



INDUSTRY UPDATE

Tuesday, 2 March 2010

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Understanding the ABC Commissioner's right to intervene

The ABC Commissioner has intervened in Federal Court proceedings relating to recent industrial action at the [Woodside Pluto LNG processing plant](#) in Western Australia. Interlocutory injunctions were ordered restraining 1471 workers from engaging in unlawful industrial action. The ABCC had earlier made submissions in a Fair Work Australia (FWA) hearing concerning the Pluto dispute, which resulted in a return to work order.

The *Building and Construction Industry Improvement Act 2005* (BCII Act) provides the ABC Commissioner with the power to intervene in court proceedings and make submissions in FWA matters.

The power has been used on more than 100 occasions in the Australian Industrial Relations Commission and more recently in FWA matters. The ABC Commissioner has also intervened in 18 court cases to date. These include matters arising from industrial action at the [West Gate Bridge](#) and the 'Blue Glue' dispute at the [New Royal Children's Hospital](#) in Victoria.

The ABC Commissioner will actively consider intervention or making submissions in relevant proceedings that may have an impact on the building industry or its participants.

What is intervention?

Court proceedings involve an applicant and a respondent. The ABC Commissioner is known as an intervener when joining proceedings. The ABC Commissioner then has the rights and duties of a party to the proceedings. This allows tendering of documents, the calling or cross-examination of witnesses and making submissions.

Submissions made to assist a court or FWA can include the ABC Commissioner's views on how the objects of the BCII Act might best be met and the application of the law to the immediate issue together with identifying relevant case law gleaned from the ABCC's experience.

When can the ABC Commissioner intervene?

The ABC Commissioner has a right to intervene in court cases that arise under federal workplace laws and involve a building industry participant or building work. Building industry participants have to notify the ABC Commissioner when they are involved in court cases relating to building work. Details of the circumstances in which this obligation applies can be found on the [ABCC website](#).

The ABC Commissioner also has a right to make submissions in a matter before FWA that arises under the FW Act. The ABC Commissioner must give written notice to the General Manager of FWA in order to exercise this right.

Why will the ABCC intervene?

The ABC Commissioner will use the power to intervene and make submissions as a means of improving standards of conduct in the industry. It is a function of the ABC Commissioner under the BCII Act to promote a culture of lawful behaviour in the industry.

How the intervention power is used will depend on the circumstances in each particular case. Information on cases in which the ABCC has intervened is available from the [Interventions and Submissions](#) section of the [ABCC website](#).

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The ABCC can come to you

A primary role of the ABCC is to educate and inform building industry participants about their rights and responsibilities under relevant laws. One way this is achieved is by conducting presentations and workshops with building industry employers, employees and associations.

ABCC staff are available to attend workplaces and offices to discuss laws, regulations and workplace practices in relation to:

- the role of the ABCC
- unlawful industrial action
- strike pay
- freedom of association
- coercion
- offences
- penalties
- compliance powers
- the National Code of Practice for the Construction Industry.

To arrange for an ABCC representative to visit your workplace or office, call 1800 003 338.

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Union safety audits – employer rights and responsibilities

The ABCC would like to remind building industry participants of the laws governing strike pay and work stoppages.

Where there is an imminent risk to health or safety, employees are entitled to withdraw their labour without notice. However, in such circumstances they must not refuse to comply with a reasonable direction by their employer to do work that is safe.

Ceasing work throughout a construction site on the basis that there may be an OHS issue may constitute unlawful industrial action.

Employers are reminded of the provisions of the BCII Act and the *Fair Work Act 2009*, both of which prohibit the payment of strike pay.

Further information

Progress of the BCII Amendment Bill

The BCII Amendment (Transition to Fair Work) Bill 2009 (the Bill) was introduced to Parliament in June 2009 and is currently before the Senate. The second reading of the Bill commenced on 4 February 2010 but did not progress to a vote during the session.

The Government has proposed amendments to the Bill to introduce two changes:

- The first is to enable the Minister to give directions about 'the allocation of resources by the Director in connection with the performance of his or her duties or the exercise of his or her power'.
- The second amendment would create a new power for the proposed Inspectorate to initiate or intervene in proceedings for contempt of court where court orders are not complied with.

The next available sitting period for the Bill to be debated begins on 9 March 2010.

