

IN THE FAIR WORK COMMISSION

MATTER NO.: D2022/10

APPLICATION BY GRAHAME KELLY – WITHDRAWAL FROM
AMALGAMATED ORGANISATION – MINING AND ENERGY DIVISION –
CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION

APPLICANT’S WRITTEN SUBMISSIONS FOR EXTENSION OF TIME UNDER S 94A

A. Introduction

1. On 15 September 2022, Grahame Patrick Kelly (**Kelly**) applied to the Commission under s 94 and s 94A of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**RO Act**) (**the Application**).
2. Kelly applies to the Commission to accept his application under s 94A of the RO Act (**94A Application**). The 94A Application is opposed by the CFMMEU (**the Union**) on the grounds identified in its statement of objections dated 30 September 2022.
3. On 3 October 2022, the Commission issued directions for the 94A Application to be heard on 25 October 2022. Those directions included directions for the filing of full written submissions by the Union and Kelly. No directions were made for the filing of evidence.
4. On 11 October 2022, the Union filed and served an Outline of Submissions (**Union’s Submissions**) together with three witness statements. Kelly submits that the statements of Noel Washington and Malcolm McDonald should not be accepted because they are not relevant and also because their content is speculative and therefore not probative of any relevant facts. With regard to the statement of Ms Dawson-Field, no objection is taken to the production of case reports, but any commentary on the cases is inadmissible and should be rejected.

Date of Document:	18 October 2022
Filed on Behalf of:	The Applicant
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5. The Applicant also relies on the witness statements of Grahame Patrick Kelly dated 15 September 2022 (**the Kelly Statement**), of Phillip John Pasfield dated 15 September 2022 (**the Pasfield Statement**) and in response the statement filed by the Union, the statement of Jack Patrick dated 18 October 2022 (**the Patrick Statement**).

B. The Constituent Part and the Alternative Constituent Part

6. The application for a ballot under s 94 of the RO Act is made in respect of:
 - (a) the constituent part which formerly constituted the United Mineworkers Federation of Australia (**UMFA**), which was deregistered on 10 February 1992 in connection with the formation of the CFMMEU, and remains separately identifiable under the rules of the CFMMEU as the Mining and Energy Division (**the Constituent Part**), (**the Primary Ballot Application**);
or
 - (b) in the alternative, the constituent part constituted by that part of the membership of the CFMMEU that would have been eligible for membership of the UMFA if it had not been de-registered on 10 February 1992 in connection with the formation of the CFMMEU (**the Alternative Constituent Part**), (**the Alternative Ballot Application**).
7. The Primary Ballot Application and the Alternative Ballot Application, both rely on the amalgamation which took effect on 10 February 1992 between the ATAIU and BWIU Amalgamated Organisation and UMFA.
8. In both cases, the part of the Union which presently constitutes the Constituent Part and the Alternative Constituent Part is the Mining and Energy Division of the Union.

C. The relevant provisions

9. Chapter 3 of the RO Act provides in Part 2 for the amalgamation of organisations and in Part 3 for withdrawal from amalgamations. The present application is brought under Part 3.
10. Withdrawal from amalgamation under Part 3 is initiated by a process of application to the Commission under s 94 of the RO Act for an order that a secret ballot be held to decide whether a section of an amalgamated organisation which is called a “constituent

part” and which became part of that organisation as a result of an amalgamation, should withdraw from the amalgamated organisation.

11. On 16 December 2020, amendments to Part 3 of the RO Act came into effect with the enactment of the *Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamations) Act 2022 (the Amendment Act)*.¹
12. The evident purpose of the Amendment Act was to expand the scope to make applications for withdrawal from amalgamations. In keeping with s 15AA of the *Acts Interpretation Act 1901 (Cth)*, the amendments should be construed to best achieve that purpose.
13. One of those expansions was the introduction of s 94A which provides for the Commission to accept applications for withdrawal to be accepted by the Commission outside the five-year time limit in s 94(1)(c) in specified circumstances.
14. It provides:
 - “(1) Despite paragraph 94(1)(c), the FWC may accept an application made under section 94 after the end of the period referred to in that paragraph if the FWC is satisfied that, having regard to the matters set out in subsection (2), it is appropriate to accept the application.
 - (2) The matters are the following:
 - (a) whether the amalgamated organisation has a record of not complying with workplace or safety laws and any contribution of the constituent part to that record;
 - (b) the likely capacity, of the organisation that the constituent part is to be registered as when the withdrawal from amalgamation takes effect, to promote and protect the economic and social interests of its members.
 - (3) If the FWC considers that an amalgamated organisation has a record of not complying with workplace or safety laws but that the constituent part has not contributed to that record, the FWC must decide that it is appropriate to accept the application.
 - (4) Submissions in relation to the matters mentioned in subsection (2) may only be made by the following persons:
 - (a) the applicant or applicants, or any person who could have made an application under subsection 94(3) in relation to the proposed withdrawal;
 - (b) the amalgamated organisation;
 - (c) the Commissioner.”

¹ Act No. 131/2020.

15. Workplace or safety laws are defined in s.93(1) as:

- “(a) this Act;
- (b) the *Fair Work Act*;
- (c) the *Building and Construction Industry (Improving Productivity) Act 2016* ;
- (d) the *Work Health and Safety Act 2011* ;
- (e) a State or Territory OHS law (within the meaning of the Fair Work Act).”

D. The operation of s.94A(1)

16. Section 94A(1) gives the Commission a discretion to accept an application outside the five year time limit in s 94(1)(c) if it is satisfied that, having regard to the matters set out in s 94A(2), it is appropriate to do so.
17. The terms of s 94A(1) specify that the matters set out in s 94A(2) are the matters to which the Commission must have regard in satisfying itself whether it is appropriate to accept the application. No other matters are prescribed as needing to be taken into account and no other matters may be taken into account.
18. At paragraphs 10 and 11 of the Union’s Submissions, it is accepted that the matters in s 94(A)(2) are mandatory considerations, but it is submitted that they do not exclude a range of other considerations. The Union submits that to find otherwise would require words to be read into the provision.
19. Kelly disputes the Union’s submission outlined in the preceding paragraph. It is a submission which is inconsistent with the words of the provision. It calls for s 94A(1) to be read as: “having regard to matters including the matters set out in subsection (2)”. It is the Union’s argument that requires words to be read into the provision. The way that s 94A(1) is drafted makes it clear that the list of matters in subsection 2 is not an inclusive list but exhaustive. That construction of the provision is confirmed by paragraph 28 of the Explanatory Memorandum, which reads as follows:

“New subsection 94A(2) sets out an exhaustive list of matters the FWC must consider for the purposes of assessing whether it is appropriate to accept the application.”²

20. The reference to *Peko-Wallsend* in paragraph 8 of the Union’s Submissions is inapposite because the judgments in that case were addressing the exercise of a Ministerial discretion where the relevant legislation did not contain an exhaustive statement of permissible matters to be taken into account.
21. However, it goes without saying that the scope of a discretion is always to be determined by reference to the empowering legislation, properly construed. Here that legislation is clear about the limits of the discretion (unlike in *Peko-Wallsend*) and the construction advanced by Kelly is confirmed by the Explanatory Memorandum.
22. At paragraph 4 of the Union’s Submissions, the principles of statutory construction are correctly stated. The construction of s 94A proposed by Kelly is entirely consistent with those principles. It begins and ends with the statutory text and there is nothing in the relevant context that calls for a different outcome.
23. The submissions in paragraphs 12 and 13 of the Union’s Submissions wrongly reduce the scheme of s 94A to “a regime which provides advantage to a constituent part with only a moderate record of non-compliance”. Once again, the Union seeks to depart from the clear words of the section. It may be accepted that the section posits compliance with relevant laws by the constituent part and the amalgamated union as a relevant consideration for allowing a withdrawal application to proceed after 5 years. And clearly, the legislature has legislated a comparative evaluation to be undertaken by the Commission of their respective records. Other than in s 94A(3), the legislature has not mandated the outcome of that comparison. When one compares subsections 94A(2) and (3), it is apparent that the level of compliance by a constituent part would be relevant for the Commission to consider, otherwise one would have expected a clear statement, such as appears in subsection (3), that any non-compliance by a constituent part must lead to a refusal of the application. But it is wrong to describe the effect of subsection (2) as a “regime” rather than an evaluative process by the Commission as to what is appropriate in a given case. And it is further submitted that if, as stated in paragraph 12 of the Union’s Submissions, there is a legislative

² Explanatory Memorandum for *Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamations) Bill 2020*, paragraph 28.

intention or purpose which values compliance with the law, then directing the Commission's consideration to that matter and taking account of the level of compliance or non-compliance in deciding what is appropriate, is entirely consistent with that intention and purpose.

24. In deciding what is appropriate, the Commission must consider what is fair and just taking into account the matters set out in sub-section (2).³
25. The submissions in paragraph 14 of the Union' Submissions are misdirected and unsustainable. The cornerstone of the submissions is the reference to the purpose of Part 2 of Chapter 3 dealing with amalgamations of organisations. However, s 94A is in Part 3 which allows for withdrawal from amalgamations under Part 2. Withdrawal provisions date back to 1996. The purpose of Part 3 must be given equal weight as that of Part 2.
26. The Union's Submissions then cite a sentence out of context, from the judgment of the Full Court in *Kelly v CFMMEU*.⁴ The Full Court, at [128] of its judgment, was addressing the interpretation of s 94(1), as is clearly demonstrated by the last sentence of that paragraph. That the Court's comments were so confined is further demonstrated by the lack of any consideration and accounting for the effect of s 94A.
27. Contrary to the second sentence in paragraph 14 of the Union's Submissions, the question of "confidence in the amalgamation provisions" is completely irrelevant to operation of s 94A. The legislature has prescribed the matters for the Commission to take into account in exercising its discretion. Confidence in the amalgamation provisions is not one of them. If the Commission's discretion was expressed in general terms or if subsection (2) was not exhaustive, the Union's submission might be worthy of some consideration. But that is not the type of discretion given to the Commission by s 94A.
28. For the same reasons, the assumptions asserted in the third sentence of paragraph 14, even if they could be proved (and they have not been proved) would be irrelevant.

E. The CFMEU's record of not complying with relevant laws and the contribution of the Constituent Part/Alternative Constituent Part (s.94A(2)(a))

³ *Nile v Wood* (1988) 167 CLR 133 at [143].

⁴ Footnote 9 in the Union's Submissions wrongly gives the citation for the Full bench's judgment.

29. The Commission should make a finding that the CFMMEU has an extensive record of not complying with workplace or safety laws.
30. The long record of the CFMMEU's civil penalty contraventions of the *Fair Work Act* (2009) Cth (**FW Act**) and the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**BCII Act**), as a result of the conduct of the Construction and General Division (**Construction and General Division**) and its officials, is set out in the Pasfield Statement at annexures PJP-3 (p.102 - p.167) and PJP-5 (p.173 - p.175).
31. Those exhibits set out a summary of civil penalty contraventions in a total of 110 proceedings. These contraventions relate solely to the Construction and General Division of the CFMMEU and its officials.
32. The Union's Submissions and statements do not challenge or respond to the above evidence of non-compliance.
33. The CFMMEU's history of contraventions (which have almost exclusively been caused by the Construction and General Division) have been the subject of much criticism by the Courts. By way of example, as a result of the conduct of the Construction and General Division and its officials, the CFMMEU has been described as a "recidivist organisation"⁵ and its conduct has been described as "astounding...disgraceful and shameful"⁶ and "deplorable"⁷
34. In *Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (The Non-Indemnification Personal Payment Case)*⁸ the Full Court (Allsop CJ, White and O'Callaghan JJ) observed that:

"it is difficult, if not impossible, not to come to the conclusion that the Union is prepared, when it suits it, to contravene the Act and, as here, seek to coerce employers to comply with its demands."

⁵ *Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (The Broadway on Ann Case)* (2018) 265 FCR 208, at [14] (per Tracey J).

⁶ *Ibid* at [56] (per Logan J).

⁷ *Cozadinos v Construction, Forestry, Mining and Energy Union* [2013] FCA 1243, at [43] (per Tracey J).

⁸ (2018) 264 FCR 155 at [20].

35. Similarly, in *Pattinson v Australian Building and Construction Commissioner* (2020) 282 FCR 580 the Full Court (Allsop CJ, Besanko, White, Wigney and Bromwich JJ) observed that:

“The most significant point to emerge from the schedules of past cases is that the CFMEU is a recidivist when it comes to contravening industrial laws. No penalties that have been imposed in the past have appeared to reduce its willingness to breach the law. It continues to thumb its nose at the industrial laws, including the BCII Act.”

36. In *Australian Building and Construction Commissioner v Pattinson*⁹ the High Court made the following observations

“The circumstance that the CFMMEU has continued to breach s 349(1), steadfastly resistant to previous attempts to enforce compliance by civil penalties fixed at less than the permitted maximum, is a compelling indication that the penalties previously imposed have not been taken seriously because they were insufficient to outweigh the benefits flowing unlawfully to the contravenor from adherence to the "no ticket, no start" policy. To the contrary, the CFMMEU's continuing defiance of s 349(1) indicates that it regards the penalties previously imposed as an "acceptable cost of doing business”

37. Although the CFMMEU’s above record of non-compliance has been contributed to by the Constituent Part and the Alternative Constituent Part, that contribution has been absolutely minimal and insignificant. In stark contrast to the contribution of the Construction and General Division which accounts for almost the entirety of the above record, the Mining and Energy Division (**M&E Division**) has contributed a single contravention of the FW Act and no contraventions of the BCII Act, the RO Act or the OHS Act.¹⁰
38. In paragraph 15 of the Union’s Submissions the Union cites three instances of non-compliance by the constituent part.
39. The relevant contravention in *Sayed v Construction, Forestry, Mining and Energy Union* is not a typical case of non-compliance by a union. The contravention arose from the M&E Division’s adverse action as an employer of Mr Sayed in 2013 in the context of an internal employment dispute within the Division.
40. The relevant facts are that Mr Sayed had been employed by the CFMEU as a trainee organiser on a fixed six month contract. The context of the employment was that the

⁹ (2022) 399 ALR 599 at [43].

¹⁰ See Annexure GK-2 to Kelly’s Statement (p.11).

CFMEU had entered into a historic alliance with the Australian Workers' Union with the aim of re-unionising the iron ore industry in the Pilbara. Each of the AWU and the CFMEU employed an organiser to live and work in the Pilbara. Mr Sayed was the CFMEU's organiser in the Pilbara. Three months into Mr Sayed's employment complaints were made about Mr Sayed's behaviour and comments on social media. This provocative behaviour included "bagging" the AWU and its officials. Ultimately, Mr Sayed's employment was terminated and the Court found that the CFMEU in its capacity as an employer had contravened s 351 of the FW Act.

41. The nature and circumstances of the *Sayed* case call for it to be given limited weight in the Commission's assessment of the matters in s 94A(2).
42. The second case is a decision of the Delegate of the General Manager of the Commission in relation to the proposed revocation of an exemption granted in 1996 to the Queensland District Branch of the Mining and Energy Division of the Union to conduct its own elections. It is to be noted from the decision that the decision was confined to the Branch's conduct in 2011 and that other parts of the Division did and continue to enjoy an exemption without objection. Remedial action was also being put in place, as noted in [268] of the decision. The Applicant submits that properly understood the decision is not an instance of a failure to comply with workplace or safety laws. The decision was made under s 186(2)(b) of the RO Act. The Delegate of the General Manager of the Commission decided that he was no longer satisfied of the matters set out in s 186(1)(b). The Applicant repeats the observations of Logan J in *Minister for Immigration and Multicultural Affairs v Holmes* which are set out below at paragraph 48. On any view this is not a finding of an instance of failing to comply with workplace or safety laws. The decision should therefore be disregarded as irrelevant.
43. In the event that the Commission concludes that the decision can be taken into account, the nature of this decision calls for it to be given limited weight in the Commission's assessment of the matters in s 94A(2) in relation to an extension of time.
44. The third matter raised in paragraph 15 of the Union's Submissions is the orders under s 418 and s 127.
45. Contrary to paragraph 16 of the Union's Submissions any orders made by the Commission under s 418 of the FW Act are not to be considered under s 94A(2)(a).

