Form 59
Rule 29.02(1)

Affidavit

No. of 2021

Federal Court of Australia

District Registry: New South Wales

Division: Employment and Industrial Relations

CPB Contractors and others

Applicants

Construction, Forestry, Maritime, Mining and Energy Union and others

Respondents

Affidavit of: **Nicholas Forde**

Address: [redacted]

Occupation: Senior Industrial Relations Advisor

Date: 11 November 2021

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Nicholas Forde, affirmed on 11 November 2021	[1] – [108]	1
2	Annexure "NFOA", being a copy of three photographs depicting the Gabba Station's Leopard St truck entrance	[12]	19
3	Annexure "NF01", being copy of Mr Paul and Mr Davis onsite	[36]	22
4	Annexure "NF02", being copy of CCTV footage of Mr Paul and Mr Davis accessing site on 31 August 2021	[48]	24
5	Annexure "NF03", being copy of CCTV footage of Mr Blakeley accessing site on 20 October 2021	[88]	25

Filed on behalf of (name & role of party)

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Email

Address for service
(include state and postcode)

[redacted]

Document number	Details	Paragraph	Page
5	Annexure "NF04", being copy of CCTV footage of 21 October 2021 of Mr Blakeley and Beau Seiffert entering site	[93]	26

I Nicholas Forde of 339 Coronation Drive, Milton, Queensland, Senior IR Advisor, affirm:

1. Where the words in this statement relate to conversations in direct speech, the words identified were those words used to the best of my recollection and reflect the substance of what was said.

Role and Background

2. I am a Senior Industrial Relations (**IR**) Advisor employed by Ghella Pty Ltd (**Ghella**) on the Cross River Rail Project.

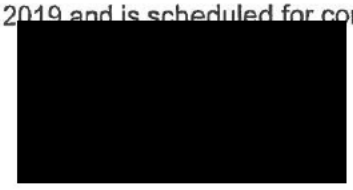
3. I commenced working for Ghella in 2021 and have been assigned to the Project as the Senior IR Advisor since my commencement. Prior to this, I have held roles such as Project HR Manager and IR Advisor. I have been in the construction and mining industry since 2008. I have a bachelor's degree in Business.

4. As the Senior Advisor, my role involves interpreting and applying the relevant industrial instruments that are being applied on the Project. I also oversee any other employment matters relating to the CPB blue collar workforce. Another part of my role involves being the union interface across the Project and managing right of entries of union officials and ensuring compliance with the Code for the Tendering and Performance of Building Work 2016 (The Building Code). I report to Terry Prior (**Prior**) who is the IR Manager for the Project. I have three Industrial Relations Advisors that report to me—Jonathan Bekkers (**Bekkers**), Andrew Marsden (**Marsden**) and Alicia Wood (**Wood**) on a day to day basis.

The Project

5. The Project is a joint venture consortium between CPB Contractors Pty Ltd, BAM International Australia Pty Ltd, Ghella Pty Ltd and UGL Ltd (**CBGU JV**). CBGU JV is undertaking the Tunnel, Stations and Development package of the Project.

6. CBGU JV is the principal contractor on the Project and has been engaged by the Cross River Rail Delivery Authority, which is the Queensland Government, to construct a new rail infrastructure project. When complete, the Project will deliver approximately 10 kilometres of new rail line between Dutton park and Bowen Hills, including approximately six kilometres of tunnel under the Brisbane River and Brisbane CBD. It is valued at approximately $5.4 billion. I understand that major construction works for the Project commenced in late 2019 and is scheduled for completion in either 2024 or 2025.



7. There are ten individual construction sites associated with the Project, four of these are associated with the new stations being built at Woolloongabba (**Gabba Station**), Roma Street Station, Albert Street Station and Boggo Road Station, four sites are associated with the tunnels being built at Woolloongabba (**Gabba Tunnel**), Roma Street Tunnel, Albert Street Tunnel and Boggo Road Tunnel. There are two additional sites known as Northern Portal which is in Spring Hill and Southern Area Works which is located near the Princess Alexandra Hospital.

8. Each of these sites has their own site management team. The locations that are building the new stations, have separate site management teams for the stations and tunnels component. Although they are considered part of the overall Cross River Rail project, they run as individual sites. There is an IR Advisor located on each of the sites where a new station is being built. Bekkers is based at Albert Street, Marsden at the Roma Street site, Wood at Boggo Road, and I am located at the Gabba site. Although I am based at the Gabba site, I oversee the IR advisors and provide them with assistance on their sites when required.

Standard Right of Entry Procedure

9. The Project, across all of its sites, has a standard procedure for handling rights of entry (**ROE**), which is as follows:

   - The union official is to wait outside the turnstile / gate access to the particular site for a representative from the Project to come and meet them to discuss their request to access site. If it's a section 117 *Work Health and Safety Act 2011* (Qld) (**WHS Act**) ROE, the union official can call up the Superintendent of the site to come meet them at the turnstile / gate, or alternatively they can request one of the traffic controllers to make a call over the radio to organise a Project representative to come meet the official at the turnstile / gate.
   - The Project representative (who is typically a Superintendent / Safety Advisor / or IR Advisor) will then meet and discuss with the union official their purpose and right to enter site. For example, if it's a section 117 WHS Act ROE, the entry notice will be requested and reviewed by the site team to determine their right to enter.
   - The applicable ROE Permits of the union official will then be checked i.e., their Federal Fair Work Act and their State WHS Act entry permits to confirm that they have a right to enter the construction site for the purpose they wish to enter
   - If it is deemed that the union official has a right to enter, they will be escorted through the pedestrian turnstile / gate.