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IC Act transition period extended

Transitional arrangements applying to certain service agreements under the [Independent Contractors Act 2006 \(IC Act\)](#), which were due to expire on 28 February 2010, have been extended by 18 months.

This extended transition period will give those affected by the IC Act more time to ensure they are compliant before relevant state and territory laws cease to apply.

Further information:

ABCC e-Alert: [IC Act transition period extended](#)

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Court round up

Legal proceedings

Alleged improper behaviour on Manly site lands four union officials in court

The ABCC filed proceedings in the Federal Magistrates Court in Sydney on 23 December 2009 alleging that CFMEU officials Brian Parker, Rebel Hanlon, Robert Kera and Thomas Mitchell acted in an improper manner, failed to comply with OHS requirements and hindered or obstructed other persons while exercising their rights as permit holders.

On 3 and 4 December 2008 the officials entered Lend Lease Development Pty Ltd's St Patrick's Estate building project in Manly, Sydney citing the *Occupational Health and Safety Act 2000* (NSW) and Part 15 of the WR Act.

The ABCC alleges their behaviour included:

- failure to undergo a site safety induction
- climbing on scaffolding despite warnings from the site's environmental health and safety officer
- persuading employees to stop work and leave the site
- parking vehicles to obstruct work and create an OHS risk, and
- driving a vehicle into fencing, narrowly missing a manager.

ABCC media backgrounder:

[Darlston v CFMEU, CFMEU \(NSW\), Parker, Hanlon, Kera and Mitchell](#)

Organisers ignore collective agreement

The ABCC filed a statement of claim in the Federal Magistrates Court in Melbourne on 22 January 2010 alleging that CFMEU organisers Michael Powell and Alex Tadic encouraged workers to take part in unlawful industrial action.

On 31 January and 1 February 2008 the organisers conducted meetings with employees of the Eastlink project in Melbourne, directing those employees to stop work.

Following the meetings employees failed to perform any work for those days, defying the existing collective agreement that was in place for the Eastlink project.

The ABCC alleges that by directing the employees to go on strike and disrupting work, the CFMEU, Mr Powell and Mr Tadic contravened s.38 of the BCII Act.

The ABCC also alleges that the actions contravened s.494 of the WR Act by ignoring the conditions outlined in the Eastlink worker's collective agreements.

ABCC media backgrounder: [Cozadinos v CFMEU, Powell & Tadic](#)

ABCC initiates proceedings against CFMEU, CFMEUW and Joe McDonald

On 12 February 2010 the ABCC filed proceedings in the Federal Court in Perth seeking civil penalties against the CFMEU, CFMEUW and Joe McDonald and an injunction restraining the respondents from further industrial action.

The ABCC's statement of claims alleges that on 27 November 2009 and 30 November 2009 Mr McDonald organised meetings with employees working on the construction of the Pluto LNG processing plant.

Following those meetings 1200 to 1300 workers failed to perform their rostered duties on 1 December and 2 December 2009.

The ABCC alleges that in organising those stoppages the CFMEU, CFMEUW and Mr McDonald were involved in unlawful industrial action in contravention of s.38 of the BCII Act.

ABCC Media Backgrounder: [Radisich v CFMEU, CFMEUW & McDonald](#)

Judgements

Federal Court slaps habitual offenders CFMEU and Robert Mates with \$45,000 penalty

In a penalty hearing held on 9 February 2010 the Federal Court in Melbourne imposed a \$40,000 fine on the CFMEU and a \$5000 fine on CFMEU organiser Robert Mates for contravening the WR Act and the BCII Act.

The court found that on 8 March 2007 three CFMEU representatives including Mr Mates attended a construction and refurbishment project at Caulfield Grammar School and held a meeting with employees regarding the termination of one of their colleagues the previous day.

The workers who attended the meeting did not perform work for the rest of the day.

During the penalty hearing of 9 February 2010 Justice Marshall handed down a \$2000 penalty to Mr Mates for taking unlawful industrial action as well as a \$3000 penalty for attempting to coerce the head contractor to reinstate an employee.

Two penalties of \$20,000 were imposed on the CFMEU for the same breaches of the BCII Act.

ABCC media backgrounder: [Cozadinos v CFMEU, Berardi & Mates](#)

ABCC media statement: [Federal Court slaps habitual offenders CFMEU & Robert Mates with \\$45,000 penalty](#)

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