



Minister for Education and
Minister for Industrial Relations

20 SEP 2018

The Honourable Curtis Pitt MP
Speaker of the Legislative Assembly of Queensland
Member for Mulgrave
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Dear Mr Speaker

I refer to the Ministerial Statement I made immediately following Question Time on 19 September 2018. My statement was in response to the following question without notice from the Member for Lockyer to the Premier during Question Time:

Mr McDONALD: I table the legal documents, paid for and filed by the Palaszczuk Labor government, where it is suing a private company to benefit the CFMEU. Why is the government spending taxpayers' money to benefit one of Labor's biggest donors in a legal dispute against a Queensland small business?

As I said in my statement to the House, the question from the Member was clearly misleading. The Palaszczuk Government is not suing any private company to the benefit of the CFMEU in relation to this matter which is currently before the Queensland Industrial Relations Commission (QIRC). This was clearly known to the Member in tabling the documents, or should have been reasonably known to him.

As the documents tabled by the Member clearly show, the facts are that it is the independent regulator, Workplace Health and Safety Queensland, that has commenced proceedings in the QIRC in relation to a right of entry dispute and a failure to comply with a direction from the regulator. No-one is being sued, and the Member would or should have reasonably known that from the very documents he tabled.

It is reasonable to expect that a Member of Parliament would know that an independent regulator taking an action in the QIRC in no way equates with the Palaszczuk Government suing a private company, particularly when he has documents in his possession that make this very clear.

On that basis, it is clear that the Member for Lockyer knew his question without notice was incorrect and deceptive at the time he made it, and that he was deliberately misleading the House.

I therefore refer this matter to you for investigation and request that you refer the matter to the Ethics Committee for consideration.

Yours sincerely

GRACE GRACE MP
Minister for Education and
Minister for Industrial Relations

Queensland Legislative Assembly	
Number: <u>5618T1799</u>	
	01 NOV 2018
MP: <u>SPEAKER</u>	Tabled <input checked="" type="checkbox"/> By Leave <input type="checkbox"/>
Clerk's Signature: <u>MARIN</u>	

Jim McDONALD MP

Member for **Lockyer**



8 October 2018

The Hon Curtis Pitt MP
Speaker of the Legislative Assembly

By email: speaker@parliament.qld.gov.au

Dear Mr Speaker

Thank you for your letter of 25 September 2018. I appreciate the opportunity to provide you with a response to the allegations made by the Hon Grace Grace MP.

Please find attached submissions and evidence for your consideration. I do not believe that I have deliberately misled the House. In my view the allegation is baseless.

The Minister may not have liked the question, but to attack it as a contempt is wrong. I can assure you that I did not intend to mislead the House. However, if it assists Mr Speaker I would be willing make a clarifying statement to the House if that would be helpful.

In the meantime if you require any further information please contact me.

Yours sincerely

Jim McDonald MP
MEMBER FOR LOCKYER

Enc.

SUBMISSIONS

BACKGROUND

1. During Question Time on 19 September 2018, the Member for Lockyer tabled two documents and asked the following question of the Premier:¹

Mr McDONALD: *My question without notice is to the Premier. I table the legal documents, paid for and filed by the Palaszczuk Labor government, where it is suing a private company to benefit the CFMEU. Why is the government spending taxpayers' money to benefit one of Labor's biggest donors in a legal dispute against a Queensland small business?*

2. The tabled documents are attached to these submissions for reference.² They are documents filed in the Queensland Industrial Relations Commission.
3. The documents are a claim to commence legal action in the Queensland Industrial Relations Commission (**QIRC**). While the QIRC is not a "Court," its legal status is similar to the Queensland Civil and Administrative Tribunal. The QIRC is empowered by the *Industrial Relations Act 2016* to deal with disputes and make determinations.
4. The documents show an action brought by the Workplace Health and Safety Queensland (**WHSQ**) as a joint applicant with the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) against Enco Precast Pty Ltd, a small proprietary company. The ASIC database shows that it is a small business with its registered address located in Queensland.
5. The action seeks to resolve a dispute between the CFMMEU and Enco Precast Pty Ltd. The submissions of Inspector John Azcune and the material in the claim document prove that the Claim is brought with the intention of providing a benefit to the CFMMEU in its dispute with Enco Precast Pty Ltd.
6. It's a matter of public record that the CFMMEU is one of the largest donors to Queensland Labor, donating over three quarters of a million dollars since 2014.³

RELEVANT CONSIDERATIONS

¹ Hansard, page 2576. 19 September 2018

² As extracted from the Online Tabled Papers database:

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2018/5618T1384.pdf>

³ Electoral Commission of Queensland, Funding and Disclosure and Online Databases.

7. Section 37 of the *Parliament of Queensland Act 2001* defines the meaning of "Contempt" of the Assembly as:

37 Meaning of contempt of the Assembly

(1) Contempt of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.

8. Standing Order 266 provides examples of Contempt to include, *inter alia*:

(2) deliberately misleading the House or a committee (by way of submission, statement, evidence or petition);

9. In order for the allegation of a deliberate misleading of the House to be made out, three elements must be proven:

- a. the statement must, in fact, have been misleading;
- b. it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
- c. in making it, the member must have intended to mislead the House.

10. In determining whether each element is met, the standard of proof to be met is 'on the balance of probabilities.'

11. The Ethics Committee, supported by David McGee in Parliamentary Practice in New Zealand, has noted that recklessness falls short of the standard required to hold a member responsible for deliberately misleading the House.

APPLICATION

12. I will deal with each element in turn.

THE FIRST ELEMENT – WAS THE MEMBER'S STATEMENT ACTUALLY MISLEADING?

13. The question asked by the Member for Lockyer was not misleading.

14. The Minister for Industrial Relations takes exception on two grounds, first that WHSQ is not the same as the Palaszczuk Government; and, that the legal action commenced by WHSQ is not accurately described as "suing." With respect to the Minister, these arguments are spurious and petty semantics.

15. The 'regulator' referred to in the Minister's correspondence is an officer of the WHSQ. WHSQ is part of the Queensland Government and the WHSQ

website clearly states as much.⁴ WHSQ is established under the *Work Health and Safety Act 2011* and the Administrative Arrangements order⁵ states that the Minister for Industrial Relations has principal ministerial responsibility for its operations. It's entirely reasonable to say that actions taken by WHSQ are ultimately the responsibly of the Palaszczuk Government. WHSQ is not "independent" as claimed in the Minister's letter as it is bound to follow the terms of the guidelines and legislation it operates under—it must follow direction by the Palaszczuk Government.

16. On the second issue, the use of the word 'suing' is not misleading. In layman's terms, to sue or suing someone means to commence any manner of legal proceedings. The Cambridge English dictionary defines 'suing' or 'to sue' as "*to take legal action against a person or organization...*" It cannot reasonably be described as misleading to label an action in the QIRC as "suing."
17. As a corollary to the second issue, the documents show that the two applicants to the legal action are WHSQ and the CFMMEU. The documents also show, on page 7 of the tabled documents, that it is an inspector in the employ of WHSQ that is bringing the action to resolve a dispute that has arisen between the CFMMEU and Enco Precast Pty Ltd.
18. To conclude the question asked a reasonable interpretation of the nature of the documents provided to the House. The comments were not false nor misleading.

THE SECOND ELEMENT – WAS THE MEMBER AWARE AT THE TIME OF MAKING THE STATEMENT THAT IT WAS INCORRECT?

19. In the alternative, even if the statement was found to be misleading, it does not meet the requisite level of "deliberately misleading" to warrant investigation by the Ethics Committee.
20. As above, the statement made by the Member for Lockyer was a reasonable interpretation of the QIRC documents. This is not the equivalent of a situation where a Member makes a statement knowing that statement was false.
21. At the absolute worst, the question could be criticised as a reckless interpretation of the WHSQ/ CFMMEU actions.

⁴ <https://www.worksafe.qld.gov.au/about-us>

⁵ https://www.qld.gov.au/data/assets/pdf_file/0026/39455/administrative-arrangements-order-no-1-2018.pdf

22. In summary, there is no evidence that the question was deliberately misleading.

THE THIRD ELEMENT – DID THE MEMBER INTEND TO MISLEAD THE HOUSE?