- The union official is then requested to sign into the Damstra Kiosk as a Visitor and complete the visitor induction. They are also requested to complete the Queensland Government QR Covid-19 check in via their mobile phone. This is a site requirement for all visitors to gain access to site.
- If the union official wishes to inspect the site works, then the union official's PPE (personal protective equipment) is also checked to determine if they are compliant with the requirements of the site. This is typically completed by a Safety Advisor.
- This is the same process that is conducted for any Workplace Health and Safety Inspector that requests site access to conduct a safety inspection of the site.

10. It is important that all visitors, including union officials, complete the correct site access process for the following reasons:

- So that the site team is aware of their presence on site, so that the official does not put themselves at risk; unlawfully disrupts any works; or harasses or intimidates any workers.
- They are logged into the Damstra system so that they are included in any evacuation process, and they are included in the random fitness for work program.
- They complete a visitor induction which provides them with key information on the site safety rules and risks that are associated with the site.
- They have compliant PPE in accordance with site safety requirements. If a visitor is intending to move beyond a crib area into an active work zone the site PPE requirements are that every visitor wear a Hardhat, Hi-visibility long sleeve shirt, Long pants, Steel Capped Boots, Protective Glasses and Gloves.
- The appropriate checks have been made that the union official has a right to be on a construction site in accordance with the applicable right of entry legislation.
- The union officials enter through the correct pedestrian gate and are escorted so that they do not put themselves at risk of being hit by a truck or vehicle by coming through the vehicle entrance / exit gates.
- They are registered via the QR Covid-19 check in for contact tracing purposes in the event there is a confirmed Covid-19 case on site.

Signage

11. There are a number of signs that are affixed to the exterior fences and walls that surround each of the project sites. Typically these signs are located at the pedestrian and vehicle entrances to the sites. This signage includes signs that state the following: -

[redacted]

- "All Visitors must report to the site office";
- "No Entry – Construction Vehicles excepted";
- "Danger Construction Site Unauthorised persons keep out";
- "It is a condition of entry to this site that all visitors and workers sign in at the Damstra Portal and complete the Check in Qld App";
- "Authorised personnel only";
- "This Personal Protective Equipment must be worn on this site [insert picture of Hardhat, Steel Capped Boots, Protective Glasses and Gloves]";
- "UHF Channel [insert relevant channel number]";
- "No Pedestrian Access";

Events of 19 August 2021

12. I crave leave to refer to my earlier affidavit affirmed 26 October 2021. Annexed hereto and marked with "**NF0A**" are photographs of the Gabba Station's Leopard St truck entrance that Mr Blakeley entered on 19 August 2021 and again on 20 October 2021.

Events of 31 August 2021

13. I arrived and commenced work and pre-start at the Gabba Stations at about 6:00am. I then departed on foot from the Gabba Stations and arrived at the Boggo Road Station site at approximately 7:50am.

14. At 8.15am I received a text message from Matt Papworth (Senior HR Advisor at CPB Contractors Pty Ltd) which stated "*CFMEU Official at eco science building, across the road at Boggo Rd.*" I was upstairs at the office of Boggo Rd and went and looked out the window of the office at the area referred to by Mr Papworth and saw one of the union officials, a man sitting at the picnic table at the park outside the turnstiles beyond the entrance to the site. I didn't recognise the man. I later become aware that there was a second union official with this man.

15. Mr Papworth received a phone call which informed him that there were CFMMEU officials at Southern Area Works trying to access site. Southern Area Works is a separate site with a separate site access and management team. Papworth and I agreed that he would head down straight away to Southern Area Works, and I will remain at Boggo Road.

16. I then caught up with Darrin Gaske (Boggo Road Site) to prepare for the union officials' entry.



17. While doing so I continued to watch one of the officials where he was waiting at the picnic table. I saw him get up and go to the turnstile entrance.

18. Mr Gaske and I then went down to the turnstile to meet the union officials, but the officials had left the area and had started walking down the road.

19. Mr Gaske, Alicia Wood (IR Advisor) and I followed and caught up with the officials who were walking towards the J2 truck gate. We all introduced ourselves, and the union officials introduced themselves as Kurt Pauls and Michael Davis. I had not met either of these union officials before.

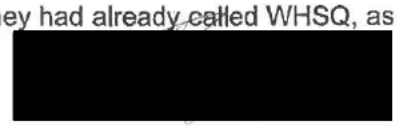
20. Mr Pauls said, "*We want to come on-site under section 81(3) to discuss some safety issues that have been raised with us.*" I asked '*What are the safety issues?*" and I was given the reply that it was about "*Access/egress*"..."*maintenance of plant*"..."*falling from heights*"... and "*some other issues.*" These were the same type of generic safety issues that other CFMMEU officials put on their section 117 entry notices.

21. I said, "*Can I have your entry permits?*", but was told by the officials that "*We don't need to provide them, they are not required for a section 81(3) entry.*" The union officials instead provided me with CFMEU business cards. I said, "*We will need to get some advice, can you please come back up to the main turnstile gate.*"

22. We all walked back up to the main turnstile access gate. Mr Gaske, Ms Wood and I then entered the turnstiles and made phone calls. I also went onto the Australian Building and Construction Commission (ABCC) website and searched their database for Mr Pauls and Mr Davis to determine if they held current Federal Right of Entry Permits. I identified Mr Pauls and Mr Davis as not having Federal entry permits as the database listed them as having 'No entry permit' on the ABCC app.

23. I said to Mr Gaske, "*These guys (Mr Pauls and Mr Davis) don't have federal right of entry permits, so they cannot exercise a right under the WHS Act* (referring to the Work Health and Safety Act 2011 (Qld)*) if they are not federal permit holders. There is a recent High Court decision which ruled on this.*" I confirmed this with a phone call to Terry Prior (Industrial Relations Manager).

