

**HALL
PAYNE
LAWYERS**

3 October 2008

Australian Competition and Consumer
Commission
PO Box 10048
Adelaide Street Post Office
Brisbane Qld 4000

GPO Box 3114, Brisbane Qld 4001 ■ T (07) 3221 2044 ■ F (07) 3229 9842 ■ DX 118
general@hallpayne.com.au ■ www.hallpayne.com.au ■ ABN 66 094 473 596

FILE No:

DOC:

MARS/PRISM:



Contact
Luke Tiley
Solicitor

Email: luket@hallpayne.com.au

Our Reference
TMB:LMT:3710132

Your Reference

Dear Sir/Madam,

Re: Application for Authorisation

We act on behalf of the Construction, Forestry, Mining and Energy Union, Construction and General Division, Queensland.

We **enclose** the following documents to be lodged with your office:

1. Form B Application for Authorisation;
2. Attachment to Form B (our client's submissions in support); and
3. Cheque payable to 'Australian Competition and Consumer Commission' in the amount of \$7,500 in payment of your lodgment fee for the above documents.

We look forward to receiving confirmation of the lodgment of these documents and a receipt for the lodgement fee in due course.

If you should have any queries please contact the writer to discuss.

Yours faithfully
HALL PAYNE LAWYERS

OFFICES

BRISBANE CITY | SOUTH BRISBANE | LOGANHOLME | ROCKHAMPTON | BLACKWATER* | CABOOLTURE* | CALOUNDRA* | TOOWOOMBA* | TOWNSVILLE*

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Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (1)

**AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of the applicant:
(refer to Direction 2)

A91103

Construction, Forestry Mining and Energy Union, C&G Division , Qld

- (b) Description of business carried on by the applicant:
(refer to Direction 3)

Trade Union

- (c) Address in Australia for service of documents on the applicant:

c/- Hall Payne Lawyers

Level 9

344 Queen Street

BRISBANE QLD 4000

Facsimile: (07) 3229 9842

Phone: (07) 3017 2400

E-mail: terrib@hallpayne.com.au

2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

See **attached**: Applicant's supporting submissions.

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:
(Refer to direction 4)

See **attached**: Applicant's supporting submissions.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

See **attached**: Applicant's supporting submissions.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

See **attached**: Applicant's supporting submissions.

3. **Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

See **attached**: Applicant's supporting submissions.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

See **attached**: Applicant's supporting submissions.

4. **Public benefit claims**

- (a) Arguments in support of authorisation:
(Refer to direction 6)

See **attached**: Applicant's supporting submissions.

- (b) Facts and evidence relied upon in support of these claims:

See **attached**: Applicant's supporting submissions.

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

See **attached**: Applicant's supporting submissions.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

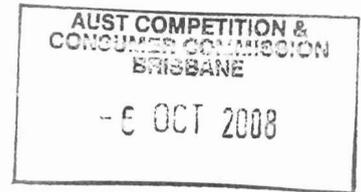
See **attached**: Applicant's supporting submissions.

- (b) Facts and evidence relevant to these detriments:

See **attached**: Applicant's supporting submissions.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.



- (a) Is this application to be so expressed?

See **attached**: Applicant's supporting submissions.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

See **attached**: Applicant's supporting submissions.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

See **attached**: Applicant's supporting submissions.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

See **attached**: Applicant's supporting submissions.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

See **attached**: Applicant's supporting submissions.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

See **attached**: Applicant's supporting submissions.

- (c) If so, by whom or on whose behalf are those other applications being made?

See **attached**: Applicant's supporting submissions.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

See **attached**: Applicant's supporting submissions.

Date: 2 October 2008

Signed on behalf of the Applicant


(Signature)

Luke Michael Tiley
(Full Name)

Hall Payne Lawyers
(Organisation)

Solicitor
(Position In Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

ATTACHMENT TO FORM B APPLICATION FOR AUTHORIZATION

1. INTRODUCTION

1.1 An integral part of the construction industry is the provision of earthmoving services. In practice, most earthmoving services are provided by independent owner drivers contracting with earthmoving companies. Most owner drivers operate very small businesses, typically run by a husband and wife or as a sole trader. The majority of these businesses are set up as proprietary companies, with the minority being either a partnership (generally comprising a husband and wife) or an unincorporated sole trader. Generally these businesses are made up of:

- (a) one body truck or one truck and trailer combination; and
- (b) one worker (being the owner driver).

