



AMMA's challenge to CFMMEU merger 28 years late: Full Court

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A Full Federal Court has dismissed the Australian Mines and Metals Association's application to quash two FWC decisions approving the merger of the CFMEU, MUA and TCFU, offering a brief history lesson as to why outstanding civil penalty proceedings posed no barrier to the amalgamation.

Chief Justice James Allsop and Justices John Griffiths and David O'Callaghan noted in the first instance AMMA's central contention that both Deputy President Val Gostencnik's [decision](#) and its unsuccessful [appeal](#) in June erred in considering whether the "carve out" expression "other than civil proceedings" in [s73\(2\)\(c\)](#) of the RO Act excludes civil penalty proceedings.

"We are of the view that the Deputy President and Full Bench were correct in their construction," said the full court.

"Up to 1990, the relevant legislation had historically distinguished between civil penalties for breach or non-observance of a term of an order or award, and criminal offences for wilfully defaulting in compliance with an order or award.

"This distinction was recognised when amalgamation of organisations became permitted.

"Until 1990, it was clear and express that one of the features that might prevent amalgamation was the existence of outstanding criminal **or** civil penalty proceedings against an organisation.

"In 1990, the relevant phraseology of the carve-out expression was introduced and, thereafter from 1990, remained in a similarly structured form.

"If that new wording and structure could not be seen to be part of any change to the underlying arrangements for amalgamation, there would be much to be said for the principal argument of [AMMA] that the phrase 'civil proceeding' should be given a narrow meaning of proceedings to adjudicate private rights.

"This approach would see the continuation to the present day of the approach that was pellucid before 1990 that the existence of outstanding civil penalty proceedings against an organisation (as well as criminal proceedings) would prevent amalgamation.

"When, however, one examines the legitimate statutory contextual material and the terms of the various amendments made in 1990, and not thereafter relevantly altered, one does find a relevant policy to assist in the ascription of meaning to the phrase 'civil proceedings' in [s73\(2\)\(c\)](#)."

That policy, said the bench, was to both encourage mergers, and make them easier.

"The removal of outstanding civil penalty proceedings as a bar to that process was one of the features of the 1990 changes to give effect to that policy.

"Once one appreciates that policy in the legislative history, the giving to the phrase 'civil proceedings' a simple meaning of non-criminal proceedings becomes clear."

"A well-deserved whack": Crumlin

With the merged CFMMEU operating since March, national secretary Michael O'Connor greeted today's decision as confirming "that the democratic will of union members should decide how our union is structured, bargains, and represents their interests, not employer groups using legal technicalities to serve their vested interests".

MUA National Secretary Paddy Crumlin was less polite, saying that AMMA and, in FWC proceedings, the MBA, had "stuck their nose into working people's business and today the Federal Court has given them a well-deserved whack for their trouble".

"These extremist employer groups wasted millions of dollars of their members money, along with the time and resources of the Federal Court, waging an ideological war right out of the 1980s.

"Australia's workplace laws have become so skewed in favour of big business that they actually believed employers should have the right to decide how workers get to bargain and represent themselves."

TCFUA national secretary-elect Jenny Kruschel described the decision as "just one battle" in restoring balance to industrial laws.

"Bad laws must be challenged, and our strong united union will give our members unprecedented power to take on the system that is working against their interests."

While it had been speculated that if unsuccessful in the Federal Court, AMMA it would seek special leave to appeal to the High Court, a spokesperson today said only that it was reviewing the decision and would comment "in due course".

BREAKING: A win for members, a win for working people.

Big business tried to stop our amalgamation. They tried to demand the right to have a say in how workers choose to organise themselves.

This morning they failed. We stand united. pic.twitter.com/llrkIRPYDE

— Construction Forestry Maritime Mining Energy Union (@CFMEU) [December 13, 2018](#)

[Australian Mines and Metals Association Inc v Construction, Forestry, Maritime, Mining and Energy Union \[2018\] FCAFC 223 \(14 December 2018\)](#)

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