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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
(CFMEU)

and

PRO IMAGE INTERIORS PTY LTD
(PRO IMAGE)

AND

KANE CONSTRUCTIONS PTY LTD
(KANE)

RE: ALLEGED BREACH OF ENTERPRISE AGREEMENT
SHAM CONTRACTING

9 MARCH 2023

003-2023

STATEMENT NO. 2

[1] The CFMEU notified a dispute on 7 February 2023 regarding alleged Breaches of the Enterprise Agreement by Pro Image at the Mt Eliza Aged Care Facility Project where it is a subcontractor to Kane as principal.

[2] The applicable Enterprise Agreements are:

- *Pro Image Interiors Pty Ltd and the CFMEU (Victorian Construction and General Division) Subcontractors Plastering Enterprise Agreement 2020-2023.*
- *Kane Constructions Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2020-2023.*

[3] The Panel conducted a Conference of the parties by video on 21 February 2023 and issued a Statement. This Statement is to be read in conjunction with the former.

[4] The Panel conducted a further Conference by video on 9 March 2023.

[5] Pursuant to the earlier Statement and its Directions the parties had conferred but had been unable to resolve the outstanding allegations concerning sham contracting and Enterprise Agreement compliance.

[6] Pro Image advised the Panel that since the last Conference it had terminated its contracts with “One Vitro” and “Spectacular Plastering” and had now engaged workers as independent subcontractors directly as well as maintaining direct employment of some 8 employees.

[6] Following separate conferences with the parties, the matters remained unresolved, and the Panel acknowledged that the dispute would necessarily require that the Panel undertake an audit of Pro Image’s engagement of its workers, both with respect to the new arrangements and previous, pursuant to its powers under the Agreements and its Charter. The purpose of the audit is for a report to be prepared for the Panel, in the first instance by Panel members, to inform the Panel if there is any basis to the allegations that the relevant workforce ought to be treated as employees pursuant to the Agreement or are legitimate independent subcontractors.

[7] The Panel determined that it would proceed to undertake such an audit for which both Pro Image and Kane advised they did not object. Pro Image undertook to make available

to the Panel all necessary contracts, invoices, and relevant documentation to assist the Panel in this process. The Panel will retain the information received on a confidential basis to it.

[8] Panel members will make arrangements directly with Pro Image for this purpose and a further Conference of all the parties will be held with the Panel **on Wednesday 29 March 2023 at 2.30pm by video conference.**

[9] In addition the parties will take further action to provide confidence that the necessary work cover arrangements are properly in place to protect the workforce, including with the assistance of WorkSafe, if the parties are able to make arrangements accordingly.

[8] In the meantime the parties are expected to follow the relevant procedures under the Agreements and should further dialogue between them advance the resolution of the matters before the Panel, that is encouraged by the Panel..



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Adrian Ziccone
Panel Member