

**From:** Phillip Pasfield <Phillip.Pasfield@slatergordon.com.au>  
**Sent:** Tuesday, 22 November 2022 1:28 PM  
**To:** Chambers - Acting President Hatcher <Chambers.Hatcher.VP@fwc.gov.au>  
**Cc:** 'Jessica Dawson-Field (JDawson-Field@mauriceblackburn.com.au)' <JDawson-Field@mauriceblackburn.com.au>; J Bornstein <JBornstein@mauriceblackburn.com.au>  
**Subject:** Application by Kelly - D2022/10 [S+G-ACTIVE.7592.M659724.FID4985938]

Dear Associate

I refer to the Order for Production made by Vice President Hatcher on 18 November 2022.

On the issue of access to the produced documents, the applicant submits that access should only be given to the CFMMEU's solicitors, Maurice Blackburn (at 380 La Trobe Street, Melbourne), and any counsel briefed by them on the receipt of written undertakings from them to the Commission that they will not disclose the documents or the information contained in the documents to anyone else or transmit or share the documents or the information contained in the documents to any CFMMEU email or electronic system and that at the end of the proceeding they will return all copies of the documents to the Commission. Such undertaking is in addition to and without derogating from the implied undertaking not to use the produced documents other than for the purposes of this proceeding.

As explained at the hearing before the Vice President on 17 November 2022, the applicant's concern is to protect the privacy of the member information in the documents. The CFMMEU's submissions in the first sentence of paragraph 23 of its written submissions dated 16 November 2022 overlook the specific provisions of the Mining and Energy Division Rules which charges the lodges, districts and division with the responsibility of keeping the rolls or registers of division members. It also overlooks the autonomy given to divisions by National Rule 27.

I note that in the email sent by Maurice Blackburn to the Commission on 18 November 2022, they sought that two lawyers employed by the CFMMEU also have access to the documents. The applicant opposes such expanded access.

Maurice Blackburn have provided no reason for that being necessary given the nature of the documents and purpose for which they are sought. Relevant instructions are able to be obtained without such access.

Further, the undertaking proposed in the Maurice Blackburn email does not exclude the making of copies which might be shared or retained by the employees of the CFMMEU.

For the reasons in the preceding four paragraphs, the applicant submits that access to the produced documents should be allowed only on the terms in the second paragraph above.

The lawyers for the CFMMEU have been copied into this email.

Regards

**Phillip Pasfield**  
National Practice Group Leader  
Industrial and Employment Law



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