



Menu

## CFMMEU has part-win as it seeks to establish anti-merger collusion case

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The CFMMEU has had a partial victory in its attempt to gain access to communications between the operator of a new "robo" terminal at the Port of Melbourne and two employer bodies, the AMMA and MBA.

Victoria International Container Terminal launched contempt proceedings against the CFMMEU over an alleged picket and rally at the VICT operations in December.

The Victorian Supreme Court yesterday rejected objections to the union winning access to communications between AMMA with VICT on the decision to initiate the contempt case.

Associate Justice Mary-Jane Ierodiaconou accepted that AMMA could make claims of legal professional privilege over certain documents, but they have to identify them and provide reasons.

However, the judge upheld objections to giving the union access to a second category of documents, which relate to communications between AMMA and the MBA about the VICT contempt case.

In separate proceedings before the Fair Work Commission, AMMA and the MBA unsuccessfully opposed the merger of the CFMEU with the MUA and the TCFU, which went ahead in March this year.

In January, AMMA and the MBA told the Commission it should not approve the merger under the Registered Organisations Act because there were civil penalty proceedings pending against the CFMEU and MUA.

The Commission heard those objections on February 2, reserving its decision.

Associate Justice Mary-Jane Ierodiaconou said a chronology events put forward by the union was not challenged.

### Under the CFMMEU chronology:

1. At about 3.45pm on February 16, a Friday afternoon, the VICT's solicitor informed the MUA's solicitor that VICT intended to file contempt proceedings against the MUA.
2. A few hours later, between 6.18pm and 6.29pm, VICT's solicitors sent five emails to The Victorian Supreme Court attaching a summons alleging contempt by the MUA and other supported material.
3. At about 6.02pm on Sunday, February 18, a solicitor acting for AMMA and the MBA in the amalgamation proceeding told the Commission in an email the employer groups understood that contempt of court proceedings against the unions were "pending" in the Victorian Supreme Court.
4. On Monday February 19, the Supreme Court issued VICT's contempt summons against the union.
5. On February 22, AMMA and MBA filed a second outline of submissions and affidavit in the merger proceedings before the Commission, but did not explain how they became aware of VICT's contempt proceedings before they issued.

## Contempt case instituted to block amalgamation: CFMMEU

The CFMMEU told the Supreme Court a "strong inference" could be drawn that VICT's contempt case constituted an abuse of process instituted for the improper or ulterior purpose of impeding the union amalgamation plan.

The union argued that VICT became aware of the alleged contempt of court on December 14 but did not file the contempt summons until February 16.

It further argued the solicitor for AMMA and the MBA notified the Commission about the contempt proceeding before the Supreme Court issued the summons, pointing to a "high level of collusion" between VICT and AMMA or the MBA.

The CFMMEU says it will argue that the contempt summons should be dismissed or permanently stayed for abuse of process, which underlined the relevance of the documents sought under subpoena.

The VICT, AMMA and MBA all objected to granting the subpoenas.

But the judge ruled the first category of documents relevant or potentially relevant to the CFMMEU's abuse of process application, as conceded by VICT, and that it had a legitimate forensic purpose for seeking them.

The judge said she did not accept the arguments by VICT, AMMA and the MBA that the union was on a "fishing" exercise.

"The facts upon which CFMMEU relies are uncontradicted.

"The inferences that it seeks to draw from them are arguable.

"Further, no evidence has been provided at this point to rebut them.

"For instance, there is no evidence from AMMA and MBA's solicitor as to how he became aware of the contempt application prior to it being issued."

However, the judge found no legitimate purpose in granting the union access to documents in the second category, exchanged between AMMA and the MBA.

"The documents exchanged between the subpoenaed parties are not 'for evidence' in respect of VICT's decision to commence the contempt application."

"There is no reasonable possibility that the documents could materially assist CFMMEU's abuse of process application," she said.

In June, a Commission full bench threw out the bid by AMMA and the MBA to reverse the amalgamation of the CFMEU, MUA and TCFU (see [Related Article](#)).

AMMA has filed a challenge to that decision that is expected to be heard by a full Federal Court, but the MBA has dropped out of those proceedings (see [Related Article](#)).

[VICT v CFMMEU \[2018\] VSC 417 \(31 July 2018\)](#)

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