Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

WITNESS STATEMENT OF JESSICA DALAUIDAO ALLAM

I, Jessica Dalauidao Allam, affirm:

Background

1. I make this statement in response to a notice issued by Stuart John Wood AM KC, the Commissioner appointed pursuant to the *Commissions of Inquiry Order (No. 2) 2025*.

2. Attached to this statement is a bundle of documents (**Bundle**). I refer to relevant documents by reference to the annexure number and the page number of that Bundle.

3. Relevant to this statement, I was formerly employed by Ghella Pty Ltd (**Ghella**) working on the Cross River Rail (**CRR**) Project as:

   (a) a Shared Services Administrator from around January 2021 to January 2025; and

   (b) an Industrial Relations (**IR**) Advisor, from around January 2025 to March 2026.

4. Ghella is a member of the joint venture known as "CBGUJV" (**Joint Venture**) that was working to deliver the tunnel, stations and development (**TSD**) component of the CRR Project. The TSD component involved:

   (a) a southern portal for the twin tunnels near Dutton Park station;

   (b) a northern portal for the twin tunnels near Normanby; and

   (c) four new underground stations at Boggo Road, Woolloongabba, Albert Street and Roma Street.

5. During my time at Ghella, I reported to Terence (Terry) Prior, who was the IR Manager for CPB Constructors Pty Ltd (**CPB**), the lead contractor within the Joint Venture.

6. As IR Advisor, I provided human resources and IR support to on-site management and teams, with a focus on their interactions with relevant trade unions and associated rights of entry (**ROE**). This role was similar to my previous role as Shared Services Administrator, where I was broadly responsible for people development, safety and IR factors, except that I was required to perform expanded duties, including in relation to redeployment and redundancy processes.

Rights of Entry to CRR Project sites

7. While I was the Shared Services Administrator, I was involved in managing all ROEs across the CRR Project. My responsibilities included:

   (a) reviewing ROE forms that were emailed to a specific ROE inbox to check:

      (i) their validity;

(ii) for compliance with Part 3-4 of the *Fair Work Act 2009* (Cth) (**FW Act**). Generally, ROE forms under Part 7 of the *Work Health and Safety Act 2011* (Qld) would be managed by the relevant Safety Advisor or Safety Manager for site (unless they were unavailable); and

(iii) otherwise, whether the requisite information was included by the union who lodged the ROE form;

(b) if the union did not include the requisite information, requesting any further information necessary. Generally, I did this by email, but if I did not receive engagement from them, I would seek this by phone or text message;

(c) communicating the proposed entry with site management;

(d) communicating the "smoko" breaks that were scheduled to occur around the proposed entry time, with the union;

(e) arranging IR personnel to attend the relevant site to:

(i) meet with the union seeking entry;

(ii) ensure the union personnel signed onto the Damstra system, completed the induction and complied with the personal protective equipment requirements (generally, wearing a fluorescent shirt or vest, and steel capped boots); and

(iii) escort them to and from the room designated for their visit to site; and

(f) if IR personnel were not available, travelling to site to undertake the steps at sub-paragraph (e) above.

Right of Entries by the CFMEU

8. It was my experience in relation to ROEs exercised by the CFMEU that:

(a) There would be times where we received ROE forms daily, or two to three times for one week at a particular site, then periods where we did not receive ROE forms at all. Generally, it appeared the CFMEU would rotate which of the four station sites they would focus ROEs on. On random occasions, the CFMEU would issue ROEs for all TSD CRR Project sites for the same proposed time, which appeared to be an attempt to stretch our IR resources in response, or at the very least had that effect.

(b) On nearly all occasions, the ROE forms were missing the requisite information. In particular, the forms require the permit holder to identify the specific contractor or subcontractor the permit holder wanted to meet on site. Generally, the CFMEU did not provide this information, and their standard response was to the effect of, "*we want to meet with all members and all potential members"*.

(c) When attending site:

(i) Some CFMEU officials would comply with our requests, while others would not comply, for example, by refusing to complete the induction or sign onto the Damstra system.

(ii) The CFMEU permit holders would bring other CFMEU officials, who did not hold a permit, and let them in through the gates. In particular, CFMEU organiser, Dean Rielly would regularly attend and enter site(s), without holding a current permit.

(iii) The CFMEU officials would not use the facilities we allocated for the meeting (generally our training rooms, to enable workers to still access other facilities like the crib huts, for those who did not want to attend) and would choose where they wanted to meet.

(iv) Occasionally, the CFMEU officials would behave aggressively towards myself or other colleagues, by being physically close to our faces, raising their voice and making gestures with their hands. The aggression would generally worsen during work health and safety ROEs. Unlike some of the other IR personnel, I was not easily intimidated by the CFMEU officials' conduct and believe they treated me better than others because I would make light of their tactics. When they would come close to my face, I would say things like, "*personal space please*" and "*say it, don't spray it*", which would often generate a laugh and diffuse any tension. Whilst I did not witness it myself, I heard that Ms Wood experienced far more aggressive behaviour than I did.

9. In my experience, the CFMEU's conduct when entering site under an ROE impacted the CRR Project for at least the following reasons:

(a) We relied on accurate information on the ROE forms to align union visits with previously scheduled "smoko" breaks, so workers can meet with the CFMEU. Without the CFMEU specifying who they intended to meet with, we could not guarantee that relevant workers were on their "smoko" break at the relevant time.

(b) The CFMEU gathered all the workers they wanted to meet with at the same time, generally in the crib rooms. Despite our efforts to align their visits with schedule "smoko" breaks, calling all workers together at the same time disrupted the scheduled works and meant work could, and regularly did, not proceed during that time.

(c) The use of crib rooms or other facilities chosen by the CFMEU (not designated for the CFMEU's entry) meant those facilities were not freely available for workers to access during the meeting (for example, if an employee wanted to use it to take their normal break and not participate, this was not possible due to the small crib room size on site).

Right of Entries by the AWU

10. In contrast to the CFMEU's conduct during ROEs at the CRR Project, my experience with the Australian Workers' Union (**AWU**) when entering site has been the following:

(a) The AWU complied with all relevant legal and site requirements in relation to the ROE process.

(b) The AWU did not behave aggressively once on site. That is, in my dealings with the AWU, I did not observe any AWU organiser shout, make gestures or be physical towards others.

11. On one occasion while were waiting outside the room during the AWU's meetings with workers (so that we could then escort the permit holders back off site), the AWU organiser exited the meeting to seek our assistance in removing CFMEU personnel who had gone into the room and had then sought to disrupt the AWU's meeting.

Further observations

12. It was my observation that the CFMEU had an ingrained hostility towards all levels of management on site and a general unwillingness to comply with the legal and site requirements that related to their entry rights. This attitude and approach was, at least in my mind, unnecessary and counterproductive. Unions have their legislative rights and my understanding at all times was that the Joint Venture was committed to ensuring that any union could lawfully exercise their rights. To that end, me and my colleagues were prepared to work cooperatively with any union official. We achieved this with the AWU. But it was not possible with the CFMEU on many occasions because of their attitude and approach that I have just described.

CFMEU conduct relating to alleged heat stroke incident

13. On 6 and 7 February 2024, at the Boggo Road Precinct, there were two altercations between:

    (a) CPB Safety Advisory, Robert Wilson;

    (b) Trent Broadhurst; and

    (c) Corey Taylor.

14. Mr Broadhurst and Mr Taylor were CFMEU Health and Safety Representatives (**HSRs**) employed by the CBGUJV after the safety reset in July 2023.

15. On 6 February 2024, a worker became nauseous and vomited whilst on site and was taken to the First Aid Room to be cared for by Mr Wilson. Mr Broadhurst was also in attendance.

16. The Queensland Ambulance Service (**QAS**) was called, and the worker was loaded into the QAS vehicle for transport to hospital. It was at this time that I approached the turnstile at the entrance to Boggo Road Precinct, where the ambulance was parked.

17. I witnessed Mr Wilson attempt to approach the ambulance because he wanted to speak to the paramedics and the worker. I saw Mr Broadhurst block Mr Wilson's access to the ambulance, stating "*He's an East Coast employee and not a CPB worker. You got nothing to do with it.*".

18. Then, during the 6.30 am pre-start on 7 February 2024, one of the subcontracted workers asked about the incident, and why it was not raised proactively during the meeting. Mr Wilson advised that the Joint Venture was awaiting confirmation of the worker's cause of illness, when Mr Taylor cut him off, aggressively stating "*It's a fucking heat stroke, 27 cases and 1 fatality with heat related injury and why don't you fucking accept that*".

19. I understand Mr Wilson reported the altercation to Nicole Watson, Senior HR Advisor via email. A copy of the email is Annexure **JDA-01**, from pages 2 to 3 of the Bundle**.**

20. I was also asked to provide my recollection of events by Ms Watson. A copy of my email is Annexure **JDA-02**, from pages 4 to 5 of the Bundle.

21. Ordinarily, we would have notified any relevant union delegates and HSRs on site, when an incident had occurred, and we had identified the cause of that incident. In this case, we were still awaiting the worker's results from the hospital, and therefore were not in a position to communicate the cause of his illness. It was strange to me that the CFMEU took issue with that, when it was made clear that management was, as yet, unaware of the cause.

CFMEU conduct relating to PABO Ballots

22. In about March 2024, the Fair Work Commission made protected action ballot orders (**PABO**), authorising the CFMEU to hold ballots of CPB's employees, who were members of the CFMEU, as to whether to take industrial action and in what form. The PABO ballots were to be held between 8 and 12 April 2024.

8 April 2024

23. In or around the morning of 8 April 2024 (the first day of the PABO ballots), Shane Bradley, Site Superintendent of Roma Street Precinct, met with me about two CPB employees who were eligible to vote in the PABO ballots (**Voter A** and **Voter B**).

24. As best I can recall, during that discussion, Mr Bradley explained he had been approached by Voter A and Voter B, who said that they had been the subject of harassment by the CFMEU in relation to the casting of their vote in the PABO ballot.

25. I told Mr Bradley that if Voter A and Voter B were willing to make a statement, I would be happy to facilitate that process.

26. Both Voter A and Voter B were known to me as employees of CPB and eligible to vote in the PABO ballot.

27. My meeting with Mr Bradley was the first time I had heard of concerns about harassment by, or on behalf of, the CFMEU relating to the PABO ballots.

11 April 2024

28. In or around the morning of 11 April 2024, I met with Voter A and Voter B separately at the Roma Street Precinct site office. In my separate meetings, as best I can recall:

    (a) I asked each employee if they were willing to make a statement about their experience regarding the PABO ballot;

    (b) each employee separately confirmed that they were willing to do so;

    (c) I provided each employee with a blank "Interview Record" form. This was a standard template we used for IR purposes, including when collecting information from an employee;

    (d) I asked each employee to complete the form by hand and left the room while each completed the form; and

    (e) once each employee completed the form, they exited the room and provided me the completed form by hand.

29. When I received the hard copy forms, no details were blacked out. I then provided the forms to Mr Prior, whose responsibility it was to manage the issue. I had no further involvement.

Urgent interim injunction on 12 April 2024

30. On 12 April 2024, in response to several CPB employees expressing concerns about the PABO ballot, CPB commenced proceedings (numbered QUD 189 of 2024) against the CFMEU (and others), seeking an urgent interim injunction.

31. CPB alleged that CFMEU delegates and organisers contravened section 462 of the FW Act by engaging in intimidatory conduct, hindering or obstructing the PABO ballot, and compromising their secrecy.

32. A copy of the affidavit I provided in support of the application is Annexure **JDA-03**, from pages 6 to 14 of the Bundle. The statements of Voter A and Voter B are attached to the affidavit.

33. On 12 April 2024, the Fair Work Commission ordered an interim injunction, where the CFMEU were restrained from taking further steps or completing the PABO ballot.

34. I served the court order on Mr Mark McKean and Mr Joseph Pryor who were HSRs and CFMEU delegates at the Roma Street Precinct. Neither of the men accepted service, so I placed the court documents at their feet. A copy of my service affidavit is Annexure **JDA-04**, from pages 15 to 104 of the Bundle.

Impact of industrial action

35. Whilst the CFMEU was engaged in protected industrial action, picket lines were established at all CRR Project sites. As I held a 'white collar' position, I was able to continue going to work and access my office each day. However, I understand many workers were harassed as they attempted to enter site. As a consequence, CRR Project management hired a security guard to monitor site entrances during the protected industrial action. Nevertheless, some workers were too intimidated to cross the picket line and therefore lost work and income. This impacted morale across the Project.

I affirm the contents of this statement are true.

[redacted]

Signature of Deponent

Place Brisbane Date 23/09/2026

[redacted]

Before me (signature of witness)

Toby Christopher Walthall

Full name of witness (please print)

☐ Justice of the Peace (JP #)
☐ Notary public
☒ Lawyer
☐ Other authorised person (specify)

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Bundle of Documents to
Statement of Jessica Allam

From: Wilson, Robert [redacted]
Sent: Tue 2/6/2024 11:35:03 PM (UTC)
To: Howard, Chris [redacted]; Watson, Nicole [redacted]
Subject: Unreasonable behaviour

To Whom It May Concern.

I wish to report my concerns regarding separate encounters of unprofessional behaviour I had with two CBGU's workers in relation to an event that occurred on the Boggo Road Station project Site. My concerns are the way they relayed information surrounding an event that occurred on site and how they interacted with me professionally as a co-workers.

The details of the event are as follows:

On the 6/02/2024 an event occurred on site when a worker who had stated he had been feeling unwell before coming to work became nauseous and vomited. The worker was treated by one of CBGU's Site First Aider Trent Broadhurst who called the Queensland Emergency Services (QES).

I was asked by Warren Tresider (Site Manager to go and assist).

On my arrival at First Aid Room the PI was stable and was being cooled down by Trent with ice packs and cold-water pat downs. The PI was stripped down to only their long pants but then change themselves into their shorts. The PI was coherent and started to use their phone to hold detailed discussion with various persons regarding work and personal issues and continued to do so on and off for an extended time.

The PI was reasonable mobile, only consumed ½ cup of water after multiple offers and their skin was moist not clammy or dry and normally warmth to the touch, their pupils were even and reactive when they opened their eyes from periods of rested closure, and the PI remained coherent at al times. The PI did report a feeling of nausea and overall lack of energy.

On arrival of the Queensland Ambulance Service (QAS) their assessment was to transport the PI for further assessment advising the PI that they may have an infection.

It was confirmed after the PI's underwent medical assessment the event was not work related and the Project received notification at 07:30 hours on the 07/02/2024.

Encounter 1/

Trent Broadhurst rang the QES back twice with concerns they were taking too long and, on both occasions, misreport the PIs signs and symptoms stating they were not 'fully with it', were 'getting worse' and emphasised it was a heat related illness even though there had been no change in the PI condition.

When the QAS arrived along with Trent Broadhurst I assisted the PI to the Ambulance as they insisted on walking to it. On my asking the paramedic where the PI would be taken so I could follow up and ensure they were receiving the required assistance. In the presence of Jessica Allam, Trent Broadhurst became aggressive towards me and told me "he's an East Coast employee and not a CPB worker so F..K Off you got nothing to do with it.

Encounter 2/

On the 07/02/2024 at the Site prestart held by Daniel Boychenko in the C3 crib room at the end of Daniel delivery he asked if there was any question.

A worker asked if there had been any event on site and the CBGU HSR Corey Taylor who was present stated 'didn't they raise it at the prestart'.

Daniel asked me to respond, I replied 'we were awaiting official notice on the cause of the event'.

In the presence of Jessica Allam and Daniel Boychenko, Corey immediately became aggressive towards me and accused CBGU and me of covering up the truth as there had been 35 heat stroke

incident and 1 death so far and that the event which happened the day before was heatstroke.
I stated there were other circumstances, but he just walked out.