1.2 The constitution of the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland ("**Union**") allows owner drivers to be members of the Union on the basis that they perform work, as independent contractors, of a kind which, if they were employees, would make them eligible to become members of the Union.

1.3 The Union estimates that there are approximately 500 to 1,000 owner drivers at any one time operating in the Brisbane area.¹ The Union currently represents 24 of these owner drivers. A list containing the names of these owner drivers is annexed to this application and marked as **Annexure A**.

1.4 Over the past few years, numerous owner driver members have expressed concern to the Union regarding their working entitlements and conditions, and their lack of ability to negotiate with customers. As a result of these concerns, the Union seeks authorization under section 88 of the *Trade Practices Act 1974* (Cth) (the **Act**) and section 88 of the Competition Code of Queensland (the **Code**) to allow its members to engage in collective bargaining on a voluntary basis with purchasers of owner driver earthmoving services.

¹ Earthmoving service providers (including owner drivers), unlike many other operators in the construction industry, are not registered with any central agency. Obtaining precise estimates of their numbers is accordingly difficult.

2. THE EARTHMOVING SERVICES MARKET

Earthmoving services

- 2.1 Owner drivers use their trucks to pick up and deliver materials from and to (predominantly) commercial and civil construction sites. The materials are loaded into the truck at one site and tipped at another site as directed by an earthmoving contractor.
- 2.2 Materials that are carted include gravel, dirt, rocks and other demolition materials.
- 2.3 While the services provided by different owner drivers are very similar, there are some differences. These differences derive from the type of truck and/or trailer used by the owner driver. This determines how much material the owner driver can carry and also what types of material they can carry.
- 2.4 There are generally two categories of trucks that the owner drivers operate. There are body trucks which carry a maximum of 22.5 tonnes and there are truck and trailer (known in the industry as "truck-and-dog") combinations which can carry a maximum of 50 tonnes.
- 2.5 Owner drivers generally have their truck and/or trailer set up in a particular way in order to specialize in carrying a particular type of material. For example, the vast majority of trucks and trailers in general cartage have aluminium bodies, as aluminium's light weight allows the truck to haul a greater payload. In contrast, steel trucks or trailer bodies, while being restricted to smaller payloads due to their weight, are preferred for heavy materials such as rocks or small machinery that would damage an aluminium body. Similarly, the configuration of the truck (for example, the height of the sides) may to some extent be tailored to specialize in a particular material. The main materials in which an owner driver may specialize are: quarry products (e.g. dirt, sand and crushed materials); rock and concrete; steel; and asphalt.
- 2.6 Other differences in the services provided by the owner drivers depend upon the size of the truck. Obviously large trucks have an advantage in that they can carry more material, but sometimes small trucks are required as the site is small or has obstacles around which a large truck would not be able to manoeuvre.

Geographic scope of market

- 2.7 On a day to day basis, owner drivers are limited in the geographical areas they service due both to physical limitations regarding how far away from the base of their operations they can (profitably) provide services and to insurance requirements. An owner driver's insurance typically covers them within a radius of 150km from the

place where the truck is garaged. For a Brisbane-based owner driver, this radius takes in areas between Ipswich to Bribie Island and down to the Gold Coast. Owner drivers can operate outside of this 150km radius, but must notify their insurers before doing so.

- 2.8 Within this area an owner driver could travel anywhere within one day. An owner driver may travel 500km or more on a standard day.

Entering and exiting the market

- 2.9 It is not difficult to enter into the construction earthmoving services market. No special qualifications or licences are required. A potential entrant requires only a truck licence and sufficient capital to purchase or hire a truck and cover initial outlays such as insurance and fuel and to manage cash flow issues.
- 2.10 Depending upon the type of truck being acquired (factors include quality, size, what material is proposed to be carted, etc) set up costs could be anywhere from \$10,000 (to buy a small second-hand truck) to \$400,000 (to buy a new larger truck).
- 2.11 Similarly, it is not difficult to exit the market as the capital equipment may be sold on the secondhand market. Of course, the price received for second hand equipment, and thus the extent of capital losses, if any, will typically vary with the state of the construction industry and thus level of demand for trucks and other equipment.
- 2.12 Also, when demand for earthmoving services is strong in south east Queensland, it is not uncommon for owner drivers from interstate or elsewhere throughout Queensland to come into south east Queensland and compete for work with the local owner drivers. The Union is aware that large projects in south east Queensland have attracted owner drivers from as far away as Tasmania. These drivers obviously can easily exit the Brisbane market in times of lower demand.

