

From: MACFARLAN, Meg
Sent: Friday, 5 October 2018 4:21 PM
To: [REDACTED]
Cc: FOGARTY, Anthony; HANNAH, Kristen; [REDACTED]
Subject: FW: FWO response [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi [REDACTED], for information, I have provided below response to The Australian re Change the Rules rallies

From: MACFARLAN, Meg
Sent: Friday, 5 October 2018 4:19 PM
To: HannanE1@theaustralian.com.au
Subject: FWO response [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Ewin,

Thanks for getting in touch. Here is a response that you can attribute to a FWO spokesperson:

The Fair Work Ombudsman (FWO) is aware that a rally is scheduled to take place on Tuesday 23 October 2018 in Melbourne and likely in other States/ Territories.

The FWO takes this opportunity to remind employees, employers and registered organisations of their obligations under the *Fair Work Act 2009* (Cth) (FW Act) and that as a part of the FWO's functions under the FW Act, the FWO will monitor and investigate potential noncompliance with the Commonwealth workplace laws, including allegations of people engaging in or organising unprotected industrial action.

Please be aware that if an employee fails to attend the workplace or stops work without authorisation from their employer, this conduct may be unprotected industrial action in contravention of the FW Act. Any person "*knowingly involved*" in a contravention of the FW Act is also taken to have contravened that provision.

Where an employee has engaged in unprotected industrial action, the employer is required under the FW Act to deduct a minimum of four hours wages from the employee, even if the industrial action was less than four hours.

If you require further information on industrial action, we refer you to the [FWO Industrial Action Fact Sheet](#)

Meg Macfarlan | Media Director
Fair Work Ombudsman

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Level 14, 414 La Trobe St, Melbourne

From: MACFARLAN, Meg
Sent: Monday, 8 October 2018 2:24 PM
To: [REDACTED]
Cc: [REDACTED]; FOGARTY, Anthony
Subject: FW: McManus [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi [REDACTED], flagging below comments from Sally McManus and the FWO's response for tomorrow's paper
Meg

From: MACFARLAN, Meg
Sent: Monday, 8 October 2018 3:23 PM
To: 'Hannan, Ewin' <hannane1@theaustralian.com.au>
Subject: RE: McManus [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Ewin,

Here is our response, which you can attribute to a FWO spokesperson:

"The Fair Work Ombudsman is responsible for enforcing the industrial action provisions of the Fair Work Act. This includes educating employers and employees to prevent breaches of the Act."

Meg Macfarlan | Media Director
Fair Work Ombudsman

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From: Hannan, Ewin <hannane1@theaustralian.com.au>
Sent: Monday, 8 October 2018 1:28 PM
To: MACFARLAN, Meg <Meg.Macfarlan@fwo.gov.au>
Subject: McManus

Hi Meg,

As discussed, I am seeking a response to the following statement today by ACTU secretary, Sally McManus, particularly the last two paragraphs.

Thanks Ewin

"In a democracy everyone has a right to stand up for what they believe in and protest for change.

"We believe that working people should get a fair share of the wealth we produce in this country, and we think that a lot of people share that view.

"The Fair Work Ombudsman, who is supposed to protect and defend working people, is instructing employers to cut people's pay if they attend a protest. They are intimidating working people by saying they'll be investigated and fined for standing up for what they believe in.

"This is a baffling and disgraceful decision at a time when working people's rights are being violated routinely and when wage theft is a business model for many employers. It shows just how badly politicised this office has become under Kelly O'Dwyer and the Morrison Government."

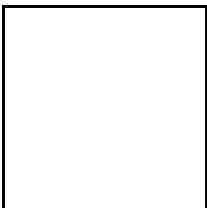
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EWIN HANNAN

WORKPLACE EDITOR

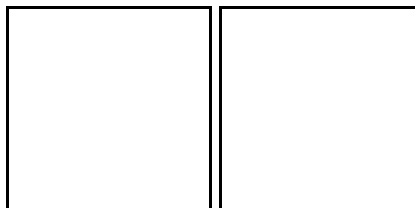
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[REDACTED]

From: MACFARLAN, Meg
Sent: Friday, 12 October 2018 5:41 PM
To: [REDACTED]
Cc: [REDACTED]; FOGARTY, Anthony; HANNAH, Kristen
Subject: AMMA MassRally 100818.doc [SEC=UNCLASSIFIED]
Attachments: AMMA_MassRally_100818.doc

Hi [REDACTED], for info Ewin Hannan is writing another story for Monday on the upcoming rallies. He approached us after receiving a copy of attached letter, and we subsequently confirmed we have written to AMMA, AIG, BCA and ACCI. Ewin also has Steve Knott's response to our letter, which i understand the Minister was copied in. Let me know if you have any questions,
Meg

Released under the
Freedom of Information Act
by the Fair Work Ombudsman



Australian Government

Fair Work

OMBUDSMAN

(FOI-982)005

GPO Box 9887, VIC 3001

10 October 2018

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 or by post to the above address.

Regards



Michael Campbell
Deputy Fair Work Ombudsman - Operations

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