

# INVESTIGATION INTO ALLEGATIONS AGAINST THE CFMEU

## INTERIM REPORT

1. In July 2024, I was engaged<sup>1</sup> to investigate allegations of criminal and corrupt conduct made against the Victorian and Tasmanian Branch of the CFMEU's Construction and General Division.<sup>2</sup> The allegations which were the subject of my investigation were published in *The Australian Financial Review*, *The Age* and *The Sydney Morning Herald* as part of a joint series of reports known as 'Building Bad'. Those allegations were also aired in an episode of *60 Minutes*. Reflecting the initial letter of engagement, the matters dealt with in this report are narrow in compass. There may be a range of other matters warranting further investigation that fall outside the limited scope of the letter.
2. While my investigation is incomplete, my work so far enables me to make some preliminary observations with a reasonable degree of confidence. In broadest summary, the information I uncovered supported the accuracy of the allegations of criminal and corrupt conduct raised in the 'Building Bad' series. As detailed in this report, I make a series of recommendations for further investigation and other steps to be taken by the Administrator. He has legal powers that I did not possess, enabling him to continue with the investigations noted below.
3. I was engaged to investigate by Zach Smith in his capacity as National Secretary of the CFMEU. Jess Moir was engaged to assist me with my investigation.
4. The manner of the investigation was left to me. Officers and employees of the Victorian Branch were instructed to cooperate with my investigation. During my investigation, I interviewed fifteen officers or employees of the Victorian Branch, including each person who was (at that time) a member of its executive team.<sup>3</sup> Some were interviewed more than once.
5. There were limitations on my ability to undertake the investigation: I had no power to compel witnesses to give evidence or to compel production of documents and I was unable to offer potential witnesses any promises of confidentiality. Part-way through my investigation, I was told that threats of violence had been made, including against members of the executive team of the Victorian Branch.<sup>4</sup> Because of those threats, I was instructed to refrain from contacting certain third parties.
6. On 23 August 2024, the Attorney-General decided to place the Construction and General Division of the CFMEU, and all of its branches, into administration.<sup>5</sup> Mark Irving KC was appointed as Administrator. Mr Irving instructed me to provide this high-level, interim report

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<sup>1</sup> My letter of engagement is Annexure A to this report and the terms of reference of the investigation are Annexure B.

<sup>2</sup> For convenience, I refer to this as the 'Victorian Branch'.

<sup>3</sup> In this report, for convenience, I use the word 'official' to refer to organisers and members of the executive team. By the time of my appointment, John Setka had resigned as Secretary of the Victorian Branch.

<sup>4</sup> Further detail is provided at paragraph 18(b) of this report.

<sup>5</sup> The decision was made by the Attorney General, under section 323B of the *Fair Work (Registered Organisations) Act 2009* (Cth), having been authorised to do so by the Minister for Employment and Workplace Relations.

and to make recommendations about further investigations the Administrator should undertake.<sup>6</sup> I make seven recommendations.

7. Because my investigation is incomplete, I am unable to make specific findings about the conduct of particular officers or employees of the CFMEU (including because I have not had an opportunity to put any of my proposed findings to those people and to hear their responses). However, I have made broad findings about the practices and attitudes that I observed.
8. My observations and recommendations are grouped according to the following five themes, which emerged from my work:
  - (a) Lawlessness, threats and violence;
  - (b) Connexions with Outlaw Motor Cycle Gangs (**OMCGs**) and organised crime figures;
  - (c) The facilitation of (and refusing to facilitate) Enterprise Bargaining Agreements (**EBAs**);
  - (d) Appointment of delegates and organisers; and
  - (e) Improper transactions.
9. There is overlap between these themes: in many cases, criminal or corrupt conduct in one aspect of the Victorian Branch's operations appears to be the cause or the effect of criminal or corrupt conduct in another aspect of its operations.

#### **A. LAWLESSNESS, THREATS AND VIOLENCE**

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10. Based on the information uncovered during my investigation, the Victorian Branch has been caught up in a cycle of lawlessness, where violence was an accepted part of the culture, and threats of violence were a substitute for reasoned negotiations.
11. As just one example, I was asked to investigate a specific incident which was captured on video, where a Victorian Branch organiser introduced himself as someone who worked for the union and then threatened two owners of an Indigenous labour hire firm, saying, among other things: "I'll fucking take your soul and I'll rip your fucking head off".<sup>7</sup> When I raised that incident with officials in the Victorian Branch, my impression was that they regarded it as unexceptional.

<sup>6</sup> I note that s 323K(2A) of the *Fair Work (Registered Organisations) Act 2009* (Cth) provides that "in performing functions and exercising powers as administrator, the administrator may undertake investigations into past practices of the Construction and General Division and its branches". One of the Administrator's functions is "promoting compliance by the Construction and General Division with the laws (including workplace laws) of the Commonwealth, the States and the Territories" (s 323K(3) of the *Fair Work (Registered Organisations) Act 2009* (Cth)).