My Concerns

I believe that the misrepresentation of the facts by my fellow CBGU workers to the QAS and fellow workers and the unnecessary showing of aggression towards me for carrying out my work in a professional and responsible manner is unacceptable and reasonable action needs to be taken to prevent it from reoccurring,

Also, given that this is not the only time these workers have behaved in such an aggressive and unprofessional way towards myself it creates issues that make it difficult for me to perform my tasks should a reasonable solution not be forthcoming.

Regards

Robert

Regards

Robert Wilson

Safety Advisor

CROSSRIVERRAIL TUNNEL & STATIONS | CPB CONTRACTORS | bam | Ghella | UGL

Cross River Rail – Tunnels and Stations

CBGU D&C JV

30 Joe Baker Street, Dutton Park, QLD 4102, Australia

T **M**

E [redacted]

From: Allam, Jessica [redacted]
Sent: Tue 20/02/2024 2:27:55 PM (UTC+10:00)
To: Watson, Nicole [redacted]
Subject: RE: Witness Statement

Hi Nic,

See statement below.

- February 6, I can't remember what time it was. In my recollection, I was heading to the turnstile when I witnessed the interaction between Trent and Robert.

  The East Coast worker was inside the ambulance receiving treatment from the paramedic and Robert wanted to speak to the paramedic and the worker before the ambulance leave site.
  Trent blocked Robert to go near the ambulance and told Robert " He is not CPB worker, he is East Coast worker, so you don't need to be here, go away"!
  Robert tried to explain to Trent, but he dismissed him. The Ambulance left and then I left. I saw Robert walk away as well.

- February 7, at 6.30am prestart, worker from ABLE subcontractor asked the question why there was no mention of the incident that occurred the previous day. Robert was the safety person in that prestart and he informed the workers that, they are just waiting for the medical result coming from the hospital. Robert was still explaining when Corey cut him off.
- Corey then said, "It's a fucking heat stroke,, 27 cases and 1 fatality with heat related injury and why don't you fucking accept that", Corey said this in aggressive manner.
- Robert tried to explain to Corey that as soon safety will receive the result, they will then communicate this to the workforce.
- Corey then told him that he doesn't care what he needs to do,, it's a heat stress and that's that. We end the prestart with that.

Regards

Jessica Allam
Shared Services Administrator

CROSSRIVERRAIL TUNNEL & STATIONS
CPB CONTRACTORS | bam | Ghella | UGL
Cross River Rail – Tunnels and Stations
CBGU D&C JV
Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia
T [redacted] M [redacted]
E [redacted]

From: Watson, Nicole [redacted]
Sent: Tuesday, February 20, 2024 1:52 PM

To: Allam, Jessica [redacted]
Subject: Witness Statement
Sensitivity: Private

Hi Jess

As mentioned it has come to my attention that you were present during a couple of recent altercations between Safety Advisor Robert Wilson and the two HSRs Cory and Trent at Boggo.

Could you please send me through your version of events which will form part of a formal investigation.

As mentioned your statement will be kept confidential but will help with determining the sequence of events.

The first incident occurred on 6 February 2024 and involved Robert attending to the aid of a worker who had suffered a medical event and paramedics were then called to site. This prompted altercation between Robert and Trent who was also in attendance with the worker.

The second incident occurred the next day on 7 February 2024 and involved Corey having words towards Robert during a pre-start meeting in C3 rib room at the end of the day when asked about the event that occurred the day before.

Let me know if you have any questions.
Thanks,
Nic

Regards

Nicole Watson
Senior HR Advisor

CROSSRIVERRAIL TUNNEL & STATIONS
CPB CONTRACTORS | bam | Ghella | UGL
Cross River Rail – Tunnels and Stations
CBGU D&C JV
Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia
T [redacted] **M** [redacted]
E [redacted]

JDA-03

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	15/04/2024 3:53:39 PM AEST
Date Accepted for Filing:	15/04/2024 3:53:47 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59
Rule 29.02(1)

Affidavit

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

Affidavit of: **Jessica Dalauidao Allam**

Address: Level 3, North Tower, 339 Coronation Drive, Milton QLD 4064

Occupation: Shared Services Administrator

Date: 15 April 2024

Contents

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1	Affidavit of Jessica Dalauidao Allam in support of in support of the application by CPB Contractors Pty Ltd for injunctive relief, affirmed 15 April 2024	1-11	1-3
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3	Annexure "JA2", being copy of the statement of Voter B	11(b)	7-8

I Jessica Dalauidao Allam, Shared Services Administrator, affirm:

Filed on behalf of (name & role of party) CPB Contractors Pty Ltd, Applicant
Prepared by (name of person/lawyer) Alexander Millman
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax
Email [redacted]
Address for service (include state and postcode) Level 23, 66 Eagle Street, Brisbane QLD 4000

[Version 3 form approved 02/05/2019]

[redacted]
Witness

[redacted]
Deponent

1. I am employed by Ghella Pty Ltd trading as Ghella ANZ (**Ghella**) in the role of Shared Services Administrator.

2. Ghella is a member, together with the Applicant, of the joint venture known as CBGUJV that is working to deliver the Cross River Rail Project (**CRR Project**) for the Queensland Government.

3. In my role I provide human resources and industrial relations support to on-site teams, including providing support to on-site management in their interactions with relevant trade unions. I am primarily based on-site at the CRR Project's Roma Street site.

4. From my work I am aware that employees of the Applicant who are also members of the Construction, Forestry, Maritime and Energy Union (**Union**) would be voting in relation to proposed protected industrial action between 8 April 2024 and 12 April 2024 (**PABO Ballots**).

Events of 11 April 2024

5. In the morning of 8 April 2024 I met with Mr Shane Bradley (Site Superintendent, Roma Street) who explained that they had been approached by two employees (**Voter A** and **Voter B**) who were eligible to vote in the PABO Ballots (**Voters**) who said that they had been the subject of harassment in relation to the casting of their vote in the PABO Ballot.

6. I told Mr Bradley that if these Voters were willing to make a statement I would be happy to facilitate that process.

7. In the morning of 11 April 2024 I met with Voter A and Voter B at the Roma Street site office. I asked both Voters if they were willing to make a statement about their experiences regarding the PABO Ballot. They both confirmed that they were willing to do so.

8. Both Voter A and Voter B were known to me as employees of the Applicant and eligible to vote in the PABO Ballot.

9. I provided both Voters a blank "Interview Record" form and asked them to complete it by hand. I left the room while the Voters completed this form.

10. When the Voters finished completing these forms they came to me and provided these to me by hand.

11. A true copy of:

    (a) The statement of Voter A, redacted to protect their identity at this time, is annexed to this affidavit and marked **Annexure JA1**;

[redacted] [redacted]

Witness Deponent

(b) The statement of Voter B, redacted to protect their identity at this time, is annexed to this affidavit and marked **Annexure JA2**.

Affirmed by the deponent)
at Brisbane)
in Queensland)
on 15 April 2024)
Before me:)

[redacted]
Signature of deponent

[redacted]
Signature of witness

Alexander Edward Millman, Solicitor

Witness

Deponent

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**JA1**" referred to in the affidavit of Jessica Dalauidao Allam affirmed at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CPB | bam | Ghella | UGL
CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident: _____ **Incident No:** _____

Project: CRR-TSD **Interview Date:** 11.4.24

WITNESS / INVOLVED PERSONS DETAILS

Name: [redacted] **Position:** Operator / Tunneller

Project / Department: CRR / Roma st **Company** CPB.

Shift / Crew: Tunnel **Supervisor:** [redacted]

Contact Details: [redacted] **D.O.B** [redacted]

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge
[redacted]	

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

On Monday 8-4-24 our crew were called in for a meeting with CFMEU to discuss the EBA that had be put forward to CPB. The people involved at the head of the meeting were Dean Riley, Dean Mathes, Mark McKean, Joseph Prior and Dillon Howard Towards the middle of the meeting Daryl Assan put forward some questions to them about how their proposals could affect the CPB / CRR workforce on behalf of all CFMEU members on site. At the conclusion of the meeting Dean Mathes asked everyone to get out their phones and vote, having said only 5 minutes beforehand we had until

Friday 2pm to decide our final Vote - Yes or No.
Dean Mathes suggested to everyone in the meeting to Vote YES to every question that was asked in the ballot.
Daryl suggested to him and the members that the voting does not have to be done right now, and that people need time to think about their decision, and talk about it with their families first, as this personal decision can have a huge impact on their families and their working future. I know myself and the majority of the people in the room were made to feel pressured into voting YES (for industrial action).
Dean Mathes responded "Ok are we going to do this or what", once again putting huge pressure on everyone in the room. It was then that Daryl stood up and politely thanked them for the meeting, shook all of their hands and said he'll be making his decision when he is ready, not when they tell us to. I felt the same way.

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**JA2**" referred to in the affidavit of Jessica Dalauidao Allam affirmed at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CPB CONTRACTORS | bam | Ghella | UGL

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident: _____ **Incident No:** _____

Project: CRR-TSD **Interview Date:** _____

WITNESS / INVOLVED PERSONS DETAILS

Name: [redacted] **Position:** _____

Project / Department: _____ **Company** _____

Shift / Crew: _____ **Supervisor:** _____

Contact Details: _____ **D.O.B:** _____

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

WE HAD A UNION MEETING WHICH GOT HEATED. THEY WERE REALLY PUSHING THE YES ~~VOTE~~ AS WE WERE SITTING THERE JASON EMMERTON CAME IN TO GIVE THEM THE THUMBS UP & SAID IT'S ALL DONE. WHICH WE FOUND OUT WAS HE MORE OR LESS STOOD OVER HE'S BOYS & GOT THEM TO ~~VOTE~~ YES. THEN THE CFMEU WHO WAS PUSHING FOR US TO VOTE YES ASKED US TO PULL OUT OUR PHONES SO THEY COULD GET US TO VOTE YES. WHEN [redacted] STOOD UP AND SAID NO THAT WONT BE HAPPENING CAUSE ITS OUR RIGHT TO CHOOSE WHICH DEAN MATTAS DEAN RILEY. DYLON HOWARD MARK MCKEAN. JOSEPH PRYOR DID NOT LIKE IT GOT HEATED & THEY STORMED OUT.

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit of Service - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	17/04/2024 12:09:56 PM AEST
Date Accepted for Filing:	17/04/2024 12:10:01 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit of Service

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

IN THE MATTER OF

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

Affidavit of:	**Jessica Dalauidao Allam**
Address:	Level 3, North Tower, 339 Coronation Drive, Milton QLD 4064
Occupation:	Shared Services Administrator
Date:	17 April 2024

Contents

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1	Affidavit of Jessica Dalauidao Allam in support of the application by CPB Contractors Pty Ltd affirmed on 17 April 2024	1-15	1 - 2
2	Annexure "JA1", being copy of the bundle of documents personally served on the Fifth and Sixth Respondents on 16 April 2024	8, 14	3 - 89

I, Jessica Dalouida Allam of Level 3, North Tower, 339 Coronation Drive, Milton in the State of Queensland, Shared Services Administrator affirm:

1. I am employed by Ghella Pty Ltd t/as Ghella ANZ in the role of Shared Services Administrator of the CBGUJV working on the Cross River Rail Project (**CRR Project**). I am authorised to make this affidavit on behalf of the Applicant.

2. At 2:40PM on 16 April 2023 I went to the Roma Street site of the CRR Project at 159 Roma Street, Brisbane in the State of Queensland and approached Mr Mark McKean,

Filed on behalf of	**CPB Contractors Pty Ltd**, Applicant
Prepared by	Alexander Millman
Law firm	Mills Oakley
Tel	[redacted] Fax
Email	[redacted]
Address for service	Level 23, 66 Eagle Street, Brisbane QLD 4000

Deponent [redacted]

Witness [redacted]

who I know as a Health and Safety Representative (**HSR**) and delegate of the Construction, Forestry and Maritime Employees Union (**Union**).

3. I said to Mr McKean "Hi, I'm Jess from Shared Services, just to confirm your name is Mark McKean?"

4. Mr McKean replied "What is this?"

5. I said to Mr McKean "I want to give this document to you by way of service. It's the same document that was sent to you via email yesterday afternoon."

6. Mr McKean said "I don't know you and I will not accept the document." He also said that he would call his solicitor.

7. I introduced myself to Mr McKean for a second time and said to him "If you don't want to accept the document that is okay, I'll leave this where you are standing."

8. Left a copy of the documents that are **Annexure JA1** to this affidavit, which I had previously placed into a sealed envelope, on the ground in front of Mr McKean.

9. While I was at the Roma Street site of the CRR Project I subsequently approached Mr Joseph Pryor, who I know as an HSR and delegate of the Union, shortly after 2:40PM.

10. I said to Mr Pryor "You are Joseph Pryor?" Mr Pryor did not answer.

11. I said to Mr Pryor "I want to give you this document by way of service. It is the same document that was sent to you by email yesterday afternoon."

12. Mr Pryor did not say anything and did not take the document from me.

13. I said to Mr Pryor "If you don't accept the document, I will leave it on the ground for you."

14. He did not take the documents, so I left the documents that are **Annexure JA1** to this Affidavit, which I had previously placed into a sealed envelope, on the ground in front of Mr Pryor.

15. I then left the Roma Street site.

Affirmed by the deponent at Brisbane)
in Queensland)
on 17 April 2024)
Before me:)

[redacted]
Signature of deponent

[redacted]
Name of Witness: Alexander Millman, Solicitor

No. QUD189 of 2024

Federal Court of Australia
District Registry: Brisbane
Division: Fair Work

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and others
Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**JA1**" referred to in the affidavit of Jessica Dalauidao Allam affirmed at Brisbane on 17 April 2024 before me:

[redacted]
Deponent

[redacted]
Witness

Federal Court of Australia

District Registry: Queensland Registry

Division: Fair Work

No: QUD189/2024

CPB CONTRACTORS PTY LTD
Applicant

CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION and others named in the schedule
Respondent

ORDER

JUDGE: Justice Collier

DATE OF ORDER: 12 April 2024

WHERE MADE: Brisbane

UPON THE PROVISION OF THE USUAL UNDERTAKINGS AS TO DAMAGES BY THE APPLICANT, AND UNTIL THE HEARING OF THE INTERLOCUTORY APPLICATION FILED ON 12 APRIL 2024 (*INTERLOCUTORY APPLICATION*), THE COURT ORDERS ON AN INTERIM BASIS THAT:

1. Pursuant to s 23 of the *Federal Court of Australia Act 1976* (Cth), the respondents be restrained from taking further steps in or completing the protection action ballots in protected action ballot orders PR772775 and PR772781 made respectively by the Fair Work Commission in matters B2024/260 and B2024/261 (**PABO Orders**), or organising any industrial action in reliance on those ballots.
2. The interlocutory application be listed for hearing before Justice Rangiah at 10:15am on 19 April 2024.
3. By 4:00pm on 15 April 2024, the applicant file and serve any further material and submissions (limited to 10 pages) upon which it relies in support of the interlocutory application.
4. By 12:00pm on 18 April 2024, the respondents file and serve any material and submissions (limited to 10 pages) upon which they rely in respect of the interlocutory application.
5. There be liberty to apply.

Date that entry is stamped: 12 April 2024

Registrar

Schedule

No: QUD189/2024

Federal Court of Australia
District Registry: Queensland Registry
Division: Fair Work

Second Respondent	DEMOCRATIC OUTCOMES PTY LTD T/A CIVS
Third Respondent	DEAN MATTHUS
Fourth Respondent	DEAN RILEY
Fifth Respondent	MARK MCKEAN
Sixth Respondent	JOSEPH PRIOR

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	12/04/2024 12:00:01 PM AEST
Date Accepted for Filing:	12/04/2024 12:24:39 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	12/04/2024, 1:30 PM
Place:	Court No. 1, Level 7, Harry Gibbs Commonwealth Law Courts Building Level 6, 119 North Quay, Brisbane

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The date of the filing of the document is determined pursuant to the Court's Rules.

