



Australian Government

# Fair Work OMBUDSMAN

GPO Box 9887, VIC 3001

10 October 2018

Education and Employment Legislation Committee

Tabled Doc#: 3  
Tabled by: Ms Sandra Pytker  
Date: 24/10/18

Mr Steve Knott AM  
Chief Executive  
Australian Resources and Energy Group AMMA  
Level 14, 55 Collins Street  
Melbourne Victoria 3001

Dear Mr Knott

**Re: Proposed 23 October 2018 “Change the Rules” rally**

I refer to the proposed Australian Council of Trade Unions (ACTU) “Change the Rules” rally scheduled to take place on 23 October 2018 as recently reported in the media and promoted via <https://changetherules.org.au/>.

As you are aware, the Fair Work Ombudsman (FWO) is an independent statutory Agency established by the *Fair Work Act 2009* (FW Act). An important aspect of our function is to provide education and advice to the community to assist them comply with workplace laws.

Organised rallies have the potential to create a situation where conduct may be engaged in that contravenes the FW Act, for example, if an employee withdraws his or her labour or fails to attend work to go to the rally. Where a worker is covered by an enterprise agreement that has not yet passed its nominal expiry date, withdrawing their labour or failing to attend for work may contravene section 417(1) of the FW Act.

Given the potential issues that can arise, I seek your assistance in reminding your members of their rights and obligations under the FW Act in respect of industrial action. In particular, that pursuant to sections 470 and 474 of the FW Act, an employee cannot be paid for the time in which they have engaged in industrial action whether protected or unprotected. See section 470(2)-(3) of the FW Act for further information in respect of partial work bans and sections 470(4)-5) and 474(4) of the FW Act in respect of overtime bans. An employer must deduct wages equivalent to four hours work, or for the total duration of the industrial action taken, whichever is the greater.

We also ask that you remind your members that it is open to them to make an application to the Fair Work Commission for an order seeking the cessation of industrial action.

As a part of the FWO’s functions, we will monitor and investigate potential non-compliance with the FW Act, including alleged unprotected industrial action resulting from employees leaving work or failing to go to work to attend the rally.

It will assist the FWO's investigations if employers:

- a) are clear in their directions to their employees that they have or do not have authorisation to leave or not attend the workplace;
- b) make and keep records of those directions;
- c) record the circumstances of individual employees not adhering to any direction given that they do not have permission to leave or not attend the workplace;
- d) record the deductions from wages which they have subsequently made; and
- e) make records of any contact from third parties regarding their involvement in organising unprotected industrial action.

If you wish to discuss this matter further, please contact me by phone at (03) 9954 2902, by email at [michael.campbell@fwo.gov.au](mailto:michael.campbell@fwo.gov.au) or by post to the above address.

Regards

Michael Campbell  
Deputy Fair Work Ombudsman - Operations

12 October 2018

Ms Sandra Parker PSM  
Fair Work Ombudsman  
GPO Box 9887  
Melbourne, Victoria 3001

Mr Stephen McBurney  
Australian Building and Construction  
Commissioner  
GPO BOX 9927, Melbourne, VIC 3001

Dear Ms Parker and Mr McBurney,

### **ACTU national rallies**

Australian Resources and Energy Group AMMA notes direct and public assurances of the Fair Work Ombudsman (**FWO**) and the Australian Building and Construction Commission (**ABCC**) that **unprotected industrial action** to attend widely promoted and planned Australian Council of Trade Union (**ACTU**) rallies will be actively monitored and investigated.

AMMA believes it is most appropriate for the regulators tasked with upholding the integrity of Australia's workplace laws to send a clear message that anything less than full compliance is unacceptable. More could be done *now* to educate, assist and advise all parties to the workplace system.

Employers in the resources and energy industry have grown increasingly concerned about the rising nonchalance of the ACTU, bordering on contempt for the Australian community and economy, in encouraging employees across Australia to stop work to join its rallies. Just months ago, the Melbourne CBD was brought to a standstill with thousands of workers from the port and construction sites (among other workplaces) walking off the job to attend an ACTU rally – met by little (if any) response from the then-FWO and the ABCC.

Resources and energy supply chains are often disproportionately exposed to the adverse impacts of unlawful industrial action in which even short stoppages of work at critical “choke points” (such as ports, transport depots, supply warehouses and construction sites) can lead to millions of dollars of lost revenues. For State and Federal Governments, adverse impacts include economic losses and forgone tax and royalty revenues.

In the face of clear threats by the ACTU to organise “a month of national protests” in 16 locations from 18 October to 20 November, and with ample resources at your disposal, AMMA believes the FWO and the ABCC could go further in preparing for and responding to both the organising and taking of unlawful industrial action. For example:

1. Publication of a checklist for distribution to employees, explaining the circumstances in which joining a political demonstration would constitute unlawful industrial action and may see employees individually liable for their actions including detailing fines that may apply;
2. Information for distribution to employees, educating them on their rights and obligations, and the fines and penalties they potentially face for engaging in unlawful industrial action;
3. Additional public information detailing the true impacts of unlawful work stoppages on individual businesses, the economy and the Australian community (such as damaging economic growth and productivity, and the impact this has on wages growth); and
4. Correspondence to the ACTU, and its affiliates and non-affiliated organisations, reminding them of their obligations and responsibilities under Australia's workplace laws and the penalties they may face for organising unlawful industrial action.

As the two regulators charged with upholding the rule of Australia's workplace laws, AMMA is of the firm view that the FWO and ABCC should enforce compliance, equally to employers, employees and other users of the workplace relations system including registered organisations.