Kelly submits that for the following three reasons, when s 94A(2)(a) is properly construed, any orders made by the Commission under s 418 of the FW Act are not to be considered under the provision.

46. *First*, the use of the language “record of not complying with...” and in s 94A(2)(a) indicates that the provision is referring to findings of contravention of a civil penalty provision.
47. *Second*, when the Commission makes an order under s 418, properly understood, as explained in *Maritime Union of Australia v Patrick Stevedores Holdings Pty Ltd*¹¹, it has not made a finding of non-compliance with the FW Act but rather, it has conducted an evaluative assessment whether, to the Commission, it “appears” (by reaching a state of satisfaction) that industrial action is “happening”, “threatening, impending or probable” or “is being organised”. Relevantly, as a matter of law there is no conclusion by the Commission that the industrial action is as a matter of fact “happening”, “threatening, impending or probable” or “is being organised”.¹²
48. In *Minister for Immigration and Multicultural Affairs v Holmes*¹³ Logan J (citing Gummow J in *Minister for Immigration and Multicultural Affairs v Eshetu*¹⁴) made the following observation which is apposite:
- “It is to be remembered that there is a very definite distinction between a “jurisdictional fact” grounded in the holding of an opinion or state of satisfaction and one grounded in whether that state of affairs truly exists...”
49. *Third*, s 418 must be considered in the context of s 421 which explicitly allows in subsection (2) of the order under s 418 to be relitigated.
50. However, whether findings made by the Commission under s 418 of the FW Act are to be considered under s 94A(2)(a) or are not, is of no consequence in this matter given the prolific record of the Construction Division and the negligible contribution of the M&E Division. Taking s 418 orders into account adds a further 32 instances of

¹¹ (2013) 237 IR 1.

¹² See at [5]-[12]. Also see *United Voice v Foster’s Australia* at [21].

¹³ (2008) 168 FCR 301 at [16].

¹⁴ (1999) 197 CLR 611 at [130].

non-compliance by the Construction Division¹⁵ and only 4 by the Mining and Energy Division.¹⁶

51. In the above circumstances the Commission should find that the Constituent Part and the Alternative Constituent Part have made a negligible contribution to the CFMMEU's extensive record of not complying with workplace or safety laws. The Commission should also find that this is so regardless of whether or not s 418 orders are properly taken into account or not.
 52. At paragraph 15(c) of the Union's Submissions the Union refers to orders made under s 127 of the *Workplace Relations Act 2009* (Cth) (**WR Act**) which is the predecessor of s 418 of the FW Act. Firstly, the Union's submission overlooks the fact that the WR Act does not fall within the definition of a workplace or safety laws in s 93(1) of the RO Act. But in any event, orders made by the Commission under s 127 of the WR Act are of the same character as those made under s 418 and accordingly would not be required to be considered under s 94A(2)(a) for the same reasons as set out above at paragraphs 44 to 48.
 53. In the final sentence of paragraph 16, the Union submits that as a result of the s 418 orders there "was a contravention of s.417 of the FW Act". This submission is misconceived and must be rejected. As explained above at paragraph 47 when the Commission makes an order pursuant to s 418 there is no conclusion by the Commission that the industrial action is as a matter of fact "happening", "threatening, impending or probable" or "is being organised".
 54. Having regard to relative size of the contribution the Constituent Part and the Alternative Constituent Part to the CFMMEU's record of non-compliance outlined above, it is submitted that the Commission should be satisfied that the factor in s 94A(2)(a) weighs heavily in favour of acceptance of the Application being appropriate.
- F. The likely capacity of the MEU to promote and protect the economic and social interests of its members (s.94A(2)(b))**
55. The Constituent Part (and the Alternative Constituent Part) is proposed to be registered as the Mining and Energy Union (**MEU**) when the withdrawal

¹⁵ See Annexure PJP-4 (p.168 – p.172).

¹⁶ See Annexure GK-3 (p.13).

from amalgamation takes effect. It is proposed that the MEU will, to the extent possible, maintain the status quo as it currently exists in the M&E Division.

56. The M&E has a proud and well-known ability of successfully influencing, advocating and promoting the interests of its members.¹⁷ This tradition will be taken up and continued by the MEU.
57. The Applicant relies on the evidence set out in the Kelly Statement at [21]-[37]. This evidence establishes, inter alia, that the MEU will be in a strong financial position and will maintain the M&E Division's governance structures and operations.
58. At paragraph 19 of the Union's Submissions, the Union claims that the Constituent Part and the Alternative Constituent part (which it incorrectly describes as entities) are "fundamentally different". The Union misunderstands the Application. It has failed to have regard to Annexures 3 and 4 to the Application.
59. At paragraph 19 of the Union's Submissions, the Union also submits that there is no evidence before the Commission which would permit the Commission to be satisfied that the Alternative Constituent Part will receive under s 109 an order that the assets of the Mining and Energy Division. This submission ignores the fact that the outlines (which are annexures 3 and 4 to the Application) clearly explain that it is proposed that all of the funds, assets and property of the Mining and Energy Division would transfer to the newly registered organisation.¹⁸
60. It is not for the Commission to speculate about how the Federal Court may deal with any application ultimately made under s 109 of the RO Act. It is to simply form an opinion on the likely capacity of the proposed new organisation to promote and protect the economic and social interests of its members. It is the expectation of Kelly that the proposed allocation of assets will be done as outlined in annexures 3 and 4.
61. At paragraph 20 of the Union's Submissions, the Union complains that "*no attempt is made in the material to identify which if any officers, and staff of the Mining and Energy Division will become part of the newly registered Union...*" This submission overlooks the fact that the proposed Rules of the Mining and Energy Union contain detailed transitional rules, which inter alia, provides that elected officers of the

¹⁷ See Explanatory Memorandum at [31].

¹⁸ See [45]-[46] of Annexures 3 and 4.

Mining and Energy Division will on a transitional basis hold office in the proposed Mining and Energy Union.¹⁹

62. Further, it is intended that all existing professional and administrative staff of the Mining and Energy Division would transfer to the newly registered organisation. Whilst not strictly necessary and for avoidance of doubt, the Applicant amends the Outline of Proposed Withdrawal in respect of the Alternative Constituent Part (Annexure 4) to include at the end of paragraph 6: “*The existing officials, professional and administrative staff would transfer to the to the newly registered organisation.*”
63. In the above circumstances, the Commission should find that the MEU will likely have the capacity to promote and protect the economic and social interests of its members and that this weighs heavily in favour of accepting the Application.

G. Other Matters

64. In response to paragraph 24 Of the Union’s Submissions, the two contempt convictions against the Mining and Energy Division over the last 22 years, pale into insignificance when compared to the history of contempt convictions arising from the conduct of other Divisions which include the following:

- (a) *VICT v CFMEU* [2018] VSC 794 (fine of \$125,000 against the Union);
- (b) *Director of the Fair Work Building Industry Inspectorate v Cartledge (No 2)* [2015] FCA 851 (fine of \$12,000 against an official);²⁰
- (c) *Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* [2015] FCA 226 (fines totalling \$125,000 against the Union);²¹
- (d) *Grocon & Ors v Construction, Forestry, Mining and Energy Union & Ors (No 2)* [2014] VSC 134 (fines totalling \$1.15 million against the Union);²²
- (e) *Alfred v CFMEU (No 2)* [2011] FCA 557 (fine of \$150,000 against the Union);²³ and

¹⁹ See Rule 25.

²⁰ See item 93 in PJP-2 (page 66).

²¹ See item 99 in PJP-2 (page 68).

²² See item 101 in PJP-2 (page 69).

²³ See item 139 in PJP-2 (page 82).

(f) *Bovis Lend Lease Pty Ltd v CFMEU (No 2)* [2009] FCA 650 (fine of \$75,000 against the Union).²⁴

65. The above fines for contempt total \$1,637,000.00. This sits in contrast to the \$50,000 fine imposed on the CFMEU in *Construction, Forestry, Mining and Energy Union v BHP Steel (AIS) Pty Ltd*²⁵ and the fine of \$25,000 imposed on Mr Hardy in *AGL Energy Limited v Hardy (No 2)*.²⁶
66. In respect of *AGL Energy Limited v Hardy (No 2)*, it must be noted that there was no allegation or finding that the CFMEU had itself engaged in the contempt. The contempt was by Mr Hardy. At the relevant time Mr Hardy was employed by AGL Energy Limited and was a workplace representative of the CFMEU (Secretary of the Loy Yang Lodge).²⁷ In these circumstances even if the contempt proceeding is a relevant consideration (which it is not) it could not be taken into account as it was not engaged in by the CFMEU.
67. In any event, the contempt convictions are entirely irrelevant to s 94A(1) and are not matters that the Commission is able to be take into account. This is because they do not fall within the definition of a workplace or safety laws in s 93(1) of the RO Act.
68. If the Commission was to accept that it can take into account contraventions of laws that do not fall within the definition of a workplace or safety laws (which it should not) it would have to take into account the total of 192 proceedings by the CFMMEU which are set out in PJP-2.
69. The matters in paragraph 25 of the Union's Submissions are entirely irrelevant to s 94A.

²⁴ See item 173 in PJP-2 (page 94).

²⁵ [2003] FCAFC 13. It is noted that the Union refers to [2001] FCA 1758. This judgment of the Full Court was followed by a remittal to the trial judge and the successful appeal in [2003] FCAFC 13. For some unexplained reason the Union does not disclose this subsequent judgment.

²⁶ [2017] FCA 863. For some unexplained reason the Union has failed to make reference to the penalty judgment.

²⁷ *AGL Energy Limited v Hardy* [2017] FCA 420 at [4].

70. The reference to extant court proceedings in paragraph 26 of the Union's Submissions is quite improper and irrelevant. In any event, the Commission is unable to take into account allegations that are untested.²⁸
71. But on this metric also, arising from the conduct of the Construction and General Division, the Union leads the statistics by a very long margin as evidenced by the data in the Patrick Statement.
72. It should also be noted that in the matter of *FWO v CFMMEU* the Construction and General Division is also alleged to be involved in the alleged contravening conduct.
73. Finally, the matters referred to in paragraphs 27 to 31 are entirely irrelevant and should be rejected. It is accepted in the first sentence of paragraph 20 that legislative regimes are always subject to changes. On that basis, the Union offers no basis under s 94A whereby this material can be taken into account. In any event, there is no probative or admissible evidence which would support the submissions in these paragraphs even if they were relevant.

G. Disposition

74. For the reasons set out above the Commission should be satisfied that having regard to the factors in both s.94A(2)(a) and s.94A(2)(b) it is appropriate to accept the Application.

H Borenstein

Y Bakri

Counsel for the Applicant

18 October 2022

²⁸ *Application by the Construction, Forestry, Maritime, Mining and Energy Union – Construction and General Division Australian Capital Territory Divisional Branch* [2019] FWC 4087 at [53].

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AMALGAMATED ORGANISATION – MINING AND ENERGY DIVISION –
CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION****WITNESS STATEMENT OF JACK PATRICK**

1. I am employed as a National Legal Officer by the Mining and Energy Division (**ME Division**) of the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**). I commenced in this role on 19 April 2021.
2. I have been admitted as a legal practitioner of the Supreme Court of New South Wales. I was admitted on 4 June 2021.
3. I currently hold a practising certificate issued by the Law Society of New South Wales, which entitles me to practice as a solicitor.
4. On 16 October 2022, Adam Walkaden, National Legal Director of the ME Division asked me to conduct a search of the Australian and Building and Construction Commission's (**ABCC**) website to identify any pending litigation which concerned an allegation that the Construction and General Division of the CFMMEU had contravened a workplace or safety law.
5. On 17 October 2022, I accessed the ABCC website (www.abcc.gov.au). I clicked on the heading 'Legal Cases' and was taken to a webpage titled 'Legal Cases'. The Legal Cases page lists court cases in which the Australian Building and Construction Commission is the Applicant. The cases on the Legal Cases page were grouped into the following categories: Current, Finalised, or Under Appeal.
6. I have reviewed the cases in the Current and Under Appeal categories.

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7. Cases in the Current category pertain to matters before a court.
8. There were thirty (30) cases in the Current category.
9. Reviewing the cases discussed in paragraph [8], I clicked on the case name on the webpage. I was taken to another webpage, which records the following details of each case:
 - a) Case Name
 - b) Known As
 - c) Commonwealth Courts Portal Reference and Link
 - d) ApplicantRespondent(s)
 - e) Date Filed
 - f) State/Territory
 - g) Alleged Breaches
 - h) Status
 - i) Summary
 - j) Historical Content
10. Based on reviewing each case in the Current category on the ABCC's website, I have identified twenty-four (24) cases concerning an allegation that the Construction and General Division of the Construction, Forestry, Maritime, Mining and Energy Union have contravened a workplace or safety law. I have listed these cases below. They are identified by reference to their "Known As" identifier:
 - a. *Huntington Apartment Project* - the webpage with the information listed in paragraph [9] regarding Huntington Apartment Project is annexed hereto and marked **JP-1**.
 - b. *443 Queen Street matter* - the webpage with the information listed in paragraph [9] regarding 443 Queen Street matter is annexed hereto and marked **JP-2**.

- c. *Woolworths Warehouse and Distribution Centre project* - the webpage with the information listed in paragraph [9] regarding Woolworths Warehouse and Distribution Centre project is annexed hereto and marked **JP-3**.
- d. *Ironside Construction Pty Ltd* - the webpage with the information listed in paragraph [9] regarding Ironside Construction Pty Ltd is annexed hereto and marked **JP-4**.
- e. *Cross River Rail Woolloongabba & Roma Street* - the webpage with the information listed in paragraph [9] regarding Cross River Rail Woolloongabba & Roma Street is annexed hereto and marked **JP-5**.
- f. *Australian Catholic University St Teresa of Kolkata Building project* - the webpage with the information listed in paragraph [9] regarding Australian Catholic University St Teresa of Kolkata Building project is annexed hereto and marked **JP-6**.
- g. *Mordialloc Freeway 2* - the webpage with the information listed in paragraph [9] regarding *Mordialloc Freeway 2* is annexed hereto and marked **JP-7**.
- h. *Brisbane South State Secondary College project* - the webpage with the information listed in paragraph [9] regarding the Brisbane South State Secondary College project is annexed hereto and marked **JP-8**.
- i. *M1 Yatala South Interchange project* - the webpage with the information listed in paragraph [9] regarding M1 Yatala South Interchange project is annexed hereto and marked **JP-9**.
- j. *Norwood Mixed Development project* - the webpage with the information listed in paragraph [9] regarding the Norwood Mixed Development project is annexed hereto and marked **JP-10**.

- k. *Flinders University Health and Medical Research Building project* - the webpage with the information listed in paragraph [9] regarding Flinders University Health and Medical Research Building Project is annexed hereto and marked **JP-1**.
- l. *Cross River Rail (Albert Street)* - the webpage with the information listed in paragraph [9] regarding Cross River Rail (Albert Street) is annexed hereto and marked **JP-12**.
- m. *Yatala Prison* - the webpage with the information listed in paragraph [9] regarding Yatala Prison is annexed hereto and marked **JP-13**.
- n. *Pacific Motorway* - the webpage with the information listed in paragraph [9] regarding Pacific Motorway is annexed hereto and marked **JP-14**.
- o. *North-East Link Project* - the webpage with the information listed in paragraph [9] regarding North-East Link Project is annexed hereto and marked **JP-15**.
- p. *CN Construction* - the webpage with the information listed in paragraph [9] regarding CN Construction project is annexed hereto and marked **JP-16**.
- q. *Mordialloc Freeway* - the webpage with the information listed in paragraph [9] regarding Mordialloc Freeway is annexed hereto and marked **JP-17**.
- r. *Coles Distribution Centre* - the webpage with the information listed in paragraph [9] regarding Coles Distribution Centre is annexed hereto and marked **JP-18**.
- s. *Intrec* - the webpage with the information listed in paragraph [9] regarding Intrec is annexed hereto and marked **JP-19**.
- t. *Two Melbourne Quarter Project* - the webpage with the information listed in paragraph [9] regarding Two Melbourne Quarter Project is annexed hereto and marked **JP-20**.