Structure of the market

- 2.13 The construction industry is generally divided into three broad categories, *residential* (construction of residential buildings), *commercial* (construction of commercial premises) and *civil* (construction of civil infrastructure such as roads and bridges).
- 2.14 Most earthmoving for residential construction, given the smaller quantities involved, is undertaken by the builder on an "in-house" basis, although owner drivers are used on occasion. Owner-drivers thus do only small amount of work in this sector.
- 2.15 For commercial and civil projects, generally the developer/project owner will appoint a principal contractor to undertake the construction. Almost invariably the principal

contractor will then call for tenders regarding the provision of earthmoving services. Earthmoving companies generally tender for the work and compete against one another on factors such as cost, supply requirements and compliance issues. In most cases, individual owner drivers are too small to participate in such tenders.

- 2.16 If the successful earthmoving company does not have enough trucks to undertake the work itself, it will engage owner drivers as independent contractors to provide the required services. The Union estimates that about only 5% of trucks and drivers involved in earthmoving in the Brisbane area are employed by earthmoving companies, with the remainder being owner drivers. As such, it is apparent that the vast bulk of earthmoving work is sub-contracted to owner drivers.
- 2.17 The Union is aware of a few attempts by principal contractors to deal directly with owner drivers, but these are rare and do not appear to have worked satisfactorily. The norm is for an owner driver to acquire work through an earthmoving contractor. Similarly, as noted above, on occasion an owner driver may obtain work in the residential construction sector or from a landscaper, but again this is limited. The vast majority of the work for owner drivers comes from earthmoving companies.

Contracting between owner drivers and earthmoving companies

- 2.18 There are approximately 17 large earthmoving companies operating in south-east Queensland. list containing the names of these companies is annexed to this application and marked as **Annexure B**.
- 2.19 There is no formal system by which earthmoving contractors engage owner drivers. Generally, owner drivers provide earthmoving contractors with the specifications of their truck and trailer so the contractor knows the carrying capacity of the truck. Then, when the contractor has work that requires a truck with the specifications of the owner driver's truck, the contractor may call the owner driver in relation to engaging the owner driver for the job. Typically, an earthmoving contractor will telephone an owner driver the afternoon before a job.
- 2.20 All work with earthmoving contractors is done on a job-by-job basis. There are no on-going contracts between owner drivers and earthmoving companies. Some, but not many, earthmoving contractors publish rates on a contract or hourly basis. One job could go for as little as a few hours or as long as a week.
- 2.21 In the usual course, there is no negotiation between the owner driver and the earthmoving contractor over the price and terms on which the owner driver will provide the service. The earthmoving company tells the owner driver how much it is willing to pay. As a rule, there is no discussion or negotiation over other terms.

There is a set of common or usual terms which, in practice, are assumed to apply to all jobs.

2.22 These common or usual terms provide:

- (a) the owner driver is hired on a daily basis at a rate of pay fixed by the contractor. Within the industry this is known as 'daily hire';
- (b) owner driver is to have (and pay for) public liability, compulsory third party and comprehensive insurance;
- (c) the owner driver is responsible for any loss of the load and any loss or damage caused on the road;
- (d) the owner driver must comply with the directions of the contractor;
- (e) the load is ordinarily loaded by the contractor;
- (f) liability for damage caused to the truck by the loading of the material ordinarily lies with the contractor.

2.23 Formal payment terms vary between earthmoving contractors. However, the experience of owner drivers is that it often takes up to 90 days to receive payment.

2.24 Owner drivers are invariably price takers. The earthmoving companies hold all the bargaining power, for the reason that if an owner driver does not want the job *on the terms offered* the earthmoving company will simply call another owner driver who will do the job on its (the earthmoving company's) terms. The weak bargaining position of owner drivers means that there is always an owner driver out there in the market who will do the work at the offered price. The result is that the owner driver is forced, without negotiation, either to accept the terms offered or go without the work altogether.

