

## Case Note: Bio-organics Pty Ltd and CEO, DWER

### Certainty and specificity in building orders and direction notices

In *Bio-Organics Pty Ltd v The Chief Executive Officer, Department of Water and Environment Regulations* [2018] WASC 236, a Closure Notice issued by the Department of Water and Environmental Regulation was found to be invalid due to it failing to state, with sufficient specificity, what was required of the notice recipient. The critical question was whether the issued Notice met the degree of clarity and certainty of expression required for a thing to be “specified in the closure notice” as required by s.68A(7) and (8) of the *Environmental Protection Act 1986*. Kott Gunning notes that for local governments who issue Direction Notices pursuant to s 214 of the *Planning and Development Act 2005*, or Building Orders pursuant to s 110 of the *Building Act 2011*, this judgement has potential ramifications: “To avoid a challenge on the grounds of validity, local governments should ensure that Building Orders and Direction Notices state, with sufficient clarity, the steps required to be taken for compliance”.

The text in this update has been adapted from the [case judgement](#), and a judgement [summary](#) provided by Kott Gunning.