

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Budget Estimates 2011-2012**

Agency - Australian Building and Construction Commission

DEEWR Question No.EW0273_12

Senator Abetz asked on 30/05/2011, Hansard page 74.

Question

Injunction Against J McDonald

Senator ABETZ: I understand that in June 2009 the ABCC obtained an interlocutory injunction against one J McDonald and that prohibited this one J McDonald from engaging in unlawful industrial action on any Diploma Construction building site in Western Australia. I understand this one J McDonald has undertaken such a site visit—or a number of them in fact—which appear to be in breach of the injunction. Can somebody confirm to me thus far that I have got the history right—namely, that an injunction has been obtained for Diploma Construction building sites? Mr Johns: The events you talk about predate my time as commissioner, but I can certainly take on notice that issuing of an injunction.

Senator ABETZ: You would not be aware of that? There was a big hit in the news, I thought, in recent times: Mr McDonald's visits.

Mr Johns: I would have to take on notice the scope of the injunction in order to determine whether or not present matters fall within that, so I am happy to take those matters on notice.

Senator ABETZ: Can you then also advise us as to the reasons, if what I am saying is correct—there was an interim injunction in June 2009 and the behaviour alleged appears to be in breach—why no contempt proceedings have been instituted?

Mr Johns: I will take that on notice.

Answer

The Office of the Australian Building and Construction Commissioner has provided the following response:

On 2 July 2009, Gilmour J in the Federal Court matter (P)WAD106/2009 *ABCC v CFMEU & Ors*, ordered an interim injunction against Mr Joseph McDonald, Mr Michael Buchan and the CFMEU.

This order was amended on 23 December 2009 and is in place as at 1 July 2011 until final determination of those proceedings. The terms of the injunctive order are included at **Attachment A**.

The injunction was sought due to ongoing industrial action occurring at Diploma sites.

Any alleged breaches of Australian workplace legislation by Mr McDonald and the CFMEU is being properly investigated by the ABCC and at the conclusion

of the investigation process a determination will be made as to the appropriate course of action.

On 5 July 2011 an Application was filed in the Federal Court for the following in relation to Joseph McDonald and the CFMEU (Respondents):

- contravention of s.38 BCII Act 2005 by reason of the organising of unlawful industrial action that occurred on 2 February 2011 and 10 June 2011;
- contravention of s.44 BCII Act 2005 by reason of the Respondents taking or threatening to take action with the intent to coerce Diploma Group Limited and/or Diploma Construction (WA) Pty Ltd (collectively referred to as Diploma), or with the intent to apply undue pressure to Diploma, to agree to make a building enterprise agreement; and
- claim for an interim and/or interlocutory relief.

Gilmour J granted an interim injunction until 25 July 2011 when a two day interlocutory hearing has been listed

Attachment A

No: (P)WAD106/2009

AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSIONER
Applicant

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
First Respondent

JOSEPH MCDONALD
Second Respondent

MICHAEL BUCHAN
Third Respondent

ORDER

JUDGE: Justice Gilmour
DATE OF ORDER: 23 December 2009
WHERE MADE: Perth

THE COURT ORDERS THAT:

1. Until further determination of this application or until further order, each of the respondents (whether by their officers, delegates, agents, employees or other representatives) be restrained from:

- (a) being engaged in or involved in any contractor (and their employees) or employee who is required to perform building work for Diploma Constructions (WA) Pty Ltd (Diploma):
 - (i) failing or refusing to attend for building work or failing or refusing to perform any work after attending for building work; or
 - (ii) placing a ban, limitation or restriction on the performance of building work adopted in connection with an industrial dispute, (together action)

save and except in relation to action by any employee of a contractor or of Diploma, required to perform building work for Diploma if the action by the employee is authorised or agreed to, in advance and in writing, by the employer of the employee; or action by an employer that is authorised or agreed to, in advance and in writing, by or on behalf of employees of the employer; or action based on a reasonable concern held by the employee about an imminent risk to his or her health or safety and the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe to perform.

- (b) attending or organising or procuring any person or persons, to attend, within 100 metres of any entrance to the Diploma construction site located at 915 Hay Street, Perth, Western Australia, save for such entry to the site as may be authorised by law pursuant to the provisions of Part 3-4 of the *Fair Work Act 2009*, for the purpose of using a public road for reasons unconnected with the said site or for the purpose of complying with these orders.

- (c) Costs reserved.