

- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Change Management
- Legal Risk Management

25 June 2012

Secretary
House Standing Committee on Education & Employment
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

By email: workplacebullying.resps@aph.gov.au

Dear Secretary

WORKPLACE BULLYING

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We act for Mr [REDACTED], a former employee of [REDACTED] and a former member of the [REDACTED] Union. [REDACTED] has been involved in the [REDACTED] industry since 1964 and has worked as both a seaman and a bosun.

[REDACTED] has instructed us to make a submission to the House Standing Committee on Education & Employment as part of its inquiry into workplace bullying. In particular, [REDACTED] has instructed us to put forward details of bullying behaviour that he has been subjected to over several years in the Australian maritime industry.

Term of Reference: Prevalence of workplace bullying in Australia

We enclose an Overview of Facts document that sets out the background to experience of workplace bullying together with various supporting materials. It is to be noted that [REDACTED] considers he has been subjected to bullying behaviour not just by his fellow [REDACTED] employees, but also by officials of the [REDACTED] Union. In this regard we

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are instructed to submit on behalf of [redacted] that the Committee's inquiry into workplace bullying should review:

- the problems of workplace bullying of employees by other employees; and
- the problems of bullying by union officials.

While we respectfully request that the Committee review the enclosed documents as part of its inquiry, by way of an indication of the type of bullying behaviour that [redacted] has been subjected to we note that:

- 1 In December 1997 [redacted] was working on the [redacted] and was required to be repatriated to his home port of Sydney on compassionate grounds due to threats of violence and acts of intimidation by members of the [redacted] Union [redacted] on board. For example:
 - (a) [redacted] was assaulted and threatened on a number of occasions including being told that *"the ocean is the world's biggest graveyard, and you'll soon be in it..."*;
 - (b) [redacted] had bleach put in his work boots, and had grease smeared inside his work jacket, oilskins and overalls;
 - (c) [redacted] had his laundry dumped in the garbage;
 - (d) [redacted] cabin was robbed;
 - (e) [redacted] mother was contacted and told that [redacted] had died and the caller (whom [redacted] understands was a worker on the [redacted]) asked [redacted] mother where she wanted the remains sent.
- 2 In 1993 on the [redacted] was pinned by the throat by a crew member and given a "welcome on board" speech while two union delegates looked on. [redacted] was told by delegates in a threatening manner that *"it is a long way to Sumatra and anything can happen..."*.
- 3 In 1992 on the [redacted] drugs were placed in [redacted] cabin by [redacted] and Customs officials and the Police were given a tip-off.
- 4 In July 2008 [redacted] was working on the [redacted] and was required to address the performance issues of an Integrated Rating employee by the name of [redacted]. In response to [redacted] legitimate performance management steps, he was subject to harassment by [redacted] including swearing at him and saying words to the effect of *"you dog"*; *"you're a maggot"*; *"f"* whenever he passed [redacted] on deck. [redacted] would also shoulder barge [redacted] in an attempt to get [redacted] to react.
- 5 On 30 November 2009 [redacted] attended the offices of the [redacted] Union [redacted] in Sydney to have his union dues suspended on the basis that he was not currently working. At that time [redacted] (Assistant Branch Secretary for the Sydney Branch) said to [redacted] words to the effect of *"I'm glad you are doing it"*

tough. You are a cancer to the industry. The sooner you are in a box, the better it will be to the union movement”.

While it is true that [redacted] had spoken out against the Union from time to time, the manner in which [redacted] has subsequently been bullied and ostracized for having done so is completely inappropriate and harmful. Significantly, the conduct that [redacted] has been subjected to has made earning a living at sea “*a frustrating and nerve wracking experience*” (using [redacted] own words).

We thank the Committee for its consideration of [redacted] submission. We are instructed that [redacted] would be prepared to provide oral evidence to the Committee should that be requested.

Please do not hesitate to contact us on (02) 9267 4322 if you have any queries.

Yours faithfully

HARMERS WORKPLACE LAWYERS

Per:

Jenny Inness

Encl

- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Change Management
- Legal Risk Management

SUBMISSION TO:

*Secretary
House Standing Committee on Education & Employment
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600*

RE: WORKPLACE BULLYING

Submitted on behalf

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OVERVIEW OF FACTS

We are instructed as follows:

1 Background and involvement with the Union

1.1 has been involved in the maritime industry in both Australia and the United Kingdom since 1964. He has worked as both a seaman and a bosun, and holds a bosun/CIR ticket. has been a member of the Union for several decades.