Form 15
Rules 8.01(1); 8.04(1)

Originating application

No. of 20

Federal Court of Australia

District Registry: Queensland

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others named in the schedule

Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane, Queensland 4001

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Date:

Signed by an officer acting with the authority of the District Registrar

Filed on behalf of (name & role of party) Applicant, CPB Contractors Pty Ltd
Prepared by (name of person/lawyer) James Ford, counsel
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax
Email [redacted]
Address for service (include state and postcode) Level 23, 66 Eagle Street, Brisbane QLD 4000

[Version 2 form approved 09/05/2013]

Details of claim

On the grounds stated in the accompanying affidavit, or any statement of claim or other document prescribed by the Rules to be filed, the Applicant claims:

1. Orders pursuant to *Fair Work Act 2009* s.539 imposing penalties on the First, Third, Fourth, Fifth and Sixth Respondents for breaches of s.462 of that Act.

2. Orders pursuant to *Fair Work Act 2009* s.562 and *Federal Court of Australia Act 1976* s.23 permanently staying or setting aside the protected action ballot orders PR772775 and PR772781 made respectively by the Fair Work Commission in matters B2024/260 and B2024/261 (**PABO Orders**) for the conduct of protected action ballots.

3. Further or in the alternative to item 2 above, orders pursuant to *Federal Court of Australia Act 1976* s.23 or *Judiciary Act 1903* s.39B, issuing writs in the nature of certiorari quashing the PABO Orders.

4. Orders pursuant to *Federal Court of Australia Act 1976* s.23 permanently restraining the Respondents from taking further steps in or completing the protected action ballots ordered in the PABO Orders or organising any industrial action in reliance upon those ballots.

5. Such other orders as the Court deems suitable in the circumstances.

Claim for interlocutory or interim relief

The Applicant also claims the following relief.

6. Orders pursuant to *Federal Court of Australia Act 1976* s.23 restraining the Respondents until further order from taking further steps in or completing the protected action ballots ordered in the PABO Orders or organising any industrial action in reliance upon those ballots.

7. Orders pursuant to *Fair Work Act 2009* s.562 and *Federal Court of Australia Act 1976* s.23 staying until further order the PABO Orders.

8. Orders pursuant to *Federal Court Rules 2011* r.1.39 shortening the time for service of the Application.

9. Orders pursuant to *Federal Court Rules 2011* r.10.24 allowing:

    a. substituted service of the application on the First and Second Respondents by email; and

    b. substituted service of the application on the Third to Sixth Respondents by service upon the First Defendant;

10. Directions towards the final hearing of the claim.

Applicant's address

The Applicant's address for service is:

Place: Mills Oakley, Level 23, 66 Eagle Street, Brisbane QLD 4000

Email: [redacted]

The Applicant's address is Level 6, 520 Wickham Street, Fortitude Valley QLD 4006.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 12 April 2024

[redacted]

Signed by Alexander Millman
Solicitor for the Applicant

Schedule

No. of 20

Federal Court of Australia
District Registry: Queensland
Division: Fair Work

Respondents

Second Respondent:	**Democratic Outcomes Pty Ltd t/a CiVS**
Third Respondent:	**Dean Matthus**
Fourth Respondent:	**Dean Riley**
Fifth Respondent:	**Mark McKean**
Sixth Respondent:	**Joseph Prior**

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	12/04/2024 12:00:01 PM AEST
Date Accepted for Filing:	12/04/2024 12:24:43 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



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Form 59
Rule 29.02(1)

Affidavit

No. of 20

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and another

Respondents

Affidavit of: **Malcolm John Davis**

Address: Level 7, 151 Clarence Street, Sydney NSW 2000

Occupation: Solicitor

Date: 12 April 2024

Contents

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6	Annexure "MD-5", being a copy of a redacted CPB employee witness statement	[43]	34-35

Filed on behalf of (name & role of party) CPB Contractors Pty Ltd, Applicant
Prepared by (name of person/lawyer) Malcolm Davis
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax
Email [redacted]
Address for service (include state and postcode) Level 23, 66 Eagle Street, Brisbane QLD 4000

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
7	Annexure "MD-6", being a copy of a redacted CPB employee witness statement	[44]	37-39

I Malcolm Davis, Solicitor, say on oath:

1. I am a Solicitor and Partner of Mills Oakley Lawyers, the solicitors for the Applicant. I am authorised to make this affidavit on the Applicant's behalf.

2. I have conduct of this matter and access to the file maintained by Mills Oakley in respect of this matter. I make this affidavit based on my instructions from the Applicant, my knowledge of the file and using documents produced from the file, as referred to below.

Background to the Cross River Rail Project

3. The Applicant (**CPB**) is an Australasian construction company.

4. A joint venture between the Applicant, BAM, Ghella and UGL (**CBGUJV**), together with other joint ventures, alliances and others parties (only some of whom are referred to in this affidavit) are contracted to deliver various separate packages of works, as part of the construction of Queensland's largest infrastructure project, collectively referred to as the Cross River Rail Project (**CCR Project**) for the Queensland government.

5. The CRR Project involves the construction of a 10.2 kilometre rail line from Dutton Park to Bowen Hills, which includes 5.9 kilometres of twin tunnels under the Brisbane River and the Brisbane CBD, the construction of railway stations, upgrading of existing rail lines and stations where there is interface with the Project, and attendant works.

6. The CRR Project is comprised of three major packages of works:

   (a) the Tunnel, Station and Development (**TSD Works**) Package which has been undertaken as a Public Private Partnership (**PPP**);

   (b) the Rail, Integration and Systems (**RIS Works**) Package that has been undertaken as an alliance; and

   (c) the European Train Control System contract.

[redacted] [redacted]

Deponent Witness

7. The head contractor for the TSD Works is an entity known as Pulse Partnerships Pty Ltd (**Pulse**), a "special purpose vehicle" established for the purpose of carrying out a PPP for the CRR Project, and other related purposes.

8. Under the project agreement between the State of Queensland and Pulse, Pulse is required to design, construct, operate, maintain and finance the TSD Works within a fixed time for a fixed cost.

9. Pulse has engaged as the Design and Construct subcontractor an unincorporated joint venture called the "CBGUJV", of which the Applicant is a member (**D&C Joint Venture**).

10. Under the design and construct subcontract between Pulse and the D&C Joint Venture, the D&C Joint Venture is required to design and construct the TSD Works within a fixed time for a fixed cost. The Applicant is the principal contractor for the TSD Works.

11. The Applicant is also separately a member of the Unity Alliance (which is comprised of corporate entities that are different to those entities that make up the CBGUJV) which successfully tendered for the RIS Works. The Applicant is the head contractor for the RIS Works.

12. Under the project agreement between the State of Queensland and the Applicant and the other members of the Unity Alliance, the Applicant and the Unity Alliance are required to design, construct, operate, maintain and finance the RIS works within a fixed time for a fixed cost.

13. As the head contractor for the RIS Works and the principal contractor for the TSD Works the Applicant occupies the separate workplaces that constitute the numerous construction sites that have been established for the purposes of the CRR Project at Albert Street, Boggo Road, Roma Street, southern Area, Northern Portal and Woolloongabba in Brisbane. Some of these locations have two separate and distinct workplaces, such as at Albert Street which has a workplace at which tunnelling is undertaken, and a separate workplace at which surface works are undertaken.

14. The Applicant employs individuals to perform work:

    (a) in relation to the TSD Works – pursuant to the *CPB Contractors Pty Ltd Cross River Rail – Tunnel and Shaft Greenfields Agreement 2019 – 2023* (**Tunnel Agreement**) and an additional agreement known as the *CPB Contractors Pty Ltd*

[redacted] [redacted]

Deponent Witness

Cross River Rail – Civil and Surface Works Greenfields Agreement 2019 – 2023 (**Surface Works Agreement**).

(b) in relation to the RIS Works – pursuant to the Surface Works Agreement.

15. I am instructed by Mr Chris Butler, Shared Services Director of the Applicant, and verily believe that in the period 11 April 2024 to 25 April 2024 the following critical activities are due to occur in relation to the TSD Works on the CRR Project:

(a) at the Albert Street Station site:

(i) concrete and formwork activities to the structural core, vertical walls and suspended slabs;

(ii) escalator installation, rail track slab concreting and installation of structural header beams for rail platform safety doors;

(iii) concrete and formwork activities to the external structural walls;

(b) at the Boggo Road Station site:

(i) concrete and formwork activities to the ventilation shaft, stairwells, vertical walls and suspended slabs;

(ii) rail platform fit-out including installation of structural header beams for rail platform safety doors;

(iii) mechanical, electrical and plumbing installation activities to plant rooms and electrical switchboard rooms;

(c) at the Woolloongabba Station site:

(i) escalator installation, rail track slab concreting and installation of structural header beams for rail platform safety doors;

(ii) mechanical, electrical and plumbing installation activities to plant rooms and electrical switchboard rooms;

(iii) installation of structural pre-cast "Super T" beams;

(d) at the Roma Street Station site:

(i) installation of external GRC façade panels;

(ii) erection of roof canopy columns;

[redacted] [redacted]

Deponent Witness

(iii) pre-assembly of structural steel canopy;

(iv) mechanical, electrical and plumbing installation activities to plant rooms and electrical switchboard rooms;

(e) throughout the tunnels forming part of the CRR Project:

(i) installation of electrical overhead conductor and contact wires;

(ii) mechanical and electrical installation to cross passages and tunnels, including lighting and fire services; and

(iii) profile grinding to railway track.

16. I am instructed by Mr Matthew Papworth, Human Resource Manager for the Unity Alliance, and verily believe, that the Unity Alliance RIS project has significant work programmed to ensure that critical dates are achieved throughout the course of the 2024 calendar year and beyond. In particular, the RIS project commenced an extended "rail possession" period on 29 March 2024. I am instructed by Mr Papworth and verily believe that a "rail possession" involves the rail operator (Queensland Rail) ceasing to conduct rail operations within a certain section of the rail corridor, and hands over "possession" of that section of the rail corridor to the contractor so that construction works can be undertake safely by that contractor. The RIS project operates predominately in an environment where securing access to the Queensland Rail corridor is required for completing all rail and civil works. Rail possession periods involve meticulous planning and execution to ensure that all necessary activities are completed within program, therefore safeguarding the project's progress and adherence to timelines so that disruptions to the travelling public are minimised. Therefore, the current and ongoing rail possession period is paramount to the RIS project's success, as any delay or disruption to possessions directly impacts the Unity Alliance's ability to meet crucial project milestones and the contractual requirements agreed with the State of Queensland.

17. I am instructed by Mr Papworth and verily believe that the following critical works are scheduled to occur within the rail corridor during the "Possession" which commenced on 29 March 2024:

[redacted]

Deponent

[redacted]

Witness

(a) Rail track to be put in final alignment at Normanby site. The first train in tunnel and significant train testing that is due to commence in mid-2024, is reliant on this activity taking place.

(b) RNA Station Platform works. This program is due for completion August 2024 for the Ekka Royal Queensland show.

(c) Combined Service Route (CSR) activities from Dutton Park through to Salisbury, this scope is considered the 'backbone' of the southern rail line.

(d) Major works at Southern stations (Rocklea, Dutton Park and Yeerongpilly), required for the successful handover to the State and Queensland Rail for public use.

18. I am instructed by Mr Papworth and verily believe that any delays or disruptions during the period of the Possession could result in significant cost overruns for both the CRR RIS project and the State of Queensland.

Background to the Protected Action Ballot Orders

19. The Tunnel Agreement and the Surface Works Agreement had nominal expiry of 15 October 2023.

20. On or about 6 December 2023 the Applicant issued a Notice of Employee Representational Rights (**NERR**) to those of its employees that it proposed to be covered by a proposed replacement Enterprise Agreement, being *CPB Contractors Pty Ltd – Cross River Rail (Integration and System – Unity Alliance Works) Enterprise Agreement 2024-2028* (the **RIS Agreement**).

21. On or about 6 December 2023 the Applicant issued a NERR to those of its employees that it proposed to be covered by a proposed replacement Enterprise Agreement, being *CPB Contractors Pty Ltd – Cross River Rail (Tunnel, Station and Development – Pulse Partnership Works) Agreement 2024-2028* (the **TSD Agreement**).

22. On or around 9 November 2023 the Applicant began bargaining discussions for a new enterprise agreement with bargaining representatives of employees to be covered by RIS Agreement.

[redacted] [redacted]

Deponent Witness

23. On or around 9 November 2023 the Applicant also began bargaining discussions for a new enterprise agreement with bargaining representatives of employees to be covered by TSD Agreement.

24. The Construction, Forestry and Maritime Employees Union (**CFMEU**) is one of the bargaining representatives of employees who would be covered by the RIS Agreement and the TSD Agreement.

25. The Australian Workers Union (**AWU**) is also one of the bargaining representatives of employees who would be covered by the RIS Agreement and the TSD Agreement.

26. Approximately thirteen (13) bargaining meetings were held between the Applicant and the First Respondent in relation to both the RIS Agreement and the TSD Agreement between the period 9 November 2023 and 6 March 2024.

27. A similar number of bargaining meetings were held between the Applicant and the AWU in relation to both the RIS Agreement and the TSD Agreement between the period 9 November 2023 and 6 March 2024

28. On 25 March 2024 the CFMEU filed a Form F34 – Application for protected action ballot order, and Form F34B – Declaration in support of an application for a protected action ballot order in the Fair Work Commission (**FWC**) in relation to the proposed RIS Agreement (**RIS PABO Application**). The Application was allocated matter number B2024/260 in the FWC.

29. On 25 March 2024 the CFMEU filed a Form F34 Application for protected action ballot order, and Form F34B – Declaration in support of an application for a protected action ballot order in the FWC in relation to the proposed TSD Agreement (**TSD PABO Application**). The Application was allocated matter number B2024/261 in the FWC.

30. Both the RIS and TSD PABO Applications were allocated to Deputy President Hampton of the FWC.

31. On 27 March 2024 Deputy President Hampton made:

    (a) Order PR772775, being a Protected Action Ballot Order pursuant to s. 443 of the FW Act in relation to the RIS PABO Application – matter B2024/260; and

    (b) Order PR772781, being a Protected Action Ballot Order pursuant to s. 443 of the FW Act in relation to the TSD PABO Application – matter B2024/261.

[redacted]

Deponent

[redacted]

Witness

32. Order PR772775 and Order PR772781 provided that both ballots were to be conducted by the Second Respondent, being the ballot agent Democratic Outcomes Pty Ltd (CiVS).

33. On 28 March 2024 the Second Respondent issued correspondence to the Applicant and the Respondent in relation to matters B2024/260 and B2024/261, which set out a timetable for the ballot. Copies of that correspondence is annexed hereto and marked **"MD-1"**. That correspondence states that the ballots would:

(a) Open at 9:00 AEST on Monday 8 April 2024; and

(b) Close at 15:00 AEST on Friday 12 April 2024.

34. On 28 March 2024 the Applicant filed a Form F7 – Notice of Appeal in the FWC in relation to matter B2024/260 and B2024/260 respectively (the **FWC Appeals**). The FWC Appeals were resolved by consent between the Applicant and the First Respondent, on the basis that certain amendments were to be made to the Orders, and consequently those appeals were formally discontinued on 3 April 2024.

35. In accordance with the terms of resolution of the Appeals, on 3 April 2024 Deputy President Hampton made consolidated Protected Action Ballot Orders, being:

(a) 'Order PR772775 – Consolidated 3 April 2024', being a consolidated amended form of the PABO in relation to the RIS PABO Application – matter B2024/260 (the **Consolidated RIS PABO**). A copy of the Consolidated RIS PABO is annexed hereto and marked **"MD-2"**.

(b) 'Order PR772781 – Consolidated 3 April 2024', being a consolidated amended form of the PABO in relation to the TSD PABO Application – matter B2024/261 (the **Consolidated TSD PABO**). A copy of the 3 April 2024 Consolidated Order is annexed hereto and marked **"MD-3"**.

