

## We will not be bullied by Marco Polo!

Dear Member,

Last year, Marco Polo management chose not to bargain for a new enterprise agreement. That means that your agreement hasn't been updated since 2015 and is falling behind industry standards. HSU members have been campaigning to start a new round of bargaining so we can lock in conditions and fair wage increases for the future.

### It's time to bargain for a new agreement!

HSU members have been calling on Marco Polo management to start bargaining for months. Now, a majority of staff have signed the HSU petition demanding that management commence negotiation with the union. Yesterday, the union formally lodged an application with the Fair Work Commission asking for an order to be made that Marco Polo must start bargaining with the union.

If the Commission grants the application, HSU members will be represented by the union. **Only HSU members will be represented by the union during bargaining.** If your colleagues are not yet HSU members, ask them to join the union today so that they are also represented in the negotiation. They can join up online at [www.hsu.asn.au/join](http://www.hsu.asn.au/join) or by calling 1300 478 679. Only when you're an HSU member are you part of the team campaigning for a fair workplace and only HSU members can be represented by the union.

We will keep members updated as the Fair Work Commission application progresses.

### We will not be bullied by Marco Polo!

Last week the HSU wrote to management informing them of our intention to seek an order from the Fair Work Commission. We also asked management to confirm if they were willing to bargain or not.

Management's reply to the union was strange and disturbing.

Management responded by email with somewhat of a threat, stating that: *'an outcome from bargaining may be that the EBA is terminated and staff return to the award'*. **This is simply not true.** It is not a possible outcome of bargaining that an existing agreement can be terminated – and people's conditions reduced – as a way of punishing staff for seeking better or fairer wages and conditions. Termination of an agreement is a different part of the Fair Work Act and the Act

**does not** provide for an employer to terminate an agreement simply because staff engage in enterprise bargaining.

Further, for management to say that staff could be adversely affected by having their current conditions and wages reduced simply because you've exercised your right to petition to bargain, is potentially an adverse action against you as employees and potentially a breach of the general protections of the Fair Work Act.

The HSU wrote to Marco Polo management immediately after receiving this email to put them on notice that this is very serious and reminding them that the penalty for breaches of the general protections can include financial penalties for individuals and for corporations. We will not accept bullying, threats or coercion against the union or union members.

We have included a copy of the emails between the union and management for your information. The HSU stands firmly against bullying and if any members feel that they are being threatened or coerced by anyone in the workplace, please contact the HSU immediately for assistance. It is important that everyone is a union member to ensure that you can be assisted by the union and represented in any workplace issues. If your colleagues are not yet HSU members, make sure that they join up today. They can join up online at [www.hsu.asn.au/join](http://www.hsu.asn.au/join) or by calling 1300 478 679.

We will keep you updated as things progress.

In unity,

A handwritten signature in black ink, appearing to read 'Gerard Hayes', with a long, sweeping underline.

Gerard Hayes  
Secretary, HSU NSW/ACT/QLD

## Elliot Waugh

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**From:** Chris Friend  
**Sent:** Friday, 27 July 2018 5:30 PM  
**To:** Kristy O'Shea  
**Cc:** [REDACTED]  
**Subject:** RE: Marco Polo enterprise bargaining

Hi Kristy,

Thanks very much for your email.

Just to be clear, we were not demanding a response from you by close of business today. We were simply informing you, as a courtesy, of our intention to file this application. As I said, we would be happy to withdraw any such application if it were no longer necessary (that is, if the organisation agreed to commence bargaining).

We were of the understanding that Marco Polo management had no interest in commencing EA negotiations and your email has confirmed that we were correct.

We have consulted widely with staff about this matter and we would only make such an application when we are confident of its success. As the majority of staff have signed this petition, we disagree with your understanding that most staff are currently happy with the current conditions. The staff we've spoken to would like an opportunity to put forward claims to be considered by management and would like to lock in fair and agreed wage increases for the coming years.

Regarding termination of the agreement, that is a completely separate matter to the bargaining process. It is not a possible outcome from bargaining as you assert. It is dealt with separately in the Act, and the Act certainly does not provide for an employer to terminate an agreement because staff engage in enterprise bargaining.

Therefore, the circumstance you're describing is one of the employer taking deliberate steps to disadvantage employees, despite the employer being 'happy with the agreement as it stands', in response to employees exercising a workplace right.

