

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/09/2014 3:46:19 PM ACST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: SAD219/2014
File Title: DIRECTOR OF THE FAIR WORK BUILDING INDUSTRY
INSPECTORATE V CONSTRUCTION, FORESTRY, MINING AND
ENERGY UNION & ORS
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 4/09/2014 4:55:51 PM ACST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Statement of claim

No. SAD of 2014

Federal Court of Australia
District Registry: South Australia
Division: Fair Work

DIRECTOR OF THE FAIR WORK BUILDING INDUSTRY INSPECTORATE

Applicant

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION and others

Respondents

The parties

1. The Applicant:

- 1.1 is a statutory appointee of the Commonwealth, appointed by the Minister for Employment by written instrument pursuant to s 15(1) of the *Fair Work (Building Industry) Act 2012* (Cth) ("**the FWBI Act**");
- 1.2 by force of s 59A of the FWBI Act, is a Fair Work Building Industry Inspector;
- 1.3 by force of s 59C of the FWBI Act, has the same functions and powers as a Fair Work Inspector and may perform those functions and exercise those powers in relation to building matters (as defined at subsection 59C(3));
- 1.4 by reason of subparagraphs 1.1 to 1.3 above, and subparagraphs 2.3, 3.3 and 4.4 below, is a person with standing and authority to bring these proceedings under section 539 of the *Fair Work Act 2009* (Cth) ("**the FW Act**").

Filed on behalf of the Applicant	Ref	DGE.ERJ
Prepared by David Ey	Fax	+61 8 8205 3300
Law firm Piper Alderman		
Tel +61 8 8205 3333		
Email dey@piperalderman.com.au		
Address for service Level 16, 70 Franklin Street, Adelaide SA 5000		
DX 102 Adelaide		

[Form approved 01/08/2011]

2. The First Respondent, the Construction, Forestry, Mining and Energy Union, at all material times, was:
 - 2.1 an employee organisation within the meaning of section 12 of the FW Act;
 - 2.2 a body corporate;
 - 2.3 a building association and, therefore, a building industry participant within the meaning of section 4(1) of the of the FWBI Act; and
 - 2.4 the employer of the Second, Third and Fourth Respondents.
3. Each of the Second Respondent, Luke Stephenson, and the Third Respondent, David Kirner, at all material times, was:
 - 3.1 an employee of the First Respondent;
 - 3.2 a permit holder within the meaning of section 12 of the FW Act; and
 - 3.3 by reason of the matters pleaded in subparagraphs 2.3 and 3.1 above, a building industry participant within the meaning of section 4(1) of the of the FWBI Act.
4. The Fourth Respondent, Aaron Cartledge, at all material times, was:
 - 4.1 an employee of the First Respondent;
 - 4.2 an officer of the First Respondent;
 - 4.3 a permit holder within the meaning of section 12 of the FW Act; and
 - 4.4 by reason of the matters pleaded in subparagraphs 2.3 and 4.1 above, a building industry participant within the meaning of section 4(1) of the of the FWBI Act.

The Project

5. At all material times, John Hindmarsh (South Australia) Pty Ltd, trading as Hindmarsh Construction Australia (**Hindmarsh**) was the managing contractor for the construction site for the South Australian Health and Medical Research Institute building located at North Terrace, Adelaide, South Australia (**the Site**).
6. At all material times, Hindmarsh was the occupier of the Site within the meaning of section 12 of the FW Act.

Events of 11 November 2013

7. On 11 November 2013, the Second Respondent entered at the Site at approximately 10:12 am.
8. The Second Respondent was exercising, or seeking to exercise, his right under section 484 of the FW Act to enter the Site to hold discussions with one or more employees who

performed work on the Site, whose industrial interests the First Respondent was entitled to represent and who wished to participate in those discussions.