36. Order 5 of the Consolidated RIS PABO and the Consolidated TSD PABO identifies the forms of industrial action that employees of the Applicant who are within the group or group of employees to be balloted may vote to authorise.

37. Order 8.2.3 of the Consolidated RIS and TSD PABOs required that the ballot be conducted electronically.

38. Both ballots under the Consolidated RIS and TSD PABO are to be conducted by the Second Respondent.

[redacted]

Deponent

[redacted]

Witness

39. Consequential to the FWC issuing the Consolidated RIS PABO and the Consolidated TSD PABO, and the correspondence from the Second Respondent above:

(a) employees of the Applicant who are in the group or groups of employees specified in the Consolidated RIS and TSD PABOs were due to vote on proposed protected industrial action, with the vote to be concluded by 15:00 AEST on Friday 12 April 2024; and

(b) the ballot was to be conducted by the Second Respondent.

(c) the group of employees specified in the Consolidated RIS PABO was to be ultimately identified by the Second Respondent after it had received from the Applicant, in accordance with Order 6, a list of those persons employed by the Applicant who would be covered by the proposed RIS agreement, and in accordance with Order 7, a list from the First Respondent identifying those who were members of their union. In short, the list of the Applicant's employees eligible to vote in the RIS PABO is only known to First Respondent and the Second Respondent. However, in fact the number of employees eligible to vote can be no greater than the number of employees listed in the list provided to the Second Respondent by the Applicant in accordance with Order 6. I am informed by Mr Matthew Papworth, and verily believe, that the list of employees that was supplied to the Second Respondent in accordance with Order 6 contained a list of 72 of the Applicant's employees. It follows that the total number of eligible voters in the RIS PABO is up to 72. Only 50% of the eligible voters are required to vote to reach a quorum, and only 50%of the votes must be yes to carry the vote.

(d) I am informed by Mr Chris Butler, and verily believe, that the list of employees provided to the Second Respondent in accordance with Order 6 in relation to the TSD PABO, contained a list of 177 of the Applicant's employees.

Intimidatory conduct by the First Respondent

40. On Monday 8 April 2024 (the day prior to the scheduled commencement of the PABOs for both RIS and TSD) a text message was sent to members of the First Respondent who are employees of the Applicant and who are eligible to vote in relation to proposed

[redacted] [redacted]

Deponent Witness

protected industrial action pursuant to the PABO Approvals. A screenshot of this text message is exhibited hereto and marked "**MD-4**."

41. On 11 April 2024 two employees of the Applicant, who are also members of the First Respondent and eligible to vote in relation to protected industrial action pursuant to the PABO Approvals, provided statements to the Applicant.

42. For the time being, those employees have asked that their identities not be revealed to the First Respondent.

43. The first of the statements referred to at paragraph 41 above, redacted to protect the identity of the employee, is annexed hereto and marked "**MD-5**." In that statement the employee states that:

    (a) on 8 April 2024 they and other employees were approached by delegates of the First Respondent on multiple occasions;

    (b) in those approaches, the delegates of the First Respondent sought to make sure that the employees voted "yes" to all questions on the protected action ballot;

    (c) the delegates of the First Respondent attempted to gather employees during their break and "look over (the employees') shoulders" to see how the employees voted;

    (d) the employee was separately approached by one of the aforementioned delegates who asked if the employee "*was going to be smart about (his) choices*;" and

    (e) the employee felt intimidated by the conduct of the delegates of the First Respondent.

44. The second of the statements referred to at paragraph 41 above, redacted to protect the identity of the employee, is annexed hereto and marked "**MD-6**." In that statement the employee states that:

    (a) organisers of the First Respondent including Dean Mattas, Dean Riley, Dylan Howard, as well as Mark McKean and Joseph Pryor who are CFMEU delegates, called a meeting at the Roma Street site involving approximately thirty (30) employees of the Applicant;

[redacted] [redacted]

Deponent Witness

(b) one the organisers told the gathered employees to "get their phones out and click on the email and tick all the boxes together;"

(c) the organisers told the employees present at the meeting to vote "yes" to all forms of proposed industrial action;

(d) the employee felt intimidated and coerced by the actions of the First Respondent's organisers, and that the secrecy of the ballot was undermined.

Potential damage

45. I am instructed by Mr Chris Butler and Mr Matthew Papworth and verily believe, that any conduct which delays the delivery of the TSD Works and/or the RIS Works is likely to have a significant impact upon the timeframe within which the CRR Project can be concluded. Given the tight timeframes that have been established for the delivery of the CRR Project, any delays that are caused by disruptions are likely to have significant financial impacts upon the State of Queensland and significant financial impacts upon the Applicant, its employees, its subcontractors and other corporate entities associated with the many packages of works that comprise the CRR Project. It follows that any person or organisation that engages in any unlawful conduct that causes or contributed to those disruptions (including unprotected industrial action whether intended or not) are exposed to the risk of; loss of employment, loss or wages and the prospect of material financial claims being made against them should their conduct cause and/or contribute to the financial losses that are incurred by the many parties that might be potentially impacted by that unlawful conduct.

[redacted] [redacted]

Deponent Witness

Sworn by the deponent
at Brisbane
in the State of Queensland
on 12 April 2024
Before me:

)
)
)
)
)

[redacted]

Signature of deponent

[redacted]

Signature of witness

David Cooper, Solicitor 9023
Mills Oakley, Level 7, 151 Clarence Street, Sydney NSW 2000

*This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

[redacted]

Deponent

[redacted]

Witness

Certificate identifying exhibit

No. 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work Division

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and another
Respondent

This is the exhibit marked "**MJD-1**" now produced and shown to Malcolm John Davis at the time of swearing his affidavit on 12 April 2024.

[redacted]

Before me: .....

David Cooper
Solicitor
Level 7, 151 Clarence Street
Sydney NSW 2000

Filed on behalf of (name & role of party) The Applicant
Prepared by (name of person/lawyer) [redacted]
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax [redacted]
Email [redacted]
Address for service (include state and postcode) Mills Oakley, Level 7, 151 Clarence Street Sydney NSW 2000

CiVS
Barringtons House
283 Rokeby Road
Subiaco WA 6008
P: 08 6314 0580
https://civs.vote

28 March 2024

To the Parties,

Timetable – Electronic Voting
Protected Action Ballot

Construction, Forestry and Maritime Employees Union
v
CPB Contractors Pty Ltd
(B2024/260)

Timetable

Wednesday, 27 March 2024	FWC making of ballot orders.
Wednesday, 3 April 2024	Applicant provides their list and covering declaration via email to CiVS by 16:00 AEST.
Wednesday, 3 April 2024	Respondent provides their list and covering declaration via email to CiVS by 16:00 AEST.
Thursday, 4 April 2024	CiVS provides Notice to Employees by 17:00 AEST via email and SMS
Friday, 5 April 2024	Roll of voters closes 16:00 AEST.
Monday, 8 April 2024	Ballot opens 09:00 AEST. CiVS emails login details to eligible voters just prior to the vote opening. SMS is sent to eligible voters.
Friday, 12 April 2024	Ballot closes 14:00 AEST. CiVS sends the results to the parties.

Regards,

[redacted]

Michael M. Michael
Managing Director
Democratic Outcomes

CiVS
Barringtons House
283 Rokeby Road
Subiaco WA 6008
P: 08 6314 0580
https://civs.vote

28 March 2024

To the Parties,

Timetable – Electronic Voting
Protected Action Ballot

Construction, Forestry and Maritime Employees Union
v
CPB Contractors Pty Ltd
(B2024/261)

Timetable

Wednesday, 27 March 2024	FWC making of ballot orders.
Wednesday, 3 April 2024	Applicant provides their list and covering declaration via email to CiVS by 16:00 AEST.
Wednesday, 3 April 2024	Respondent provides their list and covering declaration via email to CiVS by 16:00 AEST
Thursday, 4 April 2024	CiVS provides Notice to Employees by 17:00 AEST via email and SMS.
Friday, 5 April 2024	Roll of voters closes 16:00 AEST.
Monday, 8 April 2024	Ballot opens 09:00 AEST. CiVS emails login details to eligible voters just prior to the vote opening. SMS is sent to eligible voters.
Friday, 12 April 2024	Ballot closes 15:00 AEST. CiVS sends the results to the parties.

Regards,

[redacted]

Michael M. Michael
Managing Director
Democratic Outcomes

Certificate identifying exhibit

No. 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work Division

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and another
Respondent

This is the exhibit marked "**MJD-2**" now produced and shown to Malcolm John Davis at the time of swearing his affidavit on 12 April 2024.

[redacted]

Before me: .....

David Cooper
Solicitor
Level 7, 151 Clarence Street
Sydney NSW 2000

Filed on behalf of (name & role of party) The Applicant
Prepared by (name of person/lawyer) Malcolm Davis, Partner
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax [redacted]
Email [redacted]
Address for service (include state and postcode) Mills Oakley, Level 7, 151 Clarence Street Sydney NSW 2000

FairWork Commission

ORDER

Fair Work Act 2009
s.437—Protected action

Construction, Forestry and Maritime Employees Union
v
CPB Contractors Pty Ltd
(B2024/260)

DEPUTY PRESIDENT HAMPTON ADELAIDE, 27 MARCH 2024

Proposed protected action ballot of employees of CPB Contractors Pty Ltd

Pursuant to s.443 of the *Fair Work Act 2009* (the **Act**) the Fair Work Commission orders:

1. PROTECTED ACTION BALLOT TO BE HELD

The Construction, Forestry and Maritime Employees Union (**CFMEU** or **Applicant**) is to hold a protected action ballot of employees of CPB Contractors Pty Ltd (**CPB** or **Employer**) described in clause 3 of this order.

2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT

The ballot is to be conducted by the Democratic Outcomes Pty Ltd T/As CiVS (**Agent**). The contact details of the Agent are:

Democratic Outcomes Pty Ltd (CiVS)
283 Rokeby Road
Subiaco WA 6008
admin@civs.com.au

3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTED

In accordance with s 437(5) of the Act, the employees to be balloted are those who are currently covered by the *CPB Contractors Pty Ltd Cross River Rail – Civil and Surface Works Greenfields Agreement 2019-2023* and will be covered by the proposed enterprise agreement referred to in the Notice of Employee Representational Rights issued by the employer on 6 December 2023 as the *CPB Contractors Pty Ltd Cross River Rail (Rail Integration and System – Unity Alliance Works) Agreement 2024-2028* and are members of, and are represented by the bargaining representative who is the applicant for this protected action ballot order.

4. DATE BY WHICH BALLOT CLOSES

The date by which voting in the protected action ballot is to close is 12 April 2024.

5. QUESTIONS

The question(s) to be put to voters in the ballot are:

In support of reaching an enterprise agreement with your employer, do you authorise the taking of protected industrial action against your employer separately, concurrently and/or consecutively, in the form of:

1. *An unlimited number of stoppages of work, including consecutive stoppages of work of one (1) hour in duration?*
   Yes [ ] No [ ]

2. *An unlimited number of stoppages of work, including consecutive stoppages of work of two (2) hour in duration?*
   Yes [ ] No [ ]

3. *An unlimited number of stoppages of work, including consecutive stoppages of work of four (4) hour in duration?*
   Yes [ ] No [ ]

4. *An unlimited number of stoppages of work, including consecutive stoppages of work of six (6) hour in duration?*
   Yes [ ] No [ ]

5. *An unlimited number of stoppages of work, including consecutive stoppages of work of eight (8) hour in duration?*
   Yes [ ] No [ ]

6. *An unlimited number of stoppages of work, including consecutive stoppages of work of twelve (12) hour in duration?*
   Yes [ ] No [ ]

7. *An unlimited number of stoppages of work, including consecutive stoppages of work of twenty-four (24) hour in duration?*
   Yes [ ] No [ ]

8. *An unlimited number of indefinite or periodic bans on the performance of overtime, except in the case of emergencies, by all or part of the workforce? (Overtime Ban)*
   Yes [ ] No [ ]

9. *An indefinite or periodic ban on paperwork (other than regulator or safety related paperwork)?*
   Yes [ ] No [ ]

10. *An indefinite or periodic ban on the use of technology including (but not limited to) phones, computers, tablet computers, radios, fax machines and the like?*
    Yes [ ] No [ ]

6. EMPLOYER TO PROVIDE LIST OF ELIGIBLE EMPLOYEES

6.1 The Employer is to provide to the Agent (admin@civs.com.au) by 4:00pm on the third working day after the day the order is issued, a list of its employees (as at the date of the order) being a list that includes all of the employees who would be covered by the

proposed enterprise agreement, in the following format:

6.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named "CPB RIS Building Works – Employee List".

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each employee who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

COLUMN 1	Employee ID
Column 2	Surname
Column 3	First Name
Column 4	Middle Name
Column 5	Date of Birth
Column 6	Work Email Address
Column 7	Private Email Address
Column 8	Mobile Phone Number
Column 9	Postal – Address 1
Column 10	Postal – Address 2
Column 11	Postal – State
Column 12	Postal - Postcode

6.3 The list must be accompanied by a declaration in writing that the Employer reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the *fair Work Regulations 2009* (**Regulations**).

6.4 The Employer may provide the list of employees to the Agent by way of encrypted or password protected email that is accessible by the Agent.

7. APPLICANT TO PROVIDE LIST OF ELIGIBLE MEMBERS

7.1 The Applicant is to provide to the Agent (admin@civs.com.au) by 4:00pm on the third working day after the day the order is issued a list of its members (as at the date of the order) employed by the Employer in the following format:

7.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named "CFMEU RIS Building Works – Member List".

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each member who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

Column 1	Surname
Column 2	First Name
Column 3	Middle Name
Column 4	Date of Birth
Column 5	Work Email Address
Column 6	Private Email Address
Column 7	Mobile Phone Number
Column 8	Union Membership Number (if applicable)
Column 9	Postal – Address 1
Column 10	Postal – Address 2
Column 11	Postal – State
Column 12	Postal – Postcode

7.3 The list must be accompanied by a declaration in writing that the Applicant reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the Regulations.

7.4 The Applicant may provide the list of members to the Agent by way of encrypted or password protected email that is accessible by the Agent.

8. VOTING METHOD

8.1 The ballot is to be conducted by electronic voting and must take place in compliance with the Act, the Regulations and this order.

8.2 Pursuant to s.450 of the Act, the Agent is to conduct the protected action ballot in accordance with the following directions.

Timetable

8.2.1 The Agent will determine the date the ballot commences in accordance with s.451. The Commencement Date will be included in the timetable compiled in accordance with paragraph 10 of this order. The ballot will not commence before the Commencement Date.

8.2.2 The date by which voting in the protected action ballot is to close is 12 April 2024.

Voting method

8.2.3 The ballot will be held electronically.

8.2.4 The Agent will design a voting website on a secure server which will allow eligible voters to vote in the ballot.

8.2.5 The Agent will allocate to each eligible voter on the list of voters a unique identifier, being a randomly generated internet voting password, to access and vote on the website.

8.2.6 Just prior to the opening of the ballot, the Agent will issue to eligible voters an Instruction Sheet. The Instruction Sheet will contain the web address for the voting website, each eligible employee's randomly generated internet voting password, instructions on how to vote and any other material the Agent considers relevant.

8.2.7 The Agent will issue the Instruction Sheet to each employee's email address, where provided. Additionally, the Agent will send an SMS to any mobile number for that eligible voter, where a mobile phone has been provided.

8.2.8 For any eligible employees without an email address or mobile phone number, the Agent will send the Instruction Sheet by mail to that employee's home postal address.

8.2.9 The Agent will ensure the voting website will only be accessible for voting in the ballot by eligible voters.

8.2.10 The Agent will ensure that the operation of the internet voting system provides that an authenticated voter may cast only one vote in the ballot.

