other positions and responsibilities she has held. She has a commendable record of public and community service, including being elected as a member of a local council in Melbourne and being involved in a range of community organisations. That speaks positively of her general character. There is nothing before the Commission to suggest that the history of her work for trade unions is other than positive. On the material available to the Commission, I am satisfied Ms Gillies is generally of good character.

[26] With respect to s 323MC(3)(d), there is nothing before the Commission to suggest that Ms Gillies is not fit to be involved in the management of organisations. Ms Gillies has held the position of Team Leader in the EBA Team within the CFMEU and continued to hold that position after the appointment of the Administrator. That position involved management responsibility with respect to the EBA Team. Ms Gillies says she received positive feedback in relation to her work after the appointment of the Administrator including from the then Executive Officer of the Victorian Branch, Grahame McCulloch, and its Legal Officer, Micheal McIver. I have no reason to doubt that evidence.

[27] With respect to s 323MC(4) and s 177A(9), there is nothing before the Commission to suggest that there is any other reason that Ms Gillies is not a fit and proper person to hold office in an organisation or be a bargaining representative. Although the matters listed in s 323MC(3) and s 177A(8) are not mandatory considerations in relation to s 323MD, the matters I have referred to in the preceding paragraphs are relevant to whether I can be satisfied Ms Gillies is a fit and proper person to be employed or engaged by an organisation for the purposes of s 323MD(2) and I have considered those matters for that purpose.

[28] With respect to ss 323MC(5) and 323MD(3) and s 177A(10), Ms Gillies has declared that she has not been disqualified under a scheme determined under subsection 323B(1) of the RO Act and that she is not ineligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation under subsection 215(1) of the RO Act. The Commission is not prohibited from granting a certificate under those sections by ss 323MC(5) and 323MD(3) or s 177A(10).

Conclusion and Disposition

[29] Having considered the applicable mandatory considerations and other relevant material, based on the information that is presently before the Commission, I am satisfied that Ms Gillies is a fit and proper person to hold office in a registered organisation for the purposes of s 323MC(2) of the RO Act, to be employed or engaged by an organisation for the purposes of s 323MD(2) of the RO Act and to be a bargaining representative for a proposed enterprise agreement for the purposes of s 177A(7) of the FW Act. The Commission is not prohibited from granting a certificate by s 323MC(5) of the RO Act, s 323MD(3) of the RO Act and s 177A(10) of the FW Act.

[30] The certificates will be issued concurrently with this decision.



VICE PRESIDENT

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¹ *Fair Work (Registered Organisations) Act 2009* (Cth), s 323B(3)(b) and (c).

² *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024*, clause 4.

³ *Fair Work (Registered Organisations) Act 2009* (Cth), ss 6 and 323MA; *Fair Work Act 2009* (Cth), ss 12 and 177A(1) and (2).

⁴ *Fair Work (Registered Organisations) Act 2009* (Cth), s 323MB(1) and (3); *Fair Work Act 2009* (Cth), s 177A(3).

⁵ *Fair Work (Registered Organisations) Act 2009* (Cth), s 323MB(2) and (4); *Fair Work Act 2009* (Cth), s 177A(4).

⁶ *Application by William Kane Lowth* [2025] FWC 1095 at [31]-[34].

⁷ *Application by William Kane Lowth* [2025] FWC 1095 at [35]-[40].

⁸ *Fair Work (Registered Organisations) Act 2009* (Cth), s 323MC(3).

⁹ *Fair Work Act 2009* (Cth), s 177A(8).

¹⁰ *Application by William Kane Lowth* [2025] FWC 1095 at [42].