24. At 8.45am Mr Gaske, Ms Wood and I went out through the turnstile to talk to Mr Pauls and Mr Davis at the picnic table. Mr Gaske said to both of them, "*You aren't coming onsite, because you don't have a federal permit.*" Pauls and Davis disagreed saying, "*We can access the site*" and "*We don't need a federal permit.*" I explained that, "*To exercise a state WHS right, you need to have a federal right of entry permit and since you don't have one, you can't come onsite.*" Pauls and Davis disputed this and said "*WHSQ* (Workplace Health and Safety Queensland) *are on their way.*" I thought this was strange that they had already called WHSQ, as if they were pre-empting this situation.



25. Mr Gaske, Ms Wood and I waited onsite while the officials waited at the picnic table. While we were waiting, I started a search on my phone to find an article about the recent High Court Decision directly relating to this particular case. I also called Mr Prior to see if he could dig it out. Mr Prior emailed me at about 9.00am with the summary of the case which I could look up on my phone. The circumstances in the case summary dated 13 April 2021, appeared to me to be similar to what was currently occurring. I determined that Mr Pauls was one of the persons involved in the High Court case, and that matter was still before the courts pending a penalty hearing.

26. At 9.30am two WHSQ Inspectors arrived, Travis Dungley and Garry Stanley (**the Inspectors**). The Inspectors spoke to Mr Pauls and Mr Davis first and took down all the safety issues raised by Mr Pauls. The Inspectors then met with Mr Gaske, Ms Wood and I, and explained that "*They (*being Mr Pauls and Mr Davis*) have requested to enter site under section 81(3) for issues raised about the plant not being maintained, falls from height, lifting gear register, safe storage of hazardous chemicals and access/egress.*"

27. In response to the Inspectors I said, "*They ((*being Mr Pauls and Mr Davis*) don't have federal right of entry permits, and therefore they are not fit and proper persons to access a construction site.*" Mr Travis replied, "*What do you mean?*' and I repeated that "*since their federal right of entry permits have been revoked, they have been deemed as not being fit and proper persons to be on a construction site. And therefore, we are not letting them on as they require a federal permit to exercise a WHS right under section 81(3).*" Mr Travis asked, "*Are you going to tell the officials this?"* to which I replied, *"I already have, but we can tell them again."*

28. The WHSQ inspectors, Mr Gaske, Ms Wood and I then walked back up to the picnic table to talk to the union officials. I again explained "*You cannot come onsite since you do not have federal right of entry permits*". There was some discussion and disagreement about this. We said to the inspectors that they, being WHSQ inspectors could come onsite, but we will not be allowing Mr Pauls and Mr Davis onsite.

29. The Inspectors accessed site through the turnstiles, while Mr Pauls and Mr Davis waited outside. The Inspectors signed on as a visitor onto the Damstra Kiosk and scanned the Covid QR code.

30. Shane Bradley (Boggo Tunnel's Superintendent) and Peter Cullen (Senior Safety Advisor) met up with the group. Mr Cullen organised gloves for the Inspectors, as this is a site safety requirement and we headed out to site. I mentioned to the Inspectors "*There has been a recent High Court decision on this, that Union Officials need to have a federal right of entry permit if they want to come onsite under section 81(3), it was a*



job up on Bruce Highway." Mr Dungley said, "*Was that Seymour Whyte*?" I said, "*Yes, that's the one.*"

31. We walked down the scaffold stairs onto a landing, and Mr Gaske was talking to the Inspectors about the site. We then walked downstairs into the excavation box where the bulk of the station's scope of works is occurring. The Inspectors noticed a trench with inadequate barricade and took a photo.

32. At approximately 9.50am I received a phone call from Terry Prior who requested me to "*Go to Albert Street to help the team there, as they were having issues with CFMEU organisers attempting to access the site.*"

33. I then left the Boggo Rd site to wait for an Uber ride to take me to the other site.

34. I received a text message from Mr Papworth which said: '*Mark Curtin wants to talk to you about gates.*' Mark Curtin is the Southern Area Works Project Manager. I called Mr Curtin and he said to me, "*We need to get the J2 truck gate open, there are trucks backed up that need to get out. I have been told that the gates were shut because of the CFMEU being outside.*" I told him "*Call Mr Gaske if it is critical that they be opened, but we need someone on the gate.*"

35. I got picked up in an Uber from Boggo Road at 10.20am and at around 10.45am I arrived at the corner of Albert/Mary Street when I got a call from Peter Melloy (Boggo Tunnel Project Manager) who said "*The two CFMEU organisers are hanging outside the J2 truck gate and are looking to get onsite.*" I understood to be a reference to Mr Pauls and Mr Davis. I realised that this is the same gate that Mr Curtain called me about to get the trucks out from Southern Area Works. I was concerned that Mr Pauls and Mr Davis would then attempt to access the site via this truck gate. I called Mr Prior and agreed that I would head back to Boggo Road.

36. At 11.05am I arrived back at Boggo Road. I saw Mr Gaske and Ms Wood outside in front of the café across the road from the Boggo Station's entrance talking to the Inspectors. I headed down the road to the J2 truck gate. When I got there, I saw Mr Pauls and Mr Davis standing inside the site near the gate. Mr Bradley, and a couple of Supervisors, were standing in front of them so that they couldn't gain further access to the site. Annexed and marked **NF01** is a photo of Mr Pauls, Mr Davis and Inspectors onsite, inside the truck gate.

37. I approached Pauls and Davis and said "*You need to leave the site. This is an unauthorised entry to site. You cannot be onsite, it's an illegal entry and you must leave.*" They declined this directive.

