



2 May 2013

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Ms Bonnie Allan  
Acting Secretary  
Senate Standing Committee on Education, Employment  
And Workplace Relations  
PO Box 6100 Parliament House  
Canberra ACT 2600

Email: [eewr.sen@aph.gov.au](mailto:eewr.sen@aph.gov.au)

Dear Ms Allan

**Re. Inquiry into the *Fair Work Amendment Bill 2013***

Ai Group appreciated the opportunity to appear before the Committee on 22 April 2013 during the inquiry into the above Bill.

Two questions were taken on notice and answers to these questions are set out below.

**Does the Bill cover bullying by union officials?**

At page 23 of the transcript, Ai Group took a question from Senator Back on notice regarding whether an employer would be able to bring a complaint about bullying by a union official to the Fair Work Commission (FWC).

We submit that the answer to this question is No. The lack of balance in the bullying provisions of the Bill is highlighted by the fact that the Bill does not permit applications to be made to the FWC to address:

- Bullying of an employer by a union official;
- Bullying of an employer by an employee (e.g. a shop steward); or
- Bullying of an employee by a union official.

The extreme bullying behaviour engaged in by CFMEU officials against Grocon Managers and employees of Grocon who chose to work during the dispute in Victoria last year is described in the attached document distributed by Fair Work Building and Construction (see point 33 on page 7).

**Would a medical certificate be required for an employee to access the “transfer to a safe job” provisions?**

At page 23 of the transcript, Senator Back queried whether an employer would be able to require a pregnant employee to provide a medical certificate.

We submit that the answer to this question is Yes. Subsections 81(6) and 82A(2) of the Bill give the employer the right to require that an employee provide a medical certificate.

We would be happy to provide any further information that the Committee may require.

Yours sincerely

**Stephen Smith**  
DIRECTOR – NATIONAL WORKPLACE RELATIONS



**Monday 8 October 2012**

## FWBC launches Grocon proceedings

*Director of Fair Work Building Industry Inspectorate v CFMEU and John Setka, Shaun Reardon, Derek Christopher, Elias Spernovasilis, Bill Oliver, Ralph Edwards, Gareth Stephenson and Craig Johnston*

### Background

### Key events and dates

Allegations as outlined in Fair Work Building & Construction (FWBC) statement of claim filed in the Federal Court, Victoria. The allegations may change during the course of the proceeding.

1. At the time of the alleged offences (outlined below);
  - a. John Setka was an Assistant Secretary of the Victorian Branch of the CFMEU's Construction and General Division (CFMEU C&G Vic Branch).
  - b. Shaun Reardon was a Vice-President of the CFMEU C&G Vic Branch.
  - c. Derek Christopher was an organiser of the CFMEU C&G Vic Branch.
  - d. Elias Spernovasilis was a Vice-President of the CFMEU C&G Vic Branch.
  - e. Bill Oliver was the Secretary of the CFMEU C&G Vic Branch.
  - f. Ralph Edwards was the President of the CFMEU C&G Vic Branch.
  - g. Gareth Stephenson was an organiser of the CFMEU C&G Vic Branch.
  - h. Craig Johnston was a Branch Council Member Melbourne Metropolitan Zone of the Victorian Divisional Branch.
  
2. The Grocon Group of companies has a contract to design and build the Myer Emporium site, the contract price for the project being \$290 million.

### Media contacts

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3. The Grocon Group of companies is party to a contract for the development of the Victorian Comprehensive Cancer Centre in Parkville (the VCCC Site), the contract price for the project being about \$1 billion.
4. The Grocon Group of companies has a contract to design and construct the McNab site in Footscray, the contract price for the project being \$80 million.
5. The Grocon Group of companies has a contract to design and build the Westpac site at 150 Collins Street, Melbourne, the contract price for the project being \$114.8 million.
6. In a series of conversations and meetings between about mid 2011 and September 2012, Grocon and the CFMEU failed to agree on the employment of CFMEU-nominated shop stewards at Grocon work sites.
7. In a meeting on or about 11 July 2012 the CFMEU demanded that Grocon employ stewards for each of Grocon's work sites in Victoria. Grocon rejected this demand and John Setka responded with words to the effect "We'll just smash 'em".
8. On Thursday 16 August 2012, Derek Christopher or Elias Spervovasilis told Grocon managers at the Myer Emporium site words to the effect that:
  - a. picketing may occur on all Grocon sites.
  - b. the CFMEU was not in agreement with Grocon about the placement of a workers' representative at Grocon sites.
  - c. the CFMEU will be in dispute with Grocon and the dispute will not be pretty and that it would be out of Christopher's control when 100 men came down to the site.
9. On Thursday 16 August 2012, at the McNab Site, Shaun Reardon said to Grocon National Plant Manager Andrew Brinzi words to the effect: "I'll be back with a barbeque".
10. From on or about 7 September 2012, the respondents agreed to stop blockading the Grocon sites.