23. The question of intention to mislead is subjective. The Member for Lockyer did not intend to mislead the House.

24. The question does not assert any statement that isn't open to reasonable interpretation from the documents.

CONCLUSION

25. I respectfully submit that this matter should be dismissed.

ATTACHMENT 1

Tabled documents.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Work Health and Safety Act 2011

The Regulator under the Work Health and Safety Act 2011

First Applicant

&

Construction, Forestry, Maritime, Mining and Energy Union

Second Applicant

v

Enco Precast Pty Ltd

Respondent

Matter No. WHS/2018/115

STATEMENT OF REASONS

1. I John Azcune, am an inspector under the *Work Health and Safety Act 2011* (“the Act”) appointed by the regulator under s.141 of the Act to assist in resolving a dispute (“dispute”).
2. That dispute has arisen in relation to the purported exercise by a WHS permit holder of a right of entry under the Act.
3. The dispute is about whether the WHS entry permit holder has a right to enter the workplace under s.117, Division 2 of the Act. In deciding what action to take in relation to that dispute, I considered and was satisfied of the following things, namely that:
 - a) The location 73 Counihan Road, Seventeen Mile Rocks is a workplace under the Act;
 - b) ENCO Precast Pty Ltd (“the company”) is a person conducting a business or undertaking at the workplace where the permit holder proposes to exercise his right of entry under s.117;
 - c) The company employs workers who work at the workplace;
 - d) Some of the workers at the workplace are eligible to be members of a relevant union, the *Construction, Forestry, Maritime, Mining and Energy Union* (“CFMMEU”);

- e) The union is a *relevant union* under the Act;
- f) The union is entitled to represent the industrial interests of certain workers (the relevant workers) at the workplace;
- g) I am satisfied that Paul Arthur Dunbar, Craig Patrick Davidson, Shaun James Desmond and Luke Gibson are entry permit holders under the Act. I have sighted their respective permits.
- h) I am satisfied that the permit holders each reasonably suspect that a contravention of the Act in relation to workplace safety is occurring at the workplace.
- i) The permit holder seeks to enter the workplace under s.117(1) to inquire into a suspected contravention of the Act that relates to, or affects, a relevant worker;
- j) That notice of entry to the workplace was given in accordance with s.119 of the Act;
- k) No application has been made by the company to revoke the entry permit of the permit holder under s.138 of the Act;
- l) The company has locked the gate to the workplace and its representative, namely Steven James has stated that the permit holder will not be given access to the workplace. The basis for the refusal to grant access is that:
 - i. The workers at the workplace are not *relevant workers* under s.116 of the Act; and
 - ii. The workers are not safe and are at risk of intimidation or bullying if access is granted, that the police were not able to prevent this from occurring last Friday and would therefore not prevent it from occurring should access be granted.
- m) I have considered the reasons given and do not accept that they justify the company's refusal to allow the permit holder to access the premises for the following reasons:
 - i. I have perused the relevant union's rules and I am satisfied that workers at this workplace meet the definition of relevant worker as per section 116 of the WHS Act 2011 because:
 - 1. The worker area had several electrical overhead cranes, truck drivers and areas that goods were stored; and
 - 2. Precast of concrete bridge components were being manufactured which involved workers in the steel fixing, form

work support and other trades.

- ii. The presence of the Queensland Police Service at the above workplace is sufficient for the purposes of keeping the peace and ensuring the safety of all workers.
- n) I am satisfied that the permit holder reasonably suspected that a contravention of the Act is occurring at the workplace because I sighted Notices of Entry ("Notices"), in the possession of the CFMMEU, which set out suspected contraventions of the Act. These included:
 - i. Plant and equipment;
 - ii. Unsafe plumbing equipment;
 - iii. Inadequate emergency and evacuation procedures;
 - iv. Inadequate amenities;
 - v. Electrical;
 - vi. Access & egress, fire extinguishers;
 - vii. Lift register for all lifting gear;
 - viii. Inspect crane & all lifting SWMS related to [illegible];
 - ix. Manual handling training;
 - x. Traffic management;
 - xi. Hazard chemicals been stored incorrectly on site;
 - xii. Emergency evacuation procedure/muster point/site entry;
 - xiii. Amenities;
 - xiv. Firefighting equipment;
 - xv. Gantry cranes/lifting gear.
- o) I have considered the further five grounds ENCO provided to justify denying the permit holders to enter the workplace, namely that:
 - i. The suspected contraventions stated on the union officials Notice of Entry are too broad and should be described in further detail;
 - ii. CFMEU union official Blake Hynes does not hold a valid entry permit as per the date stated on the Queensland Industrial Relations Commission (QIRC) website;
 - iii. CFMEU union official Mr Blake Hynes was aggressive and threatening towards ENCO representatives on Friday, 20 July 2018, and Hynes has not apologised for his behaviour;
 - iv. Union officials who attempted to enter did not appear to have suitable personal protective equipment to enter the site i.e. long sleeved shirt; and
 - v. WHSQ Inspectors are on site and should be able to undertake a site assessment to determine if the suspected contraventions are valid without the need for union officials to enter the site.

p) I do not accept that any of these grounds justify the continued non-compliance with s.141A(4) of the Act by ENCO for the following reasons:

- i. Section 119 of the *Work Health and Safety Act 2011* (“Act”) requires that a “notice of entry” (“notice”) be provided “as soon as practicable **after entering a workplace** under this division”. Subsection (2) of s.199 also provides that in certain circumstances no notice need be given. I consider the complaint made about the particulars given in the notice under s.119 must be considered in this context, and that a lack of precise detail was not a disqualifying factor in this situation.

I do not consider that this complaint about the notice can provide a valid basis for preventing a permit holder from actually entering the workplace under s.117. Moreover, s.119 of the Act and s.28 of the *Work Health and Safety Regulation 2011* (“Regulation”) requires that: “*so far as is practicable, the particulars of the suspected contravention to which the notice relates*” must be included in the notice.

I consider that the particulars given in the notice should reasonably inform the recipient of the notice, so far as is practicable and in general terms, about the nature of the suspected contraventions. Section 118(1) provides the relevant context in which an entry is made by a permit holder under s.117. That section empowers the permit holder to carry out inquiries into suspected contraventions upon entry by: inspecting systems, consulting with workers, requiring the production of documents and so on.

The nature and extent of the particulars to be given of suspected contraventions in the notice of entry must be considered against the purpose of these provisions that both facilitate entry and, more importantly, inquiry and investigation after entry. For these reasons, I am satisfied that the particulars given adequately inform the recipient in the notice of entry about the contraventions suspected by the permit holders.

- ii. Advice was sought from the QIRC as to the validity of Mr Blake Hynes’ Entry Permits. Inquiries with the QIRC advised that the information on their permit holders’ report on the QIRC website was in error. The QIRC confirmed that WHS entry permits have been issued to Mr Bake Hynes as follows:

- WHS45[2018] ~ CFMEU-State - Term 09.03.2018 to 08.03.2021
- WHS46[2018] - CFMEU-Federal - Term 09.03.2018 to 08.03.2021

Therefore Mr Blake Hynes is the holder of a valid WHS entry permit and has been since 9 March 2018. In any event, Mr Hynes was not present at the workplace on 23 July 2018 and is not the subject of my decisions and

directions in this matter.

- iii. Mr Hynes denies the allegations made above and alleges that he himself was assaulted whilst at the workplace. The assertions made by company representatives about aggressive and threatening behaviour relates to conduct allegedly occurring on 20 July 2018. Entry was sought in this matter on 23 July 2018. Mr Hynes was not present at the workplace on 23 July 2018. A number of members of the Queensland Police Service were present on 23 July 2018 and available to prevent any breach of the peace that may have occurred upon entry by the permit holders.

It is not necessary for me to decide competing versions of events about an alleged incident involving a permit holder and company representatives on an earlier date in order to be reasonably satisfied in this case that the entry should have been allowed by ENCO on 23 July 2018. I took the allegations into account in so far as they may have been relevant.

I was, and remain, reasonably satisfied that entry by the permit holders could have been effected safely and should have been allowed.