[redacted]

38. Further discussions were had about the right to be onsite as a representative for safety issues under section 81(3). I kept explaining as per my earlier comments that they need to have a federal permit to access site to exercise a WHS Act right. I said, "*There was a recent High Court ruling on this, that you need a federal permit to exercise a state WHS right.*" I said to Mr Pauls "*You were involved in it (the High Court case), on the Bruce Highway job.*" Mr Pauls replied to me saying that, "*You need to do your homework and read up on the law a bit more.*"

39. On a couple of occasions during the conversation Mr Davis and Mr Pauls were escorted to the drinking fountain for a drink across the access gate behind the security hut. Mr Pauls and Mr Davis also utilised the onsite portaloo.

40. At 12.20pm the same WHSQ inspectors returned to the site and met with the group inside the J2 truck gate onsite. Mr Dungley led the discussion and asked "*Are you maintaining the same position?* I said, "*Our position hasn't changed, they need a federal permit to come onsite.*"

41. Mr Dungley asked, "*Who's decision was this*?" I responded, "*It's the law, it's in legislation, there has been a High Court decision on this.*" I suggested to the Inspectors to "*Google the court case when you get back to the office, as it's clear that you need a federal permit.*"

42. Mr Dungley said, "*Do you need to make a phone call? Is it Mick Nash*?" I said "*I will go make a call, but not to Mick Nash. Mick is involved as a Safety Manager.*" I went and called Terry Prior again, who confirmed the position hadn't changed.

43. I went back to Mr Dungley and said, "*The position hasn't changed.*" He asked, "*Did you talk to Mick Nash?*", I said "*No.*"

44. Mr Dungley said to the group that "*From what I understand, they (the union officials) have a right to be onsite under section 81(3) as a representative of the workforce*" and "*We cannot force CPB to take you (the union officials) onsite.*" I said, "*We have a different view on this.*"

45. Mr Dungley went and made a phone call and returned after 5 minutes. He went and spoke to Mr Pauls and said, "*We have gone through the issues*" and "*I have issued the Project with an improvement notice, but we cannot make CPB bring you onsite.*"

46. At 1.00pm The Inspectors departed the site.

47. At 1.05pm Mr Davis left the site and Mr Pauls departed soon after.

48. I then went up and saw Mr Melloy to see if he could show me how Mr Pauls and Mr Davis accessed the site via the CCTV footage, as I was curious to see how they got

through via the J2 truck gate. Annexed and marked **NF02** is CCTV footage of their access.

Events of 15 October 2021

49. At 6.02am I received a text message from Andrew Marsden (Senior IR Advisor) at Roma St Stations that Andrew Blakeley (CFMMEU Official) was onsite under a s117 WHS Act notification.

50. I kept in contact with Mr Marsden throughout the morning. I understand that WHS Inspectors were called by Mr Blakeley to attend the site at Roma Street.

51. When I spoke to Mr Marsden, he said that Mr Blakeley was 'fired up'. I decided to head over to Roma Stations site from Woolloongabba to see if I could provide assistance.

52. At approximately 8.45am, I arrived at Roma Stations site. Work Health Safety Queensland Inspectors (Inspectors) were talking to the Lindore's crane crew and their Safety / Training Manager called Garry Bath, in the crib hut to inspect their licences and determine who needed a particular internal Lindore's refresher training.

53. The Inspectors, Mr Blakeley, Mr Marsden, Paul Head (Roma Station's Safety Lead), Garry Lappin (Superintendent) and I moved into another crib hut for a discussion. The discussion was on the inclement weather procedure and questions from the Inspectors and Mr Blakeley about a post rain event inspection checklist. Since the records of these inspection checklist documents and procedures were back at the Herschel Street office, the group decided to review these documents at the Herschel Street office. I decided to remain at the site.

54. At approximately 9.20am, when the group departed for Herschel St office, I noticed Mr Bath exit the Lindore's crib room. Mr Bath was completing the internal Lindore's refresher training. I said to him, "*How'd you go mate? All done?*" Mr Bath then said "*I've been kicked out, there's another union guy in there talking to the guys.*" I then said "*What do you mean, I haven't seen anyone?*" Mr Bath said again "*There's another union guy in there, he asked me to leave.*"

55. I walked past the crib hut and through the window I saw someone that looked like a CFMMEU official. I saw Mr Lappin walk past, I said to him "*Lappo, there's another guy in their from the CFMMEU, can you come with me to see who it is?*" We entered the crib hut and I saw Beau Seiffert in there talking to the crew with another guy that looked like a CFMMEU official, but I didn't know who he was. He had shorts on, PPE boots, a black CFMMEU T-shirt, a CFMMEU Hi-vis vest on and a black CFMMEU hat.

56. I said to Mr Seiffert, "*What are you doing, how did you get in here?*" Mr Seiffert said "*Through the gate*". I asked Mr Seiffert for his right of entry permits, which he showed

[redacted]

me. I then said to the other CFMMEU Official "*Can I see your permits?*" He said "*I don't have them.*" Mr Seiffert then said, "*He's not an organiser, we are voting him up as the new Lindore's delegate.*" I then said "*Well he looks like an organiser.*" I asked him "*Are you inducted for this site.*" He responded "*No.*" I then said to both him and Mr Seiffert, "*You can't just come onsite like this, he is not even inducted to site.*" Mr Seiffert then said "*Can't I?*" I said "*No, you can't, you will need to leave.*" Mr Seiffert said "*Right now?*" I said, "*Yes, right now.*" Mr Seiffert then said "*Just give me a minute.*"

57. Mr Seiffert and the other CFMMEU guy then departed the crib and walked out the pedestrian gate. As we were walking out I again said "*You can't just come in like this, it's an unauthorised access.*"

58. I then spoke to Mr Lappin who said "The other guy with Mr Seiffert looks like Anthony Perrit." It sounded like Mr Lappin knew Mr Perritt somehow and that he possibly works on the Queen's Wharf job.