For an employer to assert that 'an outcome of bargaining may be that the EBA is terminated and staff return to the award' is untrue and is something that we take as a clear threat of adverse action against employees, for choosing to exercise a workplace right (i.e. seek to bargain under the provision of the Act).

To be clear, it is unlawful under the Act for a person to take action, or threaten to take action, with the intent of coercing another person to use, or not use, a workplace right. Should this threat be used again, we will consider escalating the matter to the Fair Work Ombudsman who can investigate contraventions and is empowered to initiate serious financial penalties to both individuals and corporations.

As you may appreciate, with such a difference of opinion on several matters (and in light of the above) our members prefer not to be identified to management as signatories to the petition. However we will, as per usual practice, make the list available to the Fair Work Commission and make a redacted version available to the employer. The Fair Work Commission will then be able to compare our petition to an employee list and make an appropriate determination.

Don't hesitate to call me if you wish to discuss this matter further. Have a great weekend.

Regards,

Chris

**Chris Friend**  
*Bargaining Officer*

Level 2, 109 Pitt Street  
Sydney NSW 2000

**Telephone:** 1300 478 679  
**Mobile:** 0427 666 519

**Email:** [chris.friend@hsu.asn.au](mailto:chris.friend@hsu.asn.au)  
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I acknowledge the Traditional Owners of the land on which I live and work as the First People of this country, and pay respect to their Elders past, present and future.

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**From:** Kristy O'Shea <[KristyO@marcopolo.org.au](mailto:KristyO@marcopolo.org.au)>

**Sent:** Friday, 27 July 2018 3:47 PM

**To:** Chris Friend <[Chris.Friend@hsu.asn.au](mailto:Chris.Friend@hsu.asn.au)>

**Cc:** [REDACTED]

**Subject:** RE: Marco Polo enterprise bargaining

Dear Chris,

Thanks for your note.

I feel it is inappropriate to write to us at 10am on a Friday morning to demand a response on such matters by the afternoon. What you are requiring of us would require consultation with the board and agreement from them.

Marco Polo is happy with the agreement as it stands. We have continued to provide pay rises since the nominal expiry date and as far as we are aware the staff are also happy as it provides benefits to them over the award, and particularly so for nursing staff who we assume you must have consulted as well. We also assume you advised staff that an outcome from bargaining may be that the EBA is terminated and staff return to the award. In light of this it is with some surprise to read an assertion that you have a majority support. If you are able to provide me with proof of

this I will certainly take matters to the board with a view to returning to you expeditiously as to whether or not we wish to commence bargaining.

**Kind regards**

**Kristy O'Shea**  
**Human Resources Manager**



MARCO POLO AGED CARE SERVICES LIMITED



Email: [KristyO@marcopolo.org.au](mailto:KristyO@marcopolo.org.au)

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**From:** Chris Friend <[Chris.Friend@hsu.asn.au](mailto:Chris.Friend@hsu.asn.au)>  
**Sent:** Friday, 27 July 2018 9:49 AM  
**To:** David Conkey <[DavidC@marcopolo.org.au](mailto:DavidC@marcopolo.org.au)>  
**Cc:** Kristy O'Shea <[KristyO@marcopolo.org.au](mailto:KristyO@marcopolo.org.au)>  
**Subject:** Marco Polo enterprise bargaining

Dear David,

I'm writing in regard to the Marco Polo Care Services NSWMA and HSU Enterprise Agreement.

As you would be aware, the agreement has passed its nominal expiry date of 30 June 2017. We understand that Marco Polo has decided not to proceed with negotiation of a new agreement, either as part of the ACSA 'template' group of employers, or separately.

The HSU and our members would like to negotiate a new agreement. Therefore, we have undertaken the appropriate process of seeking support from employees to request that bargaining commence. We have a majority of employees at Marco Polo who have signed a petition indicating that they wish to commence enterprise bargaining, in order to satisfy the commission that a determination to bargain is now appropriate.

In order to commence bargaining swiftly, we are ready to file our application for a majority support determination shortly with the Fair Work Commission. With this in mind, could you please confirm whether or not the organisation is now willing to commence bargaining with the union? In order to not lose any further time, we intend to file our application this afternoon, however we are happy to withdraw it should Marco Polo indicate that the organisation is willing to commence bargaining.

I'm in a meeting most of today, but feel free to email me or leave me a voicemail message and I'll get back to you at lunch time.

Regards,

Chris

**Chris Friend**  
*Bargaining Officer*

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Sydney NSW 2000

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