

Question on Notice
No. 111
Asked on 25 February 2021

MR J BLEIJIE ASKED MINISTER FOR EDUCATION, MINISTER FOR INDUSTRIAL RELATIONS AND MINISTER FOR RACING (HON G GRACE)

QUESTION:

With reference to the State's entitlement to intervene in workplace relations matters under s 569A of the Fair Work Act 2009—

Will the Minister advise, between 2015 and 2021 to date (a) the total number of times the State has intervened in legal proceedings, (b) the title of each court case and (c) the total number of times a court has made an order as to costs against the State (reported separately by year)?

ANSWER:

- (a) The State Government intervened in a workplace relations matter under section 569A of the *Fair Work Act 2009* (Cth) (FW Act) on one occasion between 2015 and 2021.

The State Government intervened in the proceedings, under section 569A of the FW Act, as it raised questions of law regarding the application of Queensland's *Work Health and Safety Act 2011* (WHS Act). The State Government's intervention was confined to assisting the Court in interpreting relevant provisions in the WHS Act.

- (b) The title of the court case was *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Bruce Highway Caloundra to Sunshine Upgrade Case)* (No 2) [2019] FCA 1737 (Case No. QUD238/2018).

In the related Full Federal Court of Australia appeal of the above matter, the State was not an intervener but was named as the Second Respondent. This was due to the operation of section 569A(2) of the FW Act, which provides 'If the Minister of a State or Territory who has responsibility for workplace relations matters intervenes, he or she is taken to be a part to the proceedings for the purposes of instituting an appeal from a judgment given in the proceedings'. The title of the appeal was *Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (The Bruce Highway Caloundra to Sunshine Upgrade Case)* [2020] FCAFC 203 (Case No: QUD712/2019).

On 24 November 2020, the Full Federal Court of Australia dismissed the appeal, finding in favour of the Australian Building and Construction Commissioner. In December 2020, the Construction, Forestry, Maritime, Mining and Energy Union lodged an application for special leave to appeal the decision to the High Court of Australia. As the Minister was a party to the appeal below, the Minister is also a party to the special leave application. The special leave application is pending.

- (c) No costs were awarded against the State.