

10 **IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY**

No. B36 of 2015

BETWEEN:

COMMONWEALTH OF AUSTRALIA

Appellant

and

20 **DIRECTOR, FAIR WORK BUILDING INDUSTRY
INSPECTORATE**

First Respondent

and

**CONSTRUCTION, FORESTRY, MINING AND
ENERGY UNION**

30 Second Respondent

and

**COMMUNICATIONS, ELECTRICAL, ELECTRONIC,
ENERGY, INFORMATION, POSTAL, PLUMBING AND
ALLIED SERVICES UNION OF AUSTRALIA**

Third Respondent

40 **FIRST RESPONDENT'S SUBMISSIONS**

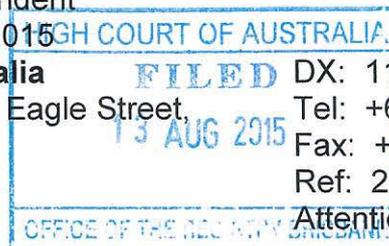
PART I:

- 1 The First Respondent certifies that these submissions are in a form suitable for publication on the internet.

50 Filed on behalf of: First Respondent

Date of document: 13 August 2015

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PART II:

10 2 The First Respondent supports and adopts the issues outlined in Part II of
 the Submissions of the Appellant dated 22 July 2015 (**Appellant's
 Submissions**).

PART III:

20 3 The First Respondent certifies that it has considered whether a notice
 should be given pursuant to section 78B of the *Judiciary Act 1903* (Cth) and
 that it considers that no notice needs to be given.

PART IV:

 4 The First Respondent supports and adopts the facts set out in Part V of the
 Appellant's Submissions and the Chronology of the Appellant dated 22 July
 2015.

30 **PART V:**

 5 In addition to the legislative provisions referred to by the Appellant, the First
 Respondent refers to section 69 of the *Building and Construction Industry
 Improvement Act 2005* (Cth), which provided for when a building
 association, such as the unions the subject of the proceeding (the Second
 and Third Respondents to this appeal), was responsible for the conduct of
40 members and others. Section 69 is set out in full in Annexure A to this
 summary of argument.

 6 The First Respondent otherwise accepts the Appellant's statement of
 applicable legislative provisions.

PART VI:

50 7 The First Respondent supports and adopts the argument set out in Part VI
 of the Appellant's Submissions.

PART VII:

10 8 The First Respondent has not filed a notice of contention or notice of cross-
appeal.

PART VIII:

9 The First Respondent estimates that no more than 1/4 hour will be required
for the presentation of its oral argument in this appeal.

Dated: 13 August 2015

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Annexure A

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Building and Construction Industry Improvement Act 2005

Act No. 113 of 2005 as amended

This compilation was prepared on 8 February 2010
taking into account amendments up to Act No. 54 of 2009

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

69 Building association responsible for conduct of members etc.

- (1) For the purposes of this Act, the following conduct in relation to a building association is taken to be conduct of the building association:
- (a) conduct of the committee of management of the association;
 - (b) conduct of an officer or agent of the association acting in that capacity;
 - (c) conduct of a member, or group of members, of the association where the conduct is authorised by:
 - (i) the rules of the association; or
 - (ii) the committee of management of the association; or
 - (iii) an officer or agent of the association acting in that capacity;
 - (d) conduct of a member of the association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.
- (2) Paragraphs (1)(c) and (d) do not apply if:
- (a) a committee of management of the building association; or
 - (b) a person authorised by the committee; or
 - (c) an officer of the industrial association;
- has taken reasonable steps to prevent the action.
- (3) In this section:
- officer*, in relation to a building association, includes:
- (a) a delegate or other representative of the association; and
 - (b) an employee of the association.

70 Capacity, state of mind etc. of person being coerced etc.

In applying a provision of this Act that refers to:

- (a) coercing a person to do a particular thing; or
- (b) applying undue pressure to a person to do a particular thing;
or
- (c) encouraging a person to do a particular thing; or
- (d) advising a person to do a particular thing; or
- (e) inciting a person to do a particular thing; or

Section 71

- (f) engaging in conduct with the intention of doing any of the above;

it is not relevant whether or not that person is able, willing or eligible to do that particular thing.

71 ABC Commissioner intervention in court proceedings

- (1) The ABC Commissioner may intervene in the public interest in a civil proceeding before a court in a matter that:
 - (a) arises under this Act; or
 - (b) arises under the *Independent Contractors Act 2006*, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and involves:
 - (i) a building industry participant; or
 - (ii) building work.
- (2) If the ABC Commissioner intervenes in a proceeding under subsection (1), the ABC Commissioner is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

72 ABC Commissioner may make submissions in FWA proceedings

The ABC Commissioner may, by giving written notice to the General Manager of FWA, make a submission in a matter before FWA that arises under the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and involves:

- (a) a building industry participant; or
- (b) building work.

73 ABC Commissioner or ABC Inspector may institute proceedings under the FW Act, etc.

Powers corresponding to powers of Fair Work Inspectors under the FW Act, etc.

- (1) If a provision of the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or of an instrument under either of those Acts, authorises a Fair Work Inspector (within the meaning of the FW Act) to: