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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
(CFMEU)**

and

GDP GROUP PTY LTD T/AS GDP PROPERTY SERVICES (GDP)

FOOTSCRAY HOSPITAL SITE and 595 COLLINS STREET, MELBOURNE

RE: SUB CLAUSE 4(E)-SCOPE OF AGREEMENT

21 DECEMBER, 2018

030-2018

STATEMENT

[1] The CFMEU notified a dispute on 14 December 2018 regarding the application of sub clause 4(e) Scope of Agreement of the Enterprise Agreement on works being conducted by GDP at the Footscray Hospital and 595 Collins Street, Melbourne.

[2] The Panel convened a conference of the parties on 21 December 2018. Mr M. Tisdall represented the Employer by telephone together with Mr C. Broadbent in person. The CFMEU was represented by Ms A Swayn.

[3] The Enterprise Agreement alleged by the CFMEU to apply to the works is:

- *GDP Group Pty Ltd t/as GDP Property Services and the CFMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018.*

[4] Sub clause 4(e) of the Enterprise Agreement provides as follows:

"Maintenance work not in connection with new work shall not fall within the scope of this Agreement."

[5] Essentially the CFMEU submitted that the works being undertaken by GDP at both sites was being undertaken in connection with new work or was new work, therefore the terms of the Enterprise Agreement applied to the relevant employees of GDP.

[6] GDP submitted that the intention of the parties was that the type of works being undertaken would not fall under the terms of the Enterprise Agreement.

[7] To assist the Panel, arrangements were made during the Conference to engage by telephone with Mr C. Norbury, Construction Manager of GDP. Mr. Norbury provided further details of the works being conducted at the Footscray Hospital which he said amount to repairs and maintenance to the west wall of an old building on the site where rendering of external patches, brick recaulking and repointing was being conducted by GDP employees by way of a contract between GDP and Bernie Leen Demolition and Contracting Pty Ltd. Mr. Norbury said there was no new works being conducted whatsoever. Mr. Norbury was not familiar with the scope of works of Bernie Leen Demolition and Contracting at the Hospital.

[8] In relation to the works at 595 Collins Street Mr. Tisdall confirmed that the GDP contract included the demolition of an existing foyer, construction of a new foyer including new steel and glass, works associated with some shops and cladding. The cladding was yet to proceed.

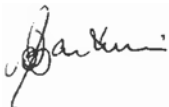
[9] GDP requested some time to review the terms of the contract it has at 595 Collins Street before making further submissions to the Panel.

[I 0] The Chairman indicated to the parties that based on the material before the Panel at this time it appeared as if the works at Footscray Hospital was unlikely to fall within the scope of the Enterprise Agreement, unless it could be established by the facts that the works were in connection with new works, which it appeared not to be. In this regard the CFMEU undertook to examine its claim further.

[11] The Chairman indicated to the parties that based upon the material before the Panel at this time it appeared as if the works at 595 Collins Street was likely to fall within the scope of the Enterprise Agreement given that these were new works according to GDP.

[12] To be clear, neither of the indications in paragraphs [10] and [11] expressed by the Chairman are concluded views.

[13] The Panel determined that a further Conference would be held, and is set down for Thursday 24 January 2019 at 9.00am at the Panel's premises, at which time the parties will make further submissions as to the facts in order that the parties might reach a settlement with the assistance of the Panel. In absence of settlement the Panel will proceed to determine the matters.



Peter Parkinson
Chairman



Lawrie Cross
Panel Member



Tony Cordier
Panel Member



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FOOTSCRAY HOSPITAL SITE and 595 COLLINS STREET, MELBOURNE

RE: SUB CLAUSE 4(E)-SCOPE OF AGREEMENT

25 JANUARY 2019

030-2018

STATEMENT NO. 2

[1] The CFMEU notified a dispute on 14 December 2018 regarding the application of subclause 4(e) Scope of Agreement of the Enterprise Agreement on works being conducted by GDP at the Footscray Hospital and 595 Collins Street.

[2] The Enterprise Agreement alleged by the CFMEU to apply to the works is *GDP Group Pty Ltd t/as GDP Property Services and the CFMEU (Victorian Construction and General Division Enterprise Agreement 2016-2018)*.

[3] The Panel held a Conference of the parties and issued a Statement on 21 December 2018. This Statement is to be read in conjunction with the previous Statement.

[4] A further Conference was held on 24 January 2019 to enable the parties to make further submissions as to the facts in order that the parties might reach a settlement with the assistance of the Panel. The CFMEU was represented by G Benstead and the Employer by M Tisdall and C Broadbent.

[5] In relation to the works being conducted at the Footscray Hospital Site there was nothing new submitted by the CFMEU to support its contention that the works being conducted by the Employer were in connection with new works. The relevant subclause 4(e) of the Enterprise Agreement provides as follows:

“(e) Maintenance work not in connection with new work shall not fall within the scope of this Agreement.

Based upon the material and evidence before the Panel we find that the said work does not fall within the scope of the Enterprise Agreement.

[6] In relation to the works being conducted by the Employer at 595 Collins Street, there was nothing submitted to suggest that the works were anything other than new works. However, the Employer submitted that the provisions of subclause 4(f) of the Enterprise Agreement provided that the Enterprise Agreement did not apply because the Employer was the principal of the site. It said its contract was with a property trust which names it as the Principal Contractor.

[7] Subclause 4(f) of the Enterprise Agreement provides as follows:

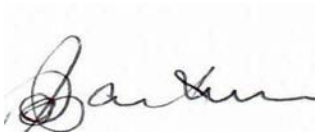
“(f) This Agreement shall not apply to any work undertaken by the Employer on a building or site unless that work is being undertaken pursuant to a contract or subcontract between the principal or main contractor of the building or site and the Employer.”

[8] The Employer further submitted that the exemption provision contained at sub-clause 4(f) was the result of its Company-specific negotiations with the CFMEU, and reflected the particular circumstances of its business. The Chairman noted that it appeared unusual that in the context of the relevant works that the principal of the building was not the

client.

[9] The negotiations of the Enterprise Agreement had been conducted by the two Employer representatives present at the Conference and R Edwards and A Swayn of the CFMEU, who were not present at the Conference.

[10] The Panel determined that it would require further clarity as to the intention of the parties to the application of the relevant subclause before reaching a Determination on this matter by hearing from all parties. Accordingly a further Conference will be held on **Tuesday 5 February 2019 at 10.00 am** to hear further from the parties on the intention of subclause 4(f), and in particular the Panel requires the attendance of those persons directly party to the negotiations. In absence of settlement at that time, the Panel will proceed to determine the matter.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member