Updates to the list of voters

8.2.11 Before the Commencement Date, the Employer will provide the Agent with the names of any of its employees that have ceased employment on the day such employment ends. If any of these employees are on the list of voters, their internet voting password to vote in the ballot will be disabled.

9. FINALISING THE LIST OF VOTERS

9.1 The Agent is to finalise the list of voters using its discretion.

10. TIMETABLE FOR BALLOT AND COMPILATION OF LIST OF VOTERS

10.1 The Agent will compile a timetable in accordance with the Act and the Directions outlined in paragraphs 8.2.1 and 8.2.2 of this order, to be sent to the parties.

10.2 The Agent may make variations to the timetable (excluding the date by which the ballot would close) as may be necessary to bring about the efficient and expeditious conduct of the protected action ballot.

11. INFORMATION

11.1 The Agent may give any ballot-related notice, information or other material to employees by means including sending the materials to employees' work email addresses and personal or other email addresses.

11.2 The Agent shall, as soon as practicable, issue to eligible employees on the roll of voters, the notice to employees, consistent with reg. 3.13 of the Regulations, including by email to their nominated email address, and SMS to any mobile phone number for that eligible voter, where a mobile phone number has been provided. For any eligible employees without an email address or mobile phone number, the Agent will send the notice to employees by mail to that employee's home postal address.

11.3 The notice to employees shall contain a copy of the protected action ballot order and include the following information and statements:

a) the name and contact details of the Agent including telephone contact and email address details;

b) the timetable for the conduct of the protected action ballot including the times of opening and closing the ballot;

c) a statement informing employees that the protected action ballot is to be conducted by electronic voting;

d) information about how eligible employees will receive their voting instructions and how they can vote electronically on the designated voting website using unique identifiers;

e) a statement inviting employees to contact the Agent if the employee believes that he or she should be included on the roll of voters;

f) a statement inviting employees to contact the Agent if the employee believes that he or she should not be included on the roll of voters;

g) a statement inviting employees to contact the Agent, the independent advisor (if any) or the Fair Work Commission in the event that the employee has any concerns or complaints relating to the conduct of the protected action ballot; and

h) a statement that the protected action ballot is to be conducted as a secret ballot and that employees are free to approve or not approve the proposed industrial action.

12. PROVISION OF INFORMATION AND ASSISTANCE TO AUTHORISED BALLOT AGENT

12.1 The Applicant and the Employer are to comply as quickly as is reasonably practicable with any reasonable request made by the Agent pursuant to the Act or the Regulations for information or assistance.

12.2 The Employer shall facilitate the email delivery of ballot related notices, information, or other materials to all employees by whitelisting the domain utilised by the Agent.

12.3 The Employer shall allow access to the voting web site from all employees' places of work and accommodation (if applicable) by whitelisting the site across the Employer's internet network.

12.4 Where the Employer does not manage the IT networks that employees may use to vote they will do all that is practicable to ensure that Orders 12.2 and 12.3 are complied with.

13. SCRUTINEERS

13.1 The Applicant and the Employer are to comply with the provisions contained in the Regulations and to notify in writing to the Agent the names of any scrutineer(s) that they propose to authorise to attend the conduct of the ballot.

13.2 Any notification of the appointment of any scrutineer(s) must be served on the other party. Should the other party object to the appointment of any scrutineer(s), then that party is able to apply to the Fair Work Commission to have its objection heard and determined.

13.3 The functions of any scrutineer(s) appointed pursuant to this clause will only occur once all votes have been received, the ballot has closed, but before any ballot result is declared.

14. RESULTS

14.1 The Agent may, on request, report to either the Employer or the Applicant the participation rate.

14.2 The Agent shall report the results of the protected action ballot as soon as practicable after the close of voting to the Applicant, the Employer and the Fair Work Commission.

15. DATE OF EFFECT

This order commences on 27 March 2024.

[redacted]

THE SEAL OF THE FAIR WORK COMMISSION

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

Certificate identifying exhibit

No. 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work Division

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and another
Respondent

This is the exhibit marked "**MJD-3**" now produced and shown to Malcolm John Davis at the time of swearing his affidavit on 12 April 2024.

[redacted]

Before me: .....

David Cooper
Solicitor
Level 7, 151 Clarence Street
Sydney NSW 2000

Filed on behalf of (name & role of party)	The Applicant
Prepared by (name of person/lawyer)	Malcolm Davis, Partner
Law firm (if applicable)	Mills Oakley
Tel [redacted]	Fax [redacted]
Email [redacted]	
Address for service (include state and postcode)	Mills Oakley, Level 7, 151 Clarence Street Sydney NSW 2000

FairWork Commission

ORDER

Fair Work Act 2009
s.437—Protected action

Construction, Forestry and Maritime Employees Union
v
CPB Contractors Pty Ltd
(B2024/261)

DEPUTY PRESIDENT HAMPTON ADELAIDE, 27 MARCH 2024

Proposed protected action ballot of employees of CPB Contractors Pty Ltd.

Pursuant to s.443 of the *Fair Work Act 2009* (the **Act**) the Fair Work Commission orders:

1. PROTECTED ACTION BALLOT TO BE HELD

The Construction, Forestry and Maritime Employees Union (**CFMEU** or **Applicant**) is to hold a protected action ballot of employees of CPB Contractors Pty Ltd (**CPB** or **Employer**) described in clause 3 of this order.

2. NAME OF PERSON AUTHORISED TO CONDUCT THE BALLOT

The ballot is to be conducted by the Democratic Outcomes Pty Ltd T/As CiVS (**Agent**). The contact details of the Agent are:

Democratic Outcomes Pty Ltd (CiVS)
283 Rokeby Road
Subiaco WA 6008
admin@civs.com.au

3. GROUP OR GROUPS OF EMPLOYEES TO BE BALLOTED

In accordance with s.437(5) of the Act, the employees to be balloted are those who are currently covered by either the *CPB Contractors Pty Ltd Cross River Rail – Tunnel and Shaft Greenfields Agreement 2019-2023* or *CPB Contractors Pty Ltd Cross River Rail – Civil and Surface Works Greenfields Agreement 2019-2023* and will be covered by the proposed enterprise agreement referred to in the Notice of Employee Representational Rights issued by the employer on 6 December 2023 as the *CPB Contractors Pty Ltd Cross River Rail (Tunnel, Station and Development – Pulse Partnership Works) Agreement 2024-2028* and are members of, and are represented by the bargaining representative who is the applicant for this protected action ballot order.

4. DATE BY WHICH BALLOT CLOSES

The date by which voting in the protected action ballot is to close is 12 April 2024.

5. QUESTIONS

The question(s) to be put to voters in the ballot are:

In support of reaching an enterprise agreement with your employer, do you authorise the taking of protected industrial action against your employer separately, concurrently and/or consecutively, in the form of:

1. *An unlimited number of stoppages of work, including consecutive stoppages of work of one (1) hour in duration?*
   Yes [ ] No [ ]

2. *An unlimited number of stoppages of work, including consecutive stoppages of work of two (2) hour in duration?*
   Yes [ ] No [ ]

3. *An unlimited number of stoppages of work, including consecutive stoppages of work of four (4) hour in duration?*
   Yes [ ] No [ ]

4. *An unlimited number of stoppages of work, including consecutive stoppages of work of six (6) hour in duration?*
   Yes [ ] No [ ]

5. *An unlimited number of stoppages of work, including consecutive stoppages of work of eight (8) hour in duration?*
   Yes [ ] No [ ]

6. *An unlimited number of stoppages of work, including consecutive stoppages of work of twelve (12) hour in duration?*
   Yes [ ] No [ ]

7. *An unlimited number of stoppages of work, including consecutive stoppages of work of twenty-four (24) hour in duration?*
   Yes [ ] No [ ]

8. *An unlimited number of indefinite or periodic bans on the performance of overtime, except in the case of emergencies, by all or part of the workforce? (Overtime Ban)*
   Yes [ ] No [ ]

9. *An indefinite or periodic ban on paperwork (other than regulator or safety related paperwork)?*
   Yes [ ] No [ ]

10. *An indefinite or periodic ban on the use of technology including (but not limited to) phones, computers, tablet computers, radios, fax machines and the like?*
    Yes [ ] No [ ]

6. EMPLOYER TO PROVIDE LIST OF ELIGIBLE EMPLOYEES

6.1 The Employer is to provide to the Agent (admin@civs.com.au) by 4:00pm on the third working day after the day the order is issued, a list of its employees (as at the date of the order) being a list that includes all of the employees who would be covered by the

proposed enterprise agreement, in the following format:

6.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named "CPB TSD Building Works – Employee List".

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each employee who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

COLUMN 1	Employee ID
Column 2	Surname
Column 3	First Name
Column 4	Middle Name
Column 5	Date of Birth
Column 6	Work Email Address
Column 7	Private Email Address
Column 8	Mobile Phone Number
Column 9	Postal – Address 1
Column 10	Postal – Address 2
Column 11	Postal – State
Column 12	Postal - Postcode

6.3 The list must be accompanied by a declaration in writing that the Employer reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the *fair Work Regulations 2009* (**Regulations**).

6.4 The Employer may provide the list of employees to the Agent by way of encrypted or password protected email that is accessible by the Agent.

7. APPLICANT TO PROVIDE LIST OF ELIGIBLE MEMBERS

7.1 The Applicant is to provide to the Agent (admin@civs.com.au) by 4:00pm on the third working day after the day the order is issued a list of its members (as at the date of the order) employed by the Employer in the following format:

7.2 The list is to be provided in the form of a Microsoft Excel compatible spreadsheet in a file named "CFMEU TSD Building Works – Member List".

(a) The list is to be in alphabetical order of surname.

(b) The list is to contain the information (if known) for each member who would be covered by the proposed enterprise agreement as indicated by those column names set out below:

Column 1	Surname
Column 2	First Name
Column 3	Middle Name
Column 4	Date of Birth
Column 5	Work Email Address
Column 6	Private Email Address
Column 7	Mobile Phone Number
Column 8	Union Membership Number (if applicable)
Column 9	Postal – Address 1
Column 10	Postal – Address 2
Column 11	Postal – State
Column 12	Postal – Postcode

7.3 The list must be accompanied by a declaration in writing that the Applicant reasonably believes that the information is complete, up-to-date and accurate in accordance with Regulation 3.15 of the Regulations.

7.4 The Applicant may provide the list of members to the Agent by way of encrypted or password protected email that is accessible by the Agent.

8. VOTING METHOD

8.1 The ballot is to be conducted by electronic voting and must take place in compliance with the Act, the Regulations and this order.

8.2 Pursuant to s.450 of the Act, the Agent is to conduct the protected action ballot in accordance with the following directions.

Timetable

8.2.1 The Agent will determine the date the ballot commences in accordance with s.451. The Commencement Date will be included in the timetable compiled in accordance with paragraph 10 of this order. The ballot will not commence before the Commencement Date.

8.2.2 The date by which voting in the protected action ballot is to close is 12 April 2024.

Voting method

8.2.3 The ballot will be held electronically.

8.2.4 The Agent will design a voting website on a secure server which will allow eligible voters to vote in the ballot.

8.2.5 The Agent will allocate to each eligible voter on the list of voters a unique identifier, being a randomly generated internet voting password, to access and vote on the website.

8.2.6 Just prior to the opening of the ballot, the Agent will issue to eligible voters an Instruction Sheet. The Instruction Sheet will contain the web address for the voting website, each eligible employee's randomly generated internet voting password, instructions on how to vote and any other material the Agent considers relevant.

8.2.7 The Agent will issue the Instruction Sheet to each employee's email address, where provided. Additionally, the Agent will send an SMS to any mobile number for that eligible voter, where a mobile phone has been provided.

8.2.8 For any eligible employees without an email address or mobile phone number, the Agent will send the Instruction Sheet by mail to that employee's home postal address.

8.2.9 The Agent will ensure the voting website will only be accessible for voting in the ballot by eligible voters.

8.2.10 The Agent will ensure that the operation of the internet voting system provides that an authenticated voter may cast only one vote in the ballot.

Updates to the list of voters

8.2.11 Before the Commencement Date, the Employer will provide the Agent with the names of any of its employees that have ceased employment on the day such employment ends. If any of these employees are on the list of voters, their internet voting password to vote in the ballot will be disabled.

9. FINALISING THE LIST OF VOTERS

9.1 The Agent is to finalise the list of voters using its discretion.

10. TIMETABLE FOR BALLOT AND COMPILATION OF LIST OF VOTERS

10.1 The Agent will compile a timetable in accordance with the Act and the Directions outlined in paragraphs 8.2.1 and 8.2.2 of this order, to be sent to the parties.

10.2 The Agent may make variations to the timetable (excluding the date by which the ballot would close) as may be necessary to bring about the efficient and expeditious conduct of the protected action ballot.

11. INFORMATION

11.1 The Agent may give any ballot-related notice, information or other material to employees by means including sending the materials to employees' work email addresses and personal or other email addresses.

11.2 The Agent shall, as soon as practicable, issue to eligible employees on the roll of voters, the notice to employees, consistent with reg. 3.13 of the Regulations, including by email to their nominated email address, and SMS to any mobile phone number for that eligible voter, where a mobile phone number has been provided. For any eligible employees without an email address or mobile phone number, the Agent will send the notice to employees by mail to that employee's home postal address.

11.3 The notice to employees shall contain a copy of the protected action ballot order and include the following information and statements:

a) the name and contact details of the Agent including telephone contact and email address details;

b) the timetable for the conduct of the protected action ballot including the times of opening and closing the ballot;

c) a statement informing employees that the protected action ballot is to be conducted by electronic voting;

d) information about how eligible employees will receive their voting instructions and how they can vote electronically on the designated voting website using unique identifiers;

e) a statement inviting employees to contact the Agent if the employee believes that he or she should be included on the roll of voters;

f) a statement inviting employees to contact the Agent if the employee believes that he or she should not be included on the roll of voters;

g) a statement inviting employees to contact the Agent, the independent advisor (if any) or the Fair Work Commission in the event that the employee has any concerns or complaints relating to the conduct of the protected action ballot; and

h) a statement that the protected action ballot is to be conducted as a secret ballot and that employees are free to approve or not approve the proposed industrial action.

12. PROVISION OF INFORMATION AND ASSISTANCE TO AUTHORISED BALLOT AGENT

12.1 The Applicant and the Employer are to comply as quickly as is reasonably practicable with any reasonable request made by the Agent pursuant to the Act or the Regulations for information or assistance.

12.2 The Employer shall facilitate the email delivery of ballot related notices, information, or other materials to all employees by whitelisting the domain utilised by the Agent.

12.3 The Employer shall allow access to the voting web site from all employees' places of

work and accommodation (if applicable) by whitelisting the site across the Employer's internet network.

12.4 Where the Employer does not manage the IT networks that employees may use to vote they will do all that is practicable to ensure that Orders 12.2 and 12.3 are complied with.

13. SCRUTINEERS

13.1 The Applicant and the Employer are to comply with the provisions contained in the Regulations and to notify in writing to the Agent the names of any scrutineer(s) that they propose to authorise to attend the conduct of the ballot.

13.2 Any notification of the appointment of any scrutineer(s) must be served on the other party. Should the other party object to the appointment of any scrutineer(s), then that party is able to apply to the Fair Work Commission to have its objection heard and determined.

13.3 The functions of any scrutineer(s) appointed pursuant to this clause will only occur once all votes have been received, the ballot has closed, but before any ballot result is declared.

14. RESULTS

14.1 The Agent may, on request, report to either the Employer or the Applicant the participation rate.

14.2 The Agent shall report the results of the protected action ballot as soon as practicable after the close of voting to the Applicant, the Employer and the Fair Work Commission.

15. DATE OF EFFECT

This order commences on 27 March 2024.