<sup>7</sup> Nick McKenzie, Ben Schneiders, David Marin-Guzman and Reid Butler, "Leo the dog': Setka caught on tape delivering threatening message to rival's home", *The Age* (online, 14 July 2024) <<https://www.theage.com.au/national/leo-the-dog-setka-caught-on-tape-delivering-threatening-message-to-rival-s-home-20240703-p5jqqr2.html>>. I note that the published excerpt of the video recording is incomplete. I have seen the full video and the published excerpt did not distort the events that were depicted.

12. That incident was not isolated and such conduct is not new. Since 1992, successive Royal Commissions have made findings about the prevalence of lawlessness and violence in Australia's construction sector.<sup>8</sup>
13. There have been multiple judicial findings that Victorian Branch officials have engaged threatening and abusive behaviour.
14. In 2015, Justice Mortimer – now Chief Justice Mortimer – made the following statements in relation to conduct (by a then Vice-President of the Construction and General Division of the CFMEU) at a Victorian Government construction site:<sup>9</sup>

*The conduct has in common features of abuse of industrial power and the use of whatever means the individuals involved considered likely to achieve outcomes favourable to the interests of the CFMEU. The conduct occurs so regularly, in situations with the same kinds of features, that the only available inference is that there is a conscious and deliberate strategy employed by the CFMEU and its officers to engage in disruptive, threatening and abusive behaviour towards employers without regard to the lawfulness of that action, and impervious to the prospect of prosecution and penalties. An alternative inference — that the CFMEU weighs up the cost of engaging in such action (that is, likely prosecution and imposition of penalties) and nevertheless concludes it is a collateral cost of doing its industrial business — reflects no better on the organisation or its officials.*

15. Among the officials with whom I spoke, there was a general acceptance that threats, intimidation and violence were part of the landscape in which the Victorian Branch operated.
16. It might be attractive to think that the police could do something to break the cycle and to remove the instigators. But I found a stubborn refusal, amongst officials, to involve the police. It was almost as though the police were regarded as enemies. I was told about specific incidents in which union people had been severely bashed or subjected to threats of violence or death, but no police referral was made. One senior official said he could give me “1000 cases where workers have been stood over and bashed” and said that “all the police do, is turn around and go after unions”. Some officials expressed distrust of police because of their personal experiences.
17. I heard, repeatedly, language which I understand to reflect the existence of a code of silence; people were called “dog” or “rat”, or were criticized for “talking out of school”.
18. Based on information obtained during my investigation, Victorian Branch officials have not only engaged in threatening and abusive behaviour – they have also been subjected to threats, violence or abuse in connexion with their work for the union. It is useful to provide two specific examples:

<sup>8</sup> See *Royal Commission into Productivity in the Building Industry in New South Wales* (Final Report, May 1992); *Royal Commission into the Building and Construction Industry* (Final Report, March 2003); *Royal Commission into Trade Union Governance and Corruption* (Final Report; December 2015).

<sup>9</sup> *Director of Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* (No 2) [2016] FCA 436 at [140]. That decision was appealed against: see *Construction, Forestry, Mining and Energy Union v Australian Building and Construction Commissioner* (2016) 247 FCR 339 (Allsop CJ, North and Jessup JJ) and *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2018) 262 CLR 157 (Kiefel CJ, Gageler, Keane, Nettle and Gordon JJ). The appellate proceedings did not disturb the factual findings quoted in this report.

- (a) On 30 June 2021, two Victorian Branch organisers were bashed at a site in Hawthorn East. It was a serious attack: one of the organisers lost the sight in an eye. I was told, by a senior official, that the Victorian Branch did not engage with the police but instead “went to Mr Gatto to negotiate”. The senior official told us that “this happens every day”.
- (b) The other example is one I mentioned earlier. On 14 August 2024, I was informed that threats of violence had been made against senior officials because of a perception that they were “lagging” (I was told that this meant “giving someone up to the cops”). I was told that there was a concern that any enquiries I made, which extended outside the union, would create a risk of violence. For that reason, I was instructed to refrain from making contact with third parties as part of my investigation (including journalists, employers and former delates I had intended to contact). My understanding is that, at the time, the police were not contacted in relation to those threats. However, the threats must have been regarded as real because there was capitulation (in that my inquiry was curtailed).
19. From my investigation, it appeared to me that, in this cycle of intimidation and violence, the CFMEU had lost control.
20. If the Victorian Branch is to cast off the influence of criminals, it would be helpful to have cooperative relationships with law enforcement agencies and regulators.

