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## Employers say litigation against CFMEU stymies merger

Friday, August 04, 2017, 2:25pm

Two employer groups have flagged that they will argue that the CFMEU's merger with two other unions cannot proceed because the former's construction division has a large amount of outstanding legal action against it.

The Australian Mines and Metals Association and the Master Builders Association today jointly appeared before the Fair Work Commission to oppose the CFMEU's planned merger with the MUA and the TCFU.

Counsel for [AMMA](#) and the [MBA](#), Stuart Wood QC, argued in the hearing in Melbourne that the application for the merger and to conduct a ballot of MUA and TCFU members was invalid.

Wood told Deputy President Val Gostenick that AMMA and the MBA will also seek to be heard if the merger ballots are approved and members of the MUA and TCFU vote to proceed with the amalgamation.

He said the employer groups would raise questions about [s73](#) of the Fair Work (Registered Organisations) Act.

That provision requires that, after a merger ballot is conducted, the Commission satisfy itself that there are no pending proceedings (other than civil proceedings) against the merger parties relating to:

- contraventions of the RO Act, the Fair Work Act or other federal laws;
- breaches of modern awards or enterprise agreements;
- breaches of orders made under the RO Act, the Fair Work Act or other federal laws.

Outside the hearing, legal sources said the CFMEU faced about 45 outstanding legal proceedings, many of them taken by the construction watchdog, the ABCC.

The MUA is also understood to face outstanding legal proceedings.

### Merger not validly approved, employers say

At today's hearing, Wood also argued that the national secretaries of the three unions had not provided enough evidence to show they had validly approved the same scheme of amalgamation.

He said a statement by MUA national secretary Paddy Crumlin referred to his union's committee of management passing amendments to the scheme in April, while the TCFU's equivalent body approved the scheme a day later.

Wood argued the union had not provided evidence such as who was present at the committee of management meeting, whether there was a quorum, the location of the vote and whether union members received appropriate notice.

Counsel for the three unions, Tony Slevin, told the hearing that the TCFU's national secretary, Michele O'Neil, would give evidence at a later date that her union had approved the same scheme of arrangement approved by the MUA.

Deputy President Gostenick adjourned today's hearing to give the three unions time to respond to the arguments put by Wood on the alleged invalidity of the merger applications.

He will resume his hearing of the matter in Sydney on August 17.

The Commission also ordered the Australian Institute of Marine and Power Engineers ([AIMPE](#)) and the Australian Maritime Officers Union ([AMOU](#)) to file an outline of submissions on why they oppose the merger (see [Related Article](#)).

Counsel for the AIMPE and AMOU, Bryce Cross, told today's hearing the two unions were concerned the merged union would make a new attempt to change their rules to encroach on the membership of his clients.

Cross said the MUA withdrew an earlier application to amend its rules due to the amalgamation plans.

Slevin said the counsel for the other two maritime unions might want to make "political speeches about the industry", but the merger plan did not involve any rule changes.

He said the AMMA and the MBA wanted to challenge the validity of the merger but should not be allowed to make statements in the current proceedings, which were limited to procedural matters.

Slevin emphasised that no "strike out" application opposing the merger was before either the Commission or a court.

The material filed by the CFMEU includes an excerpt of the national executive minutes that note that the secretary of the construction and general division's Queensland branch, Michael Ravbar, voted against the merger resolution at a meeting in May.

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