Exclusive

Watchdog drops 30pc of cases against CFMEU

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The workplace watchdog has not filed a single new case against the CFMEU for 18 months and has dropped 30 per cent of the cases alleging construction union law-breaking it inherited after Labor's election, even as builders raise concerns that CFMEU disruption is pushing up project costs.

The Fair Work Ombudsman has revealed it discontinued or partially discontinued 12 of the 41 cases transferred from the Australian Building and Construction Commission when the Albanese government scrapped the industry regulator in 2022.



The construction industry is raising questions over the FWO's ability to be a "tough regulator" for the CFMEU. **CFMEU**

The FWO has not filed any new cases against the CFMEU in the 18 months since it took over compliance for the industry, despite claims that the militant union is telling workers "no ticket no start" [https://www.afr.com/work-and-careers/workplace/cfmeu-accused-of-bringing-back-no-ticket-no-start-policy-in-nsw-20230214-p5ckdi] and kicking non-CFMEU subcontractors off sites [https://www.afr.com/work-and-careers/workplace/andrews-government-was-warned-on-illegal-cfmeu-activity-20230426-p5d3df].

However, the watchdog has filed several cases against construction employers in that time.

Higher costs caused by disruption on sites hit the construction sector at a time when wages and the prices of building materials are rising, with dozens of builders in the residential sector going to the wall.
The settlements come as the industry is questioning the FWO's eleventh-hour settlement of a physical and financial intimidation claim against the CFMEU where an official allegedly told a manager he would "grab my bat and start swinging it" [https://www.afr.com/work-and-careers/workplace/cfmeu-official-threatened-to-start-swinging-my-bat-watchdog-20220407-p5abon] if they did not use the union's preferred subcontractors on a Queensland government site.

The official also allegedly told the manager that his employer, tier-two builder Georgiou Group, "thought they were in prime position for a Coomera Connector

[road project contract], but I might see what I can do to knock them off".

Federal Circuit Court judge Salvatore Vasta this month called the circumstances around the settlement – made after a five-day trial, final written submissions and as the judge was writing his ruling – "bizarre" [https://www.afr.com/work-and-careers/workplace/cfmeu-let-off-the-hook-by-watchdog-for-most-serious-threats-judge-20240421-p5flf7] and suggested the FWO was treating the CFMEU "more equal than others".

Civil Contractors Federation national CEO Nicholas Proud said he had raised questions with the FWO and the Queensland office of industrial relations about its enforcement of health and safety principles following the decision.

"The FWO has a role to demonstrate its position as a tough regulator, which many of Judge Vasta's hearing statements cast doubt over, particularly when physical threat and intimidation of workers allegations are dropped with little detail," he said.

"In 2024 every workplace and worker in those workplaces have a right to safety, free of intimidation and bullying. Suggestions of the contrary that go unexplained fly in the face of this principle."

Opposition employment spokesman Michaelia Cash said Judge Vasta's comments about the FWO were "extremely disturbing".

"The FWO should explain why they dropped claims that an officer of the CFMEU physically and financially threatened an employer," she said.

"We will be seeking a full explanation of their conduct in this case during upcoming Senate estimates hearings."

Georgiou is understood to have incurred substantial extra costs at the project, South Brisbane's $45 million M1 freeway upgrade, as a result of disruption from the union visits.

However, the CFMEU has defended its visits on safety grounds and blamed any cost blowouts in Queensland to "cut-price companies [that] deliberately price the job low to win the contract". [https://www.afr.com/work-and-careers/workplace/more-queensland-construction-workers-to-get-at-least-200k-a-year-20240411-p5fj3n]

A spokesman for the FWO said it had progressed the ABCC cases in line with its compliance and enforcement policy.

“The case assessment process set out in the C&E Policy applies to the ABCC litigations and considers a range of matters, including jurisdictional prerequisites, sufficiency of evidence and the public interest,” he said.

“The relevant considerations and weight afforded to them vary depending on the facts and circumstances of each case.”

He said the FWO had finalised 33 of the 41 cases it had inherited from the ABCC.

Of those 33, it had completely dropped nine and partially discontinued one other.

Of the eight ongoing cases the FWO has discontinued claims against individuals in two cases.

One of the dropped cases involved a CFMEU NSW official allegedly calling a site manager a “c---” repeatedly and telling him “this is a small industry, I can make your life hard”.

In the Queensland case, the FWO dropped the intimidation claim despite insisting the two employer witnesses were “witnesses of truth” and making “very strong” submissions just two days prior, according to Judge Vasta.

The CFMEU denied the official made the threat but, in his ruling, the judge considered the official’s evidence contradictory and in some areas “quite preposterous”.

The FWO’s lawyers told the court its compromise – which secured liability over what the judge called “rather bland” allegations of not signing a visitor register – was to save the court time on deliberating on a judgment, guard against the possibility of a loss, and save funds spent on the ever-present spectre of appeal.

Senator Cash said “it would appear the FWO is not up to the task of adequately policing the building and construction industry and in particular the CFMEU”.

“They also seem to be averse to prosecuting cases against the CFMEU that were launched by the ABCC.”

Master Builders chief executive Denita Wawn said “it’s taxpayers and the broader community who ultimately pay the price for unlawful workplace disruptions through higher construction costs for homes, infrastructure and hospitals”.

The FWO spokesman said it had secured almost $2.9 million in penalties from the ABCC cases it had concluded, the large majority against the CFMEU or its officials.

The Queensland case follows controversy last year when it was revealed [https://www.afr.com/work-and-careers/workplace/cfmeu-faces-threat-of-maximum-penalties-in-35-cases-20230118-p5cdeu] Attorney General Mark Dreyfus stopped the ABCC from enforcing a $500,000 costs order against the CFMEU, instead approving a settlement for the union to pay no costs.

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