



STRIFE OVER SUPER UNION

Employer groups fear the CFMEU-MUA merger can only mean trouble

EWIN HANNAN

WORKPLACE EDITOR



Denita Wawn wants the public to be up in arms over the merger of the nation's two most militant unions, the construction and maritime unions, into a cashed-up, asset-rich, 144,000 member super union. "We now have got a union that has a monopoly over an entire supply chain," the chief executive of Master Builders Australia says.

"Nearly 80 per cent of our building products come through the ports and they are brought to site. We know, unfortunately, the activities of (both unions) are, in many instances, illegal industrial action that has dramatic impacts on the day-to-day activities of not only our big builders but all of those subbies and their workers.

"If this was a company, the community would be in uproar if we had a monopoly this big with two companies merging. But we don't have this uproar except from the employer groups. We would like to see a lot more people realise the consequences this will have."

But Paddy Crumlin, long-time national secretary of the Maritime Union of Australia and international president of the newly merged union, accuses Wawn and her allies at the Australian Mines and Metals Association of "spouting gratuitous, ideological claptrap". "We have all of the ratbags in government and the Chicken Littles in the peak (employer) bodies

who are looking for lost relevance, running around, screaming hysterically," he tells *The Australian*.

"This is just stuff from small children. We are being presented like somehow it's the joining of two New York crime families. Really it's two not-for-profit charities operating in the interests and trust of their members coming together in a legal, legitimate and historically approved process."

What is not in dispute is the Turnbull government was either distracted, uninterested or asleep at the wheel ahead of the Fair Work Commission this week approving the creation of the new Construction Forestry Maritime Mining and Energy Union, with combined assets of \$310 million and annual revenue near \$150m.

Mining and building employers, who yesterday lodged an appeal against the decision, criticise the government for failing to deliver on its 2016 federal election "priority" commitment to pass laws to torpedo the merger by subjecting the amalgamation to a public interest test.

"It's very disappointing that the government has been missing in action on this issue," says AMMA director of workplace relations Amanda Mansini.

"We can't imagine two more militant unions with better capacity to inflict damage on the Australian economy. This may well develop into a national crisis."

Employers claim the merger will result in an escalation of unlawful conduct from the "pit to the port". "It beggars belief that the intention of our workplace laws is to allow two unions with a history of law-breaking and many outstanding proceedings to merge, fuelling their capacity for greater lawlessness," Mansini says.

Wawn says it is "hard to imagine any other situation where a merger with ramifications so dire would be allowed to happen".

"No government — Labor or Coalition — would allow a corpor-

ate merger which resulted in the formation of an entity with the capacity to shut down multiple supply chains and effectively hold the economy to ransom. But this is exactly what this decision will create," she says. "The MUA and CFMEU appear to share a common belief that they are above the law and are renowned for using tactics such as bullying, intimidation and industrial thuggery on anyone who disagrees with them.

"Merging these two unions into one new, militant super-union will see these illegal tactics become more prevalent, giving them even greater power to coerce business, put jobs at risk and bring the economy to a standstill."

Crumlin accuses the two employer groups of "feeding fake news" by claiming the merger would have dire consequences for supply chain reliability and the broader economy. "They would be better off working for Donald Trump, those two," he says. "They are ridiculous and irrelevant. They are dinosaurs, gone, gonski, and

now they have the hide to blame Turnbull, who they have been spear-carriers for.

"These guys don't want to deal with unions. They want to get rid of unions. They forced us into this merger because of their belligerence and ideological ignorance."

University of Adelaide law professor Andrew Stewart says the merger could result in a slight increase in unlawful conduct but says the concerns expressed by employers are "completely exaggerated". "For a start, we know from the history of the CFMEU itself that the mere fact there is an absorption of a different union doesn't create a single hierarchy and a single set of decision-making," Stewart says.

Under the new structure, there will be construction, mining and maritime divisions with a new manufacturing division representing forestry workers and members of the Textile Clothing & Foot-



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wear Union of Australia, which is also part of the merger.

Michael O'Connor, a highly influential figure in the union movement and brother of Labor's workplace relations spokesman Brendan O'Connor, will be national secretary of the new union.

Crumlin, who is president of the International Transport Workers Federation, will be the new international president. Tony Maher will be national president while Dave Noonan will be national assistant secretary.

Crumlin says the new union will be much better resourced and will be able to combine funds for legal proceedings, including legal action taken against the union.

Stewart argues existing secondary boycott laws will constrain the capacity of the new union's different divisions to pursue lawful action in support of each other.

Moreover, he says there are a number of government agencies — the Australian Building and Construction Commission, the Australian Competition & Consumer Commission and the Fair Work Ombudsman — willing to pursue action against unions for alleged unlawful conduct.

"You might argue they are more likely to engage in unlawful conduct because they now have a bigger war chest but that bigger war chest also comes with bigger fines because the maritime division will now be inheriting the CFMEU's poor industrial record," Stewart says.

"Not only are the laws clearly there to stop these boycotts but you have a plethora of bodies who are willing to enforce those laws, from the ABCC to the new construction unit within the ACCC, and even the FWO.

"Is there perhaps a greater chance that we will see slightly more secondary boycott conduct? Yes, but we're already seeing a lot more enforcement activity against secondary boycotts."

Officials of the new union will come up against new ABCC chief Stephen McBurney, who will have a suite of new measures at his disposal to target unlawful conduct.

In his first interview since being appointed, McBurney told *The Australian* his agency was legally obliged to prosecute alleged unlawful conduct and would use a recent High Court ruling to seek to have "repeat offenders" personally pay penalties. The court decision means union officials can be hit with orders stopping unions paying fines on their behalf. "I expect as a result of this decision there will be a number of cases where personal-payment penalties will be sought," McBurney says.