3. **THE PROPOSED ARRANGEMENT**

3.1 The Union seeks authorization for its owner driver members to collectively negotiate with earthmoving contractors in relation to the terms, prices and conditions of the earthmoving services provided by the owner drivers to the earthmoving contractors in the commercial and civil construction sectors in south-east Queensland.

3.2 The parties to the proposed arrangements are thus:

- (a) present and future owner driver members of the Union who provide earthmoving services in south east Queensland; and

- (b) present and future acquirers of earthmoving services from owner drivers in south east Queensland.

3.3 Particular items about which the owner drivers propose to negotiate include:

- (a) rates of pay;
- (b) terms of payment (seeking a reduction from the current industry standard payment in 90 days, which causes cash flow burdens for small owner drivers);
- (c) minimum safety standards and measures to enhance safety;
- (d) minimum engagement/payment per day;
- (e) allowances for delays in traffic and poor on-site management; and
- (f) city rates and regional rates.

3.4 The Union and its members are not seeking an authorization for making a contract or arrangement for arriving at an understanding containing an exclusionary provision. The proposed negotiation process will be voluntary and each owner driver and earthmoving contractor will independently need to make decisions regarding whether or not to participate in the process or to adopt any collectively negotiated terms and conditions.

3.5 An outline of the likely collective bargaining process, should the authorization be granted, is as follows.

- (a) Those owner driver members of the Union who choose to participate in the collective bargaining process will meet:
 - (i) to discuss the terms and conditions they would like to negotiate with earth moving contractors; and
 - (ii) to appoint a committee of 3 to 5 owner drivers to undertake the negotiations with earth moving contractors.
- (b) The owner drivers will invite earth moving contractors to engage, on a voluntary basis, in collective negotiations. The negotiating committee would enter into negotiations with those earth moving contractors willing to participate in the process. The negotiating committee would provide reports to the other participating owner drivers throughout the negotiations.

- (c) Throughout the process, the Union will provide secretariat services to the owner drivers, as well as advice and assistance as requested in the negotiations.

4. **GROUNDS FOR GRANT OF AUTHORIZATION**

- 4.1 This application is made under section 88(1) of the Act and the Code in respect of a proposed arrangement which might substantially lessen competition within the meaning of section 45 of the Act and the Code. Accordingly to grant the authorization sought the Commission must be satisfied that in all the circumstances the proposed arrangement will result or be likely to result in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result or be likely to result from the arrangements.

Public Benefit and Collective Bargaining

- 4.2 By way of background it is important to note that the Act itself recognises that collective bargaining may produce public benefit. In 2002-2003 a committee chaired by Sir Daryl Dawson AC KBE CB conducted an independent review of the competition provisions of the Act. One of the areas specifically considered by the Dawson Committee was the operation to the Act, as it applied to collective bargaining in small business.
- 4.3 The Dawson Committee's report recommended that small business have access to a cheaper and more expeditious process for gaining statutory protection for collective bargaining. This recommendation was based on the finding that while collective bargaining at one level may lessen competition, at another level, providing that the countervailing power that a group of small businesses may obtain is not excessive, it may be in the public interest to allow small businesses to negotiate more effectively with larger business.²
- 4.4 The Senate Economic References Committee report into the effectiveness of the Act in protecting small business also endorsed the Dawson Committee's view that in some circumstances, it may be in the public's best interests to allow small business to negotiate collectively and more effectively with larger business.³
- 4.5 These reviews led to the introduction into the Act of provisions to allow for the lodgment of a notification regarding collective bargaining by small businesses. The

² *Review of the Competition Provisions of the Trade Practices Act*, January 2003, page 115.

³ Senate Economics Reference Committee, *The Effectiveness of the Trade Practices Act 1974 in Protecting Small Business*, March 2004, page 58.

proposed conduct in this case does not fit within the parameters of the notification process, and hence an authorization is sought. However, while the Union does not submit that these developments, of themselves, lend weight to this particular application, it does submit that these developments indicate that a countervailing public benefit can often be found for the competitive detriment, if any, caused by collective bargaining in particular cases.

Effect on competition

4.6 The Union submits that there is unlikely to be any significant lessening of competition as a result of the proposed negotiations for at least the following reasons.

