

[2025] FWCA 2640 [Note: This decision and the associated [agreement](#) has been quashed - refer to Full Bench decision dated 20 November 2025 [\[2025\] FWCFB 263](#)]



DECISION

Fair Work Act 2009

s.185 - Application for approval of a Greenfields agreement

Construction, Forestry and Maritime Employees Union
(AG2025/1800)

HAWTHORNE CIVIL PTY LTD GOLD COAST LIGHT RAIL STAGE 3 PROJECT AGREEMENT

Building, metal and civil construction industries

COMMISSIONER LEE

MELBOURNE, 8 AUGUST 2025

Application for approval of the Hawthorne Civil Pty Ltd GOLD COAST LIGHT RAIL STAGE 3 PROJECT AGREEMENT

Background

[1] This is an application for approval for approval of the *Hawthorne Civil Pty Ltd GOLD COAST LIGHT RAIL STAGE 3 PROJECT AGREEMENT* (the Agreement). The Application was made by the Construction, Forestry and Maritime Employees Union (CFMEU) on 10 June 2025 pursuant to s.185 of the *Fair Work Act 2009* (the Act).

[2] The Australian Workers Union (AWU) have sought to be heard in relation to two matters:

- The CFMEU are not entitled to represent a majority of the employees who will be covered by the proposed agreement in relation to work to be performed under the proposed agreement¹; and
- The proposed agreement is specifically identified as operating in the civil construction industry and the AWU consider it is not in the public interest to approve the agreement², particularly without the Commission first hearing from the principal union in that industry.

[3] I determined to hear from the AWU in respect to s.187(5) of the Act. Directions were issued for the filing of materials, and a hearing was held on 7 August 2025.

Consideration

[4] The evidence I have in this matter includes an Form F20 statutory declaration by Mr Zdravko Cvetanoski, the General Manager for the employer. Mr Cvetanoski declared yes to the question, ‘Are the employee organisations covered by the agreement, taken as a group, entitled to represent the industrial interests of a majority of the employees who will be covered by the agreement, in relation to work to be performed under the agreement?’

[5] I also have a Form F21 statutory declaration from Mr Paul Dunbar of the CFMEU which also answers in the affirmative to the same question.

[6] Ordinarily, the Fair Work Commission (the Commission) will proceed on the basis that statutory declarations made in support of agreement approvals are true and correct and proceed to approve the agreement once satisfied of all of the other statutory requirements. The exception of course is where the Commission has some reason to doubt the truth of a claim made, including when evidence is brought forward to challenge the truth of a claim made in such a statutory declaration. There is no evidence that has been filed in these proceedings by the AWU that calls into question the truth of the declarations made.

[7] In any event, as a result of the AWU’s intervention, further evidence was provided by the CFMEU. That evidence included an email from Mr Cvetanoski to Mr Dunbar which reads as follows:

“Hi Paul,

As discussed, please see below what we believe JH will require for our scope of works on the Gold Coast Light Rail Project;

Track Slab Works & Pavement Works

- *Area Prep – 1 x GPS excavator Operator*
- *Edge Form, placement of mesh and Setting Up Rail = 4 x Qualified Tradespersons, 1 x Labourer*
- *Pouring Concrete (2 Concrete Finishers, 4 x Concrete Labouring Crew made up of Qualified Tradespersons and Labourers) x 1 Day only.*
- *Stripping of Formwork = 4 x Qualified Tradespersons, 1 x Labourer*

We generally see this as a 5 day turnaround for the works, with the Area prep taking 1 day, Edge form taking 3, pouring taking 1 and stripping also taking 1.”³

[8] At the hearing the AWU referred to the above email as containing vague references and being unsure of what ‘JH’ might refer to. However, the AWU ultimately conceded that in context its very likely this refers to John Holland.

[9] Immediately prior to the hearing, Mr Elliot Dalgleish of the CFMEU provided a version of Appendix B from the Agreement which listed the relevant CFMEU occupational rule that demonstrated their eligibility to represent each of the various occupations covered by the Agreement.

[10] It's apparent from that document that the CFMEU are eligible to represent the vast majority of occupations covered by the Agreement. The only challenge to that document by the AWU was to the occupation of 'Formwork Labourer' which they claim the CFMEU is not eligible to represent. The CFMEU rely on the decision of Commissioner Coleman⁴ to support the proposition that they can represent Formworkers. Having considered that decision and not having been taken to any contrary authority, I accept that the CFMEU has eligibility to cover Formworkers, to the extent they are carpenters and builders' labourers. However, even if that is not correct it's apparent that the vast majority of occupations listed in Appendix B fall within the CFMEU rules.

[11] Having regard to the totality of the evidence from the CFMEU and the employer I am satisfied that the CFMEU is entitled to represent a majority of employees who will be covered by the proposed agreement in relation to work to be performed under the proposed agreement.

[12] As to the public interest consideration, Mr Cvetanoski in his statutory declaration stated as follows:

- The agreement relates to a genuine new enterprise that the employer is establishing or proposing to establish and the employer has not employed any of the persons who will be necessary for the normal conduct of the enterprise and will be covered by the agreement.
- The terms of the agreement are such that no employee who will be covered by the agreement will be disadvantaged compared to any existing award or the National Employment Standards and provide wages and conditions of employment which are comparable to the standards applying on other projects of a similar kind.
- The agreement will provide industrial certainty and stability for the construction of a major project.⁵

[13] In their Form F21 the CFMEU stated:

- The Employee Organisations have appropriate coverage of the majority of the employees.
- The agreement reflects construction project wage outcome appropriate for the subject project.
- A Greenfields Agreement provides security in the projected wage cost for the Employer and for the Project.⁶

[14] There is no evidence challenging those propositions and no cogent reason advanced not to accept them.

[15] The AWU submissions state that there have been no submissions made on public interest by the CFMEU. That is incorrect. It is presumed the AWU have overlooked the statements made by the employer and CFMEU in the F20 and F21 as set out above.

Conclusion

[16] For the foregoing reasons and in accordance with s.187(5)(a) of the Act, I am satisfied that the Construction, Forestry and Maritime Employees Union is entitled to represent the industrial interests of a majority of employees who will be covered by the Agreement in relation

to work that is to be performed under it. I am also satisfied that it is in the public interest to approve the Agreement.

Other approval considerations

[17] There was no challenge to the other relevant approval considerations. Taking into account the evidence in the F19, F20 and F21 I'm satisfied that this Greenfields agreement meets the requirements of section 172(2)(b) of the Act. I am satisfied that each of the requirements of ss.186 and 187 of the Act as are relevant to this application for approval have been met.

[18] Pursuant to s.53(2)(b) of the Act I note the Agreement was made with the Construction, Forestry and Maritime Employees Union and that the Agreement covers this organisation.

[19] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 15 August 2025. The nominal expiry date of the Agreement is 8 August 2029.



COMMISSIONER

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<[AE529991](#) PR790501>

¹ Section 187(5)(a) of the Act.

² Paragraph 2.2 of the Form F19, Digital Hearing Book (DHB) page 67.

³ DHB, page 14.

⁴ Print F6746.

⁵ DHB, page 72.

⁶⁶ Ibid, page 80.