

22 October 2018

Workplace regulator must act against unlawful industrial action arising from ACTU rallies

AUSTRALIAN Resources and Energy Group AMMA is calling on the Fair Work Ombudsman (FWO) to follow through on its assurances that any unprotected industrial action arising from this week's "Change the Rules" union rallies will be appropriately investigated and prosecuted.

The FWO's assurances come after the Australian Council of Trade Unions (ACTU) leadership has openly and repeatedly stated their disregard for Australia's workplace laws, including inciting workers to "walk off the job" to join the coordinated national union rallies starting tomorrow.

"In a democracy people don't get to pick and choose which laws to follow," said AMMA Chief Executive Steve Knott.

"In May, thousands of workers from the Port of Melbourne, construction sites and other workplaces stopped work to attend an ACTU rally which disrupted the CBD and shut down Australia's busiest port.

"The lack of regulator response at the time, feeds into a position where activists like Sally McManus believe they are above the law. There is nothing special about Australia's workplace laws which makes them optional. If left unchecked these attitudes will seep into other areas of our society."

In a [letter](#) sent to the FWO and the Australian Building and Construction Commission earlier this month, AMMA outlined practical ways the regulators could better prepare for and respond to unlawful industrial action arising from the national union rallies.

AMMA has also noted the ineffectiveness of past approaches by the FWO to unlawful industrial action, including encouraging employers to commence Fair Work Commission proceedings to order employees to return to work.

"If you get caught speeding, you don't get options or a caution, you get a ticket," Mr Knott said.

"The FWO suggesting to employers they seek Fair Work Commission involvement is both ineffective and an abrogation of their responsibilities.

"In May, several employers sought Fair Work Commission assistance before the ACTU rally commenced, however the hearings and return to work orders occurred after the rally concluded.

"AMMA strongly encourages the FWO to use its \$110 million in annual funding and 700-odd staff to fully investigate and prosecute any unlawfulness arising from the ACTU's national rallies this week.

"This isn't about employers, employees, unions or the right to peacefully protest. It's about ensuring that one of Australia's largest, best-funded and most important regulators is effective in upholding the rule of law and deterring all members of the community from wilfully breaking it."

See next page for provisions of the Fair Work Act affording the FWO its powers and responsibilities.

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Appendix: Provisions of the Fair Work Act relating to the role of the Fair Work Ombudsman

AMMA is of the strong view that the powers and responsibilities provided to the Fair Work Ombudsman by the Fair Work Act 2009 clearly indicate the regulator's role applies equally and indiscriminately to both employers and employees.

FAIR WORK ACT 2009 - SECT 682

Functions of the Fair Work Ombudsman

(1) The Fair Work Ombudsman has the following functions:

(a) **to promote:**

(i) harmonious, productive and cooperative workplace relations; and

(ii) compliance with this Act and fair work instruments;

including by providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations and producing best practice guides to workplace relations or workplace practices;

(b) to monitor compliance with this Act and fair work instruments;

(c) to inquire into, and investigate, any act or practice that may be contrary to this Act, a fair work instrument or a safety net contractual entitlement;

(d) to commence proceedings in a court, or to make applications to the FWC, to enforce this Act, fair work instruments and safety net contractual entitlements;

(e) to refer matters to relevant authorities;

(f) to represent employees or outworkers who are, or may become, a party to proceedings in a court, or a party to a matter before the FWC, under this Act or a fair work instrument, if the Fair Work Ombudsman considers that representing the employees or outworkers will promote compliance with this Act or the fair work instrument;

(g) any other functions conferred on the Fair Work Ombudsman by any Act.

Note 1: The Fair Work Ombudsman also has the functions of an inspector (see section 701).

Note 2: In performing functions under [paragraph](#) (a), the Fair Work Ombudsman might, for example, produce a best practice guide to achieving productivity through bargaining.

(2) The Fair Work Ombudsman must consult with the FWC in producing guidance material that relates to the functions of the FWC.