



## **CFMEU records another win as Fair Work Building Inspectorate Notice to Produce labelled “Woefully Deficient”**

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The Federal Court has again criticised the Fair Work Building Inspectorate, this time for issuing the CFMEU with a Notice to Produce Documents that was “woefully deficient”, and therefore invalid.

Earlier this year the Inspector issued the Notice for documents relating to the membership of three CFMEU members. The Inspector claimed the documents were required in relation to his investigation of alleged contraventions of the general protections provisions of the Fair Work Act 2009. Had the CFMEU failed to comply with the Notice that failure could attract a penalty of up to \$54,000 for the Union and important civil liberties of the affected members would have been compromised.

The CFMEU opposed the Notice, arguing it was deficient. The CFMEU sought a declaration that the notice was invalid. This was the first case of its kind in relation to section 712 of the Act.

In summary, the Court made the following findings in favour of the CFMEU.

1. The power that an Inspector has is limited to those exercised in relation to a “building matter”, and the documents sought must relate to that matter. The Notice identified the location, date and the sections of the Act, but failed to give sufficient detail to allow the CFMEU to assess whether the Notice would, in fact, require the specified documents to be produced.
2. While the contravention was said to have occurred at a building site, the Notice made no reference to the matter being investigated involving a building industry participant. This put the Notice outside the scope of the powers of the Inspector.
3. The Notice was “woefully deficient in its particularity”, and that it failed to show that the production required was within the authority of the Inspector to request. Where that authority is not established, a notice will be void.

Justice Logan of the Federal Court went on to observe:

“This type of statutory inquiry power needs to be exercised with particular precision of language. Unfortunately, that particular message, which is by no means a new one, has been lost on the author of this notice.”

Accordingly, Logan J found the Notice to Produce was invalid. The Court’s decision has particular significance in the context of the ongoing political debate about the proposal to replace the FWBC with the ABCC which would have additional coercive power – the kind of powers that were mis-applied here.

[View the full decision here.](#)

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