[redacted] THE SEAL OF THE FAIR WORK COMMISSION

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

Certificate identifying exhibit

No. 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work Division

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and another
Respondent

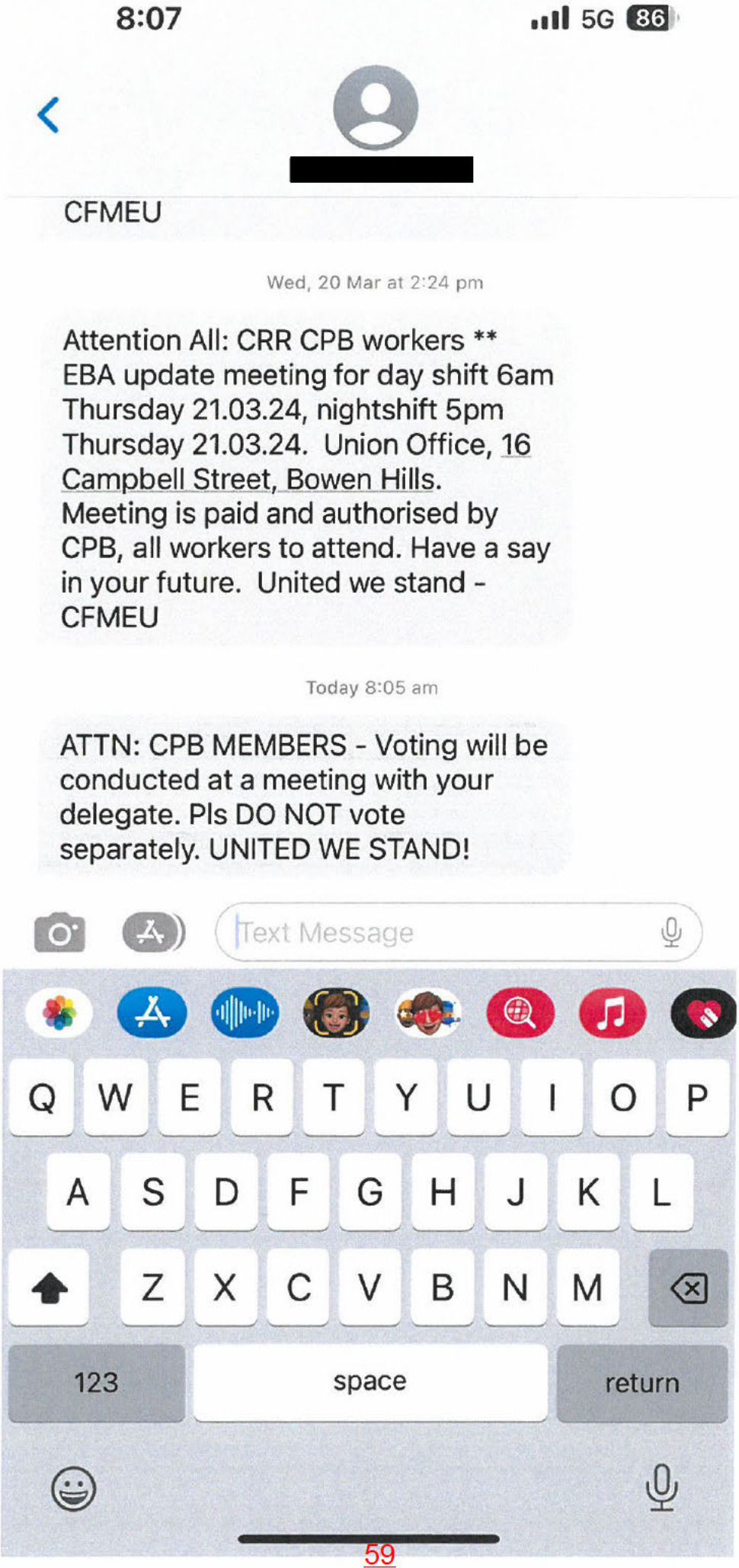
This is the exhibit marked "**MJD-4**" now produced and shown to Malcolm John Davis at the time of swearing his affidavit on 12 April 2024.

[redacted]

Before me: .....

David Cooper
Solicitor
Level 7, 151 Clarence Street
Sydney NSW 2000

Filed on behalf of (name & role of party)	The Applicant
Prepared by (name of person/lawyer)	Malcolm Davis, Partner
Law firm (if applicable)	Mills Oakley
Tel	[redacted] Fax [redacted]
Email	[redacted]
Address for service (include state and postcode)	Mills Oakley, Level 7, 151 Clarence Street Sydney NSW 2000


8:07
5G 86
[redacted]
CFMEU
Wed, 20 Mar at 2:24 pm
Attention All: CRR CPB workers **
EBA update meeting for day shift 6am Thursday 21.03.24, nightshift 5pm Thursday 21.03.24. Union Office, 16 Campbell Street, Bowen Hills.
Meeting is paid and authorised by CPB, all workers to attend. Have a say in your future. United we stand - CFMEU
Today 8:05 am
ATTN: CPB MEMBERS - Voting will be conducted at a meeting with your delegate. Pls DO NOT vote separately. UNITED WE STAND!
Text Message
Q W E R T Y U I O P
A S D F G H J K L
Z X C V B N M
123
space
return

Certificate identifying exhibit

No. 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work Division

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and another
Respondent

This is the exhibit marked "**MJD-5**" now produced and shown to Malcolm John Davis at the time of swearing his affidavit on 12 April 2024.

[redacted]

Before me: .....

David Cooper
Solicitor
Level 7, 151 Clarence Street
Sydney NSW 2000

Filed on behalf of (name & role of party)	The Applicant
Prepared by (name of person/lawyer)	Malcolm Davis, Partner
Law firm (if applicable)	Mills Oakley
Tel [redacted]	Fax [redacted]
Email [redacted]	
Address for service (include state and postcode)	Mills Oakley, Level 7, 151 Clarence Street Sydney NSW 2000

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident: _____ **Incident No:** _____

Project: CRR-TSD **Interview Date:** _____

WITNESS / INVOLVED PERSONS DETAILS

Name: [redacted] **Position:** [redacted]

Project / Department: _____ **Company** CBGU

Shift / Crew: [redacted] **Supervisor:** [redacted]

Contact Details: [redacted] **D.O.B:** [redacted]

Describe the witnesses skills and knowledge, that may be of relevance to the incident

[redacted]

Skills	Knowledge

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

On monday 8-4-24 when voting was opened for protected action. Sean K and Sten S approached me and other direct employees multiple times trying to make sure we voted 'yes' to all questions. They attempted to gather us at our break time and look over our shoulders to see which way we were voting. In the morning I was cornered on the gantry by Sean K [redacted] asking if I was going to be smart about my choice. To me this was intimidating. I felt uncomfortable and made sure I voted in privacy.

[redacted]

Note anything unusual you observed prior to or during the incident (sights, sounds, smells, etc):

What was your role in the incident sequence?

What conditions influenced the incident (weather, time of day, equipment malfunctions, etc)?

Did anyone influence the incident (actions, emergency response, etc), if so how?

How do you think the incident could have been prevented?

Please list other possible witnesses:

Additional comments/observations:

I declare that the above statement is true and accurate.

Witness Name: [redacted] **Date:** 11-4-24

Signature: [redacted]

Interviewer: _____ **Date:** _____

Signature: _____

Certificate identifying exhibit

No. 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work Division

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and another
Respondent

This is the exhibit marked "**MJD-6**" now produced and shown to Malcolm John Davis at the time of swearing his affidavit on 12 April 2024.

[redacted]

Before me: .....

David Cooper
Solicitor
Level 7, 151 Clarence Street
Sydney NSW 2000

Filed on behalf of (name & role of party) The Applicant
Prepared by (name of person/lawyer) Malcolm Davis, Partner
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax [redacted]
Email [redacted]
Address for service (include state and postcode) Mills Oakley, Level 7, 151 Clarence Street Sydney NSW 2000

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident: _____ **Incident No:** _____

Project: CRR-TSD **Interview Date:** 11.4.24

WITNESS / INVOLVED PERSONS DETAILS

Name: [redacted] **Position:** [redacted]

Project / Department: Roma St. **Company** C.P.B.

Shift / Crew: [redacted] **Supervisor:** [redacted]

Contact Details: [redacted] **D.O.B:** [redacted]

Describe the witnesses skills and knowledge, that may be of relevance to the incident

[redacted]

Skills	Knowledge

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

On Monday 8.4.24 at 10:00am the CFMEU organisers called a meeting at Roma St. They were Dean Matthes Dean Riley, Dylan, Mark McKeon and Joseph Pryor and roughly 30 C.P.B employees.

After letting the organisers say their piece as to why we should strike, [redacted] some simply

cannot afford to take time off as everybodies financial position is different.

[redacted] hushed with a long winded response involving Politics and ended with "It is what it is."

[redacted]

The debate carried on for 1hr until finally Dean told everyone to get their phones out click on the email and tick all the boxes together. I stepped in and told him thats an illegal action and thats not how a secret Ballot works They all spoke over me to get the boys all to vote YES again telling them it only works if we stick together.

[redacted]

Dean Matthes then said "Are we doing this or not" I said "No, were not" They then proceeded to

storm out of the room.

* 3/4 of the way through the meeting Jason Emmerton walked into the room. He shouted from the door to the organisers that he had got all the boys in his meeting to vote YES and that he walked them all through it. He got a well done, good job off the organisers. The meeting was as their text message described. It was blatent disregard for the Fair Work Commissions terms for a Secret Ballot. They intimidated, coerced and totally tried influencing how the employees vote. Taking away our anonymity and any right to make our own decision even walking up to workers and telling them to take out their phones and vote YES.

[redacted]

[redacted], 11.4.24

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit of Service - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	12/04/2024 1:03:13 PM AEST
Date Accepted for Filing:	12/04/2024 1:11:44 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA
AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59
Rule 29.02(1)

Affidavit of Service

No. QUD189 of 2024

Federal Court of Australia
District Registry: Brisbane
Division: Fair Work

IN THE MATTER OF

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and others
Respondents

Affidavit of:	**Alexander Edward Millman**
Address:	Level 23, 66 Eagle Street, Brisbane QLD 4000
Occupation:	Solicitor
Date:	12 April 2024

I, Alexander Edward Millman of Level 23, 66 Eagle Street, Brisbane in the State of Queensland, Solicitor affirm:

1. I am a solicitor in the employ of Mills Oakley, Solicitors for the Plaintiff.

2. At 11:40AM on 12 April 2023 I did forward to the First Respondent true copies of the following documents filed in these proceedings:

   (a) originating application (unsealed) as provided to the chambers of Justice Collier by email from Mr Malcolm Davis at 10:02AM on 12 April 2024;

   (b) draft order (unsealed) as provided to the chambers of Justice Collier by email from Mr Malcolm Davis at 10:02AM on 12 April 2024;

   (c) affidavit of Mr Malcom Davis (unsealed) sworn 12 April 2024;

   (d) email from the chambers of Justice Collier advising of the listing of this matter at 1:30PM on 12 April 2024;

Filed on behalf of	**CPB Contractors Pty Ltd**, Applicant
Prepared by	Alexander Millman
Law firm	Mills Oakley
Tel	[redacted] Fax
Email	[redacted]
Address for service	Level 23, 66 Eagle Street, Brisbane QLD 4000

[redacted]
Deponent

Witness [redacted]

by emailing the said documents to the email addresses [redacted] and [redacted] I am aware from the file maintained by Mills Oakley that correspondence in relation to the protected action ballots which are the subject of these proceedings has previously been provided to the First Respondent at these email addresses.

3. At 11:41AM on 12 April 2023 I did forward to the Second Respondent true copies of the following documents filed in these proceedings:

   (a) originating application (unsealed) as provided to the chambers of Justice Collier by email from Mr Malcolm Davis at 10:02AM on 12 April 2024;

   (b) draft order (unsealed) as provided to the chambers of Justice Collier by email from Mr Malcolm Davis at 10:02AM on 12 April 2024;

   (c) affidavit of Mr Malcom Davis (unsealed) sworn 12 April 2024;

   (d) email from the chambers of Justice Collier advising of the listing of this matter at 1:30PM on 12 April 2024;

   by sending the said documents to the email address [redacted] I am aware from the file maintained by Mills Oakley that correspondence in relation to the protected action ballots which are the subject of these proceedings has previously been provided to the Second Respondent at these email addresses.

4. At 12:27PM on 12 April 2024 I served sealed copies of the documents referred to at paragraph 3(a) and 3(b) above on the Second Respondent by sending the said documents to the email address [redacted]

5. At 12:28PM on 12 April 2024 I served sealed copies of the documents referred to at paragraph 2(a) and 2(b) above on the First Respondent by sending the said documents to the email addresses [redacted] and [redacted]

6. In the circumstances of this matter being listed at 1:30PM on 12 April 2024 I was unable to arrange for personal service to be affected on any respondent prior to the hearing.

Affirmed by the deponent at Brisbane)
in Queensland)
on 12 April 2024)
Before me:)

[redacted]

Signature of deponent

[redacted]

Name of Witness: Bradley Ellacott, Solicitor

NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	15/04/2024 3:53:39 PM AEST
Date Accepted for Filing:	15/04/2024 3:53:48 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

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The date of the filing of the document is determined pursuant to the Court's Rules.

Federal Court of Australia

District Registry: Queensland

Division: Fair Work

No QUD189/2024

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others named in the schedule

Respondents

APPLICANT'S AMENDED OUTLINE OF SUBMISSIONS – INTERLOCUTORY MATTERS

Background

Cross-river rail project

1. The Respondent is the principal contractor on the Cross-River Rail Project (**Project**), Queensland's largest infrastructure project.[1] The present status of the project is set out in the evidence of Mr Davis.[2]

Enterprise bargaining

2. The Project has in place two enterprise agreements, which both nominally expired on 15 October 2023.[3] The Applicant issued notices of employee representational rights concerning new enterprise agreements on 6 December 2023.[4] The First Respondent is the bargaining representative for some employees on the Project. The Applicant and First Respondent are presently involved in negotiations over new enterprise agreements.[5]

Protected action ballots

3. The First Respondent applied to the Fair Work Commission (**Commission**) for and was granted protected action ballot orders, issued on 27 March 2024.[6] The orders were modified on 3 April 2024.[7] Since the modified orders, the parties have gone about completing the timetable for the ballot.

4. It has come to the Applicant's attention that the First Respondent and its delegates have interfered with the balloting of its members, contravening *Fair Work Act 2009* s.462.[8]

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[1] Affidavit M Davis, 12 April 2024, [3] to [6].
[2] *Ibid,* [15] to [18]
[3] CPB Contractors Pty Ltd Cross River Rail – Civil and Surface Works Greenfields Agreement 2019-2023 ; CPB Contractors Pty Ltd Cross River Rail – Tunnel and Shaft Greenfields Agreement 2019-2023.
[4] Affidavit M Davis, 12 April 2024, [20], [21]; *Fair Work Act 2009* s.173.
[5] Affidavit M Davis, 12 April 2024, [24] – [27].
[6] Affidavit M Davis, 12 April 2024, [28] - [32].
[7] Affidavit M Davis, 12 April 2024, [35].
[8] Affidavit M Davis, 12 April 2024, [40] to [44]. Other affidavits may be filed evincing other complaints however, at the time of writing, these have not been filed.

5. The Applicant submits this interference invalidates the ballot and makes any resulting industrial action unprotected. It seeks corresponding orders and penalties, including interlocutory orders preventing the invalidated ballots proceeding, so as to avoid unprotected industrial action on the Project and significant economic harm to the Project and workers.[9]

Law – protected action ballots

6. Industrial action may be authorised by a protected action ballot,[10] conducted in accordance with *Fair Work Act 2009* (**FWA**).[11]

7. The party conducting the ballot must report any irregularities, which includes an act or omission by means of which the full and free recording of votes by employees entitled to vote is (or is attempted to be) prevented or hindered.[12]

8. The FWA prohibits and makes subject to civil penalty a person interfering with a protected action ballot, including by:[13]

   a. hindering obstructing the holding of the ballot;

   b. using any form of intimidation to prevent a person entitled to vote from voting, or to influence the vote of such a person;

   c. threatening, suggesting or using any injury, punishment damage or loss because of or to induce voting in any particular manner; or

   d. requesting, requiring or inducing another person to show a ballot paper to the first person or permit the first person to see a ballot paper in such a manner that the first person can see the vote, while the vote is being made or after it is made.