***RECOMMENDATION ONE:***

*I recommend that the Victorian Branch takes steps to build cooperative relationships with the Victoria Police, the Australian Federal Police and regulatory authorities so that criminal conduct can be dealt with in accordance with the law.*

21. Given the limited scope of my investigation, and the fact that it was incomplete, I am confident there are other serious instances of violence or intimidation I did not uncover. I note that, under s 323B(i)(4) of the *Fair Work (Registered Organisations) Act 2009* (Cth) and clause 9(e) of the Scheme made under that Act, the Administrator is obliged to cooperate with inquiries into the conduct of various CFMEU officers and employees by law enforcement agencies and regulators. Building co-operative relationships will not only enable the Administrator to perform this statutory obligation but will also allow criminal conduct by others within the industry to be dealt with more effectively by those authorities.

**RECOMMENDATION TWO:**

*I recommend further investigative work should be undertaken to identify:*

- (a) *instances where (current) Victorian Branch officials have:*
  - (i) *engaged in threatening, violent or abusive conduct;*<sup>10</sup>
  - (ii) *been subjected to threats, violence or abuse in connexion with their work for the union.*
- (b) *whether the Victorian Branch has reported threatening, violent or abusive conduct to appropriate authorities (including police).*

**B. CONNEXIONS WITH OMCGS AND ORGANISED CRIME FIGURES**

22. The CFMEU is committed to second chances.<sup>11</sup> In witness interviews, officials emphasized the importance of giving people an opportunity to change their lives. I was told that the construction sector provides vital opportunities for people with a criminal record to find employment. Such opportunities are critical, because, as the Victorian Equal Opportunity & Human Rights Commission has observed, “[i]ndividuals with a criminal record face deep stigmatisation and social exclusion”.<sup>12</sup> The Commission has also noted the “value for broader society of individuals with a criminal record being gainfully employed and included in society”.<sup>13</sup>
23. However, there is an important distinction between people who are taking an opportunity to change their lives and those who are engaging in on-going corrupt or criminal conduct. There is also an important distinction between people working in the construction industry in ordinary roles and those performing leadership or representative roles in the industry as organisers or delegates do.
24. On the information available to me, I consider that the Victorian Branch has been infiltrated by OMCGs and by organised crime figures.
25. As best I was able to ascertain, in the Victorian Branch, OMCG members mainly inserted themselves at the delegate level, employed by third parties. Delegates are “the backbone

<sup>10</sup> Based on my review of publicly available caselaw, there have been judicial findings that certain people, currently employed as Victorian Branch organisers, have engaged in threatening conduct on work sites.

<sup>11</sup> For example, in a statement published on 15 July 2024, Zach Smith observed that the CFMEU “has countless stories of delegates and members who have turned their lives around and made invaluable contributions to workers, the industry, and the wider community”: CFMEU (Zach Smith), ‘Our union exists for one purpose only: to defend and advance the safety and conditions of workers’ (Media Release, 15 July 2024) <<https://cg.cfmeu.org/news/our-union-exists-one-purpose-only-defend-and-advance-safety-and-conditions-workers-0>>.

<sup>12</sup> Victorian Equal Opportunity & Human Rights Commission, ‘Spent Conviction Discrimination Guideline: Complying with the Equal Opportunity Act 2010’ (June 2022) <[https://www.humanrights.vic.gov.au/static/adc2ca4452ff3af6474ddf70bf04b634/Resource-Spent\\_Conviction\\_Discrimination\\_Guideline-Complying\\_with\\_the\\_EOA\\_2010.pdf](https://www.humanrights.vic.gov.au/static/adc2ca4452ff3af6474ddf70bf04b634/Resource-Spent_Conviction_Discrimination_Guideline-Complying_with_the_EOA_2010.pdf)> citing Crosby Hipes, ‘The impact of a felony conviction on stigmatization in a workplace scenario’ (2019) 56 *International Journal of Law, Crime and Justice* 89, 95.

<sup>13</sup> Victorian Equal Opportunity & Human Rights Commission, ‘Spent Conviction Discrimination Guideline: Complying with the Equal Opportunity Act 2010’ (June 2022) <[https://www.humanrights.vic.gov.au/static/adc2ca4452ff3af6474ddf70bf04b634/Resource-Spent\\_Conviction\\_Discrimination\\_Guideline-Complying\\_with\\_the\\_EOA\\_2010.pdf](https://www.humanrights.vic.gov.au/static/adc2ca4452ff3af6474ddf70bf04b634/Resource-Spent_Conviction_Discrimination_Guideline-Complying_with_the_EOA_2010.pdf)> citing Jocelyn Simonson, ‘Rethinking Rational Discrimination against Ex-Offenders’ (2006) XIII(2) *Georgetown Journal on Poverty Law and Policy* 284.

of a Union”.<sup>14</sup> Their role includes ensuring that employers pay the correct wages and allowances, ensuring that employers abide by EBA/Award Conditions and ensuring the occupational health and safety of members.

