

## AMWU OHS Contacts

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'It's no accident' is the OHS  
 newsletter of the AMWU.  
 Feedback and story ideas to  
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## Eternal vigilance required

AMWU members are urged to be eternally vigilant when it comes to asbestos products.

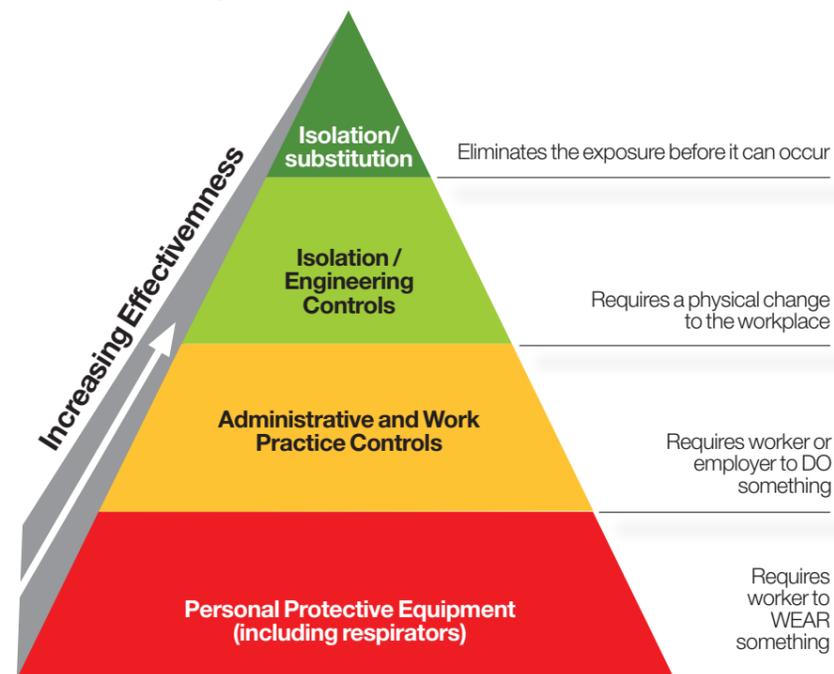
Contractors in the Victorian power industry were concerned about material they discovered when removing a chute from an economizer hopper. Samples were taken and brown and white asbestos were discovered. After discussions with the power company, contractor and union representatives, the procedures on how to deal with "any fibrous material" were revised. UGL have also donated 4 light weight wheel chairs to local asbestos support group, GARDS.

McKay Sugar Limited had to revise their procedures after the discovery of asbestos containing gaskets in pipework. During investigation of the incident it became clear that relevant workers had not received training on management and risks of asbestos containing material, and that the relevant Class B asbestos licences were lacking. This is license provisions that Queensland government is going to change! See front page. Post the incident significant changes have been introduced including -- protocols for management of friable materials, improved training and better identification procedures.

## The preferred way to remove risks to health and safety.

When deciding on ways to remove health and safety risks ask "How could we eliminate the hazard? And if not, why not?"

Start from the top of the pyramid and move down — often a combination of measure will be required.



## STOP PRESS

The Queensland LNP Government reduced workers' compensation rights in October 2013, now the target is health and safety rights. The LNP Government proposes to:

1. Remove the ability of trained H&S Reps to recommend a stop work on a task which is an immediate risk to health and safety. The requirement for H&S Reps to be trained was a compromise to the Queensland Government, now they want to take it away! Victorian H&S Reps have had a broader right than this since 1985, with no problems.
2. Remove the ability of trained union officials to investigate a work site, without notice, where the union official has evidence that H&S law is being broken. This provision has existed in Queensland law since 2005. After initially "feeling a bit put out" employers are often happy to get free H&S advice. Many employers prefer the union official to the Government Inspector.
3. Remove the obligation for testing the hearing of workers exposed to high noise levels.
4. Require persons assisting H&S Reps to give 24 hours notice and require that person to be approved by the employer.
5. Remove training requirements for supervisors of Class B asbestos removal work. See back page for story on McKay Sugar.

The LNP Government is ignoring the evidence that **joint arrangements between workers and management achieve better outcomes than unilateral management initiatives** and the deplorable fatality and injury rate on Queensland construction sites. Deaths and injuries have been declining on Australian construction sites, except in Queensland.

**PLEASE SEE INSIDE**  
 New Law in 2014: Stop Bullying.

**Court Upholds Health and Safety Rights.**

**BULLY**  
[www.amwu.org.au](http://www.amwu.org.au)



**Open and place on noticeboard**

# Bullying: we just want it stopped

From January 2014 victims of workplace bullying will be able to apply to the Fair Work Commission [FWC] for an order to stop the bullying. These changes were introduced by the Labor Government in response to the House of Representatives Report "Workplace Bullying - We just want it to stop".

Workers will be able to take their bullying case to the FWC and ask the FWC to hear their complaint. The FWC may then order that the bullying is stopped.