- iv. The WHS Entry permit holders were all wearing high visibility vests, hard hats, safety boots and safety sunglasses on 23 July 2018. Whilst present at the site that day, I saw that a person who I believe was the ENCO safety manager, Mr James Byrne, had his long sleeved shirt rolled up to his elbows at the workplace. I am not satisfied that a long sleeved shirt was a reasonable PPE requirement at the workplace in the circumstances, nor does the vague assertion that the permit holders "did not appear to have suitable personal protective equipment" alter my view that entry should have been allowed in the circumstances.

Mere anticipation that a permit holder may not have, or use, required PPE prior to any entry being allowed, without clarification of the issue by way of a request made of the permit holders under s.128 of the Act, is not, in my view, justification for refusing to allow the entry. The permit holders were required to comply with any reasonable request to follow the work health and safety requirements that applied at the workplace. I do not consider that there was any reasonable basis for the stated view that they would not do so.

- v. The Act has established a statutory scheme under Part 7 of the Act whereby WHS entry permit holders are empowered in certain circumstances to enter a workplace and exercise powers to inquire into suspected contraventions. These powers, and the statutory role played by permit holders under the Act, should not be supplanted by the exercise of inspector's powers for a number of reasons. These include the fact that circumstances may exist whereby a worker at the workplace does not wish to refer safety concerns to

an employer or an inspector and would instead prefer to refer his or her safety concerns confidentially to a permit holder.

A permit holder may be unwilling to convey information about suspected contraventions received from a worker to a person conducting a business or undertaking, or an inspector, pending the lawful exercise of their powers to enter the workplace and make the relevant inquiries to satisfy themselves as to the actual veracity of the information received.

John Aczune

Inspector

Dated :

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Work Health and Safety Act 2011

The Regulator under the Work Health and Safety Act 2011

First Applicant

&

Construction, Forestry, Maritime, Mining and Energy Union

Second Applicant

v

Enco Precast Pty Ltd

Respondent

Matter No. WHS/2018/102

POINTS OF CLAIM

The claim in this proceeding is made in reliance on the following facts:

1. At all material times:
 - a. The respondent, ENCO Precast Pty Ltd (**ENCO**), is a person conducting a business or undertaking at 77 Counihan Road, Seventeen Mile Rocks (**the workplace**).
 - b. The location is a 'workplace' under the *Work Health and Safety Act 2011 (Qld)* (**the Act**).
 - c. The respondent employs workers who work at the workplace.
 - d. Certain workers employed by the respondent are eligible to be members of the second applicant, the *Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU)*.
2. At all material times the CFMMEU is:

- a. A relevant union under the Act in that it is represented by the relevant entry permit holders (**permit holders**);
 - b. Entitled to represent the industrial interests of certain workers at the workplace (the relevant workers);
 - c. Blake Hynes, Paul Arthur Dunbar, Craig Patrick Davidson, Shaun James Desmond and Luke Gibson are representatives of the CFMMEU and permit holders under that Act;
3. On Friday 20 July 2018, Mr Hynes sought to access the workplace to inquire into suspected contraventions of the Act, pursuant to s. 117(1) and (2) of the Act, but was denied entry by the respondent.
4. On Monday 23 July 2018 CFMMEU representatives Dunbar, Davidson, Desmond and Gibson sought to access the workplace, to inquire into suspected contraventions of the Act, pursuant to s. 117(1) and (2) of the Act, but were denied entry by the respondent.
5. On or about 7.30am on Monday 23 July, Workplace Health and Safety (**WHS**) Inspector John Azcune attended the workplace. Shortly thereafter WHS Inspector Tan and A/Director Construction Helen Burgess arrived at the workplace.
6. At all material times Inspectors Azcune, Tan and Burgess were representatives of the first applicant and duly appointed as Inspectors pursuant to s.156 of the Act.
7. Inspectors Azcune, Tan and Burgess' arrival at the workplace was for the purpose complying with an appointment by the Regulator to assist in resolving the right of entry dispute between the permit holders and the respondent, which comprised the claim by the permit holders that they were entitled under the Act to enter the workplace, and the refusal by the respondent to accept that claim, and the refusal to grant the permit holders entry to the workplace.