26. From my discussions with officials, delegates also have a role in the EBA process; as the union representative on site, a delegate may be the first point of contact for an entity wishing to enter into an EBA with the CFMEU. In that process, the support of a delegate might be useful in obtaining the approval of an organiser – which, as will be explained below, can be a moment of potential corruption. By these means, when OMCG members are appointed as delegates, they are placed in positions of commercial, as well as industrial, power.
27. When I spoke with officials about the presence of OMCG members in the Victorian Branch, their responses were inconsistent. Some said there was no problem with bikies; some recognised the presence of bikies as a problem but indicated that there was nothing that could or should be done (for example, one official told me that gang membership was a private matter); other officials said that the Victorian Branch needed to rid itself of bikies.
28. After it was alleged, in media reports, that senior bikie figures had been “parachuted” into lucrative union roles as union delegates or union worksite representatives, some measures were taken by the Victorian Branch to remove known members or associates of OMCGs from the ranks of delegates. The measures taken were inadequate:
  - (a) On 30 July 2024 a letter was sent to Zach Smith notifying him that the “CFMEU Vic/Tas Branch Construction & General Division have conducted a process of identifying, removing and banning those Shop Stewards and Occupational Health and Safety Representatives who belong to or are associated with Outlaw Motorcycle Clubs”. The letter stated “[t]hese members are no longer representatives of this Branch” and listed twelve names.
  - (b) I wondered how the Victorian Branch identified which delegates were members of OMCGs and I asked for the records of the investigation. I was told there were none. I was told the twelve were identified through discussions with organisers and social media searches. In my view, the investigation was superficial and would not have captured all OMCG members.
  - (c) And the process was ineffective at removing the influence of these men. A senior official told me that, through this process, they had “got rid of the undesirables”. However, I was also told that almost all of the people on the list remained with the same employer, in a different capacity (for example, switching from paid employment as a union delegate to paid employment working for the employer directly as a health and safety officer). I understood that the same men remained on the same sites with, more or less, the same authority.

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<sup>14</sup> I was provided with copies of materials given to new delegates. This description is taken from an undated letter to delegates, from former State Secretary John Setka, which was included as part of that bundle.

29. I remain unconvinced that the Victorian Branch had a real intention to fix this problem. Even if it did, more needs to be done to fix the problem.
30. The 'Building Bad' series also raised the "problem of gangland infiltration", alleging that "figures formerly entrenched in the underworld...are flourishing in the construction sector".<sup>15</sup> Media reports identified Mick Gatto and Faruk Orman as underworld figures.
- (a) Many of the officials I interviewed said that they had seen or met with Faruk Orman and Mick Gatto at the CFMEU offices on Elizabeth Street. I was told that there were occasions where EBA paperwork was brought to Mick Gatto while he met with senior officials.
  - (b) Officials mentioned meeting Faruk Orman at the Victorian Branch's picnic day and seeing Mick Gatto at their annual AFL breakfast (which he was said to have sponsored).
  - (c) Some of the officials I interviewed described Mick Gatto as a friend.
  - (d) I was told by one senior official that Mick Gatto "came with the furniture of the job".
  - (e) The Victorian Branch has entered into several EBAs with entities owned by, controlled by or associated with Faruk Orman (see below at paragraph 41(c)).
  - (f) In this context, I refer back to the instance of the bashings at the site in Hawthorn East, where the Victorian Branch referred the issue to Mick Gatto (see above at paragraph 18(a)).
31. When I asked officials about connexions between people associated with OMCGs or organised crime and the Victorian Branch, I was told that 'bosses' (including large contractors on large sites):
- (a) Engaged "crooks" and organised crime figures;
  - (b) Employed OMCG members to "stand over" Victorian Branch officials; and
  - (c) Engaged OMCG members to "scare us [Victorian Branch officials] off".
32. Based on my conversations with officials, there was a perception that it was helpful for the Victorian Branch to have its own connexions with people associated with OMCGs or organised crime, as a counterweight to intimidatory forces allegedly deployed by 'bosses'; to achieve better outcomes for workers; and to protect union officials and their families.
33. One official told me that a "whole heap of bosses employ standover people". Asked whether the Victorian Branch was a part of it, he said: "Of course we are. We are trying to get people paid and get them home safely". Another senior official told me: "We can regulate our own game, as long as we are allowed to do it".

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<sup>15</sup> Nick McKenzie, David Marin-Guzman and Ben Schneiders, 'Bikies, underworld figures and the CFMEU takeover of construction', *The Australian Financial Review* (online, 13 July 2024) <<https://www.afr.com/companies/infrastructure/bikies-underworld-figures-and-the-cfmeu-takeover-of-construction-20240712-p5jt38>>.