9. The purpose of the above is prohibiting conduct which could lead to irregularities in balloting, ensuring free and fair ballots of employees on matters which may impact their industrial rights. The corollary is that the prohibited interference prevents such free and fair ballots.

10. The FWA is silent on what follows should a ballot be interfered with or where a report of irregularities is produced. The natural result of such interference is the ballot or its result being vitiated, and any subsequent industrial action being unprotected.[14] There appears to be no reported cases concerning breaches of s.462.

11. A person *involved in* a civil remedy provision contravention is also taken to have contravened the provision.[15]

---

[9] Of the type to which Mr Davis deposes - Affidavit M Davis, 12 April 2024, [45].
[10] *Fair Work Act 2009* ss.409(2), 459.
[11] Chapter 3, Part 3-3, Division 8.
[12] FWA s.458.
[13] FWA s.462.
[14] See for instance *Royal Flying Doctor Service (Queensland Section) Limited v Australian Nursing and Midwifery Federation* [2023] FWC 3025, [34] – [37] per Dobson DP.
[15] FWA s.550.

12. A person commits an offence by contravening a Commission order.[16]

Law – Federal Court, FWA and injunctions

13. The Federal Court has jurisdiction in relation to any matter arising under the FWA.[17]

14. The Federal Court has power, in relation to matters in which it has jurisdiction, to make orders of such kinds, including interlocutory orders and writs, as it thinks appropriate.[18]

15. The Federal Court has power in its inherent jurisdiction to stay proceedings before the Commission, when its supervisory jurisdiction is involved, where there are shown to be exceptional circumstances.[19]

16. In considering whether interlocutory relief should be granted, it is appropriate for the Court to consider whether:[20]

    a. the Applicant has established a *prima facie* case;

    b. damages are an adequate remedy; and

    c. the balance of convenience favours the granting of an injunction.

Law – admissibility of redacted material

16A. The Applicant leads evidence of statements from employees who are also members of the First Respondent about the First Respondent's conduct during the ballot.[21] At the workers' requests, the Applicant has hidden their identity.[22] The witnesses depose to the sources' status as current employees of the Applicant and members of the First Respondent, working on the Project.

16B. Section 75 of the *Evidence Act 1995* permits hearsay evidence in interlocutory proceedings where evidence of its source is adduced.

16C. The authorities conceive of a source being identified for the purpose of s.75 but without their name being given.[23] In *Liu v The Age Company & Ors*, in rejecting evidence in which media sources were hidden, McCallum J said,[24] "*it would have been open to the defendants to seek to adduce the evidence in admissible form by tendering the relevant correspondence with the*

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[16] FWA s.675.
[17] FWA s.562. See also s.563.
[18] *Federal Court of Australia Act 1976*, s.23.
[19] *Re Australian Industrial Relations Commission and CFMEU; ex parte Hail Creek Coal Pty Ltd* [2003] FCAFC 322 at [2] per Lee, Goldberg and Weinberg JJ; *EnergyAustralia Yallourn Pty Ltd v CFMEU* [2013] FCA 360 at [33]-[38] per Murphy J.
[20] *Beecham Group Ltd v Bristol Laboratories Ptd Ltd* (1968) 118 CLR 618, 622-623 per Kitto, Taylor, Menzies and Owen JJ.
[21] Affidavit of M Davis, 12 April 2024, [42] – [44].
[22] *Ibid.*
[23] *Registrar of Aboriginal Corporations v Murnkurni Women's Aboriginal Corporation* [1995] FCA 1413, [49] per RD Nicholson J (His Honour did not admit that evidence, observing of the Australia Federal Police source "*the source has only been identified institutionally and that is an inadequate identification source*" but stopping short of insisting a name is required); *Liu v The Age Company* [2010] NSWSC 1176, [45] per McCallam J.
[24] *Liu v The Age Company* [2010] NSWSC 1176, [45] per McCallam J.

sources, masking the names of the sources and any other identifying information. I do not mean to rule pre-emptively that the evidence would be admissible in that form, but it is a course that could have been pursued."

16D. Such redaction is apt in this case. There is a long standing tension between unions and employers. The FWA takes steps to hide the identity of union members from employers for fear of repercussions in their employment.[25] These redactions hide the identity of workers for fear of repercussion from their union. The evidence itself is specific about dates, the union delegates involved, and what conduct occurred. It identifies at least some of the conduct as "public", in that one source describes it occurring in a meeting of roughly 30 employees.[26] Noting the interlocutory nature of the proceeding, and that the Court will not be asked to make findings of contested evidence (merely that a *prima facie* case exists), the First Respondent ought to be able to respond satisfactorily (if it chooses) to that evidence, removing any likely prejudice from the redaction of the names of the sources.

Consideration

17. For clarity, the Applicant does not oppose its employees participating in a protected action ballot or, should they choose, protected industrial action. However, when they do so, they ought not be disenfranchised by illegal interference by their bargaining representatives.

18. The conduct of the type about which Mr Davis deposes is clearly of a type which might vitiate the free or fair conduct of a protected action ballot; prohibited by FWA s.462. There are consistent, separate reports of the First Respondent's officials requesting or requiring voters to show their ballot papers while voting, in an effort to create a coordinated "yes" vote to industrial action. The evidence goes further to actual intimidation so as to influence the course of voting.

19. So, there is a *prima facie* serious case to be determined – whether the vitiated ballot ought to be set aside (or other steps taken to prevent unprotected industrial action) as a result of contraventions of s.462 and whether penalties ought to

20. In *Royal Flying Doctor Service*, the ballot irregularity was far less deliberate or infectious than the interference in this case. But, it was sufficient to render the ballot invalid and any subsequent industrial action unprotected.

21. The evidence in this case is particularly powerful where it was brought to the Applicant by members of the First Respondent, attended as that is with the risk of reprisal. It might fairly be anticipated that:

    a. others of the First Respondent's members have been affected by the interference, but have not yet (or will not, through fear or loyalty) come forward; and

[25] FWA ss. 467, 520.
[26] Affidavit of M Davis, 12 April 2024, exhibit MD-6.

b. more evidence will emerge before a final hearing of the Application, by which time individual delegates of the First Respondent and their actions will have been more fulsomely identified.

22. Carrying a protected action ballot requires only 50% of eligible voters to vote, and only 50% of those votes to be yes. Accordingly, only a very small number of eligible voters need to have been affected by intimidation, for the overall outcome of the vote to be materially impacted.[27]

23. Whether the First Respondent was *involved* in the contraventions by its delegates is not yet clear, but even at this stage the text from the First Respondent to its members about the ballot suggests it was "knowingly concerned" in the alleged contraventions.[28]

24. Until such time as prohibited action ballots are conducted freely and fairly within the terms of the FWA, no protected industrial action may occur. This Court ought not risk the Applicant's employees proceeding towards unprotected industrial action in reliance on a vitiated ballot.

Power of the Court

24A. This Court has jurisdiction concerning all matters under the FWA. Under s.23 of the *Federal Court of Australia Act*, it has the widest possible powers to deal with that jurisdiction as it thinks appropriate.

24B. At a final hearing, if the Court accepts that a protected action ballot has been interfered with, the result of the ballot plainly ought not be permitted to stand, and any industrial action which followed it would be unprotected. The legislative setting is made somewhat uncertain by the absence of a statutory remedy where a ballot is subject to interference. There appears to be no reported cases dealing with contraventions of FWA s.462. However, unprotected industrial action was stopped by the Commission in *Royal Flying Doctor Service* for far less. The Applicant's proposed course in this Court would deal appropriately with the issue in the unusual circumstances.

24C. Read together the jurisdiction granted the Court under the FWA, and the scope of *Federal Court of Australia Act 1976* s.23, mean that the Court has power to set right the wrongs created by the interference. That should include injunctive relief that would prevent the parties taking further steps in the ballots or unprotected industrial action.

24D. It might also include writs in the nature of certiorari quashing the orders of the Commission. It is not contended that the Commission erred in issuing the PABO. The concern is that, because of subsequent interference, the result of the ballot is unsound and further steps following the Commission's orders ought to be stopped. That makes the concept of a writ in the nature of certiorari peculiar, because it is not being used to quash a decision made beyond jurisdiction. Nor is this an appeal. But, if the ballot is indeed vitiated, no further steps

[27] FWA s.459.
[28] Affidavit of M Davis, 12 April 2024, [40] and exhibit MD-4.

ought to be taken under the Commission's orders, so that the ballot is not completed and no industrial action may follow it. It is a writ *in the nature of* certiorari in the fullest sense.

25. [Not used]

Balance of convenience

26. Concerning the balance of convenience, should the interlocutory relief sough be:

a. granted, at worst there will be some delay before the First Respondent's members may complete a protected action ballot unafflicted by the present interference, during which time they will still be entitled to their current industrial rights; or

b. not granted:

i. the results of the ballots will be announced, broadcasting to workers a tainted message about the views of their fellows on industrial action that may bear on any re-conduct of the ballots (should ballots be retaken);

ii. the Applicant's employees may proceed towards unprotected industrial action, opening themselves to a stop order, penalty or damages;[29]

iii. the Applicant stands to be subject to unprotected industrial action, along with the work stoppages economic harms that typically attend such action.

27. The damages of the type described, not just to the Applicant but its workers and the State,[30] suggest an award of damages is likely an insufficient remedy should unprotected industrial action proceed.

28. The purpose of an interlocutory injunction is to preserve the status quo between the parties pending final hearing.

29. The Court ought to preserve this "pre-ballot" status quo with the injunctive relief sought. It ought not allow the current protected action ballots to proceed, infected as they are by the First, Third, Fourth, Fifth and Sixth Respondents' interferences.

30. By the ballot timetables, the ballots ~~are due to~~ closed by the end of 12 April 2024. By Collier J's interim orders on 12 April 2024 the announcement of the results was enjoined. The ~~interim~~ interlocutory relief sought will prevent the ballot being tallied or announced or further steps being taken. The Second Respondent is the balloting agent in the protected action ballot orders, joined to ensure they are bound by the orders.

31. It is an offence to contravene a Commission order. The PABO Orders require the Respondents, (particularly the Second Respondent) to do certain things. Accordingly, injuncting the Respondents is not enough. To absolve them of disobeying the PABO Orders, this Court ought also stay or quash nisi the PABO Orders.

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[29] FWA ss.418, 421.

[30] Affidavit of M Davis, 12 April 2024, [45].

Mr J.A.S. Ford

Counsel for the Applicant

15 April 2024

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	15/04/2024 3:53:39 PM AEST
Date Accepted for Filing:	15/04/2024 3:53:47 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

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Form 59
Rule 29.02(1)

Affidavit

No. QUD189 of 2024

Federal Court of Australia
District Registry: Brisbane
Division: Fair Work

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and others
Respondents

Affidavit of:	**Alicia Jane Wood**
Address:	Level 3, North Tower, 339 Coronation Drive, Milton QLD 4064
Occupation:	Industrial Relations Lead, Ghella ANZ
Date:	15 April 2024

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I Alicia Jane Wood, Industrial Relations Lead (Ghella ANZ), affirm:

Filed on behalf of (name & role of party) CPB Contractors Pty Ltd, Applicant
Prepared by (name of person/lawyer) Alexander Millman
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax
Email [redacted]
Address for service (include state and postcode) Level 23, 66 Eagle Street, Brisbane QLD 4000

[Version 3 form approved 02/05/2019]

[redacted]
Witness

[redacted]
eponent

1. I am employed by Ghella Pty Ltd trading as Ghella ANZ (**Ghella**) in the role of Industrial Relations Lead.

2. Ghella is a member, together with the Applicant, of the joint venture known as CBGUJV that is working to deliver the Cross River Rail Project (**CRR Project**) for the Queensland Government.

3. The CRR Project involves building and construction work performed by employees and contractors of the Applicant and other members of the CBGUJV across various work sites. These work sites are at Albert Street, Boggo Road, Roma Street, Southern Area, Northern Portal and Woolloongabba in Brisbane.

4. In my role I manage a team of industrial relations advisors and am the first point of contact with whom workers on the CRR Project may raise concerns. I also provide industrial relations support to on-site teams to ensure the smooth running of the CRR Project. On average, I spend about 20% of my working time on-site.

5. In my role I am also aware that employees of the Applicant who are also members of the Construction, Forestry, Maritime and Energy Union (**Union**) would be voting in relation to proposed protected industrial action between 8 April 2024 and 12 April 2024 pursuant to orders issued by the Fair Work Commission on 3 April 2024 in matters B2024/260 and B2024/261 (**PABO Ballots**).

Events of 8 April 2024

6. At about 8:00AM on 8 April 2024 I spoke in person with Mr James Maher (Site Manager) while I was at the Albert Street Site.

7. Mr Maher said that on Friday (which was 5 April 2024) employees of the Applicant eligible to vote in the PABO Ballots (**Voters**) received a text message from the Union. He said that the words of the text message were to the effect that Voters should not vote alone.

8. To the best of my recollection, Mr Maher said that:

   (a) in the morning of 8 April 2024 delegates of the Union, Mr Sean Korostovetz and Mr Sean Amies, arranged a meeting to occur at the Albert Street site at 9:00AM;

   (b) Mr Maher understood that the reason for the meeting was to ensure that all Voters voted together;

   (c) the Voters were informed by site management that no meeting was to take place, which I understood to mean that Mr Maher had communicated this to the Voters;

[redacted] [redacted]

Witness Deponent

(d) Mr Korostovetz and Mr Amies instead arranged a "smoko" meeting to occur at 10:00AM in one of the crib rooms on site;

(e) approximately six (6) Voters attended the meeting at 10:00AM with Mr Korostovetz and Mr Amies.

Events of 9 April 2024

9. Sometime between 7:00AM and 8:00AM on 9 April 2024 I received a telephone call from Mr Maher. In this telephone call Mr Maher said that some of the Voters had come to him expressing that they felt bullied about the conduct of the vote, and wanted to put in a statement.

10. At approximately 9:00AM two (2) Voters (**Voter A** and **Voter B**) attended the Albert Street site office (located on Mary Street) where I met with them together with Mr Maher. These Voters were known to me as employees of the Applicant and eligible to participate in the PABO Ballots.

11. I spoke with both Voters together and informed them that:

(a) I understood that they wanted to make a statement;

(b) I assured them of the confidentiality of their statement;

(c) I offered to leave the room while they wrote their statements by hand; neither Voter asked me to leave the room.

12. The Voters then wrote their statements by hand. I do not recall talking to either of the abovementioned Voters while they wrote their statements. Each Voter signed their statements and I co-signed their statement as the person taking the statement.

Events of 11 April 2024

13. At approximately 9:00AM I had a telephone conversation with Mr Maher checking-in on the situation on-site in relation to the PABO Ballot.

14. During this conversation Mr Maher informed me that another Voter (**Voter C**) wished to make a statement.

15. Mr Maher and Voter C attended the Albert Street site office shortly thereafter. I spoke briefly to Voter C in which I said to them:

(a) that I understood they wished to make a statement;

(b) that the statement would remain confidential;

[redacted]

Witness

[redacted]

Deponent

(c) that they should include as much information as they could recall; and

(d) I offered to leave the room while they wrote their statement.

