

MENACING BEHAVIOUR

INTERIM GUIDELINES AND DIRECTIONS

A number of organisers and other staff have requested more information and guidance on the issue of menacing behaviour.

Robust behaviour in the construction industry has always been part of the culture in the sector. Aggressive behaviour on either side of the industrial relations environment has been longstanding and historical.

However, it is alleged, and there is credible evidence, that menacing behaviour has become entrenched and constant as part of doing business in some parts of the industrial relations environment in the construction industry in 2024.

The following memo makes clear the definition of menacing behaviour, the guidelines for CFMEU staff, and directions to all organisers regarding the use of menacing behaviour as an industrial relations practice.

All staff are expected to understand the definition of menacing behaviour and the consequences of ignoring this memo and its direction.

Definition:

Menacing behaviour is:

Menacing behaviour is where a person either:

- Does an act to intentionally cause, or threaten to cause, psychological or physical harm to another person; or
- Does an act that would cause a reasonable person to fear that they may suffer psychological or physical harm, where the act does cause that fear.

Examples of menacing behaviour:

- Striking someone – even if you do not cause any injuries.
- Threatening immediate violence in such a way that the other person believes that it may be carried out eg *"I am going to punch you in the face"* or aggressively saying *"I am going to fucking get you"*.
- Attempting to strike a person whether or not contact is made.
- Throwing something at somebody whether or not contact is made.
- Spitting at someone whether or not contact is made.

- Threatening harm, even if you don't intend to carry out the threat.
- Shouting at someone in a way that make a reasonable person afraid, even if you don't mean to make them afraid.
- People can be affected by someone's behaviour towards them in different ways.

Being aware of the impact your behaviour has on others is important and critical to working in the union, and you are expected to be conscious of a person feeling threatened or fearful of your behaviour.

What is NOT menacing behaviour:

The behaviour described above will not necessarily be menacing behaviour when done in self-defence or in circumstances of necessity such as to prevent death or serious injury as long as the action taken was reasonable.

Further, accidental physical contact will not constitute menacing behaviour.

The following actions are also not menacing conduct:

- Talking loudly during an argument or debate.
- Simply swearing about a situation where there is no threat directed at a person.
- Threatening to take lawful industrial action to pursue an EBA or ensure safety on the job or compliance.

Expectation.

Robust and strong advocacy on behalf of members is not unlawful or disrespectful.

The acceptance of menacing behaviour as a way of doing business is against union values.

Acting respectfully and lawfully is expected, particularly during arguments and conflicts.