34. Leveraging past criminal conduct or associations in order to generate fear is not the same as giving people a “second chance”; weaponizing a person’s reputation for violence is contrary to the goal of social inclusion.

**RECOMMENDATION THREE:**

*I recommend that further investigative work should be undertaken:*

- (a) to ascertain whether any remaining delegates or organisers are associated with OMCGs and to remove them;*
- (b) to ascertain the role and influence of organised crime figures in the CFMEU and to eliminate that role and influence; and*
- (c) where possible, to identify those within the industry associated with OMCGs and who are organised crime figures and to seek to eliminate any role and influence those persons have in the industry.*

**C. THE ‘GIVING’ OF EBAS**

35. In witness interviews, officials commonly referred to ‘giving’ EBAs to entities, rather than ‘entering into’ EBAs with entities. Though EBAs are ultimately made between employers and employees and approved by the Fair Work Commission, the decision of the Victorian Branch to facilitate or endorse the making of an EBA – ‘giving’ an EBA – is often fundamental in determining whether an EBA is made and ultimately approved. When the Victorian Branch plays that facilitation role (such as by signing an EBA), it is effectively providing a kind of endorsement of the employer. As explained below, that endorsement can be financially valuable to the employer. Similarly, refusing to enter into an EBA with an employer can have serious financial consequences, and that refusal can be financially valuable for trade rivals of the employer. As discussed below, both of these scenarios create an environment in which employers can be financially motivated to offer inducements to Victorian Branch employees to exercise powers to enter into, or refuse to enter into, EBAs. The power of Victorian Branch employees is capable of being misused to confer favours or to fulfil corrupt bargains.
36. I heard various accounts of the processes for entering into an EBA with the Victorian Branch.<sup>16</sup> A common theme was that organisers (or, in some cases, members of the executive team) had an important role in assessing whether an entity should be ‘given’ a CFMEU-endorsed EBA. That assessment was distinct from any formal compliance checks. Based on witness interviews, I understand that each EBA facilitated or endorsed by the Victorian Branch needed to be ‘approved’ by an organiser or senior official.
37. Organisers pointed out that EBAs are a means of ensuring that workers get paid properly and have some democratic representation. In the words of one senior official: “we want to unionise the industry; that’s our job”.

<sup>16</sup> I note that the process is not universal. Greenfields EBAs (entered into where an employer is starting a new business, activity, project or undertaking, but has not yet employed anybody in relation to that business) are not subject to the same processes as brownfields agreements.



38. However, it appears that there is also a commercial advantage, for employers, in entering into an EBA with the CFMEU. In particular, on building sites where the head contractor has entered into an EBA with the CFMEU, that head contractor is likely to prefer to engage sub-contractors who also have CFMEU-endorsed EBAs, to minimise industrial risk. Therefore, an organiser's role in determining whether entities were 'suitable' gives the organiser considerable commercial power.
39. I understand that certain kinds of EBAs hold special value. One organiser told me that an Indigenous labour hire agreement was a "license to print money" and a "goldmine". From conversations with witnesses, my impression was that traffic management and labour hire EBAs were especially sought after.
40. Based on the information provided to me, there was no formal criteria that governed an organiser's assessment of an entity's suitability and no requirement to keep any record of the approval decision or the reasons for the decision. In my view, this made the EBA process vulnerable to corruption.
41. Several of the specific allegations I was asked to investigate related to the giving (or refusal) of EBAs:
- (a) The refusal to 'give' a new EBA to Indigenous labour hire firm Marda Dandhi gave rise to conflict, including threats of violence. Media reports connected "acrimony" between Marda Dandhi and the CFMEU with the death of a former Marda Dandhi employee, Ben Nash.<sup>17</sup> From media reports, I understand Mr Nash's death is being investigated by the Coroner.
  - (b) Several EBAs were entered into between Solid Seal Solutions Pty Ltd and the CFMEU (Victorian Construction and General Division). The director, secretary and sole shareholder of Solid Seal Solutions Pty Ltd was the wife of a former CFMEU delegate. That former delegate was identified in media reports as having been a chapter president and national vice president of an OMCG (the Mongols).<sup>18</sup> I understand that one of the Solid Seal Solutions EBAs may have been entered into *while* he was a delegate, which would have given rise to a conflict of interest.
  - (c) I am aware of EBAs entered into between the CFMEU (Victorian Construction and General Division) and the following entities connected with "underworld figure" Faruk Orman:

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<sup>17</sup> Nick McKenzie, Reid Butler and David Marin-Guzman, "I just need it to end': CFMEU power play turned Ben's construction dream into a fatal nightmare", *The Age* (online, 15 July 2024) <<https://www.theage.com.au/national/i-just-need-it-to-end-cfmeu-power-play-turned-ben-s-construction-dream-into-a-fatal-nightmare-20240704-p5jr7n.html>>.

