




4 November 2024



By email: 

Dear Mr Mitchell,

Anti-avoidance provisions in the *Fair Work (Registered Organisations) Act 2009*

I am writing to you about the exercise of my new regulatory powers in the *Fair Work (Registered Organisations) Act 2009* (the **RO Act**) relating to anti-avoidance conduct associated with the CFMEU Construction & General Division (**C & G Division**) administration.

I also invite you to provide any information you have received, or may be aware of, which could be relevant to potential contraventions of the anti-avoidance provisions I will explain below.

You are welcome to share this correspondence with your members.

Anti-avoidance provisions

You will be aware that as part of the scheme of administration (the Scheme) determined for the C & G Division, the RO Act was amended to include new anti-avoidance provisions.

The new anti-avoidance provisions in the RO Act, commencing at section 323P, prohibit conduct, or involvement in conduct, which prevents another person or body from taking action under the Scheme or prevents the Administrator of the Scheme from effectively administering the Scheme.

In particular, section 323P provides:

323P Anti-avoidance provision

(1) A person contravenes this subsection if:

- (a) the person engages in conduct or a course of conduct; and*
- (b) as a result of the conduct or course of conduct:*
 - (i) another person or body is prevented from taking action under a scheme determined under subsection 323B(1); or*
 - (ii) the administrator is prevented from effectively administering a scheme determined under subsection 323B(1).*

As the General Manager of the Commission, I am able to investigate and bring civil proceedings in the Federal Court in relation to alleged non-compliance with the anti-avoidance provisions. The

Administrator also has power to bring civil proceedings in relation to alleged contraventions of the anti-avoidance provisions and such contraventions may also be criminal offences, which are a matter for law-enforcement agencies.

While the new provisions have yet to be tested in any civil proceedings, in the coming week I will be publishing information on the Commission's website, including a factsheet, which includes examples of conduct which may constitute avoidance. My staff will email you a link and PDF copy of the factsheet when this information is available.

Request for relevant information

I invite you to provide any information you or your members have received or that you may be aware of which could be relevant to potential contraventions of the anti-avoidance provisions.

I understand that a range of public statements have been made, including by a range of building industry participants, expressing concern about speaking publicly or disclosing relevant information to regulators. In that context, my staff and I would welcome the opportunity to speak with you or your members on a confidential basis.

Should you wish to discuss this further, the Commission's Executive Director for the Registered Organisations Services Branch, Chris Enright, can be contacted on _____ or by email to _____. Should you wish to raise matters with me directly, I can be contacted on _____ (_____ and _____).

Yours sincerely

Murray Furlong
General Manager
Fair Work Commission