

CASE DECISION RECORD

COMPLAINANT:	Senior Inspector [REDACTED]	AIMS REFERENCE:	INV2616
ALLEGED WRONGDOER:	Section 11C(1) – CFMEU W	OFFENCE DATE:	18 July 2013
PREPARED BY:	[REDACTED]	DATE	13 June 2014

Tick appropriate box (✓)	Reason for CDR	Tick appropriate box (✓)	Reason for CDR
	Decision re: <u>Jurisdiction, Award, Classification, Employment relationship, identification of industrial instrument</u>		Decision to enforce compliance through <i>alternative to litigation</i> – FILE CLOSURE e.g Caution Notice, Enforceable Undertaking, etc
	Decision requiring <i>clarification</i> or decision <i>crucial to the outcome</i> of the case	✓	Decision - litigation or non-litigation – FILE CLOSURE
	Decision to issue or not issue Compliance Notice, NTP		Decision - no prima facie breach – FILE CLOSURE
	Decision to issue Penalty Infringement Notice		Referral to other area or department e.g Small Claims– FILE CLOSURE
	Result of Case Review		Decision – conduct witness statement

Actioned proposed/decision made and reasons for decisions:

- A record of decision to investigate (delegation from FWBC Director to perform investigation function) this matter was completed on 19/07/2013. (DM8-353595 refers).
- The parties involved are building industry participants as defined in section 4 of the *Fair Work (Building Industry) Act 2012*.
- The Sir Charles Gairdner Hospital New Children's Hospital construction site (**the Site**) is located at the corner of Winthrop and Monash avenues, Nedlands, Western Australia.
- The head contractor on this site is John Holland Pty Ltd (**John Holland**).
- John Holland is a constitutionally connected corporation.
- The work undertaken at the Site is building work as defined by Section 5 of the *Fair work (Building Industry) Act 2012*.

- On the morning of Thursday, 18 July 2013, Construction, Forestry Mining & Energy Union (CFMEU) officials including [REDACTED] [REDACTED] and numerous organisers, in company with up to several hundred construction workers, attended the vicinity main entrance of the Site and formed a picket line outside the Site entrances, preventing approximately several hundred workers from various contractors engaged on the Site from entering the site to start work.
- At 09:30 am, the workers forming the picket line moved away from the Site entrances to attend a meeting convened by the CFMEU in a car park directly over the road from the Site entrance.
- This meeting was addressed by the CFMEU [REDACTED] [REDACTED].
- FWBC Senior Inspectors [REDACTED] and [REDACTED] were present at this meeting conducting inquiries re possible breaches of industrial legislation falling within the jurisdiction of the FWBC (INV2581 refers).
- Inspector [REDACTED] was lawfully gathering evidence of potential breaches of the law and video recording the CFMEU officials addressing the crowd outside the main entrance to the Site, when he was approached by CFMEU official [REDACTED] Section 11C(1) who attempted to stop Inspector [REDACTED] videotaping by demanding he turn off the camera and deliberately standing in front of Inspector [REDACTED], blocking the camera.
- Inspector [REDACTED] identified himself to [REDACTED] Section 11C(1) as an Inspector with the FWBC and a federal government official and warned him that he was interfering with and obstructing a public official in the lawful execution of his duty. [REDACTED] Section 11C(1) refused to move and continued to demand Inspector [REDACTED] stop videoing the meeting. [REDACTED] Section 11C(1) stood so close to Inspector [REDACTED] that his chest was touching that of Inspector [REDACTED].
- After several warnings to [REDACTED] Section 11C(1) to move away, Inspector [REDACTED] was approached by a Western Australian Police Sergeant who asked if she could be of assistance. Inspector [REDACTED] identified himself as a federal government official in the lawful execution of his duty and that [REDACTED] Section 11C(1) a union official, was interfering & obstructing him from doing so. The Police Sergeant then demanded [REDACTED] Section 11C(1) move away from inspector [REDACTED] Section 11C(1). [REDACTED] Section 11C(1) initially refused, but eventually moved away from Inspector [REDACTED] to speak to the Sergeant.
- At this point, as Inspector [REDACTED] resumed videoing the meeting. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED] [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
- At this point, Inspector [REDACTED] was warned by the Police Sergeant that he and Inspector [REDACTED] should leave the vicinity of the Site as it appeared the union officials were becoming more aggressive.
- On 29 August 2013, INV2616 relating to an offence of Obstruct a Public Official - Section 149.1 Criminal Code (Cth) commenced.
- On 16 September 2013, briefs of evidence relating to [REDACTED] Section 11C(1) and [REDACTED] were forwarded to the Commonwealth DPP in Perth for the prosecution of Obstruct a Public Official charges.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- On 11 April 2014, [REDACTED] Section 11C(1) appeared in the Perth Magistrates Court and entered a plea of not guilty and the matter was remanded for trial on 10 June 2014
- On Tuesday, 10 June 2014, [REDACTED] Section 11C(1) appeared in the Perth Magistrates and entered a plea of guilty, resulting in a fine of \$1000.00 and court costs of \$201.90.
- On Friday, 13 June 2014, Inspector [REDACTED] received a request from Assistant Director [REDACTED] to initiate an action to close this investigation.

Signed:

[REDACTED]

Position: Senior Inspector

Date: 13/06/2014

Approved / Not-Approved:

Signed:

Date:

Name:

[REDACTED]

Position: Assist Director

Recommendations / Notes: