



ABCC submissions dismissed for third time, this time by Federal Court

Date: Monday December 12, 2016

Less than two weeks after gaining enhanced powers, ABCC submissions have been dismissed for the third time, this time by the Full Court of the Federal Court. This decision follows two other decisions concerning this matter, both of which also dismissed the ABCC's arguments.

In June 2014 the CFMEU applied to the Fair Work Commission for right of entry permits for some of its officials, including Michael Ravbar, the Divisional Branch Secretary of the Construction and General Division of the Queensland/ Northern Territory branch of the Union. Using their power under the *Fair Work (Building Industry) Act 2012*, the Director of the Fair Work Building Industry Inspectorate has made two submissions to the Fair Work Commission in relation to Mr Ravbar's application, arguing that it should not be granted.

Firstly, the Director argued that Mr Ravbar was not a fit and proper person to hold an entry permit, on the basis that back in 2002 he had contravened the *Workplace Relations Act*, that at the time of application he was the respondent in proceedings before both the Commission and the Federal Circuit Court, and that he held senior office in an organisation that appeared to have manifested a 'continuing attitude of wilful disobedience to the law.'

The Director made further submissions that the CFMEU and Mr Ravbar had failed to provide 'full and frank disclosure' in relation to a number of these matters which would have been relevant to determine whether Mr Ravbar was a fit and proper person.

Despite this opposition, the Commission granted Mr Ravbar an entry permit. The Director sought permission to appeal that decision, on the basis that the Commission, at first instance, had failed to take into account matters that would have been relevant under s 513(g) of the *Fair Work Act*, where the Commission was required to consider 'any other matters that the FWC considers relevant.' A Full Bench of the Commission refused permission to appeal on the basis that an arguable case of appealable error had

not been demonstrated, and that it had not been established that an appeal was in the public interest.

In the most recent stage of this matter, heard by a Full Court of the Federal Court, the Director sought to have either decision quashed and reheard in an application under the *Judiciary Act 1903*, alleging that both decisions had been affected by jurisdictional error.

In relation to the decision to refuse permission for the appeal, the Director argued that the Full Bench had applied the wrong legislative provision and had therefore based their decision on a jurisdictional error. This argument was rejected by the Full Court, who found that the provision concerned was, in substance, applied correctly although a typographical error had been made by the Full Bench.

The Director further claimed that at first instance the Commission had misunderstood the nature of the opinion it was required to form and the questions it asked itself when considering whether Mr Ravbar was a fit and proper person. The Director argued that the Commission had failed to have regard to relevant considerations which it was bound to take into account, and this had affected the exercise of its power.

The Full Court found this was not the case. They agreed with our submissions that the Commission had considered each of the matters it was required to take into account, and that this had involved an 'unremarkable' exercise of discretion.

On this key point the Full Court summarised their position by saying:

'The real complaint of the applicant is that the Commission did not attach the same weight to that conduct that the applicant attached to it. That, however, does not reveal any jurisdictional error on the part of the Commission...'

As the Director, now the Australian Building and Construction Commissioner, assumes greater power under the recently passed ABCC legislation it is worth reflecting on this decision which has found, on three occasions, that there was no basis for the Director's intervention. How the Commissioner's power will be exercised under this new legislation remains to be seen, but protecting the rights of unions to lawfully conduct their business remains as important as ever.

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