The FWO and the ABCC are sufficiently well resourced to prepare and respond, utilising the broad powers to promote *"harmonious, productive and cooperative workplace relations"* and ensure compliance, to not only educate but also investigate and prosecute breaches of Australia's workplace laws. For example:

- The FWO, has more than 700 staff and \$119 million in public funding at its disposal (\$188 million including the Registered Organisations Commission); and
- The ABCC, has more than 150 staff and \$71 million in public funding at its disposal.

Even acknowledging often divergent views about the performance of Australia's workplace laws and the need for future reforms, there has hardly been a time in Australia's modern economic and political history where one group has openly called for laws to be broken in order to achieve a political outcome. That group is representative of less than 10 per cent of private sector employees. As early as March 2017, upon her appointment as ACTU secretary, Sally McManus told ABC 7.30:

*"It might be illegal industrial action according to our current laws, and our current laws are wrong. I believe in the rule of law when the law is fair and the law is right. But when it's unjust I don't think there's a problem with breaking it."*

Since then, the leadership of the ACTU has been even more transparent and forthcoming in their disregard for the law. Far from being apologetic about the disruption of the May demonstration, they instead promised more disruption, producing "the biggest show they have ever seen". For this reason, it is AMMA's view that anything less than actively discouraging unprotected industrial action, followed by pursuing and prosecuting those illegally engaging in the ACTU's so-called 'mega rallies' would be a failure of the FWO and ABCC in exercising their duties to promote legal compliance, uphold workplace laws and protect the community.

Forwarded for your consideration and response as appropriate.

Yours sincerely,

Steve Knott  
Chief Executive

Copy: Minister for Jobs and Industrial Relations, the Hon. Kelly O'Dwyer MP  
Shadow Minister for Employment and Workplace Relations, the Hon. Brendan O'Connor MP

Attachment A: Correspondence 10/10/2018 - Deputy Fair Work Ombudsman, Michael Campbell  
Attachment B: Article published in *The Australian* 7 October 2018, "Protesting workers warned they face fines"  
Attachment C: Article published in *The Australian* 8 October 2018, "ABCC warns construction workers of union rally fines."  
Attachment D: ACTU "Change the Rules" national rallies planned and published dates

12 October 2018

Mr Michael Campbell  
Deputy Fair Work Ombudsman – Operations  
GPO Box 9887  
VIC 3001

Dear Mr Campbell,

**ACTU “Change the Rules” rallies - 18 October to 20 November**

Thank you for your correspondence of 10 October 2018 outlining the Fair Work Ombudsman (FWO)’s proposed approach to monitoring and investigating any alleged unprotected industrial action arising from the Australian Council of Trade Unions (ACTU)’s upcoming “Change the Rules” rallies. AMMA will promptly provide your advice to our members and encourage their assistance of the FWO in its efforts to ensure compliance with Australia’s workplace laws.

In addition to this correspondence, AMMA has corresponded with the FWO and the Australian Building and Construction Commissioner (ABCC) outlining employer concerns with upcoming ACTU rallies (**attached** for your information). You will see that we urge further proactive measures to educate all parties of their rights and obligations under the Fair Work Act, and the penalties they may face for engaging in unlawful industrial action.

In addition, AMMA requests your advice regarding the following:

- Will the FWO investigate and, where validated, initiate court proceedings and pursue maximum penalties against the ACTU and its affiliates and non-affiliated organisations if they are involved in aiding, abetting and inciting breaches of Australia’s workplace laws?
- Will the FWO investigate and, where validated, initiate court proceedings and pursue penalties against any individual workers who walk off the job to attend ACTU rallies in contravention of Australia’s workplace laws?

AMMA is of the strong view that the FWO must recognise that the initiation of Fair Work Commission proceedings, such as seeking return to work orders under section 418 of the Fair Work Act, is an ineffective response to unlawful industrial action as threatened by the ACTU rallies. Such proceedings usually occur after the fact, once significant damage to business and disruption to the general public has already occurred.

Further, AMMA would be interested in understanding what correspondence and/or cautions have been sent to trade unions and their officials, including the ACTU leadership, about their exposure to prosecution under section 550 of the Fair Work Act should they be encouraging others to take unprotected industrial action.

Forwarded for your consideration and response as appropriate.

Yours Sincerely,

Steve Knott  
Chief Executive

Copy: Ms Sandra Parker PSM, Fair Work Ombudsman  
Attachment: AMMA letter to FWO and ABCC (12 October) r.e. ACTU National Rallies





Australian Government

# Fair Work OMBUDSMAN

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17 October 2018

Mr Steve Knott AM  
Chief Executive  
Australian Resources and Energy Group AMMA  
Level 14, 55 Collins Street  
Melbourne VIC 3001

Dear Mr Knott

**Re: ACTU National Rallies**

I refer to your letter of 12 October 2018, in which you set out the Australian Resources and Energy Group AMMA's (AMMA) observations about the Fair Work Ombudsman's (FWO) response to the proposed "Change the Rules" rallies scheduled to occur between 18 October and 20 November 2018.

As set out in correspondence sent to you by Deputy Fair Work Ombudsman Michael Campbell on 10 October 2018, an important part of the FWO's statutory function is to provide education and advice to employees and employers to assist them to comply with workplace laws set out in the *Fair Work Act 2009*.

Our website has a public statement and references a comprehensive suite of educative materials relevant to this matter. We encourage you to bring this information to the attention of your member organisations.

The Fair Work Ombudsman will carry out its functions as an impartial regulator in line with its Compliance and Enforcement Policy (Policy) in respect of any alleged breaches of the *Fair Work Act 2009* relating to the "Change the Rules" rallies. The Policy sets out the factors considered in deciding how we will act and is available on the Fair Work Ombudsman's website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

Regards

Sandra Parker PSM  
Fair Work Ombudsman