16. I have since been informed that Voter A, Voter B and Voter C does not wish their statement to be provided in evidence in its original form for fear that their handwriting may be recognised. I therefore on 15 April 2024 typed up:

(a) Voter A's statement, a true typed copy of which (redacted to protect their identity at this time) is **Annexure AW1** to this affidavit;

(b) Voter B's statement, a true typed copy of which (redacted to protect their identity at this time) is **Annexure AW2** to this affidavit;

(c) Voter C's statement, a true typed copy of which (redacted to protect their identity at this time) is **Annexure AW3** to this affidavit;

Affirmed by the deponent)
at Brisbane)
in Queensland)
on 15 April 2024)
Before me:)

[redacted]
Signature of deponent

[redacted]
Signature of witness

Alexander Edward Millman, Solicitor

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**AW1**" referred to in the affidavit of Alicia Jane Wood sworn at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident:		**Incident No:**	
Project:	CRR-TSD	**Interview Date:**	09/04/2024

WITNESS / INVOLVED PERSONS DETAILS

Name:	Redacted	**Position:**	Redacted
Project / Department:	TSD	**Company**	
Shift / Crew:	Site Labour	**Supervisor:**	Redacted
Contact Details:	Redacted	**D.O.B:**	Redacted

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge
Redacted	

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

During the process leading up to the ballot we received the CFMEU sent out txt msgs saying do not vote alone and there will be a meeting to do so.

While having smoko we got instructed by the CFMEU to go sit with them to do the ballot together as they stood around us watching.

They instructed us what to put on the ballot and I felt pressure from them to do so, in my understanding a ballot should be private and done alone to make the decision.

This made me feel uncomfortable.

The CFMEU also told us the ballots mean nothing and we will be doing a hands up vote at the CFMEU house on Monday to decide. I feel this is not fair as they are very intimidating when there and it won't be confidential.

Note anything unusual you observed prior to or during the incident (sights, sounds, smells, etc):

What was your role in the incident sequence?

What conditions influenced the incident (weather, time of day, equipment malfunctions, etc)?

Did anyone influence the incident (actions, emergency response, etc), if so how?

How do you think the incident could have been prevented?

Please list other possible witnesses:

Redacted

Additional comments/observations:

I declare that the above statement is true and accurate.

Witness Name: Redacted **Date:** 09/04/2024

Signature: Redacted

Interviewer: **Date:**

Signature:

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**AW2**" referred to in the affidavit of Alicia Jane Wood sworn at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident:		**Incident No:**	
Project:	CRR-TSD	**Interview Date:**	09/04/2024

WITNESS / INVOLVED PERSONS DETAILS

Name:	Redacted	**Position:**	Redacted
Project / Department:	TSD	**Company**	
Shift / Crew:	Site Labour	**Supervisor:**	Redacted
Contact Details:	Redacted	**D.O.B:**	Redacted

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge
Redacted	

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

Prior to the day of voting I received text msgs from CFMEU stating we'll all vote together on Monday. This again was said to me on the morning of 8th April from delegate Shawn.

At a 1st lunch break I and others were coerced into another room and were instructed we should all vote yes to all questions regarding the ballot.

I felt uncomfortable that I was being coerced to vote for them.

Note anything unusual you observed prior to or during the incident (sights, sounds, smells, etc):

What was your role in the incident sequence?

What conditions influenced the incident (weather, time of day, equipment malfunctions, etc)?

Did anyone influence the incident (actions, emergency response, etc), if so how?

How do you think the incident could have been prevented?

Please list other possible witnesses:

Redacted

Additional comments/observations:

I declare that the above statement is true and accurate.

Witness Name: Redacted **Date:** 09/04/2024

Signature: Redacted

Interviewer: **Date:**

Signature:

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**AW3**" referred to in the affidavit of Alicia Jane Wood sworn at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident:		**Incident No:**	
Project:	CRR-TSD	**Interview Date:**	11/04/2024

WITNESS / INVOLVED PERSONS DETAILS

Name:	Redacted	**Position:**	Redacted
Project / Department:	TSD	**Company**	
Shift / Crew:	Site Labour	**Supervisor:**	Redacted
Contact Details:	Redacted	**D.O.B:**	Redacted

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge
Redacted	

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

On Monday morning 8th of April 2024 received text message stating voting will be conducted at a meeting with your delegate. Please do not vote separately and was pressured to vote yes.

I felt pressured into voting for a yes vote and not having my say.

I put my vote in by myself and had my say. I was told I should of voted with them (CFMEU) and was questioned about my vote.

Note anything unusual you observed prior to or during the incident (sights, sounds, smells, etc):

What was your role in the incident sequence?

What conditions influenced the incident (weather, time of day, equipment malfunctions, etc)?

Did anyone influence the incident (actions, emergency response, etc), if so how?

How do you think the incident could have been prevented?

Please list other possible witnesses:

Redacted

Additional comments/observations:

I declare that the above statement is true and accurate.

Witness Name: Redacted **Date:** 11/04/2024

Signature: Redacted

Interviewer: **Date:**

Signature:

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	15/04/2024 3:53:39 PM AEST
Date Accepted for Filing:	15/04/2024 3:53:47 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59
Rule 29.02(1)

Affidavit

No. QUD189 of 2024

Federal Court of Australia
District Registry: Brisbane
Division: Fair Work

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and others
Respondents

Affidavit of:	**Jessica Dalauidao Allam**
Address:	Level 3, North Tower, 339 Coronation Drive, Milton QLD 4064
Occupation:	Shared Services Administrator
Date:	15 April 2024

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1	Affidavit of Jessica Dalauidao Allam in support of in support of the application by CPB Contractors Pty Ltd for injunctive relief, affirmed 15 April 2024	1-11	1-3
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3	Annexure "JA2", being copy of the statement of Voter B	11(b)	7-8

I Jessica Dalauidao Allam, Shared Services Administrator, affirm:

Filed on behalf of (name & role of party) CPB Contractors Pty Ltd, Applicant
Prepared by (name of person/lawyer) Alexander Millman
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax
Email [redacted]
Address for service (include state and postcode) Level 23, 66 Eagle Street, Brisbane QLD 4000

[redacted]
Witness

[redacted]
Deponent

1. I am employed by Ghella Pty Ltd trading as Ghella ANZ (**Ghella**) in the role of Shared Services Administrator.

2. Ghella is a member, together with the Applicant, of the joint venture known as CBGUJV that is working to deliver the Cross River Rail Project (**CRR Project**) for the Queensland Government.

3. In my role I provide human resources and industrial relations support to on-site teams, including providing support to on-site management in their interactions with relevant trade unions. I am primarily based on-site at the CRR Project's Roma Street site.

4. From my work I am aware that employees of the Applicant who are also members of the Construction, Forestry, Maritime and Energy Union (**Union**) would be voting in relation to proposed protected industrial action between 8 April 2024 and 12 April 2024 (**PABO Ballots**).

Events of 11 April 2024

5. In the morning of 8 April 2024 I met with Mr Shane Bradley (Site Superintendent, Roma Street) who explained that they had been approached by two employees (**Voter A** and **Voter B**) who were eligible to vote in the PABO Ballots (**Voters**) who said that they had been the subject of harassment in relation to the casting of their vote in the PABO Ballot.

6. I told Mr Bradley that if these Voters were willing to make a statement I would be happy to facilitate that process.

7. In the morning of 11 April 2024 I met with Voter A and Voter B at the Roma Street site office. I asked both Voters if they were willing to make a statement about their experiences regarding the PABO Ballot. They both confirmed that they were willing to do so.

8. Both Voter A and Voter B were known to me as employees of the Applicant and eligible to vote in the PABO Ballot.

9. I provided both Voters a blank "Interview Record" form and asked them to complete it by hand. I left the room while the Voters completed this form.

10. When the Voters finished completing these forms they came to me and provided these to me by hand.

11. A true copy of:

    (a) The statement of Voter A, redacted to protect their identity at this time, is annexed to this affidavit and marked **Annexure JA1**;

[redacted] [redacted]

Witness Deponent

(b) The statement of Voter B, redacted to protect their identity at this time, is annexed to this affidavit and marked **Annexure JA2**.

Affirmed by the deponent)
at Brisbane)
in Queensland)
on 15 April 2024)
Before me:)

[redacted]
Signature of deponent

[redacted]
Signature of witness

Alexander Edward Millman, Solicitor

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**JA1**" referred to in the affidavit of Jessica Dalauidao Allam affirmed at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident: _____ **Incident No:** _____

Project: CRR-TSD **Interview Date:** 11-4-24

WITNESS / INVOLVED PERSONS DETAILS

Name: [redacted] **Position:** Operator / Hummelter

Project / Department: CRR / Roma st **Company** CPB

Shift / Crew: Trumelle **Supervisor:** [redacted]

Contact Details: [redacted] **D.O.B** [redacted]

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge
[redacted]	

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

On Monday 8-4-24 our crew were called in for a meeting with CFMEU to discuss the EBA that had be put forward to CPB. The people involved at the head of the meeting were Dean Riley, Dean Mathes, Mark McLean, Joseph Prior and Dillon Howard Towards the middle of the meeting Darryl Assam put forward some questions to them about how their proposals could affect the CPB / CRR workforce on behalf of all CFMEU members on site. At the conclusion of the meeting Dean Mathes asked everyone to get out their phones and vote, having said only 5 minutes beforehand we had until

Friday 2pm to decide our final Vote - Yes or No.
Dean Mathes suggested to everyone in the meeting to Vote YES to every question that was asked in the ballot.
Daryl suggested to him and the members that the voting does not have to be done right now, and that people need time to think about their decision, and talk about it with their families first, as this personal decision can have a huge impact on their families and their working future. I know myself and the majority of the people in the room were made to feel pressured into voting YES (for industrial action).
Dean Mathes responded "Ok are we going to do this or what", once again putting huge pressure on everyone in the room. It was then that Daryl stood up and politely thanked them for the meeting, shook all of their hands and said, he'll be making his decision when he is ready, not when they tell us to. I felt the same way.

No. QUD189 of 2024

Federal Court of Australia

District Registry: Brisbane

Division: Fair Work

CPB Contractors Pty Ltd

Applicant

Construction, Forestry and Maritime Employees Union and others

Respondents

CERTIFICATE OF ANNEXURE

This is the Annexure referred to as "**JA2**" referred to in the affidavit of Jessica Dalauidao Allam affirmed at Brisbane on 15 April 2024 before me:

[redacted]

Deponent

[redacted]

Witness

CBGU D&C JV

Interview Record

INCIDENT DETAILS

Incident: _____ **Incident No:** _____

Project: CRR-TSD **Interview Date:** _____

WITNESS / INVOLVED PERSONS DETAILS

Name: [redacted] **Position:** _____

Project / Department: _____ **Company** _____

Shift / Crew: _____ **Supervisor:** _____

Contact Details: _____ **D.O.B:** _____

Describe the witnesses skills and knowledge, that may be of relevance to the incident

(e.g. A rigger with 16 years of experience rigging various loads, who witnessed a rigging incident)

Skills	Knowledge

STATEMENT

Please provide a detailed description of the incident and the events leading up to the incident

WE HAD A UNION MEETING WHICH GOT HEATED. THEY WERE REALLY PUSHING THE YES VOTE AS WE WERE SITTING THERE JASON EMMERSON CAME IN TO GIVE THEM THE THUMBS UP & SAID IT'S ALL DONE. WHICH WE FOUND OUT WAS HE MORE OR LESS STOOD OVER HE'S BOYS & GOT THEM TO VOTE YES. THEN THE CFMEU WHO WAS PUSHING FOR US TO VOTE YES ASKED US TO PULL OUT OUR PHONES SO THEY COULD GET US TO VOTE YES. WHEN [redacted] STOOD UP AND SAID NO THAT WONT BE HAPPENING CAUSE ITS OUR RIGHT TO CHOOSE WHICH DEAN MATTAS DEAN RILEY. DYLON HOWARD MARK MCKEAN. JOSEPH PRYOR DID NOT LIKE IT GOT HEATED & THEY STORMED OUT.

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	15/04/2024 4:49:41 PM AEST
Date Accepted for Filing:	15/04/2024 4:49:52 PM AEST
File Number:	QUD189/2024
File Title:	CPB CONTRACTORS PTY LTD v CONSTRUCTION, FORESTRY AND MARITIME EMPLOYEES UNION & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA
AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59
Rule 29.02(1)

Affidavit

No. QUD189 of 2024

Federal Court of Australia
District Registry: Brisbane
Division: Fair Work

CPB Contractors Pty Ltd
Applicant

Construction, Forestry and Maritime Employees Union and others
Respondents

Affidavit of:	Terence (Terry) Prior
Address:	Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia
Occupation:	Industrial Relations Manager, CPB Contractors Pty Ltd
Date:	15 April 2024

I Terence (Terry) Paul Prior, Industrial Relations Manager (CPB Contractors Pty Ltd), affirm:

1. I am employed by the Applicant in these proceedings (**CPB**) in the role of Industrial Relations Manager working on the CRR Project in relation to the Tunnels, Stations and Development (**TSD**) package of works, awarded to the CBGU Joint Venture.

2. The CRR Project involves building and construction work performed by employees and contractors of the Applicant and other members of the CGBUJV across various work sites. These work sites are at Albert Street, Boggo Road, Roma Street, Southern Area, Northern Portal and Woolloongabba in Brisbane.

3. In my role as the Industrial Relation Manager, I work closely with the Shared Services Director, Mr Chris Butler, to deal with and respond to Industrial Relations issues that arise in relation to the TSD package of works from time to time.

Filed on behalf of (name & role of party) CPB Contractors Pty Ltd, Applicant
Prepared by (name of person/lawyer) Malcolm Davis
Law firm (if applicable) Mills Oakley
Tel [redacted] Fax
Email [redacted]
Address for service (include state and postcode) Level 23, 66 Eagle Street, Brisbane QLD 4000

[redacted]
Witness

[redacted]
Deponent

4. When I became aware of the Construction, Forestry, Maritime and Energy Union (**Union**) applications to the Fair Work Commission seeking Protected Action Ballot Orders that would be the subject of voting between 8 April 2024 and 12 April 2024 in matters B2024/260 and B2024/261 (**PABO Ballots**), I had cause to consider what responses CPB might theoretically take in the event that the votes approved industrial action, particularly in relation to the possible consequences for the TSD package of works. That work and planning is necessarily very general in nature because we are not, at that stage, sure of the timing of the proposed action and consequently the particular scheduled works that are likely to be impacted.

5. Given the complexity of the various construction activities that are being undertaken across the CRR Project, planning to manage the consequences of potential protected industrial action is a complicated process. Much of that planning cannot be finalised until after the Union has given formal notice of their intentions to take action, which also describes the nature of the action that is proposed to occur.

6. Upon receipt of a notice from the Union, giving three workings days' notice of the commencement of protected industrial action, CPB will then need to urgently consider what works are scheduled to be performed and then determine the likely impact that the proposed industrial action will have on those works. Once that has been determined, careful consideration will need to be given to the action that CPB might take in response to that action. Those options include the taking of response action, which might include a lock out of workers, or making alternative arrangement to have the scheduled works performed at a different time or in a different way. The planning of these responses, may have significant cost implications for CPB and the other CBGU JV parties and/or lead to changes to the construction programme, which in turn may have very significant costs implications for the project.

7. If the outcomes of the PABOs current being challenged in these proceedings were to be announced and the Union was permitted to issue notices giving three days' notice of their intention to commence protected industrial action, without first determining whether the PABO votes were subject to irregularity, would cause CPB and the other CBGU JV parties to immediately take action to reschedule works and to make other plans that

[redacted]
Witness

[redacted]
Deponent

would inevitably cause disruption to the orderly conduct of the CRR Project, which in turn would likely cause CPB and the other CBGU JV parties to incur significant additional costs, expenses and delays to the project as a whole.

Affirmed by the deponent
at Brisbane, Queensland on 15 April 2024
Before me:

[redacted]
Signature of deponent

[redacted]
Signature of witness

Alexander Edward Millman, Solicitor

Witness

Deponent