



Power to Intervene in Cases

The Australian Building and Construction Commissioner (ABC Commissioner) has a right to intervene in court cases and to make submissions in proceedings before Fair Work Australia that involve building industry participants.

FAIR WORK AUSTRALIA (FWA)

The ABC Commissioner has a right to make a submission in a matter before FWA that arises under the *Fair Work Act 2009* (FW Act) or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. The ABC Commissioner must give written notice to the General Manager of FWA before exercising this right.

COURT CASES

The ABC Commissioner has a right to intervene in the public interest in a civil case before a court which arises under the *Building and Construction Industry Improvement Act 2005* (BCII Act), the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Independent Contractors Act 2006* (IC Act) that involves:

- a building industry participant, or
- building work.

WHY HAVE THE POWER TO INTERVENE AND TO MAKE SUBMISSIONS?

The ABC Commissioner generally intervenes and make submissions to ensure that the parties, FWA and the courts are aware of the impact of relevant federal legislation and case law. For example, this could involve submissions that the matter being heard potentially involves a contravention of a civil penalty provision.

The ABC Commissioner may also argue that the court should make a particular order or declaration.

WHAT CAN A BUILDING INDUSTRY PARTICIPANT DO?

A building industry participant may wish to have the ABC Commissioner make submissions to FWA or intervene in a case before a court. Participants are encouraged to contact the Office of the ABC Commissioner (ABCC) in such cases. The ABCC will then seek details of the case and the ABC Commissioner would decide whether to intervene or not.

Also, the ABC Commissioner has the right to intervene without being asked to do so.

In court cases relating to building work, a participant must notify the ABC Commissioner when it applies to the court pursuant to the BCII Act, the FW Act or the IC Act. The obligation to notify the ABC Commissioner also arises if a participant is involved in a court case where the application is made by another party.

Penalties may apply to participants who fail to notify the ABC Commissioner of court proceedings.

WHAT IS THE PURPOSE OF THE INTERVENTION POWER?

The ABC Commissioner will use the power to intervene and make submissions as one means of achieving improved standards of conduct in the building and construction industry. The objective is to promote a culture of lawful behaviour in the industry.

Participants are encouraged to contact the ABCC if they are involved in court cases.

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



Need language help?

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