## **Dates CFMEU representatives attended sites**

### **McNab Site**

#### Friday 17 August 2012

11. Reardon and others attended the Site. Among other activities, Reardon mounted the driver's side of a fixed crane truck delivering tower crane components, stood in front of the truck preventing the delivery of its components to the site, and was joined by 15 to 40 other persons, including Setka and Spervovasilis.
12. Throughout the day, acting with the express or implied authorisation of the CFMEU a presence of between 15 to 40 persons was continuously kept in front of or close to access gates to the McNab Site preventing vehicle access and nearly all productive work on the Site.
13. During the day a mini-bus driven by Grocon's National Plant Manager attempted to exit the Site. Setka, Reardon, and others including CFMEU officials prevented the exit of the mini-bus, shaking it and punching its windscreen. Setka is alleged to have said to the manager, "I hope you die from your cancer".

#### Tuesday 28 August 2012

14. John Setka and Elias Spervovasilis attended the McNab Site.

#### Wednesday 5 September 2012

15. Reardon and Setka attended the Site. Among other activities, with around 30 to 40 other persons, they prevented vehicle access including by a white truck delivering reinforced steel, and partly prevented productive work on the Site.
16. Acting with the express or implied authorisation of the CFMEU a presence of between 30 to 40 persons was continuously kept in front of or close to the site.



## **Myer Emporium Site**

### Wednesday 22 August 2012

17. Setka, Reardon, Spervovasilis, Christopher and others, among other activities, attended Site. Acting with the express or implied authorisation of the CFMEU a presence of between 20 - 125 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.

### Thursday 23 August 2012

18. Setka, Reardon and Spervovasilis and others attended Site. Acting with the express or implied authorisation of the CFMEU a presence of between 10 - 125 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.

### Saturday 25 August 2012

19. With the express or implied authorization of the CFMEU a presence of between around 6 - 24 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.

### Monday 27 August 2012

20. Reardon and others attended the Site. Acting with the express or implied authorisation of the CFMEU a presence of between 40 to 60 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.

### Tuesday 28 August 2012

21. Oliver, Setka, Reardon, Spervovasilis, Christopher, Stephenson, Edwards and Johnston and others, among other activities, attended the Site. Acting with the express or implied authorisation of the CFMEU a presence of between 200 - 1200 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.



## Wednesday 29 August 2012

22. Oliver, Setka, Reardon, Spervasilis and Stephenson and others, among other activities, attended the Site. Acting with the express or implied authorisation of the CFMEU a presence of between around 100 - 500 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.

## Thursday 30 August 2012

23. Setka, Reardon and Spervasilis and others, among other activities, attended the Site. Acting with the express or implied authorisation of the CFMEU a presence of between around 60 - 1200 persons was continuously kept in front of or close to access gates and loading bays to the Myer Emporium Site.

## Friday 31 August 2012

24. Oliver, Reardon, Setka, Edwards, Johnston, Spervasilis and others, among other activities, attended the Site. Acting with the express or implied authorisation of the CFMEU a presence of between around 40 - 100 persons was continuously kept in front of or close to the line of police who had secured access to the Myer Emporium Site.

## Thursday 6 September

25. Edwards and Oliver attended the site. Acting with the express or implied authorisation of the CFMEU a presence of between around 15 - 20 persons was continuously kept in front of or close to the line of police who had secured access to the site.

## **Orders of the Supreme Court of Victoria**

26. On **17 August 2012**, orders of the Supreme Court of Victoria were made, which (among other matters), restrained the CFMEU from preventing, hindering, or interfering with free access to or free egress from the McNab Site.

27. On **21 August 2012**, orders of the Supreme Court of Victoria were made, which (among other matters), restrained the CFMEU from:



- a. Preventing, hindering, or interfering with free access to or free egress from the McNab site; or
  - b. Threatening persons proposing to enter or leave the McNab site.
28. On **22 August 2012**, further orders of the Supreme Court of Victoria were made, which (among other matters), restrained the CFMEU from:
- a. Preventing, hindering, or interfering with free access to or free egress from the Myer Emporium Site, 150 Collins St Site and VCCC Site.
  - b. Causing, inducing, inciting or procuring any person to do same.
29. On **28 August 2012**, further orders of the Supreme Court of Victoria were made, which (among other matters), restrained the CFMEU from:
- a. Preventing, hindering, or interfering with free access to or free egress from the Myer Emporium Site, 150 Collins St Site and VCCC Site.
  - b. Causing, inducing, inciting or procuring any person to do same.

## **Alleged incidents at each site**

### McNab Site, 1 McNab Avenue, Footscray

Friday 17 August 2012

30. On Friday 17 August 2012, one or more members, employees, agents and/or persons acting with the approval or upon the direction of the CFMEU
  - a. Placed tents on McNab Avenue
  - b. Set up a barbeque near the tents
  - c. Abused a security worker calling him “gutter rat”, “dog” and “c\*\*t”
31. On Friday 17 August 2012 Shaun Reardon and John Setka and others shook a mini bus driven by Andrew Brinzi (National Plant Manager, Grocon Pty Ltd), punched its windscreen and prevented it exiting the McNab site.
32. On Tuesday 28 August 2012 at the McNab Site, John Setka called Frank Bortoletto (Executive Project Manager, Grocon Pty Ltd) a “dog” and a “rat”.