<sup>18</sup> Nick McKenzie, David Marin-Guzman and Ben Schneiders, 'Bikies, underworld figures and the CFMEU takeover of construction', *The Australian Financial Review* (online, 13 July 2024) <<https://www.afr.com/companies/infrastructure/bikies-underworld-figures-and-the-cfmeu-takeover-of-construction-20240712-p5jt38>>.

- (i) ZK Civil Infrastructure Pty Ltd<sup>19</sup> (see below at paragraph 43; at the time of entering into the EBA, Faruk Orman was the entity's sole director and secretary);
- (ii) Allsafe Commercial Pty Ltd<sup>20</sup> (at all relevant times, Mr Orman was its sole director, secretary and sole shareholder);
- (iii) Allsafe Labour Pty Ltd<sup>21</sup> (at all relevant times, Mr Orman's wife was its sole director, secretary and sole shareholder).

From my conversations with officials, it appears that members of the Victorian Branch executive team interceded, on Mr Orman's behalf, to secure EBAs for those entities. I was told by one senior official that, as far as he was aware, Mr Orman had "no industry background".<sup>22</sup> Based on media reporting, Mr Orman was "close to" Mick Gatto.<sup>23</sup>

- 42. I have already explained why EBAs may have a commercial value for employers (see above at paragraph 38).
- 43. I am also aware of the following evidence that EBAs could be (in effect) transferred, through the sale of an entity, thus giving the EBA a trading value:
  - (a) By email dated Tuesday 6 September 2022, a CFMEU organiser asked Faruk Orman to provide information, in order to "make a start on your two Greenfields EBAs". The subject of the email was "INFORMATION REQUEST – CIVIL INFRASTRUCTURE GREENFIELDS EBA and DEMOLITION GREENFIELDS EBA".
  - (b) On Wednesday 7 September 2022, ZK Civil Infrastructure Pty Ltd was registered. At that time, Faruk Orman was its director, secretary and sole shareholder.
  - (c) On Wednesday 7 September 2022 at 3:34pm, Mr Orman responded to the organiser's email from the previous day, providing information about ZK Civil Infrastructure Pty Ltd and another entity (ZK Demolition Pty Ltd).
  - (d) On Friday 9 September 2022, Faruk Orman signed the greenfields EBA for ZK Civil Infrastructure Pty Ltd.

<sup>19</sup> 'ZK CIVIL INFRASTRUCTURE PTY LTD and the CFMEU (Victorian Construction and General Division) Subcontractors Civil and Infrastructure Greenfields Enterprise Agreement 2020-2023' approved by the Fair Work Commission on 26 September 2022.

<sup>20</sup> 'ALLSAFE COMMERCIAL PTY LTD and the CFMEU (Victorian Construction and General Division) Subcontractors Caulking and Sealing Enterprise Agreement 2020-2023' approved by the Fair Work Commission on 2 July 2021.

<sup>21</sup> 'ALLSAFE LABOUR PTY LTD and the CFMEU (Victorian Construction and General Division) Subcontractors Traffic Control Enterprise Agreement 2020-2023' and 'ALLSAFE LABOUR PTY LTD and the CFMEU (Victorian Construction and General Division) Subcontractors Labour Hire Enterprise Agreement 2020-2023', each approved by the Fair Work Commission on 28 August 2023.

<sup>22</sup> See also: *R v Faruk Orman* [2009] VSC 538; on the basis of Justice Weinberg's sentencing remarks, it appears that, at the time of sentencing, Mr Orman had no background, skills or experience in the construction industry.

<sup>23</sup> Nick McKenzie, David Marin-Guzman and Ben Schneiders, 'Bikies, underworld figures and the CFMEU takeover of construction', *The Australian Financial Review* (online, 13 July 2024) <<https://www.afr.com/companies/infrastructure/bikies-underworld-figures-and-the-cfmeu-takeover-of-construction-20240712-p5jt38>>.

- (e) On Tuesday 13 September 2022, the EBA was signed on behalf of the Victorian Branch (Monday 12 September 2022 was a rostered day off, so it was effectively signed on the next business day after Mr Orman had signed the agreement).
  - (f) On Monday 26 September 2022, the EBA was approved by the Fair Work Commission.
  - (g) On Tuesday 27 September 2022, Mr Orman ceased to be a director and secretary of the entity. According to media reports, Mr Orman sold the company on the same day,<sup>24</sup> but I have not been able to verify those reports.
  - (h) On Sunday 13 July 2024, the transaction was reported in *The Australian Financial Review*.
  - (i) On Wednesday 17 July 2024, an application was lodged for the voluntary deregistration of the company.
44. This series of events indicates that EBA was treated as a financially valuable commodity, given to an underworld figure with no industry background who was close to Mick Gatto.