59. The group who left for the Herschel office returned, as there had been a brief rain shower. The Inspectors then requested the post rain event inspection checklist from each of the Supervisors from the rain event that just happened. Each Supervisor came in from the field and showed them. The inspectors were happy with this.

60. The Lindore's crane crew had completed their internal Lindore's refresher training and were ready to get back to work.

61. The Inspectors and Mr Blakeley then left the site.

Events of 18 October 2021

62. At approximately mid-morning Andrew Marsden (Senior IR Advisor) informed me that there was a meeting scheduled between Mark Jones (Roma Stations' Project Manager), Chris Lindores (from Lindores Cranes) and Gary Lappin (Roma Station's Superintendent). Mr Marsden provided me an update at 12:20pm, that the same people were now going to have a meeting with the Lindore's crane crew onsite.

63. At approximately 1:00pm Mr Marsden received a phone call from Paul Head (Safety Lead), while Mr Marsden and I were outside of the Roma Street Station truck entrance gate. Mr Marsden told me that Paul had said "*Andrew Blakeley was onsite.*" Mr Marsden and I looked up and down the road we were on but did not see Mr Blakeley. Mr Head then advised that Blakeley was "*In the cribs, I have just had a call from Glenn Ward notifying me.*"

64. Mr Marsden and I then accessed the site and went to Lindore's crib hut. We realised that Blakeley was probably onsite to witness the discussion between Lindores, Garry Lappin and Mark Jones.

[redacted]

65. I opened the crib hut door and saw the Lindore's crew, Mr Jones and Mr Lappin all sitting in a circle type formation, with a Lindores' employee talking. Mr Jones and Mr Lappin had their backs to me from the door I entered. Mr Blakeley was separate from the group, leaning on a table facing the backs of Mr Jones and Mr Lappin. Mr Blakeley was closest to the door I entered in. I asked Mr Blakeley to "*come outside*." Mr Blakeley refused my direction and remained in the crib. I apologised to the group for interrupting.

66. I left to call Mr Prior in order to notify him that Mr Blakely was onsite.

67. At approximately 1:20pm the meeting finished, and the majority of those present left the crib. Mr Blakeley remained in the room with a few Lindore's workers. I re-entered the crib room and said to Mr Blakeley "*Andy, can you come outside*." He replied, "*I will just be a minute*."

68. Mr Jones and Mr Lappin were just outside the crib room. I said to Mr Lappin and Mr Jones, "*Can you give us a hand in getting Blakeley out so we can talk to him*."

69. Mr Lappin went to the door and as he opened it, Chris Lindores and Mr Blakeley exited the room. I said to Mr Blakeley "*How did you get onsite?*" He replied, "*With a swipe card*." I said, "*You just can't come onsite, it's unauthorised*." As we were exiting the site (Chris Lindores and Mr Jones exited in front of us), I said "*You know you have to wait outside the gate and call us up so we can go through your permits and paper work*" I added "*Even if a subbie invites you on, we still need to go through the approvals to access site*." Mr Blakeley then handed me a folded-up section 117 notification form.

70. I stopped to open the section 117 form, and Blakeley continued on walking and caught up with Mr Lindores and Mr Jones down Roma Street.

71. Later I asked Mr Lappin, "*Did someone invite Blakeley to the meeting?*" Lappin replied that "*He just arrived in the room after the meeting started. He was not invited. One of the guys probably texted him that the meeting was on*."

72. From where Mr Blakeley was sitting in the crib room during the meeting when I entered, it is possible that neither Mr Jones nor Mr Lappin were aware that he was present until I arrived.

Events of 20 October 2021

73. At approximately 5:55am I was just about to enter the turnstiles at Gabba Stations when I received a phone call from Matt Russell (Supervisor). Mr Russell said to me that "*Andrew Blakeley has just entered through the Leopard street truck entrance on foot and is in the crib sheds.*"



74. I gathered Mark Weise (Senior Supervisor) and we went to the crib hut. As I entered, I saw Mr Blakeley speaking to the crew from Titan, a subcontractor on the site. Justin O'Neill (Safety Lead) was also present in the crib room.

75. I said to Mr Blakeley, "*You can't just walk onsite through Leopard St, this is considered an unauthorised entry. You will need to leave site as you haven't followed the right of entry process. Why are you onsite?*" Mr Blakeley replied that he was here under "*Section 68, to meet with Richie.*" I understood this to be a reference to the *Work Health and Safety Act 2011* (Qld) (**WHS Act**). I said, "*You mean s70(1)(g). Can you show me your permits*", and he showed me his federal and state entry permits. I said, "*You need to access through the turnstiles and call us up to come meet you so we can go through the correct right of entry process. What you have done is unlawful and you need to leave the site.*" He disagreed with this and we had a back and forth discussion about his right to enter and we continued to disagree on whether his entry was lawful or unlawful. He said, "*If you have a problem, you should report it to the QIRC.*" I understood this to be reference to the Queensland Industrial Relations Commission. I responded by saying "*Because it's unlawful, I will have to report this.*"

76. Mark Weise then said to Mr Blakeley, "*You can't just walk through the truck entrance, it's unsafe, as you could get hit by a truck. You also don't have correct PPE on while walking through site.*"

77. I then asked Mr Blakeley "*What are you planning on doing?*" He responded by saying that he was "*waiting for Richie.*" I asked "*What is the safety matter?*" He said that it was "*between him and Richie and don't need to tell you.*" I said that "*if you are here to assist a HSR then there has to be a safety issue to discuss.*" I said "*Justin (O'Neill) is here, he is our Safety Lead, so you can talk to him about it.*" Mr Blakeley declined to provide any information on the safety matter that he was onsite to assist a HSR with.