## Myer Emporium Site

33. At and around the Myer Emporium Site, on one or more days, one or more members, employees, agents and/or persons acting with the approval or upon the direction of the CFMEU:
- a. Wore one or more items of CFMEU-branded clothing
  - b. Established barbeques branded “CFMEU”
  - c. Distributed flyers entitled “Grocon’s Scabs Named and Shamed”, with a logo on the bottom right hand side containing a picture of a person with a gun and the words “brought to you by SCAB HUNTER”
  - d. Put glue in the locking mechanism of a lock in a gate
  - e. Called John Van Camp and Jason O’Hara (both of Grocon Pty Ltd) words such as “scum”, “scab” and “c\*\*t” (Wednesday 22 August 2012)
  - f. Called a security worker words such as “scum”, “scab”, “bastard” and “dog” and struck the helmet he was wearing from his head (Wednesday 22 August 2012)
  - g. Forcefully and repeatedly resisted attempts by Victoria Police to obtain access to the Myer Emporium Site (Tuesday 28 August 2012)
  - h. Created an environment that was threatening and intimidating and in which there was a significant health and safety risk to employees of Grocon Builders Vic and sub-contractors working on the site should they attempt to enter the site for the performance of their ordinary work
  - i. Obstructed and interfered with the passage of vehicles and people proceeding to and from the Myer Emporium Site
  - j. Prevented the performance of productive work at the Myer Emporium Site
  - k. Caused delays to the contracted project works being undertaken at the Myer Emporium Site.



34. On Wednesday 22 August 2012, Shaun Reardon addressed a gathering of Grocon Builders Vic and sub-contractors engaged to perform work at the Myer Emporium Site and attempted to encourage, induce or persuade the said employees and sub-contractors in attendance:
- a. not to attend for their ordinary work at the Myer Emporium Site
  - b. to attend a barbeque being conducted at the loading bay to the Myer Emporium Site on Little Bourke Street during the time when they should be attending work.
35. On Wednesday 22, August 2012, Shaun Reardon approached a security worker and filmed him with a hand-held camera within inches of his face and attempted to provoke the security officer by saying words to the effect “come on, are you going to hit me?”
36. On Tuesday 28 August, 2012, Shaun Reardon shouted at John Van Camp (Head of People and Culture at Grocon) and Myer Emporium Site Grocon employees and Myer Emporium site Sub-Contractors words to the effect of “You’ve reneged on an agreement”, “Why aren’t you putting our stewards on?” and “You’re not coming in, you dogs”.
37. On Tuesday 28 August 2012, John Setka shouted at John Van Camp and Myer Emporium Site Grocon Employees and Myer Emporium Site Sub-Contractors words or phrases such as “You’re a f\*\*\*ing dog”, “dog”, “scab” and “rats” and pointed his finger at them.
38. On Tuesday 28 August 2012, Bill Oliver addressed the media and made statements to the effect that “We have been down here now for seven days” and “What we’re seeing here is Daniel Grollo’s industrial relations. This is what he wants for every Victorian construction worker – violence and thuggery on building sites.”



39. On Tuesday 28 August 2012, Ralph Edwards used loud hailers to address the crowd at the Myer Emporium Site, including statements to the effect of 'back here again tomorrow boys for more fun'.

## **Alleged Contraventions**

40. FWBC alleges that:
- a. Conduct occurring after the Supreme Court orders of 17 August 2012, 22 August 2012 and 28 August 2012 was unlawful for the purposes of coercion under the FW Act because it disobeyed the Court's orders.
  - b. The respondents contravened the Fair Work Act 2009 (FW Act) at:
    - a. Section 355 (Coercion – allocation of duties etc. To a particular person)
    - b. Section 348 (Coercion)
    - c. Section 346 (Protection)

### Alleged contravention of Section 355

41. FWBC alleges the First to Tenth respondents acted with intent to coerce Grocon Group to accede to the CFMEU nominated shop steward demand.

### Alleged contravention of Section 348

42. FWBC alleges the First to Tenth respondents took action with intent to coerce Grocon Group to engage in industrial activity, namely, to comply with a request of the CFMEU to accede to the CFMEU nominated shop steward demand and to recognize the CFMEU as a representative of its employees, including by allowing unfettered access to CFMEU organizers and wear apparel containing CFMEU logos..

### Alleged contravention of Section 346

43. FWBC alleges the CFMEU, Setka and Reardon took adverse action against Grocon employees on 28 August because they (the employees) did not support or the CFMEU-preferred shop steward demands or the blockading of the Myer Emporium site.



## **FWBC Prosecution**

44. FWBC filed a statement of claim in the Federal Court of Australia, Melbourne, on 5 October 2010.

45. The first directions hearing is scheduled for 10 December 2012.

## **Penalties**

46. FWBC is seeking civil penalties and compensation for loss for Grocon and other persons suffering loss by reason of the conduct.