- u. *Logan Enhancement Project* - the webpage with the information listed in paragraph [9] regarding Logan Enhancement Project is annexed hereto and marked **JP-21**.
- v. *CR2SM* - the webpage with the information listed in paragraph [9] regarding CR2SM is annexed hereto and marked **JP-22**.
- w. *Cairns Performing Arts Centre* - the webpage with the information listed in paragraph [9] regarding Cairns Performing Arts Centre is annexed hereto and marked **JP-23**.
- x. *Bruce Highway Case* - the webpage with the information listed in paragraph [9] regarding Bruce Highway Case is annexed hereto and marked **JP-24**.

11. Cases in the Under Appeal category pertain to matters in which a court has issued a judgement, but that judgment is being appealed.

12. There were seven (7) cases in the Under Appeal category.

13. Reviewing the cases discussed in paragraph [12], I clicked on the case name on the webpage. On doing so, I was taken to another webpage, which records the following details of each case:

- a) Case Name
- b) Known As
- c) Commonwealth Courts Portal Reference and Link
- d) Applicant
- e) Respondent(s)
- f) Date Filed
- g) State/Territory
- h) Breach(es) Found
- i) Status
- j) Link to Penalty Judgement
- k) Summary of Court Decision

- l) Total Penalties
- m) Historical Content

14. Based on reviewing each case in the Under Appeal category on the ABCC's website, I have identified seven (7) cases in which a finding of a contravention(s) of a workplace or safety law by the Construction and General Division of the Construction, Forestry, Maritime, Mining and Energy Union is being appealed. I have listed these cases below. They are identified by reference to their 'Known As' identifier:

- a. *250 East Terrace Apartments* - the webpage with the information listed in paragraph [13] regarding 250 East Terrace Apartments is annexed hereto and marked **JP-25**.
- b. *Cross River Rail (Boggo Road)* - the webpage with the information listed in paragraph [13] regarding Cross River Rail (Boggo Road) is annexed hereto and marked **JP-26**.
- c. *QPAC* - the webpage with the information listed in paragraph [13] regarding QPAC is annexed hereto and marked **JP-27**.
- d. *Kiama Aged Care Centre* - the webpage with the information listed in paragraph [7] regarding Kiama Aged Care Centre is annexed hereto and marked **JP-28**.
- e. *Botany Cranes* - the webpage with the information listed in paragraph [13] regarding Botany Cranes is annexed hereto and marked **JP-29**.
- f. *Constitution Place* - the webpage with the information listed in paragraph [13] regarding Constitution Place is annexed hereto and marked **JP-30**.
- g. *West Gate Tunnel Case* - the webpage with the information listed in paragraph [13] regarding *West Gate Tunnel Case* is annexed hereto and marked **JP-31**.

15. None of the cases I reviewed in the Current and Under Appeal categories concerned the ME Division.

Date: 18 October 2022

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ENERGY UNION & ORS

CURRENT

Huntington Apartment Project

Australian Building and Construction Commissioner v Construction, Forestry,
Maritime, Mining and Energy Union & Ors

[← BACK TO LEGAL CASES](#)

CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining
and Energy Union & Ors

KNOWN AS

Huntington Apartment Project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

NSD738/2022

APPLICANT

Australian Building and Construction Commission

RESPONDENT(S)

- CFMMEU, Robert Kera, Brendan Holl, Mark Cross, Joseph Uati, Karl Hitchcock, Troy Davis

DATE FILED

8 September 2022

STATE/TERRITORY

NSW

ALLEGED BREACH(ES)

- Coercion
- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced court action on 8 September 2022 against the New South Wales
division of the CFMMEU and five of its officials over their alleged actions during a picket at a
Newcastle building site in October 2021.

The picket was allegedly organised when the principal contractor of the \$42 million
Huntington Apartment project refused to sign an enterprise agreement with the union.

The ABCC is alleging in its statement of claim that during the period 7 October to 12 October
2021:

- Workers attempting to access the site were subjected to abuse including being called
*'f***ing scabs, dogs and grubs'*.
- During the dispute up to 40 picketers led by CFMMEU NSW state secretary Robert Kera
and organisers: Brendan Holl; Mark Cross; Joseph Uati and Karl Hitchcock, chanted
slogans, waved CFMMEU flags and constantly used megaphones and sirens to intimidate
the workers.
- The picket resulted in several crane companies engaged to lift concrete decks into place
and erect site lifts refusing to work, as did a number of scaffolders.
- Workers of the head contractor who continued to work were continually harassed,
received abusive text messages referring to them as 'scabs' and told they would never
work in Newcastle again.
- The picketers' actions caused anxiety and distress to the workers and discouraged and
prevented them from working on site.

On 12 October 2021 it's alleged:

- CFMMEU officials Brendan Holl and Troy Davis, without permission, climbed the ladder of
a tower crane while it was operating. The official's then started shaking the crane's ladders
and refused repeated calls to climb off the crane.
- Due to the officials' intrusion on the crane, work was immediately stopped, and the crane
operator advised to lock the hatch door. As a result of the officials' actions, the tower
crane did not operate for the remainder of the day.

The ABCC is alleging the CFMMEU; and its officials contravened sections 348, 500 and 503 of
the *Fair Work Act 2009*, with a total of 14 alleged contraventions.

The maximum penalty for a contravention of the Fair Work Act is \$66,600 for a body corporate
and \$13,320 for an individual.

HISTORICAL CONTENT

[14 Sep 2022 - ABCC alleges CFMMEU targeted workers with abuse and threats at Newcastle
building site](#)

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ENERGY UNION & ORS

CURRENT

443 Queen Street matter

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining And Energy Union & Ors

[← BACK TO LEGAL CASES](#)



CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining And Energy Union & Ors

KNOWN AS

443 Queen Street matter

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[BRG368/2022](#)

APPLICANT

Australian Building and Construction Commission

RESPONDENT(S)

- CFMMEU, CEPU, Matthew Vonhoff, Wendel Moloney

DATE FILED

1 September 2022

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced Federal Circuit and Family Court action on 1 September 2022 against the CFMMEU, CEPU and two officials following alleged right of entry breaches at the 264-apartment residential tower project at 443 Queen Street Brisbane.

At the time of the officials' 15 December 2021 incursion onto the project site, each of the three access gates in use had signs directing all visitors to report to the site office.

The ABCC is alleging in its statement of claim filed in the court, that CFMMEU official Matthew Vonhoff and CEPU official Wendel Moloney contravened section 500 of the *Fair Work Act 2009* by:

- acting in an improper manner when they unlawfully entered the construction site while ignoring safety requirements for all visitors to attend the site office and sign in,
- did not show their entry permits when requested to do so,
- failed to give notice of their entry, and
- held unauthorised discussions with the subcontractor's employees.

The ABCC's statement of claim further claims Mr Moloney behaved in an abusive and intimidatory manner towards the senior site manager when he responded to a query about what was going on by saying words to the effect:

*"If you f**ing speak to anybody it will be the last time you work in the EBA industry."*

The ABCC is seeking personal payment orders against Mr Vonhoff and Mr Moloney. Such an order would require Court imposed penalties to be paid personally by the representatives and not paid or reimbursed directly or indirectly by the CFMMEU or CEPU.

The maximum penalty for a contravention of the Fair Work Act is \$66,600 for a body corporate and \$13,320 for an individual.

HISTORICAL CONTENT

[5 Sep 2022 - ABCC takes CFMMEU, CEPU to court over alleged right of entry breaches at Brisbane CBD project site](#)

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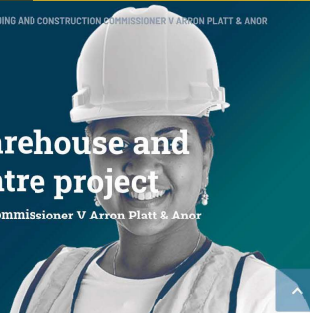


CURRENT

Woolworths Warehouse and Distribution Centre project

Australian Building and Construction Commissioner V Arron Platt & Anor

[← BACK TO LEGAL CASES](#)



CASE NAME

Australian Building and Construction Commissioner V Arron Platt & Anor

KNOWN AS

Woolworths Warehouse and Distribution Centre project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

SYG1130/2022

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- Arron Platt, CFMMEU

DATE FILED

3 August 2022

STATE/TERRITORY

NSW

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced Federal Circuit and Family Court action against the CFMMEU and its official, Arron Platt, on 3 August 2022 alleging the official used threatening and offensive language towards site management while exercising his right of entry at the Woolworths Warehouse and Distribution Centre project in Auburn, New South Wales.

The new \$64 million Woolworths Warehouse and Distribution Centre in Auburn is a 22,000sqm customer fulfilment centre being built to meet increasing demand in Western Sydney.

In its statement of claim, the ABCC alleges that on 11 March 2022, Mr Platt entered the project and made a series of intimidating and offensive comments to site management, including:

- *"This is a small industry, I can make your life hard";*
- *"Get this c..t away from me";*
- *"Get f**ked you c..t";*
- *"You are nothing but a piece of sh*t"; and*
- *On several occasions, referring to a site manager as a "c..t".*

The ABCC alleges that Mr Platt's conduct while exercising his right of entry was improper and contravened section 500 of the *Fair Work Act 2009*.

The ABCC is seeking a personal payment order against Mr Platt. Such an order would require that penalties awarded against Mr Platt be paid personally, without any contribution directly or indirectly from the CFMMEU.

The maximum penalty for a contravention of section 500 of the *Fair Work Act 2009* is \$13,320 for individuals and \$66,600 for a body corporate.

HISTORICAL CONTENT

[4 Aug 2022 - CFMMEU official accused of threatening and abusive behaviour at NSW construction site](#)

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CURRENT

Ironside Construction Pty Ltd

Australian Building and Construction Commission v Construction, Forestry,
 Maritime, Mining and Energy Union & Ors

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CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining
 and Energy Union & Ors

KNOWN AS

Ironside Construction Pty Ltd

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

VID2016/2022

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, James Simpson, Gerald McCrudden, Peter Clark, Jason Deans, James Harris,
 Jaxxon Mahty, Paul Tzimas

DATE FILED

21 April 2022

STATE/TERRITORY

VIC

ALLEGED BREACH(ES)

- Coercion
- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced Court action against the CFMMEU and seven officials on 21 April 2022
 alleging the union mounted a concerted campaign to coerce a Victorian building company to
 make a CFMMEU enterprise agreement.

The ABCC is alleging the union's campaign in 2021 saw CFMMEU officials attending the
 contractor's work sites on most workdays over a three-month period, often remaining on site
 throughout the day.

During that time union officials issued 400 right of entry notices and caused wide-scale
 disruption to work on the contractor's projects. In the 18 months prior to the campaign, the
 CFMMEU had only issued 40 right of entry notices to the company. That number was
 exceeded within the first two days of the union's campaign.

Comments made during and after the campaign indicated that the CFMMEU wanted the
 contractor to make an enterprise agreement. After a meeting between the contractor and the
 CFMMEU during which the union explained why they wanted the contractor to sign up, there
 was a "cease-fire" to allow the contractor to consider agreeing to make an enterprise
 agreement.

The ABCC's Statement of Claim alleges that on multiple occasions during the campaign,
 CFMMEU officials contravened right of entry laws, including during the following incidents:

- On 17 March 2021 at a construction project for three new apartment buildings in
 Alphington, CFMMEU official James Simpson turned off a generator without any notice,
 which shut down power to the whole site and created a safety hazard including shutting
 off the site's evacuation system. Work was stopped on the project for the remainder of the
 day.
- On 23 March at a hotel/apartment project in Cullgewood, CFMMEU official Gerald
 McCrudden stood on the driveway blocking trucks attempting to enter the site. When
 asked to move Mr McCrudden, said words to the effect of: "I can stand wherever the f*ck I
 like."
- On 13 April at a residential apartment project in Croydon, Mr McCrudden and Jason Deans
 entered the project by a rear gate despite signage indicating only authorised personnel
 could enter. They remained in a "no go" zone through which trucks would drive, despite
 site personnel asking them to leave, return to the main entry and sign in.
- Over 14 and 15 April at the Croydon project, three CFMMEU officials entered construction
 zones in which excavators were operating and refused to leave despite repeated requests
 by site personnel. On one of these occasions, CFMMEU official Paul Tzimas walked up to
 an operating excavator and caused it to stop work.
- On 4 May at the Croydon project, CFMMEU official Jaxxon Mahty accessed a site manager's
 computer without permission and took a photo of its contents.

The ABCC is alleging the union's campaign was unlawful, illegitimate and unconscionable,
 citing:

- The high volume of right of entry notices and entries by CFMMEU officials which were
 disproportionate to any reasonably suspected safety concerns or interest in an enterprise
 agreement.
- The wide-scale disruption of work across the company's projects; and
- The impact on the mental health of its employees.

The ABCC is alleging the CFMMEU and a number of its officials breached sections 499 and 500
 of the *Fair Work Act 2009*.

The ABCC is also alleging that by organising and engaging in the campaign with the intent to
 coerce or apply undue pressure to the company to agree to make a building enterprise
 agreement, the CFMMEU contravened s.54 of the *Building and Construction Industry
 (Improving Productivity) Act 2016* (BCIIP Act).

The maximum penalty for a contravention of the *Fair Work Act* is \$66,600 for a body corporate
 and \$13,320 for an individual.

The maximum penalty per contravention under the BCIIP Act is \$222,000 for a body corporate
 and \$44,400 for an individual.

The ABCC is seeking personal payment orders against all seven named CFMMEU officials:
 James Simpson, Gerald McCrudden, Peter Clark, Jason Deans, James Harris, Jaxxon Mahty and
 Paul Tzimas.

The ABCC will submit that Court imposed penalties be paid personally by the officials and not
 be paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

HISTORICAL CONTENT

22 Apr 2022 - ABCC alleges CFMMEU targeted Victorian building company in three-month
 campaign to disrupt work

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CURRENT

Cross River Rail Woollongabba & Roma Street

Australian Building and Construction Commissioner V Construction, Forestry, Maritime, Mining and Energy Union & Ors

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CASE NAME

Australian Building and Construction Commissioner V Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS

Cross River Rail Woollongabba & Roma Street

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

BRG167/2022 [↗](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Michael Ravbar, Andrew Blakeley

DATE FILED

19 April 2022

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced action in the Federal Circuit and Family Court on 19 April 2022 against the CFMMEU, its Queensland State Secretary Michael Ravbar and official Andrew Blakeley, alleging right of entry contraventions.

The court action stems from two unauthorised entries that disrupted work on two separate sites forming part of Brisbane's Cross River Rail project.

This is the third case the ABCC has brought before the courts in relation to contraventions occurring across the Cross River Rail project. The two earlier matters already before the courts occurred at [Boggo Road](#) and [Albert Street](#).

In this matter the ABCC is alleging Mr Blakeley used his hip and shoulder to push a site supervisor out of the way so a vehicle carrying a BBQ could enter the site. Mr Blakeley and Mr Ravbar also allegedly failed to comply with the site's COVID-19 and entry requirements.

In its statement of claim, the ABCC is alleging:

- On 19 August 2021, a vehicle with a trailer from a superannuation fund, arrived at the entrance to the Woollongabba Station construction site. The occupant of the vehicle said they were there for a BBQ. Mr Ravbar and Mr Blakeley arrived at the site shortly afterwards.
- As the superannuation fund vehicle was not authorised to enter the site, a site supervisor stood between the vehicle and the boom gates to block the vehicle from entering. Mr Blakeley physically pushed the site supervisor out of the way with his hip and shoulder and directed the vehicle to drive onto the site through a gap in the boom gates.
- Mr Blakeley continued directing the vehicle down the site haul road and Mr Ravbar followed on foot.
- Mr Ravbar and Mr Blakeley failed to provide prior notice of entry, comply with Queensland government COVID-19 check-in requirements, or complete a visitor induction and sign in process.
- Mr Blakeley and Mr Ravbar supervised the occupants of the vehicle as they set up a BBQ on site. The site occupier's senior industrial relations advisor said to Mr Blakeley words to the effect that his access to the site was *unauthorised* and *you need to leave*. Mr Blakeley did not respond.
- Following this, about 50 workers who had attended the project to perform building work that day gathered around the BBQ where Mr Ravbar, Mr Blakeley and the superannuation fund representatives addressed them.
- The conduct of Mr Ravbar and Mr Blakeley delayed building work by at least one hour and prevented the completion of building work in the morning as planned.
- On 24 August 2021, Mr Ravbar, Mr Blakeley, and the same vehicle entered the Roma Street Station construction site without authorisation from the occupier and again set up a BBQ, interrupting building work on site.
- Mr Ravbar and Mr Blakeley again failed to provide prior notice of entry, comply with Queensland government COVID-19 check-in requirements, or complete a visitor induction and sign in process.
- At no time had the site occupier organised, or authorised, a BBQ to take place. The Advisor told the officials about five times that they were unauthorised to be on site and that they should leave.
- About 25 workers had crowded around the BBQ area. Mr Ravbar, Mr Blakeley and the superannuation fund representatives addressed the workers and then stood around talking and eating with the workers.
- The conduct of Mr Ravbar and Mr Blakeley delayed building work for the day and did not allow scheduled work to be completed in the morning as planned.

