

Senate Education and Employment Legislation Committee

12 SEPTEMBER 2019

Attorney General's Department

Senator Rex Patrick asked the following question at the hearing on 12 September 2019:

Since the ABCC legislation and the registered organisations legislation came in, has the rate of convictions or court matters increased or decreased? Are they less egregious or more egregious? The question goes to whether the bill is necessary or whether or not that legislation has done a substantial amount to remedy the conduct that the judges were talking about.

The response to the honourable Senator's question is as follows:

Since the commencement of the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) and the re-establishment of the Australian Building and Construction Commission (ABCC) on 2 December 2016, the ABCC has commenced 21 proceedings against the CFMMEU in relation to conduct that occurred after the Act's commencement. Three proceedings relate to BCIIP Act contraventions, 13 proceedings relate to *Fair Work Act 2009* contraventions, and five are a combination of both. Four cases have been finalised (one is under appeal), and 17 remain before court. A further eight proceedings have been brought against other unions, employers or employees for conduct that occurred after 2 December 2016.

The number of cases brought by the ABCC since its re-establishment has been increasing each year, with four cases brought in 2017, nine in 2018 and 19 in 2019 (to date). Before bringing a matter to court, the ABCC must undertake an investigation and seek external legal advice as to whether there are grounds to commence proceedings. The investigation process and legal proceeding means there is typically a lengthy delay between a contravention and a court decision. The ABCC has commenced a total of 449 investigations since 2 December 2016.

The alleged conduct identified in cases after the commencement of the BCIIP Act includes:

- Unlawful industrial action and picketing, including to pressure contractors to sign up to enterprise agreements:
 - The ABCC has commenced Federal Court proceedings against the CFMMEU and its official Grant Harradine, alleging they organised unlawful industrial action on four consecutive days in a bid to pressure subcontractor, PJ Walsh, to sign a CFMMEU enterprise agreement at the Townsville Stadium site. It is further alleged that 16 employees of the subcontractor engaged in unlawful industrial action from 11 till 14 March 2019.¹
 - The ABCC has commenced Federal Court proceedings against the CFMMEU and several of its NSW officials over alleged unlawful pickets of a Sydney-based crane company on 25 and 30 January 2019 and related threats against the company's managing director in October 2018. One official is alleged to have told the managing

¹ *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors* [QUD228/2019]

director “Just agree with everything in the EBA and let’s move on. You don’t want your blokes offsite, equipment damaged, cranes wrecked when in the end it’s going to be our way”.²

- Verbally abusing workers and government officials:
 - The ABCC has commenced Federal Court proceedings alleging that a CFMMEU official yelled at a government work health and safety officer during a disagreement on the site of a major project, which hindered and obstructed the officer from performing their duties.³
 - The ABCC has commenced Federal Court proceedings alleging that a CFMMEU official, while visiting a worksite using their Federal right of entry permits, racially abused and physically intimidated a safety supervisor. The official is alleged to have said, “This is Australia, not your third world country.” The ABCC also alleges the official and their colleague failed to comply with a reasonable request from the safety supervisor.⁴

- Preventing non-union members from working at various projects:
 - On 7 March 2019, the Federal Circuit Court imposed total penalties of \$55,080 against the CFMMEU and its site delegate after he pressured a landscaper to join the union despite only being contracted to work on a Grand Central Shopping Centre site in Toowoomba for a couple of days.⁵

62 cases were commenced in relation to alleged conduct involving the CFMMEU which occurred in the equivalent time period before the commencement of the BCIP Act. These cases follow a similar investigation and litigation process, however without a new entity (and therefore new systems and processes) being created during the timeframe in question.

Since the commencement of the *Fair Work (Registered Organisations Act) 2016*, which established the Registered Organisations Commission (ROC), the ROC has commenced litigation on one matter concerning conduct that occurred after the Act’s commencement. The matter concerns a range of conduct that occurred both prior to and after the commencement of the Act. The alleged conduct identified in this case relates to the failure by an organisation to keep an accurate list of, and to notify changes to, its offices and office holders.⁶ The case remains before the court.

The ROC has commenced an additional three litigations since its establishment on 1 May 2017 which concern contraventions that are alleged to have occurred prior to the Act’s commencement. The ROC has continued three other matters following their transfer from the Fair Work Commission.

Prior to the ROC’s establishment the Fair Work Commission concluded five litigations regarding breaches of the *Fair Work (Registered Organisations) Act 2009*.

² *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors* [NSD574/2019]

³ *Australian Building and Construction Commission v John Windus & Ors* [WAD185/2019]

⁴ *Australian Building and Construction Commission v Roland Cummins & Ors* [BRG1307/2018]

⁵ *Australian Building and Construction Commissioner v Peter Joseph D’Arcy and Anor* [BRG305/2018]

⁶ *Registered Organisations Commissioner v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [NSD802/2018]

The Department is aware of a number of matters that are currently under investigation by the ROC. These include:

- An investigation into whether current or former office holders in the Health Services Union complied with their statutory obligations, including to act with care and diligence, act in good faith and in the best interests of the organisation and to not improperly use their positions.
- An investigation into the Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Queensland District Branch, in relation to credit card use and loans possibly paid by the CFMEU mining and energy division's Queensland district to its officials.