

IN THE FAIR WORK COMMISSION

Matter no: D2022/10

Re Application by: Grahame Patrick Kelly

STATEMENT OF PHILLIP JOHN PASFIELD

On 16 November 2022, I Phillip John Pasfield of level 14, 55 Market Street, Sydney in the state of New South Wales, Lawyer, state:

1. I am a lawyer employed by Slater & Gordon Ltd. I have the care and conduct of this matter on behalf of the Applicant.
2. I make this statement based on my own knowledge, except as indicated to the contrary. Where I deal with matters based on information provided to me, I believe that information to be true and correct.
3. On 31 October 2022 I received a letter from the lawyers for the CFMMEU seeking production of various documents.

Annexed hereto and marked “**PJP1**” is a copy of the letter.

4. On 2 November 2022 I sent a reply by email to the lawyers of the CFMMEU.

Annexed hereto and marked “**PJP2**” is a copy of the email.

5. On 7 November 2022 the lawyers for the CFMMEU lodged in the Commission an application for an order of production of documents, records or information to the Commission (**Application to Produce**).

Annexed hereto and marked “**PJP3**” is a copy of the Application to Produce and the draft order lodged with it.

6. On 8 November 2022 I sent a letter to the lawyers for the CFMMEU concerning the Application to Produce.

Lodged by: Grahame Patrick Kelly	Telephone: (02) 8071 2749
Address for service: C/o Slater & Gordon Lawyers	Fax: (02) 8267 0650
Level 14, 55 Market Street, Sydney NSW 2000	Email: Phillip.pasfield@slatergordon.com.au

Annexed hereto and marked “**PJP4**” is a copy of the letter.

7. On 9 November 2022 I received a letter from the lawyers of the CFMMEU responding to my letter of 8 November 2022.

Annexed hereto and marked “**PJP5**” is a copy of the letter together with the attached proposed Amended Application to Produce.

8. On 9 November 2022, following the receipt of annexure PJP5, I sent an email to the lawyers for the CFMMEU.

Annexed hereto and marked “**PJP6**” is a copy of that email.

9. On 10 November 2022, I received a reply email from the lawyers for the CFMMEU.

Annexed hereto and marked “**PJP7**” is a copy of that reply email.

10. On 10 November 2022, following the receipt of annexure PJP7, I sent an email to the lawyers for the CFMMEU concerning the proposed Amended Application being dealt with on an informal basis.

Annexed hereto and marked “**PJP8**” is a copy of that email.

11. On 10 November 2022 I received a reply email from the lawyers for the CFMMEU to annexure PJP8.

Annexed hereto and marked “**PJP9**” is a copy of that email together with a further proposed Amended Application to Produce attached thereto.

12. On 10 November 2022 I responded to annexure PJP9 by email.

Annexed hereto and marked “**PJP10**” is a copy of that email.

13. On 10 November 2022, following my email which is annexure PJP10, the lawyers for the CFMMEU lodged an Amended Application (**the Amended Application**) to Produce and draft order in the Commission.

Annexed hereto and marked “**PJP11**” is a copy of the covering email to the Commission lodging the Amended Application to Produce and draft order from the lawyers for the CFMMEU.

The Applicant’s position in respect of the Amended Application

14. The only categories in the Amended Application which are in contention are categories 9 and 10. Mr Kelly’s position in respect of each of the categories, and which I have conveyed to the Respondent in the above communications, is as follows.
15. Mr Kelly has informed me that there are no documents to produce in respect of categories 1, 2, 4 and 5.
16. The document sought by category 3 is in the possession of the CFMMEU. It is annexure GK-20 to the Statement of Mr Kelly dated 25 October 2022.
17. The document sought by category 6 is in the possession of the CFMMEU. It is annexure GK-21 to the Statement of Mr Kelly dated 25 October 2022.
18. Mr Kelly has offered to voluntarily produce the documents sought by categories 7, 8 and 11 and is agreeable to doing so.
19. Mr Kelly has instructed me to oppose the CFMMEU having access to the membership rolls sought in categories 9 and 10 in paragraph 1.1 of the Amended Application.
20. Mr Kelly has informed me that the Mining and Energy Division is concerned to protect the privacy of the members whose names, addresses and workplaces are contained on the rolls. The membership details of members is held on a confidential basis.
21. Unlike the smaller category of members who forwarded Instruments of Authorisation (being annexure 2 to the Application by Mr Kelly lodged 15 September 2022) who forwarded those authorities freely, Mr Kelly has informed me that members expect that other personal details shall not be disclosed to third parties. I have been informed by Mr Kelly that members often ask officials of the Mining and Energy

Division whether their membership status and personal details will be disclosed to anyone. I have been informed by Mr Kelly that officials of the Mining and Energy Division are rigorous in advising members that their membership status and personal details contained on membership rolls are not disclosed to third parties.

22. Mr Kelly has informed me that he is concerned that producing the membership rolls sought in categories 9 and 10 would be a breach of trust with the Mining and Energy Division's members and that doing so could be damaging to the division.