The ABCC is seeking a personal payment order against both officials, which would require Court imposed penalties to be paid personally by Mr Ravbar and Mr Blakeley and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

The maximum penalty for each contravention of the *Fair Work Act 2009* is \$66,600 for a body corporate and \$13,320 for an individual.

Mr Ravbar no longer holds a Federal Right of Entry Permit

Mr Ravbar filed an application with the Fair Work Commission to renew his federal right of entry permit on 23 March 2021. The Australian Building and Construction Commissioner Stephen McBurney intervened in the proceeding arguing Mr Ravbar was not a fit and proper person to hold a permit.

In September 2021, Mr Ravbar abandoned his application to renew his right of entry permit. Mr Ravbar is no longer authorised to exercise entry rights in accordance with the *Fair Work Act 2009*.

HISTORICAL CONTENT

21 Apr 2022 - ABCC takes action against the CFMMEU after work delays on the Cross River Rail project arising from alleged right of entry breaches

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CURRENT

Australian Catholic University St Teresa of Kolkata Building Project

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor

[← BACK TO LEGAL CASES](#)

CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor

KNOWN AS

Australian Catholic University St Teresa of Kolkata Building Project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

MLG703/2022

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU; Michael Powell

DATE FILED

4 April 2022

STATE/TERRITORY

VIC

STATUS

Current

SUMMARY

The ABCC commenced Federal Circuit and Family Court action on 4 April 2022 against the CFMMEU and its delegate, Michael Powell, alleging Mr Powell hindered and obstructed two female ABCC inspectors from conducting an audit of the Australian Catholic University project.

The \$206 million, 13-storey Saint Teresa of Kolkata Building is a new learning and teaching space at the ACU campus on the fringe of Melbourne's CBD.

In its statement of claim, the ABCC alleges:

- on 5 May 2021, two of its inspectors commenced a Building Code audit of the project.
- The inspectors were accompanied by the contractor's project manager and national workplace relations manager while inspecting the lunchrooms and the male and female amenities for compliance with the Building Code.
- During the audit, Mr Powell approached the group, allegedly shouting:

*"what business do these f**king women have going into the male toilets and taking pictures".*

- Mr Powell pointed towards one of the ABCC inspectors and stood one metre away from her while demanding, in a loud and aggressive voice, that she show him the contents of her phone.
- Mr Powell said to the contractor's managers words to the effect of:

*"you've got no f**king right to take them into the male toilets or our sheds...don't let them in our sheds".*

- Concerned for their safety, the ABCC inspectors concluded their audit early and were escorted to the site's carpark by the managers.
- Mr Powell approached the carpark fence with two other men in CFMMEU clothing and said to them words to the effect of:

"go to the carpark entrance and we'll get them there."

The ABCC is alleging the CFMMEU and Mr Powell contravened s.78 of the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) by hindering and obstructing the inspectors from exercising their compliance powers.

The maximum penalty for contravention of the BCIIP Act is \$222,000 for a body corporate and \$44,400 for an individual.

The ABCC is seeking a personal payment order against Mr Powell. Such an order would require Court imposed penalties to be paid personally by Mr Powell and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

Since May 2008, Mr Powell has been penalised \$130,200 by the Courts for 23 contraventions of workplace laws.

HISTORICAL CONTENT

6 Mar 2022 - CFMMEU delegate Michael Powell alleged to have hindered and obstructed ABCC inspectors

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CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor

KNOWN AS

Mordialloc Freeway 2

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

MLG663/2022 [of](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Gerald McCrudden

DATE FILED

31 March 2022

STATE/TERRITORY

VIC

ALLEGED BREACH(ES)

- Adverse action

STATUS

Current

SUMMARY

The ABCC commenced Court action on 31 March 2022 against the CFMMEU and its official Gerald McCrudden for allegedly disrupting a concrete pour, repeated verbal abuse and for twice making physical contact with a female health and safety manager at the Mordialloc Freeway project in Victoria in 2021.

The alleged contraventions occurred during the construction of the \$523 million nine-kilometre extension of the Mordialloc Freeway, between the Dingley Bypass and the Mornington Peninsula Freeway in Melbourne's south east.

In its statement of claim the ABCC alleges Mr McCrudden acted in an improper manner on multiple occasions when entering the project on 24 and 25 June and 14 July 2021. The ABCC further alleges that Mr McCrudden engaged in adverse action by threatening a representative of the contractor on 25 June.

The ABCC's Statement of Claim filed with the Court alleges:

On 14 July

- While exercising right of entry, Mr McCrudden walked directly into and pushed past a female health and safety manager which caused him to make physical contact with her.
- That after the female manager followed Mr McCrudden onto the site, he cocked his elbow and hit her in her side with his elbow and shoulder;
- The manager said, "don't touch me"
- A short time later Mr McCrudden said to the manager, "everyone hates you, you're pathetic."
- When the manager accused Mr McCrudden of putting words in her mouth, Mr McCrudden responded by saying, "I would never put anything in your mouth, you're disgusting."
- Mr McCrudden's physical contact and abuse caused the health and safety manager to feel shocked, extremely annoyed, frustrated and disrespected at work.

On 24 June

- Mr McCrudden entered the Bowen Parkway site of the project, having issued a notice relating to suspected safety contraventions;
- At about 10:30am a concrete truck arrived at the site. The health and safety manager told Mr McCrudden the concrete needed to be poured immediately to ensure the integrity of the bridge deck was not compromised. Mr McCrudden responded to the effect of:

"It's not going to happen. You won't be receiving the concrete if their paperwork isn't compliant."

- The health and safety manager attempted to show Mr McCrudden the relevant paperwork. Mr McCrudden did not look at the paperwork and responded:

"That's not it, you don't give a f*ck."

- Mr McCrudden then walked up to the truck driver. Despite having received the appropriate paperwork and being told the concrete pour was time sensitive, McCrudden refused to move out of the way of the concrete truck and delayed the concrete pour.
- Mr McCrudden then held his mobile phone close to the faces of a health and safety manager, project superintendent and an engineer and appeared to film them while saying:

"F*ck this, [name of head contractor] are dogs, you're all f**king useless."

- When told his access had been revoked Mr McCrudden told the superintendent to "F*ck off."
- At about 2:20pm that day Mr McCrudden returns to the project and said to the health and safety manager:

"Does [health and safety manager] know what he is doing talking to the ABCC? Whether it's me or the next guy, we won't forget, and he won't have a career in this industry."

On 25 June

- Mr McCrudden attended the Dingley Bypass site of the project. While there he said to the health and safety manager:

"You're not going to have much of a future if you continue to speak to the ABCC. You'll see mate, you'll see."

The ABCC alleges Mr McCrudden's behaviour amounted to improper conduct and adverse action in contravention of the Fair Work Act 2009. The ABCC further alleges the CFMMEU is liable for Mr McCrudden's conduct.

The unlawful conduct comprised of a threat to take adverse action and eight instances of improper conduct comprising:

- three instances of abusive language,
- obstructing a concrete truck,
- filming with offensive language,
- making a threat,
- two instances of physical contact to a manager.

The maximum penalty for each contravention of the Fair Work Act 2009 is \$66,600 for a body corporate and \$13,320 for an individual.

The ABCC is seeking a personal payment order against Mr McCrudden, which would require Court imposed penalties to be paid personally by him and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

Mr McCrudden is also a respondent in an earlier matter concerning the Mordialloc Freeway project and involving alleged contraventions of the Fair Work Act 2009. Details outlining the ABCC's allegations can be found on our website.

HISTORICAL CONTENT

3 Mar 2022 - CFMMEU official accused of disrupting freeway concrete pour and elbowing female health and safety manager

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Australian Building and Construction Commissioner v Jason Bushnell & Anor

KNOWN AS

Brisbane South State Secondary College project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[BRG136/2022](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU; Jason Bushnell

DATE FILED

31 March 2022

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Adverse action

STATUS

Current

SUMMARY

The ABCC commenced Federal Circuit and Family Court action against the CFMMEU and its delegate Jason Bushnell on 31 March 2022 alleging they took adverse action against two employees of a subcontractor by preventing them from working at the Brisbane South State Secondary College project because they were not union members.

It is further alleged Mr Bushnell falsely represented to both employees that they had to be CFMMEU members to work on the project.

In its statement of claim, the ABCC alleges:

- On 11 May 2021, two employees of a subcontractor engaged to paint structural steel arrived on site to commence works.
- After completing a site induction, the employees were met by Mr Bushnell who asked if they were members of the union.
- Later that morning, Mr Bushnell approached one of the employees outside the site office and said words to the effect of: *Sorry, you can't work here. You have to be a member.*

- Mr Bushnell then had a conversation with both employees to the following effect:

Mr Bushnell: *I'll just call the office. All you have to do just go to our office in Brisbane, become members, and then you can go and do your work.*

Employee: *So is that the only issue? If we just become members we can do the work?*

Mr Bushnell: *Yes, you can.*

Employee: *Fine. If that's the only issue, we will do it.*

- The employees drove to the CFMMEU office where they waited for 45 minutes only to be told that someone would call them later.
- Upon returning to the project, one of the employees requested to meet with Mr Bushnell and had the following exchange with him:

Mr Bushnell: *No, I don't want to come down. I don't want to see you. There's nothing else to talk about.*

Employee: *Well, what do you want me to do? What do you expect me to do?*

Mr Bushnell: *Someone will contact you in regards to that, one of the organisers.*

Employee: *I was there. No one talked to me. I was there 45 minutes and now I'm back here. I don't have any contact details of anybody. The only number I've got is your number, which I got from [the safety officer]. What do you want me to do? What's the next step?*

Mr Bushnell: *Well, I talked to them. Someone will call you.*

- The employees were not contacted by anyone from the CFMMEU in relation to union membership and were prevented from performing work at the project.

The ABCC is alleging Mr Bushnell contravened sections 346, 348 and 349 of the *Fair Work Act 2009*.

The ABCC is seeking a personal payment order against Mr Bushnell, which would require Court imposed penalties to be paid personally by Mr Bushnell and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

The maximum penalty for each contravention of the *Fair Work Act* is \$66,600 for a body corporate and \$13,320 for an individual.

HISTORICAL CONTENT

1 Apr 2022 - ABCC alleges painters prevented from working on Brisbane secondary school project unless they joined the CFMMEU

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M1 Yatala South Interchange project

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

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Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS

M1 Yatala South Interchange project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[BRG135/2022](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Dean Rielly, Matthew Vonhoff, Margues Pare

DATE FILED

31 March 2022

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced legal action on 31 March 2022 against the CFMMEU and its officials Dean Rielly, Matthew Vonhoff and Margues Pare alleging they contravened right of entry and occupational health and safety laws at the Yatala South Interchange upgrade project.

The \$45 million project aims to deliver safety upgrades for motorists using the Pacific Motorway (M1), with improvements to traffic flow through a newly constructed bridge with additional lanes.

In its statement of claim, the ABCC alleges:

- On 25 October 2021, Mr Rielly and Mr Vonhoff attended the site and refused multiple requests to follow site OHS protocols which included refusing to sign into the visitor register complete the visitor induction and present themselves to the Project Manager.
- On 27 October 2021, Mr Rielly and Mr Pare entered the site in an unauthorised manner and refused multiple requests to follow site OHS protocols which included failing to report to the site office and sign into the visitor register.
- Mr Rielly had the following conversation with site representatives:

Mr Rielly: *You need to start by using our subcontractors. We wouldn't have these issues if you had our guys.*

Site representative: *Who are your guys?*

Mr Rielly: *You tell me who you need, and I will tell you their names. If you don't start doing what I tell you I will go to my car, grab my bat and start swinging it around.*

Site representative: *Are you saying you are going to hit me? Are you threatening me?*

Mr Rielly: *I never said I'm going to hit you. I might just start swinging it around the carpark.*

Site representative: *I am in the carpark, so are you still threatening me?*

Mr Rielly: *No, I would just swing it around the carpark.*

The ABCC is alleging Mr Rielly, Mr Vonhoff and Mr Pare contravened sections 499 and 500 of the *Fair Work Act 2009* by refusing reasonable requests to comply with health and safety directions and behaving in an improper manner while on site.

The ABCC is seeking a personal payment order against all three union officials. Such an order would require Court imposed penalties to be paid personally by the union officials and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

The maximum penalty for each contravention of the *Fair Work Act* is \$66,600 for a body corporate and \$13,320 for an individual.

HISTORICAL CONTENT

[7 April 2022 - CFMMEU official allegedly threatens to "grab my bat and start swinging it around" at the M1 Yatala South Interchange upgrade site](#)

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Australian Building and Construction Commissioner v Travis Alton Brook & Anor

KNOWN AS

Norwood Mixed Development Project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[SAD43/2022](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Travis Brook

DATE FILED

22 March 2022

STATE/TERRITORY

SA

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced court action on 22 March 2022 against the CFMMEU and South Australian official Travis Brook alleging he acted improperly and refused to follow reasonable work health and safety directions when exercising his rights of entry at a Norwood construction site.

Signs displayed at the site entrance advised all visitors to report to the main office before entering the site and included a requirement that all visitors were to be escorted by an inducted person.

Visitors and workers were also required to sign in and out of the site using a QR code. A safety directive also prohibited workers and visitors from using mobile phones in all work areas while walking.

In its statement of claim the ABCC is alleging on 15 December 2021 Mr Brook entered the construction site at 166 The Parade in Norwood ignoring site requirements and safety protocols.

It is alleged that after being confronted by the site manager for being on site without an escort, Mr Brook was asked if he had signed in using the site's QR code, which he falsely claimed he had.

When asked to return to the site office to undertake a site induction, it is alleged Mr Brook refused to do so stating that he had "every right to be [there] and go where [he wanted to]". Mr Brook then continued to walk around the site while speaking on his mobile phone and looking at a second phone.

It is also alleged Mr Brook entered an exclusion zone marked with orange flagging. The site's safety advisor warned Mr Brook that he had walked into a live traffic zone. Mr Brook ignored the warning and proceeded to enter a second exclusion zone.

The ABCC is alleging Mr Brook and the CFMMEU contravened sections 499, 500 and 503 of the *Fair Work Act 2009*.

The maximum penalty for each contravention of the *Fair Work Act* is \$66,600 for a body corporate and \$13,320 for an individual.

HISTORICAL CONTENT

28 Mar 2022 - ABCC alleges right of entry breaches at Norwood construction site

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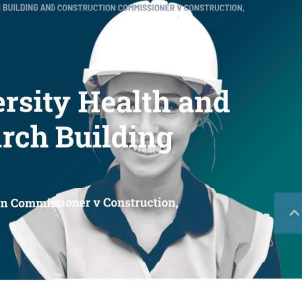
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SAD46/2022 [↗](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Travis Brook

DATE FILED

25 March 2022

STATE/TERRITORY

SA

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced court action against the CFMMEU and its official, Travis Brook on 25 March 2022, after the official allegedly asked a female worker about her sex life on two occasions, while exercising his right of entry at the Flinders University Health and Medical Research Building project in South Australia.

The ABCC alleges that on 13 January 2022, CFMMEU official Travis Brook entered the \$255 million project to investigate suspected safety contraventions.

