

# In Review

Your monthly **Industrial Relations** update

Nov 2017



## Nov Update

### High Court confirms entry permit required for entry by health and safety representatives

The High Court has refused special leave to a CFMEU official to appeal against a decision of the Full Federal Court which confirmed that union officials require a valid federal right of entry permit to enter a site as a "health and safety representative" (HSR), under State or Territory work health safety laws.

The dispute related to whether section 494 of the *Fair Work Act 2009* (FW Act) applied to entries by HSRs under sections 58 and 70 of the Victorian *Occupational Health and Safety Act 2004*, which are separate to the right of entry provisions.

Section 494 of the FW Act prevents union officials from exercising a "State or Territory OHS right", unless

the official is a permit holder under the FW Act.

A Full Federal Court unanimously found that section 494 does apply to the HSR provisions in the Victorian Act (and the equivalent provisions in other States and Territories), in addition to the normal right of entry provisions.

The High Court's refusal to grant special leave for this decision to be appealed confirms that a union official must hold a valid right of entry permit under the FW Act in order to enter a site using the provisions that apply to HSRs.

In South Australia, the relevant provisions are sections 68 and 70 of the *Work Health and Safety Act 2012* (SA) (WHS Act).

Master Builders SA welcomes this outcome, which ensures that any entry on site by a union official under the WHS Act requires the official to hold a valid entry permit under the FW Act.

Where an official seeks to enter a site under the ordinary right of entry provisions in the WHS Act (for example to inquire into suspected contraventions under section 117), the official must hold an entry permit under both the FW Act and the WHS Act.

The Australian Building and

Construction Commission has advised Master Builders SA that members will be in breach of the Building Code 2016 if they allow an official on site under these circumstances.

If you are unsure of your rights and obligations, Master Builders SA is here to advise and assist you.

It has been a relatively quiet year of industrial activity on South Australia construction sites, but unfortunately things could be about to change.

It has been reported that last month's national CFMEU divisional conference passed a resolution to appoint a "Strategic Direction Committee", comprised of Dean Hall, Michael Ravbar and Dave Noonan, to oversee the South Australian branch.

If the union has arrived on your site and you want to know your legal rights, call the Industrial Relations Team on **8122 4990**.

Both myself and Industrial Relations Officer Jason Wilder are available to provide on-site support if required.

**Sam Condon**  
Lawyer & Manager, Workplace Relations



**MASTER BUILDERS**  
SOUTH AUSTRALIA

## Members back CFMEU merger

MUA and TCFU members who participated in the ballot on amalgamation with the CFMEU have voted overwhelmingly in favour of the proposed merger.

CFMEU national secretary Michael O'Connor said the vote "sends a clear message to the Turnbull Government to respect not undermine the democratic decisions of union members in the running of their unions".

The CFMEU wants to proceed swiftly with the amalgamation and is seeking a Fair Work Commission hearing in January.

The Turnbull Government is seeking to introduce a public interest test before union mergers can occur. The *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill* is currently before the Senate, however it is unclear whether the Bill will go to the vote before the Federal Parliament rises this year.



## RDO Calendar 2018-19

The RDO Calendar for 2018-19 is now available on the Master Builders SA website. Click [here](#) to view it.

## ICAC awareness for contractors

Any person performing contract work for a public authority or the Crown, including state and local governments, police or statutory offices, may be a public officer for the purposes of the ICAC Act.

As a contractor or a person engaging contractors, it's important that you are aware of your mandatory reporting obligations and the fact that you may be reported and investigated for corruption.

Members are invited to a presentation at the Adelaide Pavilion at 9:30am on Monday 4 December. At this presentation the Commissioner will provide background information on the role and functions of the ICAC and OPI. He will explain key terms and will also provide the opportunity to ask questions. Please contact Master Builders SA for more details.

## More fines for CFMEU

The CFMEU and two officials were fined \$54,500 after attempting to force workers to join the union at a Queensland construction site.

A CFMEU official falsely claimed the Gladstone Boardwalk project was a "union site" and gave workers five minutes to join the union or they would be "removed" from the project.

The Federal Circuit Court in Brisbane was told that workers had objected to the threats during "angry" and "heated" discussions at meetings.

The Court penalised the CFMEU \$45,000 for coercion, misrepresentation and freedom of association contraventions. Union organiser Jody Moses was fined \$5,500 and CFMEU delegate Gregg Churchman was penalised \$4,000 for "remaining silent and offering implicit support" to Mr Moses.

Judge Jarrett said both Mr Moses and Mr Churchman had shown a "deliberate disregard of the law".

Acting ABC Commissioner Cathy Cato said the Court had sent a strong message that employees have the right to work on construction sites without being forced to join a union.



## Portable Long Service Leave

### Portable Long Service Leave

Members are reminded of their obligations under the Construction Industry Long Service Leave Act 1987. Employers of eligible workers are required to register with Portable Long Service Leave, lodge Employer Returns every two months and pay a levy based on 2.15% of remuneration (apprentices are levy free). It is far better to be proactive now than be met with a Bill for many thousands of dollars that has accumulated over the years. For further information, contact the Master Builders SA Industrial Relations Team on **8122 4990**.