78. Mr Blakeley did not follow our direction to leave site, so I exited the crib hut with Mr Weise and Mr O'Neill.

79. At 6:20am Mr Blakeley, Richie (a Heinrich Health and Safety Representative) and Colby (an IPR Health and Safety Representative) started walking onsite. I said to Blakeley, "*You cannot go onsite Andy, you don't have a 117, you haven't done the visitor induction or Covid check in, so we can't authorise your access to site.*" Blakeley disagreed with the site requirements and refused my direction. Mr O'Neill and I followed them onsite via scaffold access stairs down to B9 level (the lowest level). They walked around B9 and B7 levels. Mr Blakeley made comments about water on the ground, and lack of lighting. Mr Weise joined us at B9 for the walk around.



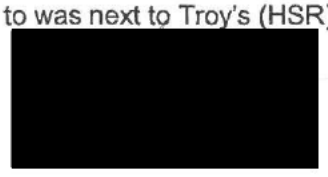
80. At 6.50am we went up to the B4 level, which is the main open deck area where the majority of work is getting done. Warren Tresider (Site Manager) had joined us by this stage. Mr Blakeley was unhappy with walkways, access to the main deck, access into steel fixing pits, and he stopped steel fixing crews from working in the area until two access ways onto the main deck were installed and the proper scaffold access into the pits were installed. A Supervisor organised this immediately. All other work groups were working. Steel fixers were redeployed to other areas. I understand that the WHS workgroup had already assessed this work area and were happy with the current set up, however, Mr Blakeley's proposals for access improvements were implemented rather than being disputed.

81. There was a discussion about the supply of drinking water. Mr Tresider explained that "*The project will be issuing personal 5L water bottles to everyone.*" Mr Blakeley didn't like this idea and said that he expects "T*he bigger water jugs to be organised at all work areas.*"

82. At 8.15am I had another discussion with Mr Blakeley about him being onsite unauthorised. I said "*All we are asking is that you play by the rules. If you had gone to the turnstiles, called us up, or called one of the HSRs to organise us to come down, we can go through the entry process, check permits, give us a s117 and then we can do the site inspection and it would be all good. But since you have come onsite unauthorised, we cannot sanction this visit and we have to report it.*" Mr Blakeley said in response, "*I have done everything that's required, I have shown my permits, I can inspect the site under a 68. I don't need a 117 to walk around site and advise HSRs. How can I advise them from the office?*" Mr Blakeley again said "*If you have a problem, then go report it to the QIRC.*" We again had a back and forth disagreement about his legal right to be onsite.

83. At 8:20am the steel fixers started moving back to the work area as the access had been fixed up as per Mr Blakeley's request.

84. At 8.35am Mr Blakeley and group departed the box, out of the work area, and entered the Heinrich office. Heinrich is a subcontractor on the site. I heard Mr Blakeley say to Scott Pearson (Heinrich Safety manager) and Ross Carrigan (Heinrich Site Manager) "*You need to move over to another desk, and Richie is to sit where Scott is.*" The seat referred to was next to Troy's (HSR) desk. They all share the same open plan office



(which was a 12mx3m sized donger). Mr Carrigan said, "*I am not aware of this.*" I could see Mr Blakeley intimidating Mr Pearson to move and I thought this was not very fair or right, so I said to Mr Blakeley, "*Scotty is not going anywhere." Mr Blakeley responded by saying "Who are you?"* I said to Mr Blakeley, *"Your entry to site is unlawful and you have to leave*." Mr Blakeley declined this request.

85. Blakeley then rang someone, who I believe might have been Hoss Heinrich, as it sounded as if Mr Blakeley was explaining to the person over the phone about the reconfiguring of seats in the Heinrich office. After the phone call, Mr Blakeley went back into the office and told Mr Pearson and Mr Carrigan that "*Hoss has agreed.*" Mr Carrigan said to Mr Blakeley, "*Are you the new construction manager, are you? Is that what this visit was all about down there, giving us a hard time onsite to sort out an office for Richie? The work area down there that you had an issue with had already been consulted and agreed to by the workforce.*"

86. Mr Blakeley then went back to Mr Pearson, who was at his desk and said to him "*You right to move to the other desk and Richie will sit here?"* Pearson responded with "*I suppose so*". This looked to me as intimidation from Mr Blakeley to rearrange seating within the Heinrich office.

87. At 8:45am Mr Blakeley departed the site.

88. Later on that day I obtained the CCTV footage of Mr Blakeley accessing site through the Leopard St truck entrance, which occurred at about 5.48am. Annexed and marked **NF03** is a copy.

89. I also asked Matt Russell (Supervisor) what the Traffic Controller said to Mr Blakeley as he walked through the Leopard St truck gate. Mr Russell's feedback is that the traffic controller said words to the effect "*You can't walk through here*." Mr Russell also told me that he ran into Mr Blakeley on that morning after he walked through the Leopard St truck gate. Mr Russell told me that he said to Mr Blakeley "*You need to use proper turnstile access at Vulture St.*"

Events of 21 October 2021

90. A day earlier on the 20 October 2021, Mr Tresider said to me "*Blakeley wants to meet with the Titan crew before work tomorrow.*" In response I said, "*That's okay, but the meeting must be before work and offsite."* Mr Tresider made this clear to Warren Reid (Titan's State Manager), and Mr Tresider confirmed to me that Mr Read had conveyed this message with the CFMMEU

[redacted]

91. I arrived onsite at approximately 5:15am on the 21 October 2021. Upon entering I spoke to the on-duty supervisor and asked them to "*Keep the Leopard Street gate closed and only open for approved vehicles to access the site.*" As I was concerned that Mr Blakeley would again access the site unlawfully through Leopard St truck gate, as he did the day prior.