During his inspection of the site, Brook allegedly asked a female labourer who was known to him about her Christmas and asked, "were you and [her husband] humping like rabbits the whole time?" On a separate occasion, Mr Brook allegedly again asked whether the female labourer and her husband were "humping like rabbits."

The ABCC alleges that the comments made by Mr Brook were sexualized, demeaning, disrespectful and/or humiliating and caused the female labourer to feel uncomfortable and embarrassed.

The ABCC alleges that Mr Brook's conduct fell below the standard expected of a permit holder when exercising rights of entry and contravened section 500 of the *Fair Work Act 2009*, which provides that a person must be a 'fit and proper person' to hold such a permit, and not behave improperly while exercising the rights of entry afforded by the permit.

The ABCC is seeking a personal payment order against Mr Brook. Such an order would require Court imposed penalties to be paid personally by Mr Brook and not paid or reimbursed directly or indirectly by the CFMMEU or any other person, including via crowdfunding.

The maximum penalty for each contravention of the Fair Work Act 2009 is \$66,600 for a body corporate and \$13,320 for an individual.

The Australian Human Rights Commission's *Respect@Work Report* found that gender inequality was the key power disparity that drives sexual harassment and that there is a higher risk of experiencing sexual harassment in industries that are male dominated. The construction industry is among the most male dominated industries in Australia, with women accounting for just 12% of the workforce.

According to the report, 51% of women in the construction industry reported experiencing sexual harassment in the workplace (compared to 12% of men).

HISTORICAL CONTENT

01 Mar 2022 - CFMMEU official accused of asking lewd questions to a female labourer while exercising right of entry [↗](#)

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Cross River Rail (Albert Street)

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[BRG81/2022](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Dean Rielly

DATE FILED

28 February 2022

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC has started Federal Circuit and Family Court action against the CFMMEU and QLD
official Dean Rielly alleging Mr Rielly contravened right of entry requirements at Brisbane's
Cross River Rail project in July 2021.

The Cross River Rail is a new \$6.88 billion train line from Dutton Park to Bowen Hills, stretching
10.2 kilometres and including 5.9 kilometres of twin tunnels under the Brisbane River and
CBD.

In its statement of claim, the ABCC is alleging:

- Mr Rielly ignored reasonable requests to make a mandatory COVID-19 health declaration,
refused to sign the visitor register and to complete a visitor induction.
- He also ignored requirements to be accompanied by an escort, to obey safety signs and to
stay out of a restricted work area, all important requirements to ensure workers' and
visitors' safety while on site.
- During his attendance at the Albert Street Station construction site, Mr Rielly unlawfully
entered a restricted work area where there were trucks and excavation equipment.
- At the time of his incursion, Mr Rielly was unaccompanied by site management. This was
despite the presence of signs advising the area was restricted to visitors unless
accompanied by an authorised officer and safety fencing surrounding the area.
- Mr Rielly also walked past a traffic controller ignoring his instructions to report to the site
office. Shortly after, he climbed scaffolding stairs leading to the tower crane pad, again
ignoring directions not to do so.
- When he entered the restricted area, he was told by the site's industrial relations advisor:

For your own safety we need you out of here. it's a restricted area.

- At about 3:10 PM, Mr Rielly left the restricted area.

The ABCC is alleging Mr Rielly contravened sections 499 and 500 of the *Fair Work Act* by
refusing reasonable requests to comply with health and safety directions and behaving in an
improper manner while on site.

HISTORICAL CONTENT

8 March 2022 - CFMMEU official Dean Rielly faces court for right of entry incursion at Cross
River Rail project

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COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

SAD 17/2022

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Wyatt Rayment
- Alexandria Russell
- Travis Brook
- Desmond Savage

DATE FILED

10 January 2022

STATE/TERRITORY

SA

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC has commenced proceedings alleging that CFMMEU officials abused site staff and
 ignored lawful health and safety directions whilst exercising their rights of entry at the \$123
 million construction upgrade to Yatala Labour Prison in Northfield SA.

The alleged contraventions involve CFMMEU officials Wyatt Rayment, Alexandria Russell,
 Travis Brook and Desmond Savage, and occurred over 3 days in August and September 2021.

The ABCC alleges that whilst exercising their rights of entry, the officials engaged in abusive,
 derogatory and offensive behaviour, and a number of them forced their way into exclusion
 zones when directed not to.

The ABCC alleges:

- On 30 August 2021, Ms Russell, Mr Rayment and Mr Brook conducted a site walk when
 Ms Russell and Mr Rayment became abusive towards the health, safety and environment
 manager, saying words to the effect of:

*Rayment: [name] you are f**king useless at your job, I can't believe you call yourself a
 professional, you should be ashamed.*

*Russell: Completely f**king useless, you are going to kill someone.*

Russell: Seriously aren't you ashamed? It's amazing how useless you are.

*Rayment: How can you get up every morning and do a sh** job? Aren't you ashamed?*

- Mr Rayment and Ms Russell directed offensive and derogatory statements to the Safety
 Supervisor and Site Manager.
- During the site walk Ms Russell removed a safety barrier to enter an exclusion zone
 without authorisation.
- Ms Russell refused to leave the exclusion zone when directed, despite being told that she
 was putting herself at risk. When Ms Russell eventually left the zone, she then re-entered
 at another point and stood on the edge of a concrete storm water pit which was in a
 confined space.
- The following day, Mr Rayment and Mr Brook disrupted a concrete pour by raising a
 safety concern, which the site engineer rectified immediately. Mr Brook then proceeded to
 stand close to the site engineer before raising his arms and stating aggressively:

*I hope to God that something goes drastically wrong and gets people seriously hurt, I
 really do. Then we can take [the contractor] to the cleaners in court and you might learn
 your lesson.*

- On 2 September 2021, Mr Savage threatened the safety supervisor by saying "The more
 you call your mates, the more I'll come down on you". It is alleged that "your mates" was a
 reference to ABCC inspectors.
- That same morning Mr Rayment approached the safety supervisor's car and stated that
 he would "get in trouble" and be subject to a "personal fine" if a complaint was made. He
 also used foul language to intimidate the supervisor.

The ABCC further alleges the CFMMEU is liable for the conduct of its officials.

The ABCC is seeking personal payment orders against all four union officials. Such an order
 would require Court imposed penalties to be paid personally by the officers and not paid or
 reimbursed directly or indirectly by the CFMMEU or through crowd funding.

The maximum penalty for each contravention of the *Fair Work Act 2009* is \$66,600 for a body
 corporate and \$13,320 for an individual.

HISTORICAL CONTENT

17 Jan 2022 - CFMMEU officials accused of abusing site supervisors and disregarding health
 and safety directions on Adelaide building site

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Australian Building and Construction Commissioner v Dean Rielly & Ors

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Pacific Motorway

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

QUD445/2021 [↗](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Dean Rielly
- Paul Fitzpatrick

DATE FILED

22 December 2021

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC has started court action against the CFMMEU and two of its Queensland state representatives alleging they contravened right of entry requirements and refused to comply with lawful safety directions at the M1 Motorway project in April 2021.

In its statement of claim the ABCC is alleging the following:

- On 19 April the two officials, Dean Rielly and Paul Fitzpatrick, entered the M1 Motorway construction site using one of the site's vehicle access points at Burleigh Heads ignoring signs requiring all visitors to report to the main site office.
- When on site the officials entered a cordoned off exclusion zone where heavy machinery, including a crane, were working. Despite repeated directions to leave the high-risk area the officials refused to do so placing themselves and workers at risk. As a result of their presence work had to be stopped.
- During his presence in the exclusion zone Mr Rielly was told words to the effect of:

We're asking you not to go in the area ... It's dangerous for you to be in there. Don't go in the area, it is unsafe, you're unsupervised...

- On 23 April Mr Rielly again entered the construction site. When on site Mr Rielly entered an exclusion zone where heavy machinery was laying asphalt. While in the exclusion zone he ignored repeated directions to leave and proceeded to walk unsafely around equipment and heavy vehicles. Mr Rielly also approached operating vehicles within the exclusion zone.
- When repeatedly asked to leave the site, Mr Rielly stated words to the effect of:

I'm not going, you can ask all you want, but I'm not leaving ...

The ABCC is alleging the CFMMEU, Mr Rielly and Mr Fitzpatrick contravened sections 499 and 500 of the Fair Work Act 2009 by failing to comply with the site's occupational health and safety requirements and acting in an improper manner, including by entering a designated exclusion zone and then refusing to move to a safe location.

The maximum penalty for each contravention of the Fair Work Act is \$66,600 for a body corporate and \$13,320 for an individual.

The ABCC is seeking personal payment orders against Mr Rielly and Mr Fitzpatrick. Such an order would require Court imposed penalties to be paid personally by the representatives and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

HISTORICAL CONTENT

12 Jan 2022 - ABCC alleges CFMMEU QLD representatives' actions placed themselves and workers at risk on M1 Motorway project

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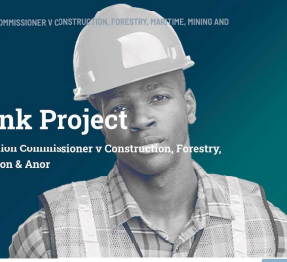
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CURRENT

North-East Link Project

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor

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CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor

KNOWN AS

North-East Link Project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

MLG3368/2021

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Paul Tzimas

DATE FILED

22 December 2021

STATE/TERRITORY

VIC

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC on 22 December 2021 commenced Court action against the CFMMEU and its official Paul Tzimas over an incident at the \$15.8 billion North East Link Project in Melbourne on 4 February 2021.

The jointly funded Australian and Victorian Government project will connect Melbourne's freeway network between the Eastern Freeway and M80 Ring Road in Melbourne's north-east.

The ABCC is alleging excavation work to relocate a sewer at the project's Bulleen site was stopped when Mr Tzimas exercised his right of entry powers at the site. It is alleged Mr Tzimas ignored safety directions and deliberately entered a restricted area while a heavy excavator was operating.

In its statement of claim, the ABCC is alleging:

Mr Tzimas demanded work be stopped because the address on the Safe Work Method Statement was incorrect, making reference to a different site within the project.

When told the address could be amended while work continued Mr Tzimas responded to the site supervisors with "get f***ed" and "f**k the two of you".

He then walked into the restricted area where he threw his compendium on the ground and said words to the effect "try and work now" or "see if you can keep operating while I'm standing here".

At the time of his incursion into the restricted plant operating zone an excavator was operating with its bucket in mid-air.

Despite repeated requests Mr Tzimas refused to move from the area resulting in work being disrupted and a truck driver scheduled to work until at least 4pm being sent home at 8.50am.

Victorian WorkSafe inspectors attended the site but did not identify any concern or issue with the Safe Work Method Statement.

The ABCC is alleging Mr Tzimas contravened sections 499 and 500 of the Fair Work Act by acting in an improper manner and intentionally hindering or obstructing persons at the site – specifically, by intentionally entering the plant operating zone and causing all work on the site to stop.

The ABCC further alleges the CFMMEU is liable for the conduct of its official.

The ABCC is seeking a personal payment order against Mr Tzimas. Such an order would require Court imposed penalties to be paid personally by Mr Tzimas and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

The maximum penalty for each contravention of the *Fair Work Act 2009* is \$66,600 for a body corporate and \$13,320 for an individual.

HISTORICAL CONTENT

1 Feb 2022 - ABCC alleges CFMMEU official's actions led to work stopping on North-East Link project

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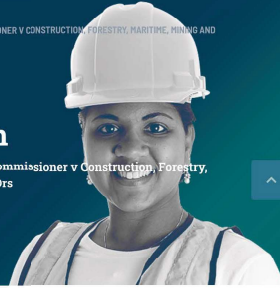
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GN Construction

Australian Building and Construction Commissioner v Construction, Forestry,
Maritime, Mining and Energy Union & Ors



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CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining
and Energy Union & Ors

KNOWN AS

GN Construction

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[WAD259/2021](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Bradley Upton
- Stephen Parker

DATE FILED

22 November 2021

STATE/TERRITORY

WA

ALLEGED BREACH(ES)

- Unlawful picketing

STATUS

Current

SUMMARY

On 22 November 2021 the ABCC commenced court action against the CFMMEU and two of its
officials alleging they took part in an unlawful picket at GN Construction's Balcatta
construction yard on 3 May 2021.

The ABCC is alleging CFMMEU officials Bradley Upton and Stephen Parker led the picket, which
involved up to 60 protesters gathering at the construction yard at 6.30am.

In its statement of claim the ABCC is alleging:

- An unlawful picket was organised when a CFMMEU email was sent to all WA members
calling on them to attend the Balcatta company's construction yard to protest.
- The unlawful picket involved approximately 60 protesters, many of them wearing
CFMMEU branded clothing and waving CFMMEU flags.
- A truck that had earlier dropped off timber was prevented from leaving the yard after
picketers marched up and down the footpath blocking the exit.
- As the truck approached the exit gate, Mr Upton shouted to the picketers: "C'mon guys,
get here. March up and down, they can't stop us doing this. Stop 'em."
- At around 7.45am Mr Upton addressed the picketers where he said:

*"At this stage what we're going to do is we'll probably ah pass it in, we'll head off. But
keep your emails up to date, we'll be (sic) keep coming back. We're going to keep having
a go at these f**king maggots."*

- Following Mr Upton's direction, the picketers left the site.
- Later in the day the CFMMEU posted a video of the picket on the WA CFMMEU Facebook
page.

The maximum penalty for unlawful picketing under the *Building and Construction Industry
(Improving Productivity) Act 2016* is \$222,000 for a body corporate and \$44,400 for an
individual.

The ABCC is seeking personal payment orders against both union officials. Such an order
would require Court imposed penalties to be paid personally by Mr Upton and Mr Parker, and
not be paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

HISTORICAL CONTENT

22 Nov 2021- ABCC commences action against CFMMEU and officials for alleged illegal picket
of WA construction yard

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Mordialloc Freeway

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

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CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS

Mordialloc Freeway

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

VID669/2021

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Paul Tzimas
- Gerald McCrudden
- James Harris

DATE FILED

16 November 2021

STATE/TERRITORY

VIC

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC on 16 October 2021 commenced court action against the CFMMEU and three officials after they allegedly directed workers to stop work, prevented concrete pours, abused health and safety officers and struck a health and safety manager at the Mordialloc Freeway project site in 2020.

The \$523 million project involved construction of a nine-kilometre section of the freeway between the Dingley Bypass and the Mornington Peninsula Freeway in Melbourne's south east.

In its statement of claim the ABCC is alleging the officials, Paul Tzimas, Gerald McCrudden and James Harris misused their entry rights between November and December of 2020.

The ABCC alleges the unlawful conduct included:

- On 18 November, Mr Tzimas and McCrudden directed 15 workers to not return to work
- Behaving in an aggressive and intimidating manner towards health and safety officers by standing close to the officers and yelling words to the effect of:

"you're pathetic";

"you're a disgrace";

*"you're f***ed this time";*

*"you guys are f***ing useless";*

*"you're the worst f***ing safety person I've met in my life."*

- On 19 November Mr McCrudden entered an exclusion zone without authorisation. Despite requests to leave the area he remained there for around 2 ½ hours preventing a concrete pour. His presence resulted in the concrete pour being cancelled and the concrete being wasted.
- On 2 December Mr Tzimas and Mr Harris attended the site. Mr Harris stood near the edge of an excavation site. Despite repeated requests to move away from the edge he responded by saying:

"Nah, piss off I will do what I want."

- On the same morning Mr Tzimas is alleged to have struck a health and safety manager in the chest with his fist causing the manager to lose balance. Victoria Police were called to attend the site.
- Mr McCrudden and Mr Harris returned on the same day ahead of a further scheduled concrete pour and stood in an exclusion zone, preventing two concrete trucks from entering the site. The pair stood in front of the third concrete truck as it was entering the exclusion zone and prevented the truckload of concrete from being poured. The concrete in each of the three trucks had to be disposed of.

The ABCC further alleges the CFMMEU is liable for the conduct of its officials.

The maximum penalty for each contravention of the *Fair Work Act 2009* is \$66,600 for a body corporate and \$13,320 for an individual.

