

20 August 2013

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The Hon Kevin Rudd MP
Prime Minister
PO Box 6022
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Dear Prime Minister

Re: Still no action from Labor on union bullying and unlawful conduct

AMMA writes to you to highlight several recent disturbing incidents of workplace bullying by union officials and unionists that continue to plague the building and construction industry in particular, and on which your government has to date been silent.

These incidents continue to occur in an environment where union officials are facing fewer deterrents to inappropriate conduct than ever before and individuals are facing significantly lower penalties for engaging in unlawful behaviour such as unprotected industrial action.

Urgent action needed to check deteriorating culture in the building industry

AMMA notes and welcomes the Coalition's policy commitment to restore the Australian Building & Construction Commission (ABCC) with its full former powers as one of its first acts of government, along with a commitment to ensure the industry regulator maintains the rule of law and drives productivity on commercial building sites and construction projects both onshore and offshore. AMMA is calling on a Labor government, if re-elected, to do likewise.

You will recall that AMMA wrote to you on 18 July 2013 ([Attachment 1](#)) highlighting the ongoing problem of union-related bullying in the workplace and seeking confirmation about how Labor's laws would deal with this behaviour now and into the future.

To date, we have received no official response from you on these matters yet incidents of union-related bullying continue to be reported in local and national media.



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The most recent examples of this are:

- **A Builders Labourer's Federation (BLF) official** facing potential legal action after verbally abusing Fair Work Building & Construction inspectors simply for doing their jobs, calling them "scum" among other terms of abuse¹; and
- **Unionised workers on the \$52 billion Gorgon LNG project** on Barrow Island in WA who reportedly turned on their colleagues, calling fellow workers 'scabs' for accepting allowances in exchange for sharing accommodation facilities. The remaining workers are threatening to take industrial action over the accommodation issue², which would be unprotected strike action given it is not over a legitimate safety issue or in the course of bargaining for a new agreement.

These incidents follow last week's High Court [decision](#) which overturned earlier court decisions ruling employers did not have to continue providing accommodation to striking workers on remote sites. With those earlier decisions overturned, it appears that under Labor's "Fair Work" laws, union bosses can now organise strikes and have their members remain onsite while the employer sustains millions of dollars in damages per day and is also obliged to provide catering and accommodation.

Still waiting for answers on Labor's policy

AMMA's 18 July letter sought answers on how Labor's 'anti-bullying' changes to the Fair Work Act (which will take effect on 1 January 2014) would cover instances of union bullying such as those above and a matter involving an MUA official who threatened and abused one of his own union's delegates in public emails earlier this year.

The questions AMMA posed remain unanswered, that is, how these and other examples of bullying behaviour by union officials and unionised workers would be actionable under the new anti-bullying provisions that your government has enacted; and what further measures your government plans to introduce to curb this sort of behaviour should Labor win government at the 7 September 2013 federal election.

While AMMA awaits a formal response from you on these matters, we note that in a recent newspaper article³, a spokeswoman for Employment & Workplace Relations Minister Bill Shorten was quoted as saying the Fair Work Amendment Act 2013's workplace bullying provisions would "cover bullying of anyone who is a co-worker, including managerial employees, by an individual, including a union official or a visitor to the workplace". The spokeswoman was quoted as saying in the article:

"A Fair Work Commission order to stop bullying could be made against a union and could also require an employer to take specific steps."

¹ Robertson, J (17/08/2013) *Fair Work Building & Construction investigates alleged threats made by BLF official Kane Pearson*, The Courier Mail, Brisbane QLD ([link](#))

² Macdonald, K (15/08/2013) *FIFO bunk-sharing row*, The West Australian, Perth WA ([link](#))

³ *Bosses uneasy at union bullying* by Annabel Hepworth and Ewin Hannan, published in *The Australian*, 22 July 2013

This again begs the question of employers' potential liability for bullying behaviour engaged in by union officials, a concern AMMA raised in our earlier letter. AMMA again seeks your urgent clarification about the extent to which employers would face liability for this sort of conduct, whether it be union-to-union-member, union-member-to-non-union-member, union-official-to-agency-representative under the Fair Work Act's anti-bullying provisions or work health and safety laws.

Other questions remain unanswered

AMMA's earlier letter to you also highlighted the following issues on which we are still awaiting your views:

- **The fact that employers' hands are tied** when it comes to taking disciplinary action or "adverse action" against an employee in relation to workplace bullying if the conduct occurred in the context of their "industrial activities". Under the Fair Work Act, participation in industrial activities is protected as a "workplace right" and arguably much of the bullying behaviour seen in this context will continue to get a free pass, even under your new laws;
- **The uncertainty employers face** about their multiple and concurrent liabilities arising from the interaction of the various anti-bullying jurisdictions (including under workplace health and safety, anti-discrimination and now workplace relations laws);
- **The lack of accountability of registered organisations**, including the less stringent obligations placed on officers of unions under the Fair Work (Registered Organisations) Act 2009 in relation to their conduct compared with the obligations under the Corporations Act 2001;
- **The massively reduced deterrents to unlawful behaviour** in the building and construction industry, including reducing by two-thirds the maximum penalties for breaches of the law and tying the hands of the regulator when it comes to prosecuting parties for unlawful conduct; and
- **Changes your government has made to union access to worksites** (to take effect on 1 January 2014) giving unions greater access to workers in their private time, including in lunch rooms and their private living quarters, thus greatly expanding the opportunity for bullying and coercive behaviour to occur.

These ongoing issues require urgent attention and AMMA is again calling on you to clarify your policies in these areas ahead of the September federal election.

Yours sincerely



Steve Knott
Chief Executive
Australian Mines and Metals Association (AMMA)

Attachment 1 – AMMA correspondence to The Hon Prime Minister Kevin Rudd MP, 18 July 2013

cc. The Minister for Education, Employment and Workplace Relations