

Builder paid kickbacks to secure work, Heydon inquiry told

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The owner and director of a formwork company in Canberra paid \$135,000 to a CFMEU lead organiser in 2012 and 2013 to win contracts, the Heydon Royal Commission heard today.

Elias Taleb today told the inquiry that he won a contract to work on a block of 35 residential units in Yarralumla in 2012 after agreeing to pay "five slabs" of \$10,000 each to CFMEU official Halafihi "Fihi" Kivalu.

Taleb said he moved to Canberra from the US in 2008 and started a formwork company, Class 1 Form Pty Ltd, with his brother Tony.

"Ever since I had been in Canberra, I noticed that everybody was scared of the union and wanted to be on their side," he said in a [witness statement](#). "I didn't want to argue with them or fight them."

Taleb said he had bought timber on credit for between \$300,000 and \$400,000 and the Yarralumla job was worth about the same amount of money.

"I had financially committed myself such that if I didn't get the job, I would be under a lot of financial strain, possibly even bankruptcy."

The inquiry heard that Taleb ended up paying a total of \$50,000 in cash to Fihi — three payments of \$10,000 and another of \$20,000 — in white envelopes.

In one episode, Fihi is said to have pulled up in a car outside Taleb's office in August 2012. According to Taleb: "My brother saw me give the money to Fihi and I remember him saying to me, 'What the fuck was that?' And I replied, 'That's to keep you working'."

The Royal Commission today began three weeks of hearings in Canberra, which will mostly deal with the CFMEU construction and general division's ACT branch.

However, one case study will canvass conduct by the CEPU's plumbing division.

The inquiry's counsel assisting, Jeremy Stoljar SC, said the evidence would paint a "disturbing picture" of the CFMEU's conduct in the ACT, including "alleged corrupt payments, standover and intimidation tactics, and the apparent establishment and promotion of cartels for key trades".

In his [opening address](#), Stoljar said the evidence would raise questions of whether the Branch has received falsified membership forms and the bulk-payment by employers of purported membership dues.

He said Taleb believed he had no choice other than to make the payments in order to obtain, or retain, work on various ACT construction projects, with the union exerting "significant control" over the subcontractors that builders were allowed to engage on projects in the Territory.

A second witness today is also expected to give evidence that he paid \$40,000 to the same CFMEU lead organiser, as recently as 2014.

Stoljar said that investigations were continuing and more witnesses might come forward with similar evidence.

"These case studies would not have been possible without the courage and conviction of the many participants in the ACT construction sector who have been prepared to share their personal stories with the Commission."

The inquiry heard that Kivalu stopped working with the CFMEU at the end of last year.

He has been summonsed to appear, but might not do so until he attends a family funeral in New Zealand this weekend.

Stoljar said many of the case studies involved "apparent intimidation and coercion" of subcontractors, which were often small family businesses, to sign the CFMEU's pattern agreement.

He argued that "significant commercial benefits" flowed to the CFMEU under the terms of each agreement, and this would be explored in further hearings in Sydney in August, after the Canberra sittings.

The Royal Commission will investigate whether the CFMEU promoted "cartels" for key trades, particularly crane drivers, formworkers and scaffolders.

"The evidence will show that the CFMEU promote EBAs across these industry sectors as a group," Stoljar said.

"Participants are apparently then told to agree minimum pricing in the market to ensure that each of them can sustain a profit after meeting the terms and conditions of the pattern EBA. It may be that the effect of these arrangements is substantially to lessen competition in the Canberra market and to inflate the cost of construction work in that market."

In earlier hearings, the inquiry has investigated whether whether employers paid union dues on behalf of workers to the CFMEU's rival in civil construction, the AWU.

Stoljar said a key theme in the Canberra hearings would be the CFMEU's demand for members, regardless of the willingness or otherwise of some employees to join the union.

"Evidence will be received of the pressure on employers to pay membership dues in bulk, regardless of the lack of consent by individual employees to joining the union," he said.

In his evidence, Taleb said the union expected at least 80% of workers on site to be CFMEU members, but his employees did not want to be members.

Taleb said he had to pay the equivalent amount of members due to the union so he could run his business, while also providing them with employees' names and addresses.

He gave evidence of signing membership forms in the presence of Kivalu and another CFMEU official, John Lomax, after his workers refused to sign.

He also said the CFMEU completed the paperwork required for new agreements, falsely stating that they had conducted meetings with members.

The Canberra hearings conclude on Friday, July 31.

[Opening statement by Heydon Royal Commission counsel assisting, Jeremy Stoljar SC, Canberra, July 13, 2015](#)