23. This practice is consistent with the provisions of the *Privacy Act 1988* (Cth).

24. On 9 November 2022 I made contact with Mr Julius Roe who is a former Commissioner of the Commission. I asked Mr Roe whether he would be agreeable to conducting an independent analysis of the documents in categories 9 and 10 of the Amended Application to provide:

- a. a verification that the members who signed the instruments of Authorities were recorded on the membership rolls; and
- b. the identification of the numbers of members employed in each workplace, employer or lodge in each District Branch. The identification of the workplace, employer or lodge will readily identify those members who would have been eligible for the United Mineworkers' Federation of Australia if it had not been deregistered on 10 February 1992 in connection with the formation of the CFMMEU.

25. Mr Roe was agreeable to undertaking such an analysis and providing a report of the outcome.

26. In my email to the lawyers of the CFMMEU which is annexure PJP8 I advised of my above discussion Mr Roe and that he was agreeable to conducting an independent analysis and providing a report to the parties. I advised that the exercise would be at no cost to the CFMMEU and would ensure the privacy of the members of the Mining and Energy Division. It would further obviate the need for the CFMMEU to have access to the membership rolls. The lawyers of the CFMMEU have provided no explanation as to why Mr Kelly's proposal has been rejected (see PJP8).

27. I am advised by Mr Roe that he is still available to conduct such an analysis.

28. I am instructed by Mr Roe that the analysis could be conducted within a period of 2-3 days.

29. I am advised by Mr Roe that he is available to conduct the analysis on Thursday 24 and Friday 25 November 2022. If a third day becomes necessary (which Mr Roe and I consider to be most unlikely), Mr Roe has advised me that he is available to finalise the analysis on Tuesday 29 November 2022.

ANNEXURE PJP1

Our Ref: JBF/5739303
Direct Tel: 03 9605 2809
Direct Fax: 03 9258 9613
Direct Email: jdawson-field@mauriceblackburn.com.au

Mr Philip Pasfield
National Practice Group Leader
Industrial and Employment Law
Slater and Gordon Lawyers
Level 14, 55 Market Street, Sydney
New South Wales 2000

Maurice Blackburn Pty Limited
ABN 21 105 657 949
Level 21, 380 La Trobe Street
Melbourne VIC 3000
PO Box 523, Melbourne VIC 3001
DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

mauriceblackburn.com.au

31 October 2020

BY EMAIL

Dear Mr Pasfield

D2022/10 Application by Grahame Patrick Kelly

1. We refer to the above matter. We write to request production of the following material:
 - a. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
 - b. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
 - c. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
 - d. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
 - e. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
 - f. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
 - g. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
 - h. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
 - i. A copy of the membership roll of the Mining & Energy Division as at 15 September 2022;
 - j. A copy of each current District Branch membership rolls as at 15 September 2022; and

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- k. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).
2. Please advise us by 4:00pm on Wednesday 3 November 2022 whether your client agrees to produce the requested documents. If your client agrees to produce the documents, we request that they be produced by 4pm on Monday 7 November 2022.
3. We advise that our client is agreeable to providing undertakings that the documents will be kept confidential and not shown to members of our client beyond its legal representatives and in-house solicitors.
4. If your client does not agree to our clients' request by 4:00pm on Wednesday 3 November, we are instructed to make urgent application to the Commission for an order requiring your client to produce the above documents. We will rely on this letter in support of any such application.

Your faithfully



Jessica Dawson-Field
Senior Associate
Employment & Industrial Law Section
MAURICE BLACKBURN

Coronavirus Update

Covid 19 guidance for our clients, guests, suppliers and contractors click here.
(<https://www.mauriceblackburn.com.au/about/covid-19/covid-19-vaccinations>)

ANNEXURE PJP2



From: Phillip Pasfield

Sent: Wednesday, 2 November 2022 4:02 PM

To: 'Jessica Dawson-Field' <JDawson-Field@mauriceblackburn.com.au>

Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>

Subject: RE: Application by Kelly - D2022/10 [MBC-VIC.FID8032398] [S+G-ACTIVE.7592.M659724.FID4985938]

Jessica

I refer to your letter of 31 October 2022.

I am in the process of obtaining instructions.

You have requested a response by 4.00pm on Wednesday 3 November 2022. As 3 November falls on Thursday and not today, I am uncertain as to when a response is sought.

In any event, I will respond once I have obtained proper instructions.

Regards

Phillip Pasfield

National Practice Group Leader
Industrial and Employment Law

SLATER AND GORDON LAWYERS

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ANNEXURE PJP3

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Form F52 – Application for an order for production of documents, records or information to the Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission (Commission) for an order under s.590(2)(c) of the Fair Work Act 2009 requiring a person to produce documents, records or other information to the Commission.

The Applicant



These are the details of the party that is making this application.

If the Applicant is an individual, provide the following details:

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is not an individual, provide the following details:

Legal name	Construction, Forestry, Maritime, Mining and Energy Union (National Office)
ACN (if a company)	
ABN (if applicable)	46 243 168 565

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Trading name or registered business name (if applicable)	Construction, Forestry, Maritime, Mining and Energy Union (National Office)		
Contact person	Chris Cain		
Postal address	Level 6, 540 Elizabeth Street		
Suburb	Melbourne		
State or territory	VIC	Postcode	3000
Phone number	<u>03 9274 9201</u>	Fax number	
Email address	<u>ccain@cfmeu.org</u>		

Which party is the Applicant?