***RECOMMENDATION FOUR:***

*I recommend that there is an investigation and review of:*

- (a) *the processes by which the Victorian Branch determines which EBAs it will endorse or facilitate and which it will refuse to endorse or facilitate;*
- (b) *existing EBAs – in the nature of an audit – to identify potential corruption and conflicts of interests, including whether undisclosed benefits were paid to officers, employees or delegates to facilitate such EBAs;*
- (c) *circumstances in which the Victorian Branch has refused to enter into an EBA because an organiser did not “approve” of the entity (as opposed to circumstances where an entity did not pass a compliance check), again, to identify potential corruption and conflicts of interest.*

***RECOMMENDATION FIVE:***

*If it is appropriate, having regard to the findings of any Coronial investigation, I recommend investigating any connexion between Mr Nash’s death and conduct by CFMEU officers or employees.*

**D. APPOINTMENT OF DELEGATES AND ORGANISERS**

45. I was given conflicting accounts of the processes by which delegates, organisers and members of the executive came to hold their positions.

<sup>24</sup> Nick McKenzie, David Marin-Guzman and Ben Schneiders, 'Bikies, underworld figures and the CFMEU takeover of construction', *The Australian Financial Review* (online, 13 July 2024) <<https://www.afr.com/companies/infrastructure/bikies-underworld-figures-and-the-cfmeu-takeover-of-construction-20240712-p5jt38>>.

46. I was told that there were democratic processes. However, based on my conversations with officials, it seemed that the outcome was often determined (at least in substance) by undemocratic means. For example:
- (a) One organiser told me that he was approached, in a Noodle Box restaurant, by a man who was (at that time) an OMCG member. The man sought “recognition” from the union and was ultimately appointed as a delegate. In the organiser’s account of the appointment of that delegate, there was no mention of any involvement by workers voting for the delegate or endorsing his appointment.
  - (b) Derek Christopher, the former President of the Victorian Branch, accepted that he had been “anointed” by John Setka to become the Branch’s new Secretary. Mr Christopher described a process by which his succession of Mr Setka was, more or less, guaranteed – although he did go on to acknowledge that the position would be filled after an election.
47. As far as I am aware, there were no ‘term limits’ for members of the executive team.
48. Based on the information available to me, delegates were required to attend a 6-day training course. I was also provided with copies of various policies that applied to employees and officials. However my understanding is that there was no formal criteria for appointment as a delegate or organiser; that is, there were no formalised qualifying or disqualifying factors.
49. These positions are well-remunerated. As I have said above (at paragraphs 26 and 38), delegates, organisers and officials wield commercial and industrial power. In the absence of robust governance arrangements, that power was capable of being misused to confer favours or to fulfil corrupt bargains.

***RECOMMENDATION SIX:***

*I recommend that there is an investigation and review of the processes by which delegates and organisers are appointed.*

**E. IMPROPER TRANSACTIONS**

50. I was asked to investigate two specific allegations, reported in the ‘Building Bad’ series,<sup>25</sup> relating to improper transactions:
- (a) The allegation that Mr Derek Christopher received an estimated \$200,000 in free labour and supplies from major building companies in 2017, including from Built, Multiplex and Express Interiors; and
  - (b) The alleged conduct and alleged statements made by Mr Harry Korras in March 2024 relating to fees for enterprise agreements, funnelling secret benefits or kickbacks to his union contacts.

<sup>25</sup> Nick McKenzie, David Marin-Guzman, Ben Schneiders and Amelia Ballinger, “Everyone eats’: Secret audio lays bare CFMEU kickback plan’, *The Age* (online, 14 July 2024) <<https://www.theage.com.au/national/everyone-eats-secret-audio-lays-bare-cfmeu-kickback-plan-20240704-p5jr2p.html>>.

51. Based on my preliminary work, each of those allegations warrants further investigation.
52. I reiterate my observations (above) that it appears that:
  - (a) there was a commercial advantage to employers entering into EBAs with the CFMEU;
  - (b) the Victorian Branch's EBA process was vulnerable to corruption;
  - (c) delegates, organisers and members of the executive team may have come to hold their positions through processes which were not (in substance) democratic; and
  - (d) there were no formal criteria for appointment as a delegate or organiser.
53. In my view, in light of those observations, there is a real risk that there may have been improper transactions, in connexion with the 'giving' of EBAs, and the appointment of people to positions within the Victorian Branch.

