

ORDERS

QUD 755 of 2016

BETWEEN: **DIRECTOR, FAIR WORK BUILDING INDUSTRY
INSPECTORATE**
Applicant

AND: **CONSTRUCTION, FORESTRY, MINING AND ENERGY
UNION**
First Respondent

MATTHEW PARFITT
Second Respondent

JUSTIN STEELE (and others named in the Schedule)
Third Respondent

JUDGE: **COLLIER J**

DATE OF ORDER: **14 OCTOBER 2016**

THE COURT ORDERS THAT:

1. Until the hearing and final determination of the proceeding or further order, the first respondent (whether by its officers, delegates, employees or agents, or howsoever otherwise) and the second to eighth respondents be restrained from organising, encouraging, directing, counselling, procuring, aiding or assisting in any stoppage, cessation, disruption or interference of paid work at any building site occupied and/or in the control or responsibility (in whole or in part) of J Hutchinson Pty Ltd T/A Hutchinson Builders (Hutchinson sites).
2. Without limiting the effect of paragraph 1 of this order, until the hearing and final determination of the proceeding or further order, the first respondent (whether by its officers, delegates, employees or agents, or howsoever otherwise) and the second to eighth respondents be restrained from:
 - (a) convening, organising or conducting more than one meeting of workers at the same Hutchinson site within any 7 day period; and
 - (b) convening, organising or conducting the meeting referred to in (a) without first giving 48 hours written notice to J Hutchinson Pty Ltd T/A Hutchinson Builders and any employer of any workers that are anticipated to attend the

meeting, such notice to include a brief statement of the purpose of the meeting and the precise time, date, location and expected duration of the meeting.

3. For the avoidance of doubt, paragraphs 1 and 2 of this order do not apply to:
 - (a) any *bona fide* exercise of a right under any State or Territory OHS law as that expression is defined in s 494(3) of the *Fair Work Act 2009* (Cth) (FW Act) and r 3.25 of the *Fair Work Regulations 2009* (Cth) where such right is exercised by a person holding an entry permit issued pursuant to s 512 of the FW Act; or
 - (b) any *bona fide* advice provided to a person working on a Hutchinson site as to that person's rights in respect of any occupational health and safety issue, including any advice as to when it may be appropriate for a person to cease working because of a reasonable concern of an imminent risk to the person's health or safety.
4. Within 24 hours of this order being issued, the first respondent post a copy of this order on its website.
5. Personal service of this order be permitted to be effected on all respondents by a copy of this order being served by email to Luke Tiley of Hall Payne Lawyers at luket@hallpayne.com.au.
6. Costs be reserved.
7. Liberty to apply reserved on 24 hours' notice.

AND THE COURT ORDERS BY CONSENT THAT:

8. By 4 pm on 8 November 2016, the applicant is to file and serve any amended originating application and a statement of claim.
9. By 4 pm on 6 December 2016, the respondents are to file and serve their defences.
10. By 4 pm on 20 December 2016, the applicant is to file and serve any reply.
11. The trial of the proceeding be by way of affidavit, except with leave of the Court.
12. By 4 pm on 20 January 2017, the applicant is to file and serve any affidavits on which it intends to rely.
13. By 4 pm on 10 February 2017, the respondents are to file and serve any affidavits on which they intend to rely.

14. By 4 pm on 24 February 2017, the applicant is to file and serve any affidavits in reply on which it intends to rely.
15. If any party proposes to call a witness at the trial who will not make an affidavit, such party is to file and serve an outline of anticipated evidence of the witness and identify the witness.
16. Between 27 February 2017 and 17 March 2017 the parties shall attend a mediation before a Registrar.
17. By 4 pm 21 days prior to the first hearing date, the parties are to exchange any objections to evidence.
18. By 4 pm 14 days prior to the first hearing date, the parties are to exchange responses to any objections to evidence.
19. By 4 pm 14 days prior to the first hearing date, the applicant is to file an outline of submissions of no more than 10 pages.
20. By 4 pm 7 days prior to the first hearing date, the respondents are to file an outline of submissions of no more than 10 pages.
21. By 4 pm 5 days before the first hearing date, the applicant must file and serve a list of authorities and legislation.
22. By 4 pm 3 days before the first hearing date, the respondents must file and serve their list of authorities and legislation.
23. By no later than 48 hours before the first hearing date, the applicant must file and serve any outline of submissions in reply.
24. The matter be listed for hearing for 5 days commencing at 10.15 am on a date to be fixed in Brisbane.
25. There be liberty to apply in respect of any further directions or any application to vary these directions.

Endorsement pursuant to r 41.06 of the *Federal Court Rules 2011* (Cth)

TO: Construction, Forestry, Mining and Energy Union, the First Respondent
Matthew Parfitt, the Second Respondent
Justin Steele, the Third Respondent
Kurt Pauls, the Fourth Respondent

Edward Bland, the Fifth Respondent

Antonio Floro, the Sixth Respondent

Anthony Stott, the Seventh Respondent

Michael Davis, the Eighth Respondent

You will be liable to imprisonment, sequestration of property or punishment for contempt if:

- (a) for an order that requires you to do an act or thing – you neglect or refuse to do the act or thing within the time specified in the order; or
- (b) for an order that requires you not to do an act or thing – you disobey the order.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.