



Fair Work  
Commission

# Obstructing the administration of the CFMEU Construction & General Division

---

The Construction and General Division of the Construction, Forestry and Maritime Employees Union is under administration. It can be unlawful to obstruct the CFMEU administration.

## What is the administration scheme?

On 23 August 2024, the Attorney-General placed the Construction and General Division (C&G Division) of the Construction, Forestry and Maritime Employees Union (CFMEU) under a scheme of administration (Scheme) in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* (RO Act).

Under these provisions, the administration is in place for up to 5 years.

The Administrator, Mark Irving KC, was appointed by the General Manager of the Fair Work Commission. The day-to-day work of the C&G Division in supporting its members is continuing. The Administrator must act in accordance with the Scheme and the RO Act.

The Administrator has broad powers to act in place of the officers and collective bodies of the C&G Division. This includes exercising the powers and functions of, and ability to direct, elected officials in WA and the ACT whose offices were not vacated by the Scheme. The Administrator has appointed people into positions of authority to run the day-to-day operations of the other Divisional Branches.

## Obstructing the administration

The RO Act includes an anti-avoidance provision (section 323P). The provision makes it unlawful to prevent a person or body from taking action under the Scheme or to prevent the Administrator from effectively administering the Scheme.

Conduct that breaches the provision can attract civil or criminal penalties.

A criminal offence will only apply where the conduct was engaged in for the sole or dominant purpose of obstructing the administration.

The civil penalty provision applies retrospectively to conduct engaged in on and after 1 July 2024, while the criminal offence only applies to conduct engaged in on or after 23 August 2024.

### What does the anti-avoidance provision do?

The anti-avoidance provision is intended to ensure that action is not taken to obstruct the administration and to protect the use of the Administrator's existing powers.

The anti-avoidance provision means there are civil penalties if a person:

- engages in conduct or a course of conduct,

**AND**

- as a result of the person's conduct or course of conduct:
  - another person or body is prevented from taking action under the Scheme or
  - the Administrator is prevented from effectively administering the Scheme

**AND**

- the person cannot prove they have a reasonable excuse for engaging in the conduct or course of conduct.

The same conduct may give rise to a criminal offence if the person engaged in the conduct or course of conduct for the sole or dominant purpose of:

- preventing another person or body from taking action under the Scheme, or
- preventing the Administrator from effectively administering the Scheme.

## What are the penalties?

Civil or criminal penalties could apply if a person is found to have contravened the anti-avoidance provision.

The General Manager or the Administrator may apply in the Federal Court of Australia for an order seeking civil penalties for a contravention of the anti-avoidance provision. The maximum civil penalty is:

- 600 penalty units for an individual (up to \$198,000)
- 3,000 penalty units for a body corporate (up to \$990,000)

The General Manager cannot prosecute criminal offences, but can refer alleged conduct to a relevant law enforcement agency. The maximum criminal penalty is:

- 2 years in prison
- 3,000 penalty units for an individual (up to \$990,000)
- 15,000 penalty units for a body corporate (up to \$4,950,000)

## Examples of common concerns

Ultimately it is for a court to decide if the conduct breaches the anti-avoidance provisions. As with any new provision, there are as yet no court decisions concerning section 323P.

Examples of avoidance conduct may include destroying business records or membership lists, transferring assets to hide them and other actions that could reasonably 'obstruct or frustrate' the administration.

The following examples are provided as an indication as to how different situations may be considered by a court.



Priya has been talking negatively about the new administration scheme in her lunchroom at work. She is telling all her colleagues and friends that she is unhappy about the scheme.

Priya's conduct is **unlikely to have breached** section 323P.

Priya may discuss the administration and have a personal opinion about it. Discussing the Scheme and what is happening in the CFMEU is not a breach of section 323P if it does not procure or induce others to breach section 323P or involve Priya in a contravention of section 323P by another person.



Maurice is an employee of the C&G Division of the CFMEU. He was directed by the Administrator to provide documents by last week. Maurice has not done so.

Maurice's conduct **may be a breach** of section 323P. Maurice could also be in breach of section 323L if the Administrator issues a written notice requiring him to produce the documents and he fails to comply with the written notice.