HISTORICAL CONTENT

17 November 2021 - CFMMEU officials accused of disrupting major freeway project - striking health and safety manager

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CASE NAME

Australian Building and Construction Commissioner v Andrew Blakeley & Ors

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Coles Distribution Centre

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

QUD329/2021 [↗](#)

RESPONDENT(S)

- CFMMEU
- Andrew Blakeley
- Luke Gibson

DATE FILED

12 October 2021

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Adverse action
- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC has taken court action against the CFMMEU and its officials, Andrew Blakeley and Luke Gibson, after they allegedly prevented a concrete pour at a Redbank construction site because a labour hire provider was not covered by a CFMMEU enterprise agreement.

The officials' actions resulted in around seven truckloads of concrete being wasted.

The two officials are also alleged to have misled the Queensland Police about their powers as federal right of entry permit holders.

The ABCC has filed proceedings in the Federal Court. In its statement of claim, the ABCC is alleging:

Mr Blakeley and Mr Gibson entered the Coles Distribution Facility Project site in Redbank at 3am on 28 February 2020, met site representatives and asserted they were there to enquire into a suspected OHS breach.

A discussion was had to the following effect:

Mr Gibson: We've had a report that you're pouring outside DA [Developers' Approval] hours, and there's insufficient lighting.

Site representative: DA conditions have nothing to do with the CFMEU.

*Mr Gibson: Get f**ked.*

The two union officials:

- Refused to comply with occupational health and safety requests that they sign-in upon entry and not go onto site unescorted.
- Entered the site and approached a work area where a concrete pour was to take place.
- Entered an exclusion zone and stood in the path of, and behind, a loaded concrete truck preventing it from discharging its load.
- Moved themselves to positions which prevented additional trucks, which had arrived at the site to deliver concrete, from discharging their loads.
- Refused repeated requests to move.

While blocking the concrete trucks, Mr Gibson told the subcontractor's project manager words to the effect of:

You're robbing the guys of money, working non EBA.

The ABCC will argue the purpose of the officials' attendance at the site was aimed at coercing the labour hire provider to sign up to a CFMMEU enterprise agreement and not over safety concerns.

At 4:30am, two Queensland Police officers arrived and spoke with Mr Blakeley.

Mr Blakeley misled the police officers about the officials' power to stop works at the site by saying:

We're acting under our permits in good faith.

We'll can stop works if we think it's unsafe under the Act. Yeah, 100%. So it's a matter of interpretation and unfortunately that's how the workplace health and safety act works. It's not exactly black and white. But for us if we think there's workers at risk, we'll do anything to avoid that.

Following a discussion, the officials left the area and re-engaged in discussions with site representatives, where Mr Gibson said words to the effect of:

None of this would've happened if you paid the boys what they're worth.

The ABCC is alleging Mr Blakeley and Mr Gibson contravened right of entry requirements and engaged in adverse action. Mr Blakeley misrepresented their authority to stop works at the site. The ABCC further alleges the CFMMEU is liable for the conduct of the CFMMEU officials.

The maximum penalty for each contravention of the fair Work Act 2009 is \$63,000 for a body corporate and \$12,600 for an individual.

The ABCC is seeking personal payment orders against both union officials. Such an order would require Court imposed penalties to be paid personally by the officers and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

Mr Blakeley is a respondent in seven and Mr Gibson a respondent in four ABCC matters currently before the courts.

HISTORICAL CONTENT

20 Oct 2021 - ABCC alleges CFMMEU officials obstructed concrete pour and misled QLD Police

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Australian Building and Construction Commissioner v Andrew Robert Blakeley & Ors

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CASE NAME

Australian Building and Construction Commissioner v Andrew Robert Blakeley & Ors

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COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

QUD231/2021

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- Andrew Robert Blakeley
- Beau Richard Seiffert
- CFMMEU

DATE FILED

13 July 2021

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

On 13 July 2021, the ABCC commenced legal action in the Federal Court against the CFMMEU and two of its officers alleging right of entry contraventions at the Central Energy Plant Towers Upgrade in South Brisbane.

The ABCC alleges the CFMMEU officers, Andrew Blakeley and Beau Seiffert, acted in an improper manner by directing workers to cease work despite having no power to do so. It's further alleged Mr Blakeley verbally abused a site manager.

In its Statement of Claim filed with the Court, the ABCC alleges:

- On 23 November 2020, Mr Blakeley directed workers to cease work when he had no power to do so. Mr Seiffert was present when Mr Blakeley gave this direction and did not revoke, qualify or disagree with it. Throughout the visit, Mr Blakeley shouted abuse at the site manager, including:

*Where is the water on this level? These guys aren't f**king dogs.*

*This is not f**king good enough and needs to be right now. Sort out the f**king access here.*

*You don't know what the f**k you are doing... this isn't good enough.*

The ABCC alleges the officials and the CFMMEU have contravened section 500 of the *Fair Work Act 2009*.

The maximum penalty for each contravention of the Fair Work Act is \$66,600 for the CFMMEU and \$13,320 for the officials.

The ABCC is also seeking personal payment orders against Mr Blakeley and Mr Seiffert. Such an order would require Court imposed penalties to be paid personally by the officers and not paid or reimbursed directly or indirectly by the CFMMEU or through crowd funding.

HISTORICAL CONTENT

20 July 2021 - ABCC alleges CFMMEU officer verbally abused site manager and ignored OHS requirements

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Two Melbourne Quarter Project

Australian Building and Construction Commissioner v Jason Roach & Anor

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CASE NAME

Australian Building and Construction Commissioner v Jason Roach & Anor

KNOWN AS

Two Melbourne Quarter Project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

VID23/2021

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- Jason Roach, CFMMEU

DATE FILED

20 January 2021

STATE/TERRITORY

VIC

ALLEGED BREACH(ES)

- Freedom of association

STATUS

Current

SUMMARY

The ABCC has filed Federal Court proceedings against the CFMMEU and its delegate Jason Roach alleging they coerced and made misrepresentations to a subcontractor that unless their union fees were paid, they could not commence work on the Melbourne Quarter – Commercial Tower ZMQ project.

In its statement of claim, the ABCC alleges on 20 April 2020, subcontractors arrived at the construction site to commence works.

After completing a site induction, Mr Roach asked the subcontractors whether they had their 'cards' and checked their CFMMEU membership details. After checking these details, it is alleged Mr Roach had a conversation with one of the subcontractors to the following effect:

Roach: "It says you owe \$500";

Subcontractor: "I don't want to pay that";

Roach: "Well if you don't pay the \$500 you can't work here";

Subcontractor: "Really, I can't work here?";

Roach: "Yep";

Subcontractor: "So you're telling me that unless I pay that \$500, I can't work on site?";
and

Roach: "Nope, not until you pay your \$500".

It is alleged the subcontractor was prevented by the CFMMEU delegate from performing work because he had not paid his membership fees to the CFMMEU. Soon after this conversation, the subcontractor left the construction site without performing the caulking works.

It is also alleged the CFMMEU delegate engaged in unlawful misrepresentations about being required to pay union membership fees before being allowed to perform work at the construction site.

The ABCC is alleging the conduct contravenes the coercion and misrepresentations provisions of the *Fair Work Act 2009*.

The maximum penalty for contraventions of sections 348 and 349(1) of the *Fair Work Act 2009* is \$63,000 for a body corporate and \$12,600 for an individual.

HISTORICAL CONTENT

25 Jan 2021 - ABCC alleges CFMMEU delegate told subcontractor at Docklands project "you can't work here" unless he joins union

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Logan Enhancement Project

Australian Building and Construction Commissioner v Construction, Forestry,
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Australian Building and Construction Commissioner v Construction, Forestry, Maritime,
Mining, Energy Union & Ors

KNOWN AS

Logan Enhancement Project

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

QJUD194/2020

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Beau Seiffert, Te Aranui Albert, Blake Hynes, Shaun Desmond, Anthony Harding,
Craig Davidson

DATE FILED

30 June 2020

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC commenced proceedings on 20 July 2020 in the Federal Court of Australia against
the CFMMEU and six of its officials alleging multiple right of entry contraventions at the Logan
and Gateway motorways extension site in Brisbane.

The ABCC alleges CFMMEU officials attended the site on four separate days, refused
reasonable requests to produce their right of entry permits and refused to leave site when
requested.

The CFMMEU officials in question are:

- Mr Beau Seiffert
- Mr Te Aranui Albert
- Mr Blake Hynes
- Mr Shaun Desmond
- Mr Anthony Harding
- Mr Craig Davidson

In its amended statement of claim filed in the Federal Court on 16 July 2021 the ABCC alleges:

- On Tuesday 15 May 2018, Mr Seiffert failed to produce his entry permit when requested,
walked around the site and ignored requests from site managers to leave the work site.
- On Friday 18 May 2018, Mr Seiffert refused reasonable requests to produce his right of
entry permit, walked around the site and remained on site after being asked to leave and
told: "you are trespassing, I will call the police".
- On Wednesday 13 June 2018, Mr Seiffert, Mr Albert and Mr Hynes refused reasonable
requests to produce their right of entry permits, walked around the site, including
approaching a work area where two excavators were in operation and remained on site
after being asked to leave.
- On Thursday 14 June 2018, all six CFMMEU officials attended the site at varying times of
the day and refused reasonable requests to produce their right of entry permits. The
officials proceeded to enter and walk around the site, including Mr Hynes who walked
down a haul road. Mr Davidson was told "you are trespassing and you need to leave". Due
to Mr Desmond's presence on a particular part of the site, site management directed all
plant in that area to stop operating, including a roller, excavator and truck. All six CFMMEU
officials remained on site after being asked to leave.

The ABCC alleges the CFMMEU officials' conduct on 15 and 18 May, as well as 13 and 14 June
2018 at the Logan and Gateway motorways extension site contravenes section 500 of the *Fair
Work Act 2009*.

The maximum available penalty for each contravention of the *Fair Work Act* in this case is
\$63,000 for a body corporate and \$12,600 for an individual. The ABCC is seeking pecuniary
penalties against each of the six officials and personal payment orders to be awarded against
Mr Seiffert, Mr Albert, Mr Hynes and Mr Desmond.

A personal payment order is a court order that requires the pecuniary penalty imposed on an
individual respondent to be personally paid by that individual.

HISTORICAL CONTENT

07 Jul 2020 - ABCC alleges CFMMEU officials breach right of entry at Brisbane construction site

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COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[QUD656/2019](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Te Aranui Albert, Blake Hynes, Michael Ravbar

DATE FILED

21 October 2019

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC on 21 October 2019 commenced action in the Federal Court alleging the conduct of the CFMMEU and three of its officials led to work being halted during a critical bridge construction stage on the upgrade of the Bruce Highway from Caloundra to Sunshine Motorway.

In its statement of claim, the ABCC is alleging:

- On 23 July 2018 Queensland CFMMEU state secretary Michael Ravbar and organisers Te Aranui Albert and Blake Hynes attended the worksite while night time construction was underway.
- At around 8.20pm the officials, accompanied by the project's nightshift health, safety and environment advisor travelled in convoy to where a bridge was being constructed.
- At about 11.35pm a truck loaded with concrete girders to be used in the construction of the bridge arrived at the site where a concrete precast girder was then lifted off the truck by a crane and lowered onto the ground. The officials remained close to the girder whilst the girder was hooked up to a hoist and lifted into place.
- Shortly after, the officials moved to a position at the site where a truck, carrying a girder, was to be positioned to enable the girder to be unloaded.
- The position of the officials prevented the truck operator from being able to safely reverse down the ramp and the girder could not be unloaded.
- Whilst the officials remained at the site, representatives of the site occupier were not able to attend to their other and usual duties because they were attending and responding to the officials' presence.
- A short time later, the site was shut down because of the risk to safety posed by the presence of the officials at the site.
- As a consequence of that shut down, only two of the seven girders scheduled to be lowered into place at the site were in fact lowered with the remaining five girders being left on trailers parked at the site.
- Mr Hynes returned around 8.20pm the following night and acted in an improper manner on two occasions by speaking in an aggressive manner towards a representative of the site occupier, including words to the effect of:

"Where are the documents that we asked the Project to provide to us yesterday and the day before?"

"You don't care about safety and you are supposed to be a safety manager"

"You don't care about safety you're just in it for the wage"

"You are impeding our demands, you could be fined \$10,000 for this"

"You've just witnessed an unsafe act what are you going to do about it" and repeated yelling those words several times.

The ARCC is alleging the CFMMEU, along with Mr Ravbar, Mr Albert and Mr Hynes, contravened section 500 of the Fair Work Act by hindering and obstructing or otherwise acting in an improper manner.

The maximum penalty for each contravention of the Fair Work Act is \$63,000 for a body corporate and \$12,600 for an individual. The ABCC will be seeking personal payment orders against Mr Hynes and Mr Ravbar.

HISTORICAL CONTENT

191031 - ABCC alleges actions of CFMMEU QLD state secretary and organisers threatened safety on major road project

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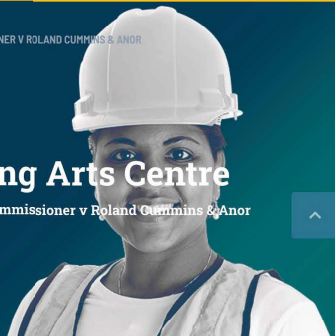
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Cairns Performing Arts Centre

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Australian Building and Construction Commissioner v Roland Cummins & Anor

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Cairns Performing Arts Centre

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

BRG1307/2018

APPLICANT

Australian Building and Construction Commission

RESPONDENT(S)

- CFMMEU, Roland Cummins

DATE FILED

19 December 2018

STATE/TERRITORY

QLD

ALLEGED BREACH(ES)

- Non-compliance with right of entry laws

STATUS

Current

SUMMARY

The ABCC has commenced legal proceedings against the CFMMEU and one of its Queensland officials, Roland Cummins, after he allegedly called a Queensland Work Health and Safety officer a "f***ing dog" during a disagreement at the Cairns Performing Arts Centre.

The ABCC alleges Mr Cummins and the CFMMEU contravened section 500 of the Fair Work Act by acting in an improper manner and hindering and obstructing a Queensland WHS Inspector from undertaking his lawful duties.

The Statement of Claim filed by the ABCC alleges that:

- Queensland WHS officers attended site on 4 April 2018 to investigate an alleged safety breach
- In the course of attempting to undertake their investigation, a WHS officer was hindered and obstructed from performing his duties.
- Mr Cummins approached the officer, put his face a matter of centimetres away from the WHS officer and repeatedly shouted "You're a f***ing dog".

The ABCC alleges the conduct in this case contravenes right of entry provisions in the Fair Work Act. The maximum penalty for a breach of the Fair Work Act in this case is \$63,000 for bodies corporate and \$12,600 for individuals.

HISTORICAL CONTENT

15 Jan 2019 - QLD Work Health & Safety officer allegedly called f***ing dog by CFMMEU official during site entry

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CURRENT

The Bruce Highway Case

Australian Building and Construction Commission v Construction, Forestry, Maritime, Mining and Energy Union & Ors

[← BACK TO LEGAL CASES](#)



CASE NAME

Australian Building and Construction Commission v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS

The Bruce Highway Case

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[QUD 238/2018](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU, Beau Seiffert, Te Aranui Albert, Blake Hynes, Luke Gibson, Matthew Parfitt, Royce Kupsch, Kurt Pauls

DATE FILED

18 April 2018

STATE/TERRITORY

QLD

BREACH(ES) FOUND

- Non-compliance with right of entry laws

STATUS

Current

LINK TO LIABILITY JUDGEMENT

[Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union \[2019\] FCA 1737 \(23 October 2019\)](#)

FULL COURT APPEAL COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[Construction, Forestry, Maritime, Mining and Energy Union & Ors v Australian Building and Construction Commissioner & Anor](#)

SUMMARY OF COURT DECISION

On 20 April 2018, the ABCC was granted a temporary injunction preventing seven CFMMEU officials from entering the Bruce Highway, Caloundra project site unless they complied with their federal right of entry requirements – including producing their federal permit for inspection on site when requested to do so.

The \$812 million project involved a major upgrade of the Bruce Highway to six lanes spanning nine kilometres between Caloundra Rd and the Sunshine Motorway on Queensland's Sunshine Coast.

Between 8 March and 17 April 2018, CFMMEU officials entered the Commonwealth and Queensland government-funded project site, the Fulton Hogan Seymour Whyte Construction Joint Venture, on the Sunshine Coast in Queensland on nine separate occasions, each time refusing to show their federal right of entry permits.

On each occasion, the CFMMEU officials told site managers they were entering the site under section 81(3) of the WHS Act and were not required to show their federal right of entry permits.

The unlawful entries resulted in work stopping, shifts being cancelled, safety issues, project delays and increased costs because of the delays. Queensland Police also attended the site on four occasions.

Of the seven CFMMEU officials, (Beau Seiffert, Te Aranui Albert, Blake Hynes, Luke Gibson, Matthew Parfitt, Royce Kupsch and Kurt Pauls) all with the exception of one, Kurt Pauls, held valid federal right of entry permits.

The ABCC alleged that each of the CFMMEU officials (other than Pauls) had contravened right of entry provisions of the FW Act in relation to the relevant entries. The ABCC also alleged that the CFMMEU and Pauls were accessories to the alleged contraventions.

On 23 October 2019 the Federal Court delivered its judgment reinforcing the requirement that union officials must hold and, when requested, show a valid federal right of entry permit when entering construction sites whilst exercising a state or territory OHS right

The Federal Court will list the matter for a penalty hearing at a later date.

The CFMMEU filed an appeal on 18 November 2019 ([QUD712/2019](#))

On 24 November 2020 the Full Federal Court dismissed the CFMMEU's appeal.

On 24 December 2020 the CFMMEU applied for special leave to the High Court to appeal the Full Federal Court's decision.

On 8 April 2021 the High Court refused the CFMMEU's application for special leave and also imposed costs against the union.

HISTORICAL CONTENT

[23 Oct 2019 - Federal Court decision reaffirms that union officials must comply with federal right of entry laws](#)

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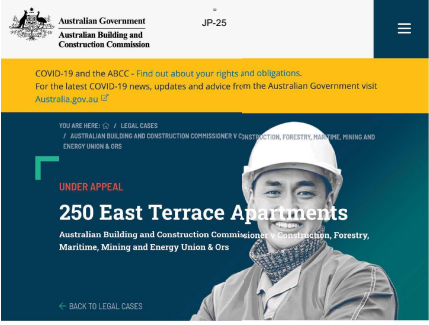


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CASE NAME
Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS
250 East Terrace Apartments

APPLICANT
Australian Building and Construction Commissioner

- RESPONDENT(S)**
- CFMMEU
 - Andrew Sutherland
 - Andrew Sneath
 - Core-Form Pty Ltd

DATE FILED
24 September 2020

STATE/TERRITORY
SA

- BREACH(ES) FOUND**
- Unlawful picketing

STATUS
Under appeal

LINK TO PENALTY JUDGMENT
Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The 250 East Terrace Case) [2022] FCA 760

SUMMARY OF COURT DECISION

The Federal Court on 1 July 2022 penalised the CFMMEU and its SA state secretary Andrew Sutherland \$227,000 for their involvement in an unlawful picket in October 2019 during construction of the \$27 million East Terrace apartments.

South Australian company Core-Form Construction and its director Andrew Sneath were also penalised \$157,000 for their part in the picket.

The Court found a group of up to 30 people, some wearing CFMMEU hoodies and waving union flags, congregated outside the front gate of the site to protest matters relating to a commercial dispute between the head contractor and Core-Form.

The protesters were found to have shouted and directed chants towards the head contractor, including, "Grub" and "grubby-grub-grub".

The protesters told a female employee of the head contractor to "get off site". The protesters also directed chants to the head contractor's female lawyer including "sell the Porsche" and "pay your bills".

The Court found the protesters prevented a vehicle driven by a painter from entering the construction site by obstructing access and found the painter was prevented from using his vehicle to bring painting supplies onto the site to perform work.

In determining the CFMMEU's penalty Justice O'Sullivan took into account the union's history of contraventions:

"I accept the Commissioner's submission that the contravening conduct by the Union was serious, deliberate and unjustified. Further, I accept that the contravening conduct was antithetical to the objects of the BCJIP Act.

"This offending is both another example and a continuation of the Union's appalling behaviour...

"I consider the Union's record of prior contraventions is a matter going to both the objective seriousness of its contravening conduct and is a factor indicating an ongoing need for specific deterrence."

Justice O'Sullivan said of the union's submission for a lower penalty:

"The first point is an attempt by the Union and Mr Sutherland to isolate the contravening conduct from the broader perpetration of a deliberate policy of disobedience by the Union and its officers. That attempt must be rejected. As Katzmann J observed in the WGC Cranes Case, to which I have referred above, the Union is notorious for its contravention of industrial laws."

Assessing Mr Sutherland's penalty Justice O'Sullivan noted his previous unlawful actions:

"This is the fifth time Mr Sutherland has engaged in behaviour which contravenes industrial legislation. I consider Mr Sutherland's record of prior contraventions is a matter going to both the objective seriousness of his contravening conduct and is a factor indicating an ongoing need for specific deterrence."

In penalising Core-Form, Justice O'Sullivan said:

"The SOP [Security of Payment] Act gave Core-Form the opportunity to obtain an adjudicator's decision on its payment claims. Mr Sneath is a Director of Core-Form. The failure by Core-Form to pursue its rights under the SOP Act, but instead engage in the contravening conduct, is a matter I take into account as going to the objective seriousness of the contravening conduct of both Core-Form and Mr Sneath.

"In all the circumstances, I find the contravening conduct by Mr Sneath and by Core-Form was objectively serious."

Since July 2019, \$13.2 million has been paid to sub-contractors following ABCC intervention to assist in recovering overdue or unpaid payments.

TOTAL PENALTIES

Penalties awarded against	Penalties awarded
CFMMEU	\$189,000
Andrew Sutherland	\$38,000
Core-Form Pty Ltd	\$132,000
Andrew Sneath	\$25,000
Total	\$384,000

HISTORICAL CONTENT
4 Jul 2022 - Premeditated unlawful picket in SA leads to \$384,000 in penalties

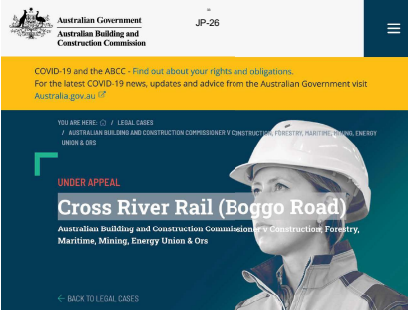
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CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining, Energy Union & Ors

KNOWN AS

Cross River Rail (Boggo Road)

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

HK6360/2020 [LF](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Andrew Blakeley
- Luke Gibson

DATE FILED

30 June 2020

STATE/TERRITORY

QLD

BREACHES FOUND

- Non-compliance with right of entry laws

STATUS

Under appeal

LINK TO PENALTY JUDGMENT

[ABCC v CFMMEU \(Boggo Road Cross River Rail Case\) ^{LF}](#)

SUMMARY OF COURT DECISION

The Federal Circuit and Family Court on 28 July 2022 penalised the CFMMEU and two of its officials \$151,200 following right of entry breaches on the \$5.4 billion Queensland Cross River Rail project.

The 10.2 kilometre rail line between Dutton Park and town Hills is Queensland's largest infrastructure project aimed at improving public transport and growing jobs.

The Court found that, on 15 April 2020, whilst at the Boggo Road site, CFMMEU official Andrew Blakeley aggressively "chested" a representative of the site occupier by walking towards him with his (Blakeley's) chest puffed and arms bent at the elbows in an imposing and aggressive stance and later stood in the path of a truck to delay it from proceeding down a road and refused requests to leave the area.

Judge Vasta said that he had "absolutely no doubt" that Mr Gibson calling the safety advisor a "pumpkin eater" was "meant as a homophobic slur". In support of that finding, Judge Vasta referred to a subsequent offensive comment made by Mr Blakeley to the safety advisor that suggested he was trying to look at Mr Blakeley's penis while in a toilet block.

The conduct of the CFMMEU organisers on that day contravened the right of entry provisions in the *Fair Work Act 2009*. In penalising Blakeley and Gibson \$12,600 respectively, the Court ordered that they must pay the penalties personally. This means they are unable to seek or receive any contribution from the CFMMEU. In determining the CFMMEU's penalty Judge Vasta said:

"The antecedents of the [CFMMEU] are notorious. I have previously described them as the "greatest recidivist offenders in Australian corporate history" and many other judges have also noted their infamous past.

There is no other "appropriate" penalty that will achieve the deterrent effect necessary other than the imposition of the maximum penalty.

*I acknowledge that this penalty will still be insufficient to deter the [CFMMEU] who will as I remarked during the hearing, regard such a sum as "chump change". But this is the only tool that the Parliament has given to the Court to deter such contraventions. It is a matter for the Parliament as to whether they wish to give the Court sufficient power to actually deter such contraventions of the *FW Act* or whether they are content with the status quo."*

Judge Vasta said that in relation to the CFMMEU officials:

"[Mr Blakeley and Mr Gibson] were visitors and were asked to tell the occupier who they were and why they were there. There is no excuse for the failure to do so. The belligerent response and subsequent behaviour of [Mr Blakeley and Mr Gibson] speaks of a sense of entitlement and a recalcitrance to behaving as ordinary decent human beings.

All of this ignores the blatant homophobic slur uttered by [Mr Gibson] to [safety advisor] and the subsequent homophobic slur to [safety advisor] by [Mr Blakeley]. This behaviour is not just "improper"; it is illustrative of a bullying and demeaning of [safety advisor] that simply cannot be tolerated in a civilised society.

What has occurred is that [Mr Blakeley and Mr Gibson] have arrived at a worksite and decided to do anything and everything to frustrate and annoy [safety advisor], [senior supervisor] and [industrial relations advisor] or any other representative of the occupier...

They had absolutely no regard for anyone else or the site and acted as if their desires trumped the safety and good order of the worksite...

*The behaviour of uttering quite disgusting homophobic slurs has been assigned to the chapters of the dark history of Australia where the hurling of vitriolic insults which targeted a person's sexuality, race or religion were unfortunately tolerated as if such belittling and bullying was something that a victim just "had to cop". Those days are thankfully gone and only troglodytes would attempt to resurrect them. For [Mr Blakeley and Mr Gibson] (who are supposedly fit and proper persons to issue an entry permit pursuant to s 512 of the *FW Act*) to utter such slurs to bully and belittle a person simply must be deterred by all means available to a Court."*

TOTAL PENALTIES

Penalties awarded against	Penalties awarded
CFMMEU	\$126,000
Andrew Blakeley	\$12,600
Luke Gibson	\$12,600
Total penalties	\$151,200

HISTORICAL CONTENT

29 Jul 2022 - Judge describes CFMMEU as "greatest recidivist offenders in Australian corporate history", impose maximum penalties on Cross River Rail project

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UNDER APPEAL

QPAC

**Australian Building and Construction Commissioner v Construction, Forestry,
 Maritime, Mining And Energy Union & Ors**

[← BACK TO LEGAL CASES](#)

CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining
 And Energy Union & Ors

KNOWN AS

QPAC

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

BHG16172021 [f](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENTS

- CFMMEU
- Andrew Blakeley
- Michael Ravbar

DATE FILED

23 April 2021

STATE/TERRITORY

QLD

BREACH(ES) FOUND

- Non-compliance with right of entry laws

STATUS

Under appeal

LINK TO PENALTY JUDGMENT

[Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining
 And Energy Union & Ors \[f\]\(#\)](#)

SUMMARY OF COURT DECISION

The Federal Circuit and Family Court on 3 February 2022 penalised the CFMMEU, its State
 Secretary Michael Ravbar and official Andrew Blakeley \$138,528 after they breached right of
 entry laws at the Queensland Performing Arts Complex (QPAC) construction site in November
 2020.

The penalty of \$119,880 awarded against the CFMMEU is a near maximum penalty for its two
 contraventions of the Fair Work Act

Mr Blakeley and Mr Ravbar admitted to acting in an improper manner in contravention of
 section 500 of the Fair Work Act at the QPAC site on 5 November 2020.

The officials:

- entered the site without providing the required 24 hours' prior notice of entry required by
 the Fair Work Act and in direct contravention of requests of the head contractor's
 representatives,
- failed to comply with the site's occupational health and safety requirements that
 prohibited unauthorised access and required visitors to report to the site office,
- remained on the site in circumstances where they had no lawful basis to do so and
 despite being asked to leave and conducted an unauthorised meeting with workers on the
 site.

Mr Blakeley also facilitated entry onto the site by a group of 10 to 12 people who were not
 workers on the site and had not undertaken a site induction in circumstances where he knew
 that those people were not authorised to be on the site.

In assessing penalties against the CFMMEU, Judge Egan said:

*...[T]he CFMMEU's appalling and disgraceful record of established contraventions
 continues, unabashed and unabated. There can be no doubt that the CFMMEU is a rogue
 union untroubled by its ongoing bad behaviour. It seems that it prides itself on its
 recidivism.*

Commenting on the actions of Mr Ravbar, Judge Egan said:

*Insofar as Ravbar was concerned, it is of significance that he was, at the time of the
 contravening conduct, the National Vice President of the CFMMEU National Executive
 Committee and Secretary of the CFMMEU Construction and General Division –
 Queensland and Northern Territory Divisional Branch. He was well aware of the need for
 compliance by him with provisions of the FWA, but he chose to pointlessly flout his
 obligation to do so.*

*Note: In September 2021 Mr Ravbar abandoned his application with the Fair Work
 Commission to renew his Federal right of entry permit and is no longer authorised to exercise
 entry rights in accordance with the Fair Work Act 2009. The Australian Building and
 Construction Commissioner Stephen McBurney intervened in the proceeding arguing Mr
 Ravbar was not a fit and proper person to hold a permit.*

*In opposing the application for the permit, the Commissioner submitted that under Mr
 Ravbar's watch the QLD Division and its officials had contravened industrial law on 175
 occasions in 28 separate proceedings.*

TOTAL PENALTIES

Penalties awarded against	Penalties awarded
CFMMEU	\$119,880
Michael Ravbar	\$10,656
Andrew Blakeley	\$7,992
Total penalties awarded	\$138,528

HISTORICAL CONTENT

03 Feb 2022 - CFMMEU described by judge as "rogue union" has near maximum penalties
 imposed for right of entry breaches at Brisbane's QPAC project

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UNDER APPEAL

Kiama Aged Care Centre

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

[← BACK TO LEGAL CASES](#)



CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS

Kiama Aged Care Centre

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

[NSD205/2019](#)

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Gerasimos Danalis
- Anthony Dimitriou

DATE FILED

9 December 2019

STATE/TERRITORY

NSW

BREACH(ES) FOUND

- Non-compliance with right of entry laws
- Unlawful picketing

STATUS

Under appeal

LINK TO LIABILITY JUDGEMENT

[Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union \(Kiama Aged Care Centre Case\) \[2021\] FCA 920](#)

SUMMARY OF COURT DECISION

The Federal Court has penalised the CFMMEU, former official Gerasimos Danalis and current official Anthony Dimitriou \$184,000 for contravening right of entry laws in November 2018 at the Kiama Aged Care Centre construction project.

Mr Danalis was found to have obstructed three concrete trucks on 27 November 2018 resulting in concrete being wasted and work delayed.

Mr Danalis and Mr Dimitriou were found to have returned to the site the following day, 28 November, and acted in an improper manner by refusing to undertake a visitors' induction and entering the site unaccompanied, contrary to a reasonable request from the site manager.

At one point on 27 November, Mr Danalis walked behind a reversing concrete truck, approached an operating concrete pump and attempted to push the emergency stop on the pump. Mr Danalis disrupted the truck from unloading its contents and prevented a second and third concrete truck from entering the site.

In relation to the actions of both CFMMEU officials, the Court said:

A common feature of the conduct on both days was that the officials exhibited a certain arrogance or sense of entitlement... None of the contraventions was trivial or insignificant... Each involved deliberate acts: obstruction on the first day and defiance on the second.

As the Commissioner submitted, suspected safety breaches or safety concerns did not entitle Danalis to take matters into his own hands the first day or entitle Danalis and Dimitriou on the second day to flout the occupier's reasonable work health safety requirements...