8. On or about 8.30am on 23 July 2018 Inspector Azcune observed the entry permit holders attempting to give Notices of Entry (**notices**) to an employee of the respondent at the entry gate of the workplace.
9. Inspector Azcune read the said notices and Inspector Tan took photographs of the notices.
10. After reading the notices, Inspectors Azcune, Tan and Burgess entered the workplace and spoke with the respondent's General Manager, Steven James, Safety Manager James Byrne and others. The entry dispute was unable to be resolved at this meeting and the respondent continued to deny the permit holders access to the worksite.
11. At around 2pm on 23 July 2018, Inspector Azcune, in his capacity as an Inspector appointed by the Regulator under section 141 of the Act to assist in resolving a dispute, made five (5) decisions under s.141A(2)(a) and gave (5) written directions under s141A(2)(b) (**Directions**) to the respondent.
12. The Directions stated that Mr Azcune had sighted the relevant entry permits and satisfied himself of the following:
 - a. The location is a workplace under the Act;
 - b. ENCO is a person conducting a business or undertaking at the workplace where the permit holder proposes to exercise his right of entry under s 117 of the Act;
 - c. ENCO employs workers who work at the workplace;
 - d. Some of the workers at the workplace are eligible to be members of a relevant union, the CFMEU and CEPU;
 - e. The CFMEU and CEPU are relevant unions under the Act;

- f. The union is entitled to represent the industrial interests of workers at the workplace;
- g. The permit holder reasonably suspects that a contravention of the Act is occurring at the workplace;
- h. The permit holder seeks to enter the workplace under s 117 of the Act to inquire into a suspected contravention of the Act that relates to, or affects, a relevant worker;
- i. That (sic) notice of the entry to the workplace was given in accordance with s 119 of the Act;
- j. No application has been made by ENCO to revoke the entry permit of the permit holder under s 138 of the Act;
- k. The company has locked the gate to the workplace and its representative, namely Steven James has stated that the permit holder will not be given access to the workplace. The basis for the refusal is that:
 - The workers at the workplace are not relevant workers under s 116 of the Act; and
 - The workers are not safe and at risk of intimidation or bullying if access is granted, that the police were not able to prevent this from occurring last Friday and would therefore not prevent it from occurring should access be granted.

13. The Directions stated that Inspector Azcune had decided that:

- a. Paul Arthur Dunbar, Andrew Robert Blakeley, Craig Patrick Davidson, Shaun James Desmond and Luke Gibson were permit holders under the Act;
- b. The permit holders had a right to enter the workplace under s117, Division 2 of Part 7 of the Act.

14. The Directions were read out by Inspector Azcune in the presence of Steven James and directed the respondent to immediately allow the permit holders to enter the workplace under s117 of the Act.
15. The respondent continued to deny entry to all permit holders and provided five (5) further grounds that were said to justify their refusal, namely:
 - a. the suspected contraventions stated on the union officials Notice of Entry are too broad and should be described in further detail;
 - b. CFMEU union official Blake Hynes does not hold a valid entry permit as per the date stated on the Queensland Industrial Relations Commission (QIRC) website;
 - c. CFMEU union official Blake Hynes was aggressive and threatening towards ENCO representatives on Friday, 20 July 2018, and Hynes has not apologised for his behaviour;
 - d. Union officials who attempted to enter did not appear to have suitable personal protective equipment to enter the site i.e. long sleeved shirt; and
 - e. WHSQ Inspectors are on site and should be able to undertake a site assessment to determine if the suspected contraventions are valid without the need for the union officials to enter the site.
16. At around 5pm on 23 July 2018 Inspector Azcune and Tan conducted a 45 minute safety audit of the respondent's workplace and identified a number of legislative breaches involving storage of chemicals and electrical equipment.
17. Inspector Azcune considered the additional five grounds raised by the respondent justifying refusal of entry and after doing so, confirmed his original decisions and directions made under s.141A of the Act.
18. By email correspondence on 24 July 2018, Inspector Azcune provided the respondent with written reasons for confirming his original decision.

19. The respondent continues to refuse to comply with the directions made by Inspector Azcune.
20. The applicant seeks a determination from the Commission as to whether
 - a. the entry permit holders were entitled to enter the workplace pursuant to s117 of the Act on the occasions that they sought to do so between 20 and 23 July 2018; and
 - b. the directions made by the inspector as aforesaid were properly made in accordance with the Act.