- (a) The current level of negotiations between owner drivers and earthmoving companies is very low

The Union submits that the current competition between owner drivers is already low as the owner drivers are in effect offered standard oral contracts by earthmoving contractors on a "take it or leave it" basis. Individual owner drivers have very little individual bargaining power. As a result, they currently have little scope, if any, to vary the terms and conditions regarding the supply of their earthmoving services to contractors. Consequently, the proposed arrangements are unlikely to have a significant impact upon the existing level of competition.

- (b) Participation in the collective bargaining arrangements will be voluntary

Participation by both owner drivers and the earthmoving companies in the collective negotiation process will be voluntary. Owner drivers may opt out of the collective negotiation process at any time and negotiate individually with earthmoving contractors. Similarly, earthmoving contractors will be able to choose whether to participate in the collective bargaining process or continue to deal with owner drivers on an individual basis.

- (c) The restricted size and coverage of the bargaining group

The members of the bargaining group will be limited to owner driver members of the Union in southeast Queensland, who currently represent less than 10% of the estimated total number of owner drivers in the Brisbane region market. The Union does not anticipate a significant increase in membership should this authorization application be successful. Even apart from the competitive tension arising from the voluntary nature of the arrangements, the Union submits that the competitive tension provided by non-member owner drivers (both within the Brisbane region and those able to enter the Brisbane region

should prices rise), as well as the ability of earthmoving contractors to expand their in-house earthmoving capacity, will constrain the bargaining group in its negotiations with earthmoving contractors.

- (d) The Union does not apply for authorization to engage in collective boycott activity

Voluntary collective bargaining only is proposed. Accordingly, the proposed conduct does not involve boycott conduct.

- (e) The proposed conduct will not increase barriers to entry

The Union does not see the proposed conduct leading to owner drivers entering into long-term contracts with earthmoving contractors or otherwise adding to barriers to entry in the industry. As noted above, the proposed arrangements will be voluntary such that earthmoving contractors are free to negotiate and deal with owner drivers (whether or not such owner driver is a member of the Union) on an individual basis.

- 4.7 For the forgoing reasons, the Union submits that the proposed arrangements will not cause any significant lessening of competition within the earthmoving services market. Accordingly, the Union submits that only limited public benefit is necessary for the Commission to authorize the proposed arrangement.

Public Benefit

- 4.8 The Union submits that the proposed collective bargaining arrangements will result in the following public benefits:
 - (a) fairness in the negotiating process;
 - (b) improved safety;
 - (c) enhancing the viability of efficient businesses.

Fairness of the negotiating process

- 4.9 The majority of earthmoving work available to owner drivers is in the commercial and civil construction sectors. Accordingly, owner drivers rely on work in these sectors for their survival. Owner drivers businesses are generally too small to deal directly with principal contractors, and so they are forced to deal with earthmoving contractors to obtain work. This, combined with the ease of entry into the earthmoving services market (whether as an owner driver or by earthmoving companies increasing in-house capacity), gives significant bargaining power to earthmoving companies.

- 4.10 Presently individual owner drivers can either accept the terms and conditions dictated by the earthmoving contractors or not obtain work. The experience of owner drivers is that earthmoving contractors do not negotiate with individual owner drivers the terms upon which services will be provided. However, the Union's members would like to be able to have some meaningful input into the determination of the conditions of work. In particular, owner drivers would like to be able to negotiate with earthmoving contractors regarding the range of issues listed in paragraph 3.3 above.
- 4.11 While owner drivers would like to negotiate, an individual owner driver does not have the bargaining power to bring an earthmoving contractor to the negotiating table. In any event, an individual owner driver will generally lack the skills and resources to effectively negotiate on their own. To conduct negotiations individually, owner drivers would likely be required to obtain financial and accounting advice to formulate the necessary submissions about income and operating expenses, and legal advice to assist in conducting negotiations. Apart from the expenses of external advisors, the preparation for and participation in negotiation would be a significant drain on the very limited resources of owner drivers. The result is that is neither practical nor economical for owner drivers individually to negotiate with earthmoving contractors.
- 4.12 The proposed collective bargaining arrangements would provide a process by which the costs of negotiation could be shared across participating owner drivers. A collective approach is also likely to make negotiation more attractive to earthmoving contractors. A likely contributor to the reluctance of earthmoving contractors to negotiate in the past is the costs associated with numerous individual negotiations. A collective bargaining approach obviously avoids many of these costs. Thus, allowing collective negotiations