In relation to the conduct of the CFMMEU, the Court remarked:

The Union is a notorious repeat "offender". It has an extensive history of contravening industrial laws ...

The Union adduced no evidence to show that it has any system in place to ensure compliance or prevent or reduce the risk of its officials or employees breaking the law. It has adduced no evidence to indicate that it has taken any corrective action. It appears to have no culture of compliance. If anything, the evidence suggests it has a culture of non-compliance. While it insists on employers complying with the law, it behaves as if it is above the law

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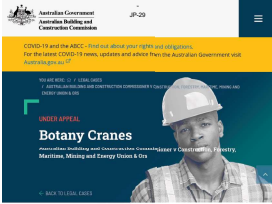


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OUR NAME
Australian Building and Construction Commissioner • Construction, Forestry, Maritime, Mining and Energy Union & O's

KNOWN AS
Botany Cranes

COMMONS AND COURTS PASTEL REFERENCE LABEL
NSD5742019 17

APPLICANT
Australian Building and Construction Commissioner

RESPONDENTS

- CFMEU
- Risa Malik
- Robert Kira
- Michael Greenfield
- Howard Byrnes
- Daniel Greenfield
- 3 others

DATE FILED
16 April 2019

STATUS/CLASSIFY
NOL

BREAKEED/ISSUE

- Unlawful picketing

ISSUE
Unlawful picketing

LAW TO PENALTY ABBREVIATED
Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (No 2) (The Botany Cranes Case) (2017) 162 ALJ 363 (28 April 2017) 17

ORDER
19 May 2021 17

REMARKS OR COURT REASONING

The Federal Court on 22 April 2021 imposed \$1,022,500 in penalties against the CFMEU, three of its highest-ranking NSW officials and a delegate following threats and unlawful pickets against Botany cranes company Botany Cranes in January 2018.

The CFMEU was ordered to pay \$895,000 in penalties, NSW CFMEU President Risa Malik, Assistant Secretary Robert Kira and Michael Greenfield and union delegate Howard Byrnes were penalised a total of \$172,500. Ms Malik, Mr Karamanidis and Greenfield were ordered to personally pay penalties.

The ABCC brought proceedings alleging unlawful picketing and threats aimed at coercing Botany Cranes to sign up to a CFMEU enterprise agreement and release the employment of the firm.

On 25 January during the first picket involving about 50 people, NSW Police were required to escort Botany Cranes staff while they entered and left the premises.

When the Botany Cranes operations manager arrived to work, she heard "there's one of them", "there's a bunch of dogs", "CFMEU" and "They haven't moved to standing up for his mum", making her feel fearful. It and causing her to cry. "The operations manager was called the office receptionist and advised her not to attend work for fear of being intimidated and distressed by the group."

On 30 January Mr Greenfield told the Botany Cranes managing director if he did not renege the CFMEU's enterprise agreement and said:

"This is going to be pretty bad today, worse than any I have seen. Or I can stop it immediately, it's going to be full on. Usually for me, I don't like happen today there's no going back for you. Or we can wait if you get forward back on. We'll come to terms with the things you need to do. We'll start negotiating today give you what you need and we can come forward. I want the Botany staff out of it. Complete an deal."

On 31 January Mr Greenfield told the Botany Cranes managing director to sign the CFMEU's enterprise agreement and said:

"I'll come you, I'll give sign it. This doesn't mean you have ever had yet. The what happened in 1992 and then Captain and they had money what do you think will happen to you?"

The Court awarded \$20,000 of the union's penalty to be paid to Botany Cranes, on account of lost revenue following the picket on 25 January 2018.

In handing down the judgment, Justice Barnes said of the unlawful pickets:

- "The point of that contact was to make, as it did, a stark demonstration of the reality of the picketers' case 'Silence – Power'. Later, Michael Greenfield again evoked the power that the group was exercising by the use of 'let things go' before they acted, as recorded in the police notes. Indeed, as a whole, and the great abuse was that when the operations manager arrived, some picketers pulled out 'buses', some made monkey noises and Michael Greenfield for even clapping."
- "As to this proceeding, a large group of about 60 individuals, mostly comprising apparently strong physically well built males, including or controlling what would otherwise be the entry to and exits from premises while aggressively chanting and generating noise and pressure that it be or it threatened to cause fear in persons who are within or wish to enter their premises."
- "There could have been no doubt about the intimidatory intent directed towards Botany Cranes of those conduct in the public outside its yard and premises and their conduct, including as exemplified in their aggressive chants and gestures."
- "The police had to respond to considerable numbers. They were publicly advised that had to be directed from their other activities across the Union indicated that it would require a permit that it was not to take would involve substantial picketing. The Commissioner did not, but the Union did, have the expense in providing police to protect premises and property from the reasonably apprehended possibility of trouble arising over the use and display of the power."
- "This deliberate, persistent and flagrantly unlawful conduct by a senior official and the Union, which as a result constituted a breach of the common law of tortious assault, is a threat to the rule of law."

In relation to the conduct of NSW CFMEU President Risa Malik, the Court said:

"... Ms Malik's conduct was what is obviously the established culture in the Union. That culture was the laws created by the Parliament to prohibit in what the Union and its officials had their to do in breach of them. The Union regard was possibly as a member of its doing business. It is essential that persons in the senior leadership of the Union, such as Ms Malik, and its members generally, be held to account for engaging in such behaviour."

"The price of contemptuous must be set so high that persons who might feel emboldened by the laws culture, revealed in the Union's history of defiance of the law that the Court will exercise its powers to deter them and any others who might contemplate doing so in the future."

In reference to the contrasting history of Assistant Secretary Mr Kira, the Court said:

"The respondent and a recipient. His conduct on 28 January 2018 was conduct of the Union in being to have very significant control of Botany Cranes by his menacing threats to 'wipe the dust' with it."

"It is essential that he, as a senior officer holder of the status of assistant secretary of the Union, and others, be deterred from engaging in such behaviour again and that the message be given loudly and clearly that the Court will not tolerate such flagrant, outrageous defiance of the law."

In relation to the conduct of Assistant Secretary Mr Greenfield, the Court said:

"The threat was menacing, calculated and deliberate. It was cutting close then industrial threats."

"Michael Greenfield's statement on 31 January 2018 to the managing director 'I'll come you, I'll give sign it, this doesn't... what do you think will happen to you?' followed up the same day by 'I'll come you, I'll give sign it, this doesn't... what do you think will happen to you?' that they were overbearing threats, intended to scare, and they worked."

"He responded to the group, in his speech on 28 January 2018, that what was happening reflected the Union's culture, namely, respect for the law. The Commissioner said, 'we do it' (emphasis added) and, however, in January and February 2018, Michael Greenfield was a prominent exponent of 'the way we do it' (emphasis added) by the Union using industrial thuggery in the language of the law to intimidate, as every time."

"Unions, and persons and other forms of industrial holding force on place in our society. Michael Greenfield's behaviour over the week beginning 28 January 2018 was showing to be not only menacing power – 'total power' – as held established by the Union's long history of not only picketing in defiance of the law made by the Parliament to prohibit such bullying behaviour. It is necessary that he and others in similar positions, be deterred from engaging in such conduct in the future."

In reference to the CFMEU, the Court said:

"... In conduct, though its senior officials in this proceeding displayed overt contempt for the rule of law. Its conduct here demonstrates that the culture of the Union, and its senior officials, is simply 'might is right' or 'Union – power'. That conduct has no place in our society."

"The Union is not prepared to abide by the law."

"In my opinion, the Union will only be deterred from further contemptuous of the very serious nature of those that occurred on 27 January 2019 of the Act by a warning of not drastic penalty."

On 19 May 2021 the Federal Court made final orders for further payments to be made out of the penalties previously imposed as follows:

- \$2,500 to be paid to the female operators manage of Botany Cranes;
- \$12,500 to be paid to have death threat police;
- \$100,000 to be paid to have death threat police;
- \$100,000 to be paid to have death threat police;

The Court found the female Botany Cranes' operations manager was subjected to intimidation by the plaintiff's actions, which justice requires that she be "calculated to rest her mind on persons who are within or wish to enter their premises."

The Court ruled "here, the Operations Manager) was in innocent victim of the coercion and unlawful picket for which the Union is liable."

PENALTIES

	Penalty imposed	Personal payment orders
CFMEU	\$895,000	
Risa Malik	\$20,000	\$20,000
Robert Kira	\$47,500	\$47,500
Michael Greenfield	\$100,000	\$60,000
Howard Byrnes	\$1,000	\$1,000
Total	\$1,022,500	

*The Court ordered the CFMEU pay \$895,000 in a pecuniary penalty to Botany Cranes

**The Court also ordered the CFMEU to pay the ABCC's legal costs totaling \$115,000.

HISTORICAL CONTEXT
22 April 2021 - CFMEU and senior officials in NSW with more than \$1 million in penalties for industrial thuggery and bullying

19 May 2021 - Court orders payment of penalty to victims of CFMEU unlawful picket and NSW police

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CASE NAME
 Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS
 Constitution Place

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK
[ACJ329/2019](#) [1/2](#)

APPLICANT
 Australian Building and Construction Commissioner

RESPONDENTS)

- CFMMEU
- Jason O'Mara
- Zachary Smith
- Joshua Bolitho

DATE FILED

17 April 2019

STATE/TERRITORY

ACT

BREACH(ES) FOUND

- Unlawful picketing

STATUS

Under appeal

LINK TO PENALTY JUDGMENT

[Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union \(The Constitution Place Case\) \[2020\] FCA 1070](#)

SUMMARY OF COURT DECISION

The ACT Branch of the CFMMEU and three of its officials have been penalised a total of \$159,600 after the Federal Court found they engaged in unlawful picketing at a Canberra building site in May 2018.

The Court ordered the officials, CFMMEU ACT secretary Jason O'Mara; Assistant Secretary Zachary Smith; and organiser Joshua Bolitho to personally pay the penalties ordered against them. The Court orders prevent the union from paying their penalties for them.

The unlawful conduct occurred on the \$300 million Constitution Place Project – a 12 level commercial project in the heart of Canberra.

From around 5.30am on 14 May 2018, cars were parked in front of the main entrance to the building site. CFMMEU officials Jason O'Mara; and Zachary Smith; and organiser Joshua Bolitho, together with a group of 20 other people linked arms at the main entrance blocking pedestrian and vehicle access through the main entrance gate.

Site management requested the cars, which were registered to the CFMMEU, be removed but were told by the CFMMEU officials they could not find their keys.

Locks and chains were also placed on entrance gates preventing access to the site. A bus carrying a group of workers was unable to access the site.

Project management was forced to use bolt cutters to gain access through the gates and police were called to the site. The unlawful picketing lasted for two hours.

Justice Katzman said of the CFMMEU's action:

"It is evident that neither the penalties imposed in the past nor the repeated imposition of penalties has had any deterrent effect. Indeed, it is reasonable to infer that the Union takes the view that paying penalties is merely a cost of doing business. In the absence of evidence to the contrary and in the light of its appalling record, the inference is open that the Union has done nothing to encourage its officers and employees to comply with laws that stand in the way of its industrial objectives. There was no suggestion, let alone evidence, to indicate that the Union has established any systems or processes to ensure that its officers or employees comply with the law."

The judgment noted, as with previous cases, the absence of contrition or remorse:

"The respondents eschewed any notion that they were entitled to any leniency because their admissions represented an acceptance of wrongdoing, let alone a 'suitable and credible expression of regret'. Indeed, none of the respondents offered an apology or exhibited any contrition."

In ordering all three CFMMEU officials to personally pay their penalties Justice Katzman said:

"I accept that the conduct of the union officials was serious. The combination of the deliberate obstruction of entry to the project site, the refusal to remove vehicles when asked, and the use of chains and locks without authorisation from the site's occupiers puts the contraventions in the serious category."

"... None of the men expressed contrition or gave any indication that he would not reoffend if the opportunity arose again. Unless the burden is imposed on them, they will not feel any sting of the Court's orders. As long as the union officials can look to the Union to pay the penalties or reimburse them, they have little incentive not to reoffend. Requiring them to pay the penalties personally serves as a deterrent, not only to them but also to others in similar positions. It will bring home to them that they cannot act in contravention of the Act secure in the knowledge or belief that the Union will pick up the tab."

The judgement also stated:

"It is troubling that the Union saw fit to insist on the contractor's compliance with federal workplace laws when its officials behaved as though they were above the law. Notwithstanding their motivations, their participation in an unlawful picket tends to undermine the Union's moral authority in its campaign for wage justice. In this respect, their action may well have been counterproductive."

The ABCC filed an appeal [ACD43/2020](#) on 24 August 2020

TOTAL PENALTIES

Penalties awarded against	Penalties awarded
CFMMEU	\$126,000
Jason O'Mara	\$12,600
Zachary Smith	\$12,600
Joshua Bolitho	\$8,400
Total	\$159,600

HISTORICAL CONTENT

[29 Jul 2020 - CFMMEU penalised for unlawful picket in Nation's capital](#)

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 ENERGY UNION & ORS

UNDER APPEAL

West Gate Tunnel Case

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

[← BACK TO LEGAL CASES](#)



CASE NAME

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors

KNOWN AS

West Gate Tunnel Case

COMMONWEALTH COURTS PORTAL REFERENCE AND LINK

VID625/2020

APPLICANT

Australian Building and Construction Commissioner

RESPONDENT(S)

- CFMMEU
- Paul Tzimas
- Ron Buckley

DATE FILED

16 September 2020

STATE/TERRITORY

VIC

BREACH(ES) FOUND

- Non-compliance with right of entry laws

STATUS

Under appeal

SUMMARY OF COURT DECISION

The Federal Court has penalised the CFMMEU and its officials \$75,600 after the officials were found to have accused a WorkSafe Inspector and Victoria Police officers of being "lap dogs" and "corrupt" during a critical work disruption at the \$5.7 billion West Gate Tunnel Project in December 2019.

Works had been scheduled to lift and install five bridge beams weighing 16 tonnes each to construct a bridge between Millers Road and Kororoit Creek Road in Brooklyn, west of Melbourne.

The road had been closed from 9.30pm to 4.00am to allow the works to occur on 3 and 4 December 2019.

The bridge works were unable to proceed after CFMMEU officials, Paul Tzimas and Ron Buckley entered the project and positioned themselves in an exclusion zone, making it unsafe for the head contractor to lift the bridge beams into place.

Despite repeated requests from project management, the officials refused to leave. The head contractor called WorkSafe and Victoria Police to attend the site to resolve the dispute.

The WorkSafe Inspector found there was no imminent risk to the health or safety of workers that would justify works stopping. When the WorkSafe Inspector asked the officials to leave the exclusion zone and allow work to continue they accused him of being a "lap dog", "corrupt", "incompetent" and a "disgrace".

The CFMMEU officials also accused Victoria Police officers of being on the head contractor's "payroll", acting as "lap dogs" and demonstrating "corruption at its finest".

The Federal Court ruled that both Mr Tzimas and Mr Buckley had contravened the Fair Work Act by acting in an improper manner while exercising rights to enter site under the Act.

Mr Buckley's abusive comments in the aftermath of those events to the effect that the police were on John Holland's payroll, had been exhibiting corruption at its finest and had sided with Mr Drury in defending a tyrant went beyond that which can be accepted.

In relation to Mr Tzimas, the Court ruled:

a direct allegation that Mr Drury, a WorkSafe Inspector, was willing to risk the safety of employees as a result of corruption, cannot be characterised as other than a grossly wrongful instance of an official "acting in an improper manner" ..

The Court penalised the CFMMEU \$63,000, Mr Tzimas \$8,800 and Mr Buckley \$3,780 (suspended for a period of 2 years).

The ABCC Commissioner has filed an appeal to the Full Court of the Federal Court against the judgment. The grounds of appeal include that the penalties imposed were manifestly inadequate.

TOTAL PENALTIES

	Penalties Imposed
CFMMEU	\$63,000
Paul Tzimas	\$8,800
Ron Buckley	\$3,780 (suspended for a period of 2 years)
Total	\$75,600

HISTORICAL CONTENT

10 Jan 2022 - CFMMEU and officials penalised \$75,600 after false accusations of corruption on the West Gate Tunnel Project

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