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Court rebuffs Setka bid to extinguish blackmail charges

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The Victorian Supreme Court has dismissed a bid to quash blackmail charges against two leaders of the CFMEU construction and general division's Victorian branch over the union's dispute with Boral.

The [judgment](#) handed down late this afternoon by Justice James Elliott clears the way for CFMEU officials John Setka and Shaun Reardon to face a committal hearing in the Melbourne Magistrates Court.

Outside court, a CFMEU spokesperson said the union is "disappointed by this outcome and John and Shaun's lawyers will be reviewing this decision and considering an appeal."

Lawyers for Setka and Reardon argue the Competition and Consumer Act 2010 and mirror state legislation prohibit bringing criminal proceedings when the charges deal with an alleged secondary boycott.

They claim that [s78\(d\)](#) of the CC Act means that a criminal charge cannot be laid over a person breaching or seeking to induce a breach of the secondary boycott prohibitions at sections [45D](#) and [45E](#).

However, the judge found that the language of s78 "does not plainly have the meaning for which the plaintiffs contend."

"On the contrary, the use of the word 'only' in s78 strongly suggests that the legislature was confining the immunity to conduct that would result in a relevant contravention or an ancillary contravention of [Part IV](#) of the Competition and Consumer Act."

"It is only when the conduct could amount to no more than such a contravention or an ancillary contravention that it could properly be said that criminal proceedings if commenced, would lie 'by reason only' of the contravention or ancillary contravention."

The Heydon Royal Commission recommended charging Setka and Reardon with blackmail, but the application of criminal law to industrial behaviour has been widely criticised by trade unions.

Lawyers for the two men argued that the broader construction of s78 was consistent with the history of decriminalisation of trade union activities in England and Australia since the 1870s

But the judge found this change in attitude to be of "marginal relevance", with much of it related to the fact that the common law doctrine of restraint of trade, being generally contrary to public policy, "infected the objects and conduct of trade unions."

He said the "decriminalisation" of trade union activities has been largely directed towards laws that had meant industrial activity could expose the participants to criminal liability.

"However, this shift in attitude towards union activities, including the withholding of labour, does not carry with it any general policy of Australian legislatures to decriminalise or immunise conduct that would otherwise attract criminal liability, simply because it could also be characterised as involving industrial activity."

In November, the Melbourne Magistrates Court rejected a similar application to halt the committal hearings for blackmail charges against Setka and Reardon (see [Related Article](#)).

Magistrate Kay Robertson in that ruling said it would be a "fraught and complex process" for a magistrate to form a view in advance on whether a charge was valid.

Taskforce Heracles, a joint AFP and state police taskforce established to investigate matters arising from the Heydon Royal Commission, laid the charges against Setka and Reardon in late 2015 (see [Related Article](#)).




The charges allege they made unwarranted demands with menace in 2013 against two Boral executives with the intent of causing harm to construction company Grocon.

It is alleged the union leaders threatened to take industrial trial action against Boral Resources unless it stopped supplying concrete to Grocon (see [Related Article](#)).

Both Setka and Reardon deny the allegations.

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