The Fair Work Commission will not be able to make orders requiring payment of money. The focus is on resolving the matter and enabling normal working relationships to resume.

As this is a new law, AMWU members are urged to contact the AMWU before applying to the FWC. Contact our helpdesk on 1300 732 698.

## Other Bullying News:

SafeWork Australia is about to publish *A Guide for Preventing and Responding to Workplace Bullying and Workplace Bullying – A Worker's Guide*. These Guides contain useful information but will be less effective than the proposed Code of Practice on Prevention of Bullying.

Prior to the election of the Abbott Government, SafeWork Australia [a body representing all the governments in Australia] agreed to a Code of Practice on the Prevention of Bullying. This decision was changed when Senator Abetz was appointed Minister for Employment.

The AMWU has always been a strong supporter of a Code of Practice. Codes are more beneficial than Guides as they create clearer standards for what is reasonably practicable under health and safety law.

**"Bullying is repeated and unreasonable behaviour directed towards a worker or group of workers and that behaviour creates a risk to health and safety."**

## Delegates and H&S Representatives

**At the request of AMWU activists, the AMWU has drafted a clause on Bullying for Enterprise Agreements.**

**Speak to your organiser for assistance**

- X.1 All employees are entitled to be treated with respect and dignity in their employment. The employer has a duty of care to provide a workplace that is free of bullying and harassment and to eliminate a hazard, or if that is not possible, control those risk factors, which increase the risk of bullying occurring.
- X.2 "Bullying" is defined as repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Single incidents of unreasonable behaviour can also create a risk to health and safety and are also not acceptable.
- X.3 The employer must take appropriate measures to prevent employees being subjected to bullying in their employment. Such measures include, but are not limited to:
  - X.3.1 Ensuring that all persons at the workplace are aware of this Agreement's prohibition of bullying and victimisation;
  - X.3.2 Ensuring that all persons at the workplace are made aware of relevant legislation or other law, (such as those regulating health and safety, workers' compensation, anti-discrimination, and equal opportunity etc) and their rights and responsibilities under such legislation or law;

- X.3.3 Providing training that informs all employees and supervisors of types of behaviour that constitute bullying, including identifying and recognising any working arrangements or workplace cultural activities that are considered normal but may comprise or lead to bullying;
- X.3.4 Providing training to health and safety representatives and other health and safety personnel on the risk factors and relevant control measures to address the potential of bullying occurring;
- X.3.5 Ensuring access to an internal procedure for dealing with complaints about alleged bullying. The internal procedure will be set up by agreement and will:
  - (a) Be procedurally fair;
  - (b) Be enforceable;
  - (c) Be timely;
  - (d) Allow for confidentiality where appropriate;
  - (e) Provide the right for union representation; and
  - (f) If requested by any party, require a qualified and agreed independent person to:
    - a. investigate, establish the facts, make findings and develop recommendations for the resolution of the complaint; and
    - b. provide a written report to the complainant.
- x.4 Any person covered by this agreement, has the right to take any complaint to the Fair Work Commission or relevant industrial commission for resolution by mediation, conciliation or arbitration.
- x.5 This clause is in addition to any right not to be bullied that is provided for by legislation or other law and is not intended to reduce or diminish any rights provided for by them.

# Court upholds health and safety rights

As reported in the AMWU News Spring 2013, the AMWU won a major victory for workers' health and safety when packaging giant Visy was fined by the Federal Court for persecuting H&S Representative Jon Zwart. Mr Zwart tagged out two unsafe forklifts because of defective beepers, in August 2011.

The Federal Court Judge, Justice Murphy, found that Visy and its operations manager contravened workplace rights protections, in s340 of the Fair Work Act, when they subjected Mr Zwart to an investigation and suspended him on full pay.

Early in 2011 Visy launched a *Tuff on Safety* campaign which included a presentation from management to factory staff. The presentation instructed employees that "**absolutely no excuses for ignoring unsafe practices**". However, when Mr Zwart exercised his rights as an elected H&S Rep, Visy management suspended him pending the findings of a company led investigation.

Justice Murphy made some very important comments and he reminded employers to respect the right of H&S Reps to have an opinion that differs from theirs:-

"The contraventions are serious and Visy must be deterred from again infringing the **workplace right enjoyed by Health and Safety Representatives and employees to raise their legitimate OHS concerns**"



*Expressing an opinion on health and safety is a workplace right.*

"The OHS Act plainly contemplates that a Health and Safety Representative may have a different view from the employer as to the appropriate resolution of a particular health and safety issue. **The right to advocate such a different view is an important workplace right and the dialogue it promotes serves**

**an important occupational health and safety function.** In my opinion, actions taken by a Health and Safety Representative in asserting a particular position on a health and safety issue should not lightly be treated as constituting uncooperative or obstructive conduct." [emphasis added].

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