Applicant

Respondent

Other

If you answered **other** – Provide details.

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The Commission matter that this application relates to



These are the details of the main matter that the proposed order relates to.

Matter name	Application by Grahame Patrick Kelly – withdrawal from amalgamated organisation – Mining and Energy Division – Construction, Forestry, Maritime, Mining and Energy Union
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FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Matter number	D2022/10
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1. The Application

1.1 What documents, records or other information are being sought?



Using numbered paragraphs, identify the documents, records and information you want produced to the Commission.

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022; and
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022.

1.2 Why are the documents, records or other information being sought?



Using numbered paragraphs, explain why each document, record or piece of information is sought. This might include, for example, explaining the evidence that is contained in a document or how a document is relevant to the main matter

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

1. The documents requested are relevant to determining whether the former UMFA is separately identifiable as the Mining and Energy Division of the amalgamated organization and therefore a “constituent part” for the purpose of s 94 and s 94A of the Fair Work (Registered Organisations) Act 2009, and whether the application has been made in accordance with s 94(3).
2. The documents requested are relevant to determining the application in respect of the alternative constituent part has been authorized by the required members.
3. The documents in paragraph 3, 6, 7 and 8 are also referred to in Mr Kelly’s statement of 24 October 2022.

1.3 How will the documents, records or other information assist the Commission in reaching a decision?



Using numbered paragraphs, explain how each document, record or other piece of information could assist the Commission in deciding the main matter.

1. The information will assist the Commission in determining the matters identified at [1] and [2] of part 1.2 of the form.



You must complete the draft order attached to this form.

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

Signature




If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Jessica Dawson-Field

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Date	7 November 2022
Capacity/ Position	Lawyer for the Respondent
	If you are not the Applicant and are completing this form on the Applicant's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 11 November 2022
Date: 4pm
Place: Fair Work Commission, Melbourne Registry

Member

- Note:
- This order has been issued at the request of [*party applying for order*].
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022; and
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022.



DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

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Date: 4pm

Place: Fair Work Commission, Melbourne Registry

Member

- Note:
- This order has been issued at the request of [*party applying for order*].
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022; and
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022.

ANNEXURE PJP4



8 November 2022

Jessica Dawson-Field
Employment & Industrial Law
Maurice Blackburn Lawyers
Level 21, 380 La Trobe Street
Melbourne VIC 3000

485 La Trobe Street
Melbourne VIC 3000

Fax: (03) 9600 0290

<http://www.slatergordon.com.au>

Correspondence to:

Lawyer: Phillip Pasfield
Legal Assistant: Emma Harper

Direct Ph: 0419 295 492

Email: phillip.pasfield@slatergordon.com.au;
emma.harper@slatergordon.com.au

By Email: jdawson-field@mauriceblackburn.com.au

Dear Ms Dawson-Field

D2022/10 Application by Grahame Patrick Kelly

I refer to the Application for an order for production of documents, records or information to the Commission dated 7 November 2022.

I also refer to the email of 7 November 2022 from the Associate to Vice President Hatcher seeking a response by my client to the Application by 5.00pm today.

My client has reviewed the documents sought in paragraph 1.1 of the Application.

My client proposes that no order for production needs be issued by the Commission on the basis that documents in respect of paragraphs 7 and 8 are produced informally to you by no later than 5.00pm on Friday 11 November 2022.

Please note that my client has no documents to produce in respect of paragraphs 1, 2, 4 and 5.

In respect of paragraph 3, a copy of the financial report is annexure GK-20 to Mr Kelly's statement.

In respect of paragraph 6, the documentation sought is found at annexure GK-21 to Mr Kelly's statement.

Please let me know if the above proposal is acceptable to your client or otherwise so that I may respond to the Associate by 5.00pm today.

Yours faithfully

A handwritten signature in blue ink, appearing to read "P. Pasfield".

Phillip Pasfield
National Practice Group Leader
Industrial and Employment Law
SLATER AND GORDON

ANNEXURE PJP5

Our Ref: JBF/5739185 (650)
Direct Tel: 03 9605 2809
Direct Fax: 03 9258 9613
Direct Email: jdawson-field@mauriceblackburn.com.au

Mr Philip Pasfield
National Practice Group Leader
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mauriceblackburn.com.au

9 November 2022

BY EMAIL

Dear Mr Pasfield

D2022/10 Application by Grahame Patrick Kelly

1. We refer to your correspondence yesterday.
2. We note that the last three categories of documents identified in our correspondence of 31 October 2022 were not included in our draft application. This was an inadvertent error.
3. Provided your client is agreeable to voluntarily producing those additional categories in addition to those proposed in your correspondence of yesterday, we are content for the production to occur without an order. This is on the basis that production of all documents occur by no later than 5pm on Friday 11 November 2022.
4. Alternatively, we are instructed to file the attached amended application today. Please advise your client's response by 5pm today.

