

MEMORANDUM OF ADVICE
REGARDING PERSONAL PAYMENT ORDERS

1. Against a background which includes the following, I have been asked to Advise in relation to a number of questions:
 - a. The Federal Court in actions seeking pecuniary penalties for breaches of the *Fair Work Act 2009 (Comm)* at times makes orders against union organisers (**officials**) who are employees of the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) that they are not to seek or accept indemnity from the CFMMEU for the penalties imposed. In those same proceedings, the CFMMEU is also a respondent usually on the basis of statutory vicarious liability. This process is referred to as the imposition of a personal payment order. The CFMMEU is a federally registered union.
 - b. The Construction, Forestry, Mining and Energy Union of Employees, Queensland (**CFMEUQ**) is a State registered union.
2. The questions asked are:
 - a. Will penalised officials have breached their personal payment order if they have
 - (i) sought to or encouraged the CFMEUQ to them or for their benefit in any way whatsoever, any money or financial benefit referable to the payment of the penalty whether in whole or in part?
 - (ii) Accepted or received from the CFMEUQ in any way whatsoever, any money or financial benefit referable to the payment of the penalty, whether in whole or in part?
 - b. There exist a number of entities/associations in which relevant officials are members. The officials financially contribute via a membership fee to these bodies to assist them to achieve their objectives which include

advancing the interests of members by providing financial support to members. Will a penalised official have breached a personal payment order made against them if they are assisted in funding the personal payment order by one of these entities?

3. I have been assisted by the provision of an Advice re “Personal Payment Orders” (the Advice) by senior and junior counsel, Paul Freeburn QC and Hamish Clift dated 21 April 2021. That Advice, so far as is relevant, was to the following effect:

- (i) A union official the subject of a personal payment order which prohibits assistance from the CFMMEU will not breach that order if she seeks or receives financial assistance from the CFMEUQ;
- (ii) A union official the subject of a personal payment order which prohibits assistance from the CFMMEU will not breach that order if she seeks or receives assistance from another related entity;
- (iii) A union official the subject of a personal payment order which prohibits assistance from the CFMMEU will not be breach of that order if she seeks or receives assistance from another unrelated entity;

4. I agree with this Advice for the reasons set out therein, on the assumption that references to other entities related or unrelated are references to entities which are related or unrelated to the CFMEUQ and are not controlled by or related to the CFMMEU.

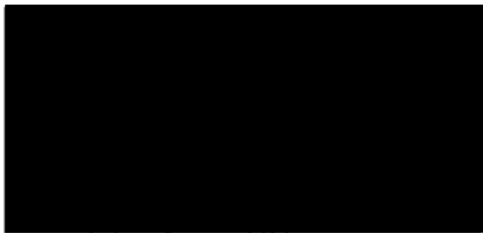
5. In short there are two reasons why it would not, in my opinion, be a breach of court orders, which prohibit a union official from seeking indemnity from the CFMMEU (or before the CFMEU's amalgamation with the Maritime Union of Australia, the CFMEU) or that he or she should not accept or receive indemnification from the CFMMEU, for the union official to seek indemnity from

or receive indemnification from the CFMEUQ or an entity related to the CFMEUQ:

- A. The CFMEUQ is legal entity registered in Queensland under State law. It is not the CFMMEU. The CFMMEU is registered federally under Commonwealth legislation. The two organisations are separate and distinct legal entities, even though they have similar names. The CFMEUQ is not controlled by the CFMMEU. It can act separately to the CFMMEU and vice versa. For example, the CFMMEU did not amalgamate with the Maritime Union. Separately registered unions i.e. a union registered under the *Registered Organisations Act (Comm)*, (see s. 27) is a body corporate distinct from a State based union registered under the *Industrial Relations Act QLD* (see s. 611).
- B. In those cases where the federally registered CFMMEU (or before the amalgamation, the CMFEU) was ordered not to indemnify its officials who had been ordered to pay a pecuniary penalty, the CFMMEU was a party to the proceedings in which pecuniary penalties had been imposed upon one or more of its organisers. As a party to those proceedings it could be bound by an order that in effect it not indemnify its officials upon whom penalties had been imposed in those same proceedings. The CFMEUQ was, and remains, not a party to pecuniary penalty proceedings for breaching provisions of the *Fair Work Act 2009 (Comm)*. Not only is it not a registered organisation under the *Fair Work Act*, the Federal Court cannot restrain the CFMEUQ from indemnifying the official when it is not a party to the proceedings. The court will refer to the CFMMEU when making restraining orders directing non-indemnification against the CFMMEU and not against other legal entities, not party to proceedings. Further, separate and distinct legal entities such as the CFMEUQ or other entities controlled by the CFMEUQ (and NOT the CFMMEU) are not bound by such orders.

6. Further, court orders directed at union officials to the effect that they not seek indemnity from the union (the CFMMEU) and that the union official not accept or receive indemnity from that union do not otherwise bind the official not to approach other legal entities not controlled by the CFMMEU, e.g. a spouse, a relative, a benevolent society, the ACTU or for example Go Fund Me via the internet *provided those entities are not controlled by the CFMMEU.*

I advise accordingly. Please do not hesitate to contact me further about this matter.



John Agius SC

20 September 2021