

CFMMEU

CONSTRUCTION

25 July 2022

Dear Mr Rawson,

VID172/2022 – CFMMEU v ABCC & Ors

We refer to the above matter (**Appeal**), and to the upcoming hearing listed for 18 and 19 August 2022.

As you would be aware, the *Code for the Tendering and Performance of Building Work 2016 (Cth) (2016 Code)* has been substantially amended so that the section in dispute – cl 13(2)(j) – is no longer in force as of 26 July 2022.

While the CFMMEU is confident of its prospects in the Appeal, we do not consider it a good use of either the union's – or the taxpayers' – resources to maintain the Appeal in these circumstances.

The CFMMEU therefore proposes that the Appeal be discontinued by consent, on the basis that:

- each party bears their own costs in the Appeal; and
- the order of Justice Snaden dated 31 March 2022 (concerning costs) be set aside.

With respect to the order of Justice Snaden, we note that the order sought at 2(f) of the Notice of Appeal seeks to set aside the costs order below, and replace it with an order that the ABCC Respondents pay the costs of the CFMMEU (and Lendlease) in the proceedings below. We also note that the ABCC Respondents have accepted that - if the Appeal is not discontinued and the Full Court upholds the appeal - the costs order against the CFMMEU made on 31 March 2022 should be set aside (as acknowledged in [40] of the submissions filed on behalf of the First and Second Respondents dated 21 July 2022).

Please see **attached** a draft Notice of Discontinuance which reflects the above.

Given the programming orders in place, we would be grateful if you could indicate consent or otherwise to the above proposal by not later than COB this **Wednesday 27 July 2022**.

Kind regards,



CFMMEU – Construction & General Division

Form 126
Rule 36.73(1)

Notice of discontinuance of appeal

No. VID172 of 2022

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

On appeal from the Federal Court

CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION

Appellant

AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSIONER and others

Respondents

The Construction, Forestry, Maritime, Mining and Energy Union, the Appellant, discontinues the whole of the appeal.

The discontinuance is by consent on the following terms:

1. Each party bears their own costs.
2. The order of Justice Snaden dated 31 March 2022 in VID56/2020 be set aside.

Date:

Signed by S 47F
Lawyer for the Appellant

Signed by Craig Rawson
For and on behalf of the Australian Government Solicitor
Lawyer for the consenting First and Second Respondent

Date:

| | |
|-------------------------------------------|----------------------------------------------------------------------|
| Filed on behalf of (name & role of party) | Construction, Forestry, Maritime, Mining and Energy Union, Appellant |
| Prepared by (name of person/lawyer) | S 47F |
| Law firm (if applicable) | - |
| Tel | Fax - |
| Email | S 47F |

Address for service
(include state and postcode)

Signed by Herbert Smith Freehills
Lawyers for the consenting Third Respondent

Date:

Note in relation to costs

Under rule 36.73(4), an appellant who files a notice under rule 36.73(1) must, unless the parties otherwise agree, pay the costs of each respondent.

Schedule

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

No VID 172 of 2022

Respondents

Second Respondent

Australian Building and Construction Inspector
Robert Dalton

Third Respondent

Lendlease Building Contractors Pty Ltd