Your faithfully



Jessica Dawson-Field
Senior Associate
Employment & Industrial Law Section
MAURICE BLACKBURN

Coronavirus Update

Covid 19 guidance for our clients, guests, suppliers and contractors [click here.](https://www.mauriceblackburn.com.au/about/covid-19/covid-19-vaccinations)
(<https://www.mauriceblackburn.com.au/about/covid-19/covid-19-vaccinations>)

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About the F52 application form

Application for an order for production of documents, records or information to the Commission

About orders for the production of documents etc to the Fair Work Commission

The [Fair Work Act 2009](#) allows the Fair Work Commission (Commission) to inform itself in relation to a matter before it by requiring a person to provide copies of documents or records, or to provide any other information to the Commission. A party can apply for an order requiring a person to produce documents, records or other information to the Commission.

The application must be accompanied by a draft order. The template for the draft order is attached to this form.

A person is only required to produce documents which are in their possession, custody or control; they are not required to create documents to comply with an order.

If the Commission makes the order, you must serve a signed copy of the order upon the person who is required to produce the documents, records or other information and, unless the order has been published on the Commission's website, upon every other party in the matter. For information about orders for production of documents, records or information to the Commission, see the [Practice note for Orders to attend and orders to produce](#) on the Commission's website.

Who can use this form

Use this form if you are a party to a matter currently before the Commission and you want the Commission to make an order for production of documents, records or other information to the Commission.

Lodgment and service of your completed form

1. **Lodge this application and draft order** and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your state or territory.

2. Unless the Commission orders otherwise, **as soon as practicable** after this form is lodged with the Commission, **serve a copy** of this application on:
 - the person who is required to produce the documents, records or information to the Commission **and**

- unless the application has been published on the Commission’s website, every other party in the matter.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for the purpose of dealing with the application for an order requiring production of documents, information or records to the Commission. The information will be included on the case file, and the Commission may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Form F52 – AMENDED Application for an order for production of documents, records or information to the Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission (Commission) for an order under s.590(2)(c) of the Fair Work Act 2009 requiring a person to produce documents, records or other information to the Commission.

The Applicant



These are the details of the party that is making this application.

If the Applicant is an individual, provide the following details:

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is not an individual, provide the following details:

Legal name	Construction, Forestry, Maritime, Mining and Energy Union (National Office)
ACN (if a company)	
ABN (if applicable)	46 243 168 565

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Trading name or registered business name (if applicable)	Construction, Forestry, Maritime, Mining and Energy Union (National Office)		
Contact person	Chris Cain		
Postal address	Level 6, 540 Elizabeth Street		
Suburb	Melbourne		
State or territory	VIC	Postcode	3000
Phone number	<u>03 9274 9201</u>	Fax number	
Email address	<u>ccain@cfmeu.org</u>		

Which party is the Applicant?

Applicant

Respondent

Other

If you answered **other** – Provide details.

--

The Commission matter that this application relates to



These are the details of the main matter that the proposed order relates to.

Matter name	Application by Grahame Patrick Kelly – withdrawal from amalgamated organisation – Mining and Energy Division – Construction, Forestry, Maritime, Mining and Energy Union
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FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Matter number	D2022/10
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1. The Application

1.1 What documents, records or other information are being sought?



Using numbered paragraphs, identify the documents, records and information you want produced to the Commission.

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
9. A copy of the membership roll of the Mining & Energy Division as at 15 September 2022;
10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

1.2 Why are the documents, records or other information being sought?



Using numbered paragraphs, explain why each document, record or piece of information is sought. This might include, for example, explaining the evidence that is contained in a document or how a document is relevant to the main matter

1. The documents requested are relevant to determining whether the former UMFA is separately identifiable as the Mining and Energy Division of the amalgamated organization and therefore a “constituent part” for the purpose of s 94 and s 94A of the Fair Work (Registered Organisations) Act 2009, and whether the application has been made in accordance with s 94(3).
2. The documents requested are relevant to determining the application in respect of the alternative constituent part has been authorized by the required members.
3. The documents in paragraph 3, 6, 7 and 8 are also referred to in Mr Kelly’s statement of 24 October 2022.

1.3 How will the documents, records or other information assist the Commission in reaching a decision?



Using numbered paragraphs, explain how each document, record or other piece of information could assist the Commission in deciding the main matter.

1. The information will assist the Commission in determining the matters identified at [1] and [2] of part 1.2 of the form.



You must complete the draft order attached to this form.

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.


Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Signature	
Name	Jessica Dawson-Field
Date	9 November 2022
Capacity/ Position	Lawyer for the Respondent
	If you are not the Applicant and are completing this form on the Applicant's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 11 November 2022

Date: 4pm

Place: Fair Work Commission, Melbourne Registry

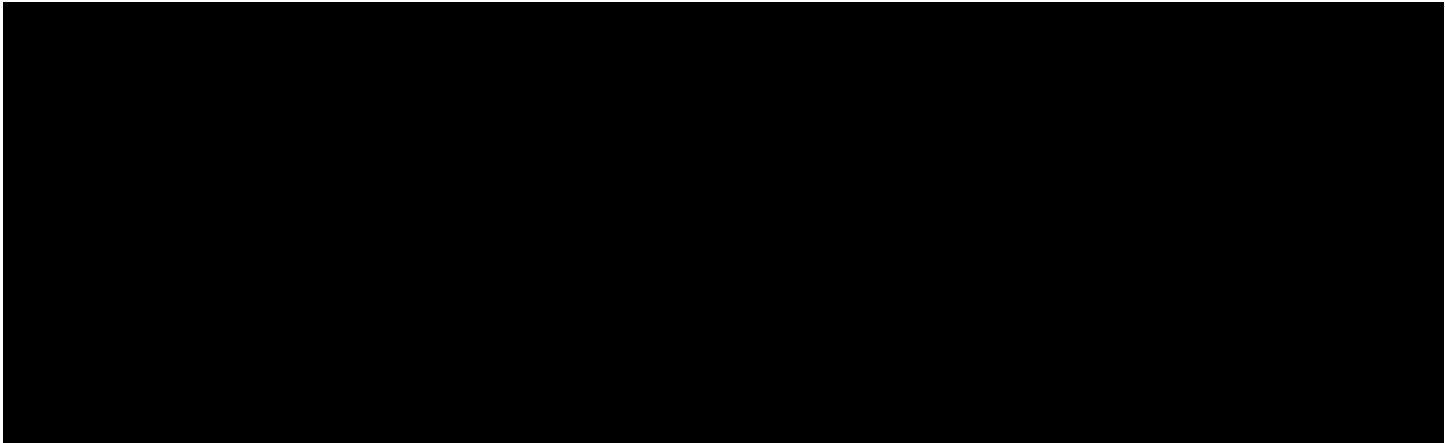
Member

- Note:
- This order has been issued at the request of [*party applying for order*].
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
9. A copy of the membership roll of the Mining & Energy Division as at 15 September 2022;
10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).

ANNEXURE PJP6



From: Phillip Pasfield
Sent: Wednesday, 9 November 2022 4:08 PM
To: 'Jessica Dawson-Field' <JDawson-Field@mauriceblackburn.com.au>
Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>
Subject: RE: Application by Kelly - D2022/10 [MBC-VIC.FID8032398] [S+G-ACTIVE.7592.M659724.FID4985938]

Jessica

I refer to your letter of today's date.

I note the additional categories of documents now sought. I also note that the grounds in paragraph 1.2 in the proposed amended application have not been amended to account for the additional categories sought.

With reference in particular to the documents now sought in categories 9 and 10, I assume this is for the purpose of reconciling the roll with the instruments of authority filed with the Application proper.

In order that I may obtain instructions can you please confirm this is the purpose.

Regards


Phillip Pasfield
National Practice Group Leader
Industrial and Employment Law



SLATER AND GORDON LAWYERS
Level 14, 55 Market Street, Sydney New South Wales 2000
D +61 2 8267 0613 | **T** +61 2 8071 2790 |
M +61 419 295 492 | **F** (02) 8267 0650
W slatergordon.com.au



ANNEXURE PJP7



From: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>
Sent: Thursday, 10 November 2022 9:15 AM
To: Phillip Pasfield <Phillip.Pasfield@slatergordon.com.au>
Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>
Subject: RE: Application by Kelly - D2022/10 [S+G-ACTIVE.7592.M659724.FID4985938]

This Message Is From an External Sender

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Phillip

The documents in category 9 and 10 are relevant for the reasons you identify and also for the purpose of interrogating the analysis the subject of category 11.

Please advise your client's instruction by 1pm today, otherwise we are instructed to file the amended application.

Kind regards

Jessica Dawson-Field
Senior Associate

T 03 9605 2809
F 03 9258 9613

E JDawson-Field@mauriceblackburn.com.au

mauriceblackburn.com.au

Naarm
Level 21, 380 La Trobe Street
Melbourne VIC 3000

ANNEXURE PJP8

From: Phillip Pasfield

Sent: Thursday, 10 November 2022 12:55 PM

To: 'Jessica Dawson-Field' <JDawson-Field@mauriceblackburn.com.au>

Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>

Subject: RE: Application by Kelly - D2022/10 [S+G-ACTIVE.7592.M659724.FID4985938]

Dear Jessica

Further to your email this morning and in addition to my letter of 8 November last, my client is willing to produce the documents sought in category 11 to you on an informal basis by 5.00pm tomorrow.

With respect to categories 9 and 10, my client proposes that the analysis be conducted by an independent person rather than producing the rolls to your client. I have spoken with Mr Julius Roe, a former Commissioner of the FWC, who has advised that he is in a position to conduct that analysis and provide a report to the parties. My client would be responsible for Mr Roe's costs. This proposal would ensure the privacy of the members concerned but provide your client with the information it seeks.

Please advise whether this proposal is acceptable.

