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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**

**29 MARCH 2023**

**003-2023**

**STATEMENT NO. 3**

[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 and 9 March 2023 and issued Statements. Those Statements are to be read in conjunction with this Statement.

[4] The Panel conducted a further Conference by video on 29 March 2023.

[5] Pursuant to Statement No.2, Panel members Cordier and Ziccone commenced an audit of Pro Image's engagement of its workers, both with respect to the new arrangements and previous, pursuant to the Panel's powers under the Agreements and its Charter. The Panel members had requested and received some materials from Pro Image, met with Pro Image at its offices and conducted an onsite inspection at the Mt Eliza site.

[6] The Panel members provided an overview of their audit to date, noting that a final report to the Panel awaited further material to provide by Pro Image and/or Kane.

[7] The Panel again notes that the purpose of the audit is for a report to be prepared for the Panel in order 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 and that sham contracting was not occurring, both with respect to the new arrangements in place and previously. Thus far the Panel has not yet been provided with any evidence as to the contracts that were in place with workers engaged through or by One Vitro P/L and Spectacular Plaster P/L in relation to the contracts that Pro Image has held with Kane, prior to the termination of the contracts held between Pro Image and One Vitro and with Spectacular Plaster P/L. To be clear this information is necessary for the Panel to determine if there has been any sham contracting occurring on

either of the sites in question at any time in relation to either or both Enterprise Agreements. The Panel directs that both Kane and Pro Image arrange for the provision of the evidence of contracts, if any exist, **no later than 5.00pm on Wednesday 5 April 2023.**

[8] It was noted that initially the CFMEU had asserted that Pro Image may have not been compliant with pay slip requirements with respect to its direct employees. In this regard the CFMEU is requested to provide further details to the Panel **no later than 5.00pm Wednesday 5 April 2023** such that the Panel members can also examine any such allegations, in the event the CFMEU advises it wishes to press these matters. The CFMEU agreed to confirm its position.

[9] In Statement No.2 the Panel noted that the parties would 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. The Panel notes that Pro Image sought some confirmation in writing, but not from WorkSafe, which was provided to the Panel, which Pro Image agreed it will make available to the CFMEU. Nevertheless there is still uncertainty as to who is required to pay Workcover premiums and the coverage of workers. Kane agreed with the recommendation of the Chair that it would arrange and facilitate a meeting with an appropriate representative of WorkSafe, itself, the CFMEU and Pro Image to clear this up once and for all. The Panel expects this will be completed expeditiously and asks to be advised of the outcome.

[10] Following 5 April 2023, the Panel members will determine if any further site inspections are required and the Panel will thereafter issue further Directions as to how the Dispute will proceed.



**Peter Parkinson**  
**Chairman**



**Tony Cordier**  
**Panel Member**



**Adrian Ziccone**  
**Panel Member**