The agency will also consider contempt orders if the CFMMEU

seeks to pay the penalty on behalf of the individual worker. He says the ABCC legislation gave him additional weapons, including the tripling of penalties for unlawful conduct since December 2016.

The CFMMEU will also have to meet the agency's legal costs where the regulator successfully prosecutes over conduct.

McBurney, a former organised crime investigator and AFL umpire, says the agency was pursuing 41 investigations, with 37 involving the CFMEU. Last financial year, court penalties totalling \$1.8m were imposed on the CFMEU. In the first seven months of this financial year, fines worth more than \$4m have been handed down, including \$2.7m in penalties that are under appeal.

McBurney wrote to Noonan last week, offering to meet senior officials to explore if the union was prepared to stop breaking the law. He says he would prefer to spend his budget on education and prevention rather than costly taxpayer-funded litigation.

But Noonan immediately rejected the olive branch, accusing McBurney of being a Liberal Party "stooge" and a "crap umpire". He says McBurney is echoing the rhetoric of past ABCC heads, John Lloyd and Nigel Hadgkiss, and the union will not change its conduct.

"He's singing the tune of the Liberal Party and their attack on unions and workers," Noonan says. "The whole conduct of Hadgkiss was a disgrace and the fact he would praise him shows he's

another stooge for the Liberal Party in that role."

With the union merger now due to take effect in 18 days, employers have appealed to a Fair Work full bench in a bid to overturn its approval.

Meanwhile, Workplace Relations Minister Craig Laundy is resuming negotiations with Senate crossbenchers in a bid to get the bill with the public interest test passed by parliament.

But he acknowledges passing the bill before the amalgamation date would not have an impact on the commission decision because it was not retrospective.

AMMA is lobbying for an amendment to the bill designed to have the public interest test take effect before March 27.

Laundy declines to express a view on the proposed amendment. To achieve AMMA's objective the amended bill would have to be passed before March 27.

Despite former employment minister Michaelia Cash declaring the bill to be a priority commitment during the 2016 federal election campaign, the government delayed its introduction in the lower house until last August and in the Senate until October 17.

With the ALP and Greens opposed, and the government unconvinced it had crossbench support, the Coalition refused to seek a Senate vote on the bill.

Laundy points to the ALP-Greens opposition and the Coalition's decision to set aside the balance of time in parliament late last year to the same-sex marriage legislation.

The citizenship debacle distracted the government while Cash's credibility with the public and the crossbench was undermined by the fallout from the raids on the Australian Workers Union, including the forced resignation of her senior media adviser.

Should the merger proceed, Laundy says the government will consider deregistration proceedings if the pattern of unlawful conduct persists.

"The government will closely monitor the conduct of the newly amalgamated union and will take



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appropriate steps if necessary,” he tells *The Australian*.

“It is now up to the union officials to work cooperatively and within the law to ensure the best interests of all its members and the country are represented under the new arrangements.”

Stewart says the government has the power under the Fair Work Act to apply to deregister the union. Given the union’s record of law-breaking, he says the government would have a “clear prospect of success” if it sought deregistration.

If the union was deregistered, officials would lose their right to enter workplaces and the union’s standing to bring cases in the Fair Work Commission and the courts would vanish, as would its automatic standing as a bargaining representative for members.

But Stewart notes the proceedings would be costly and “you run the risk of a whole group of disaffected workers popping up in unregistered unions who are much harder to take legal action against”.

Crumlin says it is rich for the employers to blame the Coalition. “We don’t want to have a class war or a fight,” he says.

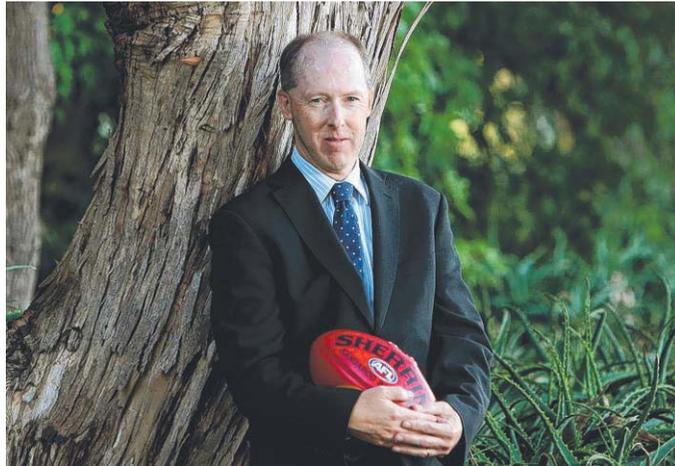
“We know the long-term security of our members is in an economy that’s growing. We have to have reasonable and decent relationships with employers, but these guys don’t want it.”

ROBERT GOTTLIEBSEN P30

“These guys don’t want to deal with unions. They want to get rid of unions. They forced us into this merger because of their belligerence and ideological ignorance”

PADDY CRUMLIN
MUA NATIONAL SECRETARY

NEW SUPER UNION CONSTRUCTION FORESTRY MARITIME MINING & ENERGY UNION	
MEMBERSHIP	NATIONAL SECRETARY
144,000	Michael O'Connor
COMBINED ASSETS	NATIONAL PRESIDENT
\$310M	Tony Maher
ANNUAL REVENUE	INTERNATIONAL PRESIDENT
\$146M	Paddy Crumlin
	NATIONAL ASSISTANT SECRETARY
	Dave Noonan



STUART McEVOY

The ABCC's chief, former AFL umpire Stephen McBurney



AARON FRANCIS

CFMEU's Michael O'Connor with MUA's Paddy Crumlin



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The writ of the merged union will extend to the wharves, enhancing its ability to 'bring the economy to a standstill' in the event of disagreements with employer groups or the state