Regards

Phillip Pasfield

National Practice Group Leader
Industrial and Employment Law



SLATER AND GORDON LAWYERS

Level 14, 55 Market Street, Sydney New South Wales 2000

D +61 2 8267 0613 | **T** +61 2 8071 2790 |

M +61 419 295 492 | **F** (02) 8267 0650

W slatergordon.com.au

ANNEXURE PJP9

From: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>
Sent: Thursday, 10 November 2022 2:39 PM
To: Phillip Pasfield <Phillip.Pasfield@slatertgordon.com.au>
Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>; Justin Go <justingo@mauriceblackburn.com.au>
Subject: RE: Application by Kelly - D2022/10 [S+G-ACTIVE.7592.M659724.FID4985938]

This Message Is From an External Sender

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Phillip

We do not agree to that proposal

As advised in our correspondence of 31 October 2022, our client is agreeable to providing undertakings that the documents will be kept confidential and not shown to members of our client beyond its legal representatives and in-house solicitors. This should address the privacy concerns held by your client.

If your client does not agree to provide the documents in category 9 and 10 in addition to those other documents already identified, we will file the attached application and send the below email to the Associate at 4:30pm today:

Dear Associate

We refer to the above matter.

The parties have not been able to reach agreement on all categories sought by the CFMMEU. We attach an amended F52 Application for filing.

We request that the order is made as soon as possible.

Kind regards

Jessica Dawson-Field
Senior Associate

T 03 9605 2809

F 03 9258 9613

E JDawson-Field@mauriceblackburn.com.au

mauriceblackburn.com.au

Naarm

Level 21, 380 La Trobe Street

Melbourne VIC 3000



About the F52 application form

Application for an order for production of documents, records or information to the Commission

About orders for the production of documents etc to the Fair Work Commission

The [Fair Work Act 2009](#) allows the Fair Work Commission (Commission) to inform itself in relation to a matter before it by requiring a person to provide copies of documents or records, or to provide any other information to the Commission. A party can apply for an order requiring a person to produce documents, records or other information to the Commission.

The application must be accompanied by a draft order. The template for the draft order is attached to this form.

A person is only required to produce documents which are in their possession, custody or control; they are not required to create documents to comply with an order.

If the Commission makes the order, you must serve a signed copy of the order upon the person who is required to produce the documents, records or other information and, unless the order has been published on the Commission's website, upon every other party in the matter. For information about orders for production of documents, records or information to the Commission, see the [Practice note for Orders to attend and orders to produce](#) on the Commission's website.

Who can use this form

Use this form if you are a party to a matter currently before the Commission and you want the Commission to make an order for production of documents, records or other information to the Commission.

Lodgment and service of your completed form

1. **Lodge this application and draft order** and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your state or territory.

2. Unless the Commission orders otherwise, **as soon as practicable** after this form is lodged with the Commission, **serve a copy** of this application on:
 - the person who is required to produce the documents, records or information to the Commission **and**

- unless the application has been published on the Commission’s website, every other party in the matter.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for the purpose of dealing with the application for an order requiring production of documents, information or records to the Commission. The information will be included on the case file, and the Commission may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Form F52 – AMENDED Application for an order for production of documents, records or information to the Commission

[Fair Work Act 2009](#), s.590(2)(c); [Fair Work Commission Rules 2013](#), rule 54 and Schedule 1

This is an application to the Fair Work Commission (Commission) for an order under s.590(2)(c) of the [Fair Work Act 2009](#) requiring a person to produce documents, records or other information to the Commission.

The Applicant



These are the details of the party that is making this application.

If the Applicant is an individual, provide the following details:

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is not an individual, provide the following details:

Legal name	Construction, Forestry, Maritime, Mining and Energy Union (National Office)
ACN (if a company)	
ABN (if applicable)	46 243 168 565

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Trading name or registered business name (if applicable)	Construction, Forestry, Maritime, Mining and Energy Union (National Office)		
Contact person	Chris Cain		
Postal address	Level 6, 540 Elizabeth Street		
Suburb	Melbourne		
State or territory	VIC	Postcode	3000
Phone number	<u>03 9274 9201</u>	Fax number	
Email address	<u>ccain@cfmeu.org</u>		

Which party is the Applicant?

Applicant

Respondent

Other

If you answered **other** – Provide details.

--

The Commission matter that this application relates to



These are the details of the main matter that the proposed order relates to.

Matter name	Application by Grahame Patrick Kelly – withdrawal from amalgamated organisation – Mining and Energy Division – Construction, Forestry, Maritime, Mining and Energy Union
-------------	--

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Matter number	D2022/10
---------------	----------

1. The Application

1.1 What documents, records or other information are being sought?



Using numbered paragraphs, identify the documents, records and information you want produced to the Commission.

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
9. A copy of the membership roll of the Mining & Energy Division as at 15 September 2022;
10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

1.2 Why are the documents, records or other information being sought?



Using numbered paragraphs, explain why each document, record or piece of information is sought. This might include, for example, explaining the evidence that is contained in a document or how a document is relevant to the main matter

1. The documents requested are relevant to determining whether the former UMFA is separately identifiable as the Mining and Energy Division of the amalgamated organization and therefore a “constituent part” for the purpose of s 94 and s 94A of the Fair Work (Registered Organisations) Act 2009, and whether the application has been made in accordance with s 94(3).
2. The documents requested are relevant to determining the application in respect of the alternative constituent part has been authorized by the required members.
3. The documents in paragraph 3, 6, 7 and 8 are also referred to in Mr Kelly’s statement of 24 October 2022.
4. The documents in category 9 and 10 are relevant for the purpose of reconciling the roll with the instruments of authority filed with the Application, and also for the purpose of interrogating the analysis the subject of category 11.