92. I observed a couple of Titan workers arriving as usual between 5:15am to 5:45am. I asked one Titan worker "*Are you meeting with Blakeley this morning?*", and he said, "*I don't know.*"

93. At approximately 5.50am Mr O'Neill and I were on the veranda having a chat when we spotted Mr Blakeley and Beau Seiffert walking down Lahey Lane, the street opposite to the Vulture Street entrance. They crossed the road and accessed the truck exit gate at Vulture Street. Annexed and marked **NF04** is a copy of the CCTV footage of them walking through the truck exit gate.

94. I greeted them on the pathway walking up into the pre-start / crib area. I asked, "*What are you doing?*" and they replied "*We are here under section 68.*" I said, "*Do you mean section 70(1)(g)?"* Mr Blakeley said, "*No under section 68.*" I understood this to referencing the WHS Act. I asked for their permits, they both showed me their Federal and State permits.

95. They kept walking past me as I was attempting to determine their right to be onsite. I asked "*Which HSR has requested you to come to site?*" They said "*Richie.*" I asked "*What is the safety matter you are assisting with*? They didn't respond.

96. Mr Blakeley and Mr Seiffert entered the crib room and started talking to Titans. The Titans crew said they have to go to pre-start at 6.00am. Blakeley said, "*We will wait for you to finish.*" Titans crew left to go to pre-start.

97. Mr O'Neill went and got a paper-based visitor induction and covid declaration form as Mr Blakeley and Mr Seiffert accessed incorrectly via the truck gate and not the turnstile and weren't going to go back to the turnstile area to sign in via Damstra. Mr O'Neill went through these paper-based checklists with the two union officials. They refused to sign the forms.

98. I again asked Mr Blakeley and Mr Seiffert, "*What is the safety matter you are here to discuss?*" The did not respond. I said, "*Your right to be onsite is to assist a HSR about a safety issue, not to talk to a whole crew.*" Blakeley said, "*You should read up on the law more.*" I said, "*If it's not a safety related matter, then your entry would be better under a section 484, which you need to give us an entry notice and meet during smoko break.*" Blakeley disagreed with this and said, "*We are here for safety that affects the whole crew.*"



99. I asked Mr Blakeley, *"Are you planning to go onsite?"* he said, *"Do you want me to?"* I said, *"You will need the correct entry notice to do that, not like yesterday."*

100. The Titan workers returned after pre-start. Mark Weise, Senior Supervisor, came in and asked Mr Blakeley, *"Which Titan guys do you need to talk to?"* Mr Blakeley said, *"All of them"* Mr Weise asked, *"For how long?"* and Mr Seiffert said *"10 to 15 minutes."*

101. They all started walking outside the crib. They walked up the stairs to the gantry bridge. I was not sure where they were going. Richie then took them into the Leopard meeting room which is adjacent to the gantry bridge which is the main access to site.

102. I asked Mr Blakeley *"Should one of our safety team attend since it's a safety matter?"* but Mr Blakeley declined this request. Mr Seiffert and Richie went into the room with the full Titan crew. Mr Blakeley waited outside the room.

103. Mr Weise approached Mr Blakeley with a phone and handed it to him. I understand Mr Tresider was on the call, and he said to Mr Blakeley, *"This was supposed to happen before work and offsite."* Blakeley said, *"We are here to talk to Titan workers about fatigue management."*

104. While we were waiting outside the meeting room, I again spoke to Blakeley and said, *"You need to follow the right process when accessing the site. If you want to catch up with a full crew on non-safety related matters, then you can put in a section 484 and meet at smoko."* He disagreed with this and said, *"It's a safety related matter."* I said *"You can't be walking onsite unannounced through truck gates like you have been doing across all our sites recently. You have to wait for us at the gate and go through the right of entry process. If you walk through truck gates onsite without doing the proper site access process then this is unauthorised."* He said, *"I am lawfully here to be onsite, I have done what's required, you saw my permits. You can report me to QIRC if you think I am in the wrong."* I said, *"Well I guess we will disagree on this then won't we."*

105. At 6:45am the meeting finished, and the Titan crew went back to work.

106. Mr Tresider, Mr O'Neill and I approached Mr Seiffert, Mr Blakeley and Richie. O'Neill asked *"Can we assist with the safety issue?"* Mr Seiffert said, *"It's about fatigue management and with the fixed RDOs coming up, the Titan guys were concerned that they might be programmed to work over that break."* Mr Tresider confirmed that the tower cranes won't be required on those fixed RDO days. I thought this was a strange safety matter to discuss for 30 minutes onsite with the full Titan's crew, as I was aware that the Titans crew were already told that they were not required to work the upcoming RDOs that are prescribed under their enterprise agreement.



107. Mr Blakeley then said "*It would be good to discuss the heat policy under the EBA* (Enterprise Bargaining Agreement)." Mr Tresider replied that "*It will need to be another time.*"

108. At 6:50am, Mr Blakeley and Mr Seiffert left the site via the Vulture Street turnstiles.

Affirmed by the deponent)
at Woolloongabba)
in Queensland)
on11 November 2021)
Before me: [redacted])

[redacted]

Signature of witness

[redacted]

Signature of deponent

IN THE FEDERAL COURT OF AUSTRALIA
AT SYDNEY

No. /2021

BETWEEN

CPB Contractors and Others

Applicant

and

Construction, Forestry, Maritime, Mining and Energy Union and others

Respondent

CERTIFICATE IDENTIFYING ANNEXURES

This is the annexure marked **"NF0A"** referred to in the Affidavit of Nicholas Forde sworn 11 November 2021.