***RECOMMENDATION SEVEN:***

*I recommend that there is an investigation of the specific allegations mentioned in paragraph 50 above.*

Date: 12 September 2024

**Geoffrey Watson**

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25 July 2024

Geoffrey Watson SC  
New Chambers  
34/126 Phillip St  
**SYDNEY NSW 2000**

**By Email: [watson@newchambers.com.au](mailto:watson@newchambers.com.au)**

Dear Mr Watson,

**Re: CFMEU Internal Investigation**

1. Maurice Blackburn acts on behalf of the CFMEU and its National Secretary Zach Smith.
2. In recent days a series of serious allegations have been made against the CFMEU which, if correct, might involve criminal conduct or corruption.
3. In a response to the allegations, on 15 July 2024 the Divisional Executive of the Construction and General Division (C&G Division) of the CFMEU placed the Victorian Branch of the C&G Division into administration (Tabs 5.1 and 5.2).
4. Zach Smith, the National Secretary of the Division, has been appointed as the administrator of that Branch.
5. Mr Smith has instructed Maurice Blackburn to provide him with legal advice in relation to the allegations. As part of that, he has instructed us to commission an independent investigation into the allegations directed at the Victorian Branch. It is anticipated that the investigation will result in a written report incorporating factual findings and recommendations. The purpose of the report is so we can further advise Mr Smith.
6. We seek to engage you to conduct the investigation and provide the report. You will be assisted in the investigation by junior counsel, Jess Moir. A solicitor from Maurice Blackburn will be made available to assist. In addition, the Union's Director of Legal and Industrial, Lucy Weber, is the designated union contact person for the purposes of this investigation.

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7. We have prepared draft terms of reference reflecting the most serious allegations (Tab 1.0). In the event that further serious allegations of criminal conduct or corruption emerge in relation to the Victorian Branch, the terms of reference may need to be expanded.
8. The manner of the conduct of the investigation, and the content of any report, is a matter for you, subject, of course, to the rules of procedural fairness. Mr Smith instructs us union officers and employees will be instructed to cooperate with the investigation.
9. If you accept the engagement, we would ask you to commence your investigation as soon as possible. We recognise that the investigation may take time, but we request that your report be made available by no later than 22 September 2024. That time limit can, if necessary, be extended.

Yours faithfully



**Josh Bornstein**  
**Practice Team Leader**  
**Employment & Industrial Law Section**  
**MAURICE BLACKBURN**



**Bodhi Shribman-Dellmann**  
**Lawyer**

(Enquiries: Emily Waite - 03 9605 2847)

## Annexure B

### TERMS OF REFERENCE

Whether any officers or employees of the CFMEU have engaged in any criminal or corrupt conduct in relation to the following matters:

1. The allegation that senior bikie figures have been parachuted into lucrative union roles as union delegates or union worksite representatives as described in the AFR Article "*Bikies, underworld figures and the CFMEU takeover of construction*" on 13 July 2024;
2. The alleged conduct and alleged statements made by Mr Harry Korras in March 2024 relating to fees for enterprise agreements, funnelling secret benefits or kickbacks to his union contacts (<https://www.theage.com.au/national/everyone-eats-secret-audiolays-bare-cfmeu-kickback-plan-20240704-p5jr2p.html>);
3. The signing and approval in September 2022 of an enterprise agreement between ZK Civil Infrastructure and the CFMEU and the alleged subsequent sale of ZK Civil Infrastructure (<https://www.afr.com/companies/infrastructure/bikies-underworldfigures-and-the-cfmeu-takeover-of-construction-20240712-p5jt38>);
4. The allegation that building company "Solid Seal" has three enterprise agreements with the CFMEU and that a senior CFMEU organiser was pressuring delegates to use Solid Seal or replace a small building firm with Solid Seal (<https://www.afr.com/companies/infrastructure/bikies-underworld-figures-and-the-cfmeu-takeover-of-construction-20240712-p5jt38>);
5. The allegation that Mr Derek Christopher received an estimated \$200,000 in free labour and supplies from major building companies in 2017 including from Built, Multiplex and Express Interiors (<https://www.theage.com.au/national/everyone-eatssecret-audio-lays-bare-cfmeu-kickback-plan-20240704-p5jr2p.html>);
6. The alleged conduct of Mr Gerry McCrudden and Mr Joel Shackleton in March 2022 on the Monash Freeway upgrade (<https://www.theage.com.au/national/leo-the-dogsetka-caught-on-tape-delivering-threatening-message-to-rival-s-home-20240703-p5jqr2.html>);
7. The alleged conduct of an alleged unnamed CFMEU representatives on 24 January 2024 allegedly telling a former Marda Dandi employee to "f--- off" and allegedly locking him in a shed for 3 to 4 hours (<https://www.theage.com.au/national/i-justneed-it-to-end-cfmeu-power-play-turned-ben-s-construction-dream-into-a-fatalnightmare-20240704-p5jr7n.html>).