Maurice is required to provide the documents to the Administrator. If Maurice can prove that he does not have the documents, or they do not exist, or there were other circumstances preventing him from providing the documents, such as illness or an emergency, he may have a reasonable excuse. If he simply refuses to provide them, he may have breached section 323P.



While Helen was a CFMEU officer, she had the password and access to a Divisional Branch social media channel and occasionally posted content. Helen was removed from office under the Scheme but failed to handover the password to the social media channel and then continued using it to post misinformation about the administration.

Helen was required to return all relevant passwords and system access to the Administrator. In failing to do so, and in accessing the Divisional Branch's social media systems and using them to spread misinformation about the administration, Helen may have contravened section 323P. Helen may also be in breach of other laws relating to the unauthorised access to restricted computer systems.



A crane company operating in the commercial building sector is negotiating with its employees in respect of a new enterprise agreement. The company disagrees with several terms which the C&G Division of the CFMEU insists to be inserted in the agreement.

The company **is unlikely to have breached** section 323P.

It is not inherently a breach of section 323P to disagree with, negotiate with or bargain with the C&G Division of the CFMEU. An employer is allowed to take all lawful steps to protect its industrial interests.



Matteo was an officer at the CFMEU. He is trying to encourage staff remaining at the CFMEU to obstruct the work of the Administrator, and to provide Matteo with confidential information about what the Administrator is doing.

Matteo's conduct **may be a breach** of section 323P if it obstructs the Administrator from undertaking their work.

A person who is involved in a contravention of section 323P by another person, including by procuring, inducing or conspiring to effect the contravention, can also breach the anti-avoidance provision (section 323Q).



A construction company operating in the commercial building sector has been supporting and encouraging former officials of the C&G Division to obstruct the administration, including by providing lists of CFMEU members who are employees to the former officials and diverting union payroll deduction payments to them.

The company **may have breached** section 323P, including by aiding and abetting or conspiring with others to prevent the Administrator from effectively administering the Scheme.

The anti-avoidance provision applies to other industry participants that obstruct the administration, and includes participants that are involved in a contravention of the anti-avoidance provision by another person. The company in this example may also have breached other obligations, including under the *Fair Work Act 2009*.



The Administrator is investigating the circumstances in which a contract to supply goods to the CFMEU was established and has asked the supplier to provide relevant invoices. The Administrator issues a notice under section 323L to require it to produce the documents.

The supplier **must comply** with a written notice under section 323L issued by the Administrator.

The supplier and any responsible individuals within it **may be in breach** if they fail to comply with a written request from the Administrator to produce documents under section 323L.



Daniel is a longtime member of the CFMEU but has never worked for it. He has been suggesting to work colleagues that they take regular, unscheduled breaks from their work at a construction company to protest against the administration.

Daniel's conduct is **unlikely** to breach section 323P unless it also obstructs the administration or causes other people to do so.

However, Daniel should be aware that unprotected industrial action is unlawful. There are serious consequences for engaging in or organising unprotected industrial action, including loss of pay, disciplinary action, and possible compensation to the employer for damages.

Any person affected by unlawful industrial action should consider the Fair Work Commission's resources on [unprotected industrial action](#) and speak to the Fair Work Ombudsman about the steps they can take.

The Fair Work Commission may make orders to stop unprotected industrial action. A person who fails to comply with such an order can be liable to pay a significant civil penalty.

## How to report conduct to the General Manager

Complaints about avoidance conduct can be made to the General Manager:

- Online form: [www.fwc.gov.au/reportcfmeu](http://www.fwc.gov.au/reportcfmeu) or
- By phone: 03 9063 7633.

The General Manager may investigate conduct that may contravene section 323P, and will do so in accordance with the [Compliance and Enforcement Policy](#).

The General Manager may also refer any conduct of a criminal nature to a relevant police force or law enforcement agency.

This factsheet is not legal advice, and it is not intended to be comprehensive. Amounts stated in relation to maximum civil penalties are accurate as at the time of publication. If you are uncertain of your legal rights or obligations, you may need to seek legal advice.