9. The Second Respondent acted in an improper manner.

Particulars of acting in an improper manner

- 9.1 The Second Respondent entered the Site without authorisation;
- 9.2 The Second Respondent failed to provide written notice of entry as required under section 487 of the FW Act;
- 9.3 The Second Respondent refused to comply with a request from a representative of Hindmarsh that he leave the Site;
- 9.4 The Second Respondent failed to sign the visitors' register, which was a Site entry requirement; and
- 9.5 The Second Respondent inconvenienced and disrupted Hindmarsh by:
- 9.5.1 failing to provide notice of entry;
- 9.5.2 entering the Site without authorisation;
- 9.5.3 walking around the Site; and
- 9.5.4 causing a representative from Hindmarsh to cease performing his normal duties in order to follow and observe the Second Respondent as he moved around the Site.

10. The Fourth Respondent was knowingly concerned in the conduct of the Second Respondent set out in paragraphs 7 to 9 above.

Events of 22 November 2013

11. On 22 November 2013, the Third Respondent entered at the Site at approximately 11:00 am.
12. The Third Respondent was exercising, or seeking to exercise, his right under section 484 of the FW Act to enter the Site to hold discussions with one or more employees who performed work on the Site, whose industrial interests the First Respondent was entitled to represent and who wished to participate in those discussions.
13. The Third Respondent acted in an improper manner.

Particulars of acting in an improper manner

- 13.1 The Third Respondent entered the Site without authorisation;

- 13.2 The Third Respondent failed to provide written notice of entry as required under section 487 of the FW Act;
- 13.3 The Third Respondent refused to comply with a request from a representative of Hindmarsh that he leave the Site;
- 13.4 The Third Respondent failed to correctly complete the visitors' register, which was a Site entry requirement; and
- 13.5 The Third Respondent inconvenienced and disrupted Hindmarsh by:
 - 13.5.1 failing to provide notice of entry;
 - 13.5.2 entering the Site without authorisation; and
 - 13.5.3 walking around the Site.

Contravention of section 500 of the FW Act by the First Respondent

- 14. On the basis of the facts set out in paragraphs 2 and 3 above and paragraphs 15 and 16 below, the First Respondent is taken to have contravened section 500 of the FW Act, pursuant to the operation of section 793 of the FW Act.

Contravention of section 500 of the FW Act by the Second Respondent

- 15. On the basis of the facts set out in paragraphs 3 and 7 to 9 above, the Second Respondent contravened section 500 of the FW Act.

Contravention of section 500 of the FW Act by the Third Respondent

- 16. On the basis of the facts set out in paragraphs 3 and 11 to 13 above, the Second Respondent contravened section 500 of the FW Act.

Contravention of section 500 of the FW Act by the Fourth Respondent

- 17. On the basis of the facts set out in paragraphs 10 and 15 above, the Fourth Respondent was a person involved in the Second Respondent's contravention of section 500, pursuant to the operation of section 550 of the FW Act.

AND THE APPLICANT CLAIMS:

Declarations

- 1. A declaration pursuant to subsection 545(1) of the FW Act that the First Respondent contravened section 500 of the FW Act on 11 November 2013 and 22 November 2013 pursuant to section 793 of the FW Act.
- 2. A declaration pursuant to subsection 545(1) of the FW Act that the Second Respondent contravened section 500 of the FW Act on 11 November 2013.

3. A declaration pursuant to subsection 545(1) of the FW Act that the Third Respondent contravened section 500 of the FW Act on 22 November 2013.
4. A declaration pursuant to subsection 545(1) of the FW Act that the Fourth Respondent contravened section 500 of the FW Act on 11 November 2013 pursuant to section 550 of the FW Act, as a person involved in the Second Respondent's contravention of section 500 of the FW Act.

Orders

5. Orders pursuant to subsection 546(1) of the FW Act that each of the Respondents pay a pecuniary penalty that the Court considers is appropriate in respect of their contravention of section 500 of the FW Act.
6. An order pursuant to subsection 546(3)(a) of the FW Act that the pecuniary penalties sought in paragraph 5 above be paid to the Commonwealth.
7. Such further or other orders as the Court considers appropriate.

Date: 4 September 2014



Signed by David Gregory Ey, Partner
Lawyer for the Applicant

This pleading was prepared by David Gregory Ey, lawyer

Certificate of lawyer

I David Gregory Ey certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 4 September 2014



Signed by David Gregory Ey
Lawyer for the Applicant