1.2 During his time as a member of the Union, has had a number of disagreements with the leadership of the Union (and in particular, the leadership of the Sydney Branch). We are instructed that has made known his political and trade union views to the Union and other maritime bodies on a number of occasions, including by voicing his concerns about certain actions at branch meetings and at shipboard meetings. has also drafted a number of letters and pamphlets expressing concerns about the leadership of the Union, both at a national level and in the Sydney Branch of the Union. The issues he has raised include:

- (a) the Union's influence over ships' crews;
- (b) support for the appointment of crews on the basis of union membership or support of the Union's activities, rather than merit; and
- (c) support for the promotion of bosuns on the basis of union membership, or support of the Union's activities, rather than merit (even in cases where an industrial agreement specified that appointments were to be made on merit).

1.3 By way of example, written communications against the Union and its activities include:

- (a) two pamphlets distributed by to members of the Sydney Branch of the Union in 2003 (prior to the 2003 Union elections), one entitled ' , the other entitled "All Ships ... All Ships ... All Ships" (found behind **Tab 1** of the enclosed folder); and
- (b) an exchange of letters to the editor in the *Asia Pacific Shipping* magazine in July 2003 between and , the National Secretary of the Union (found behind **Tab 2** of the enclosed folder).

1.4 has also been opposed to the actions of majority Union member crews who have, in effect, taken industrial action (or threatened to do so) by refusing to perform their duties on board ships until certain benefits or advantages were provided to them by the owners of the vessels. When crews under ' supervision have taken such actions, we are instructed that has not supported this (unless it was for a genuine occupational health and safety reason) and has attempted to manage the crews so that they were made to perform their duties, and so that the vessels operated efficiently.

2 Previous treatment of _____ by Union crews

- 2.1 The effect of _____ actions in 1.4 above has meant that a number of Union members who have served as crew under _____' supervision have disliked his supervision and have taken action against _____ on a number of occasions in the last two decades.
- 2.2 For example, in 1997 _____ was sent home from the _____, for his own safety as a result of threats of violence and intimidation from members of the Union under his supervision. Behind **Tab 3** of the enclosed folder is a copy of the report to _____ from _____, the Master of the _____.
- 2.3 Similar incidents occurred on board the _____ r in or about mid 2008 and were witnessed by a number of senior crew members, all of whom, we are instructed, have supported _____ recollections of the events that took place and are willing to give evidence to this effect:
- (a) behind **Tab 4** of the enclosed folder is a report to _____ from _____, the Chief Officer on board the _____ in July 2008, concerning an altercation between an Integrated Rating named _____ and _____, which arose from his disagreement about crews' work practices. In August 2010, _____ provided a more detailed report to _____ regarding his experience with _____ and the attitude of crew members towards him on the _____; a copy of which can be found behind **Tab 5** of the enclosed folder; and
- (b) behind **Tab 6** of the enclosed folder is a report of _____, who served aboard the _____ as _____ from February until March 2008.

We understand that other third parties are willing to provide evidence about these incidents, and _____ has contact details for these people if you wish to speak to them.

- 2.4 We are also instructed that _____ has, in the past, been excluded from employment as a result of his union activities. Behind **Tab 7** of the enclosed folder are two draft letters from his then solicitors, White Barnes, _____ and the Union concerning his exclusion from a _____ job on board the _____. Neither we nor _____ hold copies of the final letters.

3 Events leading up to Fair Work Australia proceedings

- 3.1 Between 4 July 2009 and 24 August 2009 _____ was employed by _____ a company that supplies marine personnel, to act as bosun on board the Dredge _____ was based at Port Botany, and during the "swing period" on which he worked he was not based on board the ship for the entire time, but on a number of occasions returned home after a day's work.
- 3.2 We are instructed that prior to _____' employment, the owners of the *E* _____, _____, had threatened to cancel their contracts with _____ for the *I* _____ and another dredge _____) because the crew (all members of the Union)

were repeatedly refusing to perform their duties unless certain benefits or advantages were provided to them. understands that their actions were affecting the operations of the vessel.