Before me:

[redacted]


NO ENTRY
STRICTLY NO DELIVERIES
L1
10
CALL UHF




10
STOP

IN THE FEDERAL COURT OF AUSTRALIA
AT SYDNEY

No. /2021

BETWEEN

CPB Contractors and Others

Applicant

and

Construction, Forestry, Maritime, Mining and Energy Union and others

Respondent

CERTIFICATE IDENTIFYING ANNEXURES

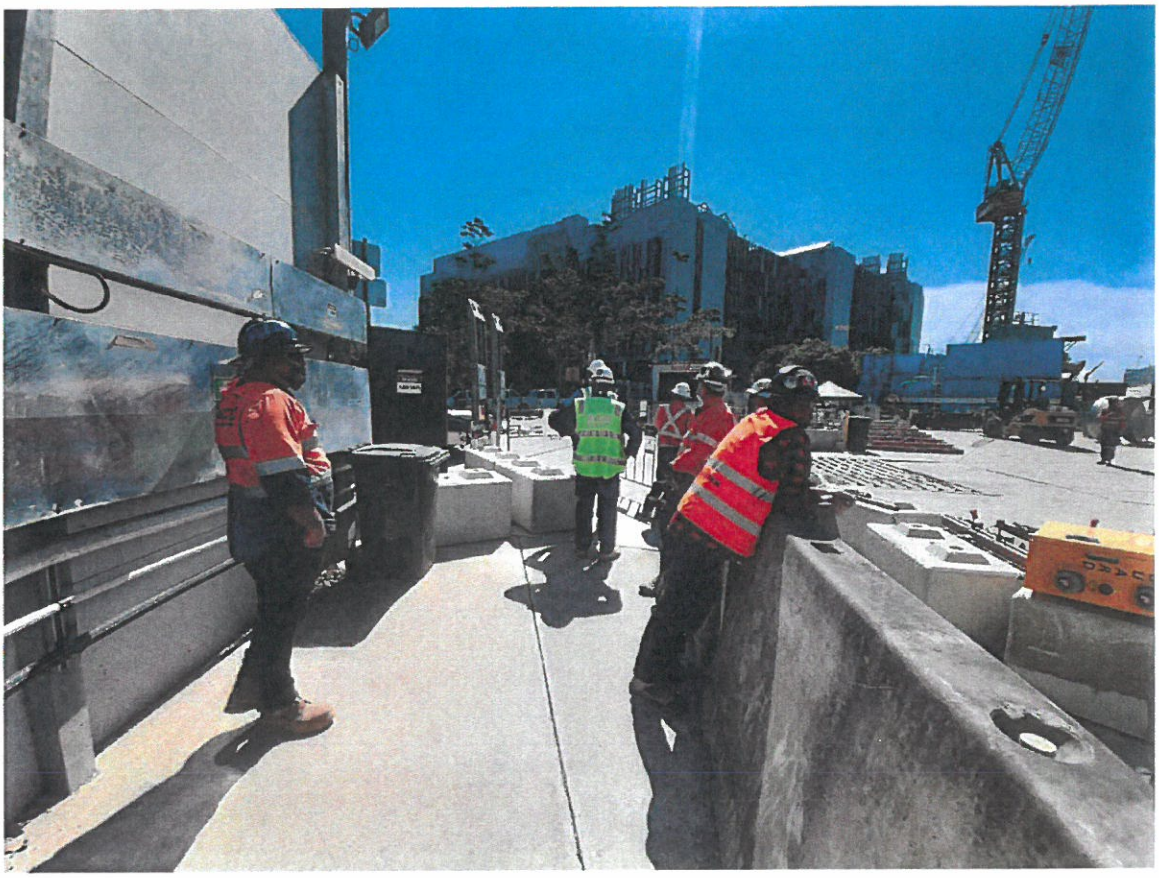
This is the annexure marked **"NF01"** referred to in the Affidavit of Nicholas Forde sworn 11 November 2021.

Before me:

[redacted]

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NF01



IN THE FEDERAL COURT OF AUSTRALIA
AT SYDNEY

No. /2021

BETWEEN

CPB Contractors and Others

Applicant

and

Construction, Forestry, Maritime, Mining and Energy Union and others

Respondent

CERTIFICATE IDENTIFYING ANNEXURES

This is the annexure marked **"NF02"** referred to in the Affidavit of Nicholas Forde sworn 11 November 2021.

Before me:

[redacted]

.....

IN THE FEDERAL COURT OF AUSTRALIA
AT SYDNEY

No. /2021

BETWEEN

CPB Contractors and Others

Applicant

and

Construction, Forestry, Maritime, Mining and Energy Union and others
Respondent

CERTIFICATE IDENTIFYING ANNEXURES

This is the annexure marked **"NF03"** referred to in the Affidavit of Nicholas Forde sworn 11 November 2021.

Before [redacted]

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IN THE FEDERAL COURT OF AUSTRALIA
AT SYDNEY

No. /2021

BETWEEN

CPB Contractors and Others

Applicant

and

Construction, Forestry, Maritime, Mining and Energy Union and others
Respondent

CERTIFICATE IDENTIFYING ANNEXURES

This is the annexure marked **"NF04"** referred to in the Affidavit of Nicholas Forde sworn 11 November 2021.

Before me: [redacted]

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