

GPO Box 9887, VIC 3001

10 October 2018

Mr Innes Willox  
Chief Executive Officer  
Australian Industry Group  
Level 2, 441 St Kilda Road  
Melbourne 3004

Dear Mr Willox

**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 their 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](mailto:michael.campbell@fwo.gov.au) or by post to the above address.

Regards



Michael Campbell  
Deputy Fair Work Ombudsman - Operations