- 3.3 On the basis of his ability to efficiently manage Union-majority crews, , we are instructed, was hired by , Human Resources Manager for Dredges to do them “a favour” because of the problems with the crew and the potential loss of contracts. While acting as bosun, we are instructed that was able to make the crew perform their duties and drop their threats to cease their duties unless certain benefits were provided.
- 3.4 While on board the , received telephone calls by and , the Human Resources Manager at , to inform him that the owners of the B were pleased with his ability to manage the crew, and that would be pleased to offer casual employment on board the , for a period of nine months. accepted this offer.
- 3.5 From 24 August 2009 to 4 September 2009 did not perform any work for .
- 3.6 On the morning of 4 September 2009, as was leaving his flat to join the at Port Botany, he received a phone message from asking that he call him urgently. Mr ; phoned Ms ; and was told by her that:
- “You are not to join the vessel. There are problems on board”.*
- 3.7 Upon further inquiry, was informed by Ms ; that:
- (a) The Union, and in particular, the Assistant Branch Secretary for the Sydney Branch, , did not want to serve on board the , as bosun; and
 - (b) , who we understand is an officer of the Union and a member of its Ports Committee, would be appointed as bosun instead. understands that , at this time, did not hold a CIR/Bosun’s ticket.
- 3.8 attempted to determine why he had been refused employment. , we are instructed, refused to say anything further to , but said to him, “*you know what the Union’s like, I*”.
- 3.9 was subsequently admitted to hospital the same day with heart problems and was discharged the following day.
- 3.10 In the following week, following his discharge from hospital, enquired about further work. He was offered a position on board the based in Port Hedland, Western Australia – however, this job was only for two months, required significant travel to and from the home port, and has been subsequently informed that the conditions on board the vessel were substandard and a number of the crew left after a single “swing” period.

3.11 [redacted] accepted the job on the [redacted] reluctantly. However, on the day the first “swing” period was due to commence, [redacted] was in hospital on account of further health problems. Although he was paid from 4 September 2009 up until this point, from the time [redacted] contacted [redacted] to inform them he was not able to join the [redacted] he was no longer paid. He was offered a further role on the [redacted] for its second swing, but due to failing a drug test (in an ill-conceived attempt to relieve nausea in order to return to work earlier) was not able to take up this role for the second month.

3.12 On 30 November 2009, [redacted] attended the offices of the Union in Sydney to have his union dues suspended, because he was not currently working. At that time, [redacted] met [redacted] (Assistant Branch Secretary for the Sydney Branch of the Union) and had a conversation with him, during which [redacted] said words to [redacted] to the following effect:

“I’m glad you are doing it tough. You are a cancer to the industry. The sooner you are in a box, the better it will be to the union movement.”

[redacted] also said:

“I remember when you wrote those pamphlets – according to you, MUA stands for ‘Mainly Under Achievers’”.

[redacted] believes that this reference is to the document behind Tab 1 of the enclosed folder.

[redacted] also said:

“The Company won’t be crewing the boats; the Union will.”

3.13 Subsequent to these events, we also understand that [redacted] son was denied employment with [redacted]. We understand that [redacted] has already spoken to you about this issue in a recorded interview you conducted with him last year.

4 Fair Work Australia Proceedings

4.1 From around August 2009 onwards, for the next few months, we are instructed that [redacted] wrote to [redacted] on a number of occasions regarding his employment. [redacted] no longer holds any copies of that correspondence. He also made a number of telephone calls to [redacted] shortly after the incident. Appearing behind **Tab 8** of the enclosed folder is a copy of [redacted]’ phone records at or around the time of the 4 September 2009 incident. At no time during any of these conversations, or in response to any of the correspondence provided to him, was [redacted] provided with any reason in response as to why he was refused employment on the [redacted], other than in accordance with what he was told by [redacted] on 4 September 2009.

4.2 [redacted] contended that he had lost the following as a result of [redacted] and the Union’s actions:

- (a) eight months’ wages (the nine months’ casual pay, less the approximate one month’s pay that was given to [redacted] after the refusal of his employment

on the [redacted] and prior to him informing [redacted] that he was not able to perform work on the [redacted] (due to ill health), a total of \$41,600 (gross);

- (b) leave pay;
- (c) a site allowance of \$40 per day; and
- (d) a hard-lying allowance that was paid to employees on board the [redacted], on account of the vibrations from the dredge operations.

4.3 [redacted] considered that the only reason he was refused employment was because of his political opinion or his industrial activity (or lack thereof). In accordance with this, he instructed Harmers to prepare, file and serve an Application for FWA to Deal with a General Protections Dispute. This was filed on 20 January 2010. A copy of the application appears behind **Tab 9** of the enclosed folder.

4.4 Due to issues arising as to the jurisdiction of Fair Work Australia in the absence of [redacted] and the Union's agreement to participate in a conference before Fair Work Australia to deal with [redacted] application, the matter was only finalised before Fair Work Australia (but with no outcome due to lack of jurisdiction) in October 2010.
