



THE UNITED MINeworkERS' FEDERATION OF AUSTRALIA

(Division of the Construction, Forestry, Mining and Energy Union)
(Incorporating the Federal & State Registered Unions)

Northern District Branch

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Committee Secretariat
House of Representatives Standing Committee on
Education and Employment
PO Box 6021
Parliament House
CANBERRA ACT 2600

Email: workplacebullying.reps@aph.gov.au

Dear Sir

RE: HOUSE OF REPRESENTATIVES COMMITTEE – INQUIRY INTO WORKPLACE BULLYING

Please find attached a copy of the CFMEU, Mining & Energy, Northern District Branch's submission in relation to the abovementioned inquiry on workplace bullying.

Should you have any questions concerning the same, please do not hesitate to contact me directly at the Union's Northern District Office on the numbers above.

Yours sincerely



**KEENON ENDACOTT
INDUSTRIAL RESEARCH OFFICER**



**HOUSE OF REPRESENTATIVES STANDING COMMITTEE
ON EDUCATION AND EMPLOYMENT**

INQUIRY INTO WORKPLACE BULLYING

SUBMISSION

**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
(MINING & ENERGY DIVISION)
(NORTHERN DISTRICT BRANCH)**

JUNE/JULY 2012

The House of Representatives Standing Committee on Education and Employment has been tasked by the Minister of Employment to inquire into workplace bullying.

The CFMEU has reviewed the terms of reference of the enquiry, consulted with its Officials and members and welcomes the opportunity to make a submission.

The Mining & Energy Division is a division of the CFMEU. The CFMEU is a registered industrial organisation of employees under the Fair Work (Registered Organisations) Act. The CFMEU has over 100,000 members and is one of the largest in Australia.

The Mining & Energy Division of the CFMEU covers several industries, the Coal Industry, Coal Ports, Metalliferous Mining Industry, Electrical Power Generation, Oil and Gas and the nation's small Coking Industry.

The Northern District Branch of the CFMEU Mining & Energy Division being the branch of the CFMEU that is making this submission is the principal Union representing coal miners in the Northern District Coalfields of New South Wales.

The CFMEU Northern District's Branch is familiar with industrial relations and issues that arise on the minesites that are located in the Northern Districts.

The CFMEU Northern District's Branch regularly communicates with site representatives and members in regards to their experiences with respect to bullying and members frequently raise issues of bullying and seek advice about what options are open to them to try and put a stop to the bullying they have experienced.

In this submission we intend to focus on the specific term of reference of "*whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying*" and in addition to this we intend in this submission to touch upon the terms of reference "*the most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another*" and on the first Term of Reference being the prevalence of workplace bullying.

The Coal Mining Industry in the main is owned by a handful of multi-national mining corporations, many of them would be well known to the Committee (Rio Tinto, Xstrata, Peabody, BHP, and more recently the Chinese through Yang Zhou). There are a number of smaller players; Centennial Coal was recently bought by the Thai company Banpu Public Company Limited and some other minor players. There are also a number of significant contract labour hire employers who contract to these companies. It's the Union's experience that complaints and harassment and members who have raised concerns of harassment tend not to come from across the board in the sense of every mine. Noteworthy, at some minesites and for some companies the CFMEU Northern District's Branch has no recollection of any bullying ever being raised by any member at those organisations which is indicative of a minesite culture both from management and employees that either understand or have practices of mitigating against bullying. This cannot be said to be the case against some of the major mining companies. There is no purpose within this submission to name individual companies and it's not our intention to do so.

The CFMEU Northern District's Branch submits that the prevalence of bullying in the coal mining industry is endemic. The term endemic is described in medical literature as meaning "*when that infection is maintained in the population without the need for external inputs*" and this is true for some minesites and mining companies. The frequency at which workplace bullying is brought to our attention by our members is daily/weekly basis.

The forms of bullying are many and are numerous. They include:-

- Demeaning language used by managers/supervisors to employees.
- The spurious accusations of not meeting performance standards or the issues of warnings without justification.
- The unfair or unreasonable riding of a particular employee or group of employees by one manager/supervisor.

- The adopting of an inappropriate language or tone against employees.
- The moving of employees between less favourable shifts or allocating an employee to less favourable tasks just to prove a point.
- Marking employees down in performance appraisals for no good reason.

The above list is an example of some forms the more prevalent bullying that occurs but the conduct towards employees can be far more expansive than those examples given above.

Contractors are particularly vulnerable. They can be bullied by a supervisor/manager of a minesite and cannot say or do anything. The mine just tells the employer of the contract labour hire employee not to bring them back to the mine. This results in a devastating loss of income or job.

Supervisors/managers have become more prone to bully the people who work for them as they've become aware that there is less capacity for an employee to do anything about the bullying that they have been subjected to, other than if the bullying behaviour is motivated because the employee has exercised workplace rights or is protected by some type of discrimination law.

Most, if not all, mines have policies and procedures that are meant to prohibit bullying. Unfortunately if an employee makes a complaint of bullying against a supervisor/manager it is investigated by management and no action is taken against them.

Whether the Existing Regulatory Frameworks Provide a Sufficient Deterrent Against Workplace Bullying

The existing regulatory framework does not provide a sufficient deterrent against workplace bullying.

The prevalence of bullying from supervisory/management employees we have experienced and are informed of is evidence in itself that the existing regulatory framework is an insufficient deterrent but I now proceed to provide greater explanation about why the framework is insufficient.

Federal and State jurisdictions have Legislation and Regulations that addresses some but not all of the motivating factors that cause the workplace bullying to occur, for example, if an employee is bullied because of a ground that is either discriminatory or a workplace right but bullying behaviour that does not fall within those categories are in the main not regulated.

Even when the bullying behaviour may be motivated by protected ground i.e. discriminatory ground or the employee exercising a workplace right, is that it's not easy for the employee to pursue it. When an employer or supervisor/manager bullies an employee they do not tell them why they do it. In fact, they deny it if it's raised.

If the bullying behaviour is motivated by a non protected ground, the only avenue open to the employee is to complain to their employer and that's it. If it's a protected ground then it's possible to make a complaint to the appropriately regulatory authority and if not resolved go to the Court or in some cases go straight to Court. However, the process is lengthy and arduous.

If the bullying is motivated by a breach of a workplace right or another ground at which there is protections under the Fair Work Act 2009, it's open to the employee or the CFMEU Northern District's Branch on their behalf to make an application to Fair Work Australia. However, Fair Work Australia can only conciliate the matter and the employer's participation is voluntary. The CFMEU Northern District's Branch has experienced employers refusing to participate. When they do participate they are contemptuous of the proceedings because it is toothless.

There is no doubt the members of Fair Work Australia are uniquely experienced to be able to resolve these matters in conciliation, if they are able to be resolved in conciliation. They are also uniquely experienced, which they are unable to exercise

through a current legislative absence, to be able to resolve the dispute around the matters raised before them by arbitration.

An individual, or the CFMEU Northern District's Branch acting on their behalf, is able to pursue the matter in a court of competent jurisdiction if the Fair Work Australia conciliation process does not occur because the employer refuses to participate or it does not resolve the matter. However the court process is complicated, protracted and expensive. The entire adversarial legal system works against employers and employees effectively being able to resolve workplace bullying issues. Employees are reluctant, even when subjected to bullying, to pursue their employers in the courts, and even if they desire to do so it's financially impossible for them unless supported by a union to finance such proceedings.

If the bullying is not motivated by a protected ground then there is no ability to make application to Fair Work Australia or other organisation that addresses discrimination and therefore they have no choice but to endure the bullying behaviour.

The current regulatory framework must be expanded and modified to empower Fair Work Australia to arbitrate disputes that arise between an employee and their employer about behaviours that constitute bullying and by order be able to remedy it.

Finally, the most appropriate way to ensure bullying cultures or behaviours are not transferred from one workplace to another is, we say, to have an appropriate, expansive, simplistic framework and one that is able to determine and prohibit the behaviour but expanding on and improving the existing regulatory framework.

Should the Committee wish, the CFMEU Northern District's Branch is able to address the Committee personally at any public hearing that the Committee may be conducting.