1.3 How will the documents, records or other information assist the Commission in reaching a decision?



Using numbered paragraphs, explain how each document, record or other piece of information could assist the Commission in deciding the main matter.

1. The information will assist the Commission in determining the matters identified at [1] and [2] of part 1.2 of the form.



You must complete the draft order attached to this form.

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Signature	
Name	Jessica Dawson-Field
Date	10 November 2022
Capacity/ Position	Lawyer for the Respondent
	If you are not the Applicant and are completing this form on the Applicant's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



FairWork
Commission

DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 11 November 2022

Date: 4pm

Place: Fair Work Commission, Melbourne Registry

Member

- Note:
- This order has been issued at the request of [*party applying for order*].
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
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8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
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10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).

ANNEXURE PJP10

From: Phillip Pasfield

Sent: Thursday, 10 November 2022 4:23 PM

To: 'Jessica Dawson-Field' <JDawson-Field@mauriceblackburn.com.au>

Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>; Justin Go <justingo@mauriceblackburn.com.au>

Subject: RE: Application by Kelly - D2022/10 [S+G-ACTIVE.7592.M659724.FID4985938]

Jessica

I am instructed not to agree to what you have proposed.

I note that you will forward the draft email below to the Associate. Please copy me in to that email.

Regards

Phillip Pasfield

National Practice Group Leader
Industrial and Employment Law



SLATER AND GORDON LAWYERS

Level 14, 55 Market Street, Sydney New South Wales 2000

D +61 2 8267 0613 | **T** +61 2 8071 2790 |

M +61 419 295 492 | **F** (02) 8267 0650

W slatergordon.com.au

ANNEXURE PJP11

From: Jessica Dawson-Field <JDawson-Field@mauriceblackburn.com.au>
Sent: Thursday, 10 November 2022 4:41 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>; Phillip Pasfield <Phillip.Pasfield@slaterguson.com.au>
Cc: Josh Bornstein <JBornstein@mauriceblackburn.com.au>; Justin Go <justingo@mauriceblackburn.com.au>
Subject: RE: D2022/10 - Application by Kelly [S+G-ACTIVE.7592.M659724.FID4985938]

This Message Is From an External Sender

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associate

We refer to the above matter.

The parties have not been able to reach agreement on all categories sought by the CFMMEU. We attach an amended F52 Application for filing.

We request that the order is made as soon as possible.

Kind regards

Jessica Dawson-Field
Senior Associate

T 03 9605 2809
F 03 9258 9613

E JDawson-Field@mauriceblackburn.com.au

mauriceblackburn.com.au

Naarm
Level 21, 380 La Trobe Street
Melbourne VIC 3000



About the F52 application form

Application for an order for production of documents, records or information to the Commission

About orders for the production of documents etc to the Fair Work Commission

The [Fair Work Act 2009](#) allows the Fair Work Commission (Commission) to inform itself in relation to a matter before it by requiring a person to provide copies of documents or records, or to provide any other information to the Commission. A party can apply for an order requiring a person to produce documents, records or other information to the Commission.

The application must be accompanied by a draft order. The template for the draft order is attached to this form.

A person is only required to produce documents which are in their possession, custody or control; they are not required to create documents to comply with an order.

If the Commission makes the order, you must serve a signed copy of the order upon the person who is required to produce the documents, records or other information and, unless the order has been published on the Commission's website, upon every other party in the matter. For information about orders for production of documents, records or information to the Commission, see the [Practice note for Orders to attend and orders to produce](#) on the Commission's website.

Who can use this form

Use this form if you are a party to a matter currently before the Commission and you want the Commission to make an order for production of documents, records or other information to the Commission.

Lodgment and service of your completed form

1. **Lodge this application and draft order** and any supporting documents with the Commission.

You can lodge your application by post, by fax or by email or in person at the [Commission's office](#) in your state or territory.

2. Unless the Commission orders otherwise, **as soon as practicable** after this form is lodged with the Commission, **serve a copy** of this application on:
 - the person who is required to produce the documents, records or information to the Commission **and**

- unless the application has been published on the Commission’s website, every other party in the matter.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – In relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form for the purpose of dealing with the application for an order requiring production of documents, information or records to the Commission. The information will be included on the case file, and the Commission may disclose this information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Form F52 – AMENDED Application for an order for production of documents, records or information to the Commission

Fair Work Act 2009, s.590(2)(c); Fair Work Commission Rules 2013, rule 54 and Schedule 1

This is an application to the Fair Work Commission (Commission) for an order under s.590(2)(c) of the Fair Work Act 2009 requiring a person to produce documents, records or other information to the Commission.

The Applicant



These are the details of the party that is making this application.

If the Applicant is an individual, provide the following details:

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is not an individual, provide the following details:

Legal name	Construction, Forestry, Maritime, Mining and Energy Union (National Office)
ACN (if a company)	
ABN (if applicable)	46 243 168 565

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Trading name or registered business name (if applicable)	Construction, Forestry, Maritime, Mining and Energy Union (National Office)		
Contact person	Chris Cain		
Postal address	Level 6, 540 Elizabeth Street		
Suburb	Melbourne		
State or territory	VIC	Postcode	3000
Phone number	<u>03 9274 9201</u>	Fax number	
Email address	<u>ccain@cfmeu.org</u>		

Which party is the Applicant?

Applicant

Respondent

Other

If you answered **other** – Provide details.

--

The Commission matter that this application relates to



These are the details of the main matter that the proposed order relates to.

Matter name	Application by Grahame Patrick Kelly – withdrawal from amalgamated organisation – Mining and Energy Division – Construction, Forestry, Maritime, Mining and Energy Union
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FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Matter number	D2022/10
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1. The Application

1.1 What documents, records or other information are being sought?



Using numbered paragraphs, identify the documents, records and information you want produced to the Commission.

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
3. A copy of the financial report referred to at [60](a) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
4. A copy of the United Mine Workers Division of the amalgamated organisation (the **UMW Division**) membership roll as at 2 September 1992;
5. A copy of any document evidencing or recording the membership of the UMW Division of the amalgamated organisation membership roll as at 2 September 1992;
6. A copy of any document evidencing or recording the total number of members who voted in the 1996 Mining and Energy Division elections referred to at [60] (e) of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
7. A copy of any document evidencing or recording the total number of members of the Mining and Energy Division immediately before the transfer of members in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
8. A copy of any document evidencing or recording the total number of members who transferred to the Mining and Energy Division in 2003 referred to at [61] of Mr Grahame Patrick Kelly's statement dated 24 October 2022;
9. A copy of the membership roll of the Mining & Energy Division as at 15 September 2022;
10. A copy of each current District Branch membership rolls as at 15 September 2022; and
11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

1.2 Why are the documents, records or other information being sought?



Using numbered paragraphs, explain why each document, record or piece of information is sought. This might include, for example, explaining the evidence that is contained in a document or how a document is relevant to the main matter

1. The documents requested are relevant to determining whether the former UMFA is separately identifiable as the Mining and Energy Division of the amalgamated organization and therefore a “constituent part” for the purpose of s 94 and s 94A of the Fair Work (Registered Organisations) Act 2009, and whether the application has been made in accordance with s 94(3).
2. The documents requested are relevant to determining the application in respect of the alternative constituent part has been authorized by the required members.
3. The documents in paragraph 3, 6, 7 and 8 are also referred to in Mr Kelly’s statement of 24 October 2022.
4. The documents in category 9 and 10 are relevant for the purpose of reconciling the roll with the instruments of authority filed with the Application, and also for the purpose of interrogating the analysis the subject of category 11.

1.3 How will the documents, records or other information assist the Commission in reaching a decision?



Using numbered paragraphs, explain how each document, record or other piece of information could assist the Commission in deciding the main matter.

1. The information will assist the Commission in determining the matters identified at [1] and [2] of part 1.2 of the form.



You must complete the draft order attached to this form.

Disclosure of information

The Commission may provide a copy of this application and any documents you lodge in support of this application to the other parties in this matter.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

FAIR WORK COMMISSION

Form F52 – Application for an order for production of documents, records or information to the Commission

Signature	
Name	Jessica Dawson-Field
Date	10 November 2022
Capacity/ Position	Lawyer for the Respondent
	If you are not the Applicant and are completing this form on the Applicant’s behalf, include an explanation of your authority to do so in the Capacity/Position section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS



FairWork
Commission

DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

215-217 Clarence Street Sydney, NSW, 2000

Pursuant to s.590(2) of the *Fair Work Act 2009* you are **ORDERED** to provide to the Fair Work Commission the documents, records and other information specified in the Schedule to this order before the Fair Work Commission at the following time, date and place:

Time: 11 November 2022

Date: 4pm

Place: Fair Work Commission, Melbourne Registry

Member

- Note:
- This order has been issued at the request of [*party applying for order*].
 - You can apply to have this order set aside or varied.
 - Instead of attending to provide the documents etc. covered by this order at the time and place specified above, you may produce them to an officer of the Commission at the place specified above not later than 4.00 pm on the day before the day specified above.
 - If you have any queries in relation to this order please contact the associate to [*member*] on [*chamber's email*].

SCHEDULE

1. A copy of the membership roll of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
2. A copy of any document evidencing or recording the membership of the United Mineworkers' Federation of Australia (**UMFA**) as at 9 February 1992;
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11. A copy of any document recording or comprising the analysis undertaken by each District Secretary (or other officer including Mr Kelly) to identify which members of each District Branch were also eligible to be members of UMFA (as at paragraph 8 of the Second Statement of Grahame Patrick Kelly dated 24 October 2022).



FairWork
Commission

DRAFT ORDER

Fair Work Act 2009

s.590(2)(c) – Order requiring a person to produce documents etc to the Fair Work Commission

Applicant(s):

Grahame Patrick Kelly

Commission Matter No:

D2022/10

COMMISSION MEMBER

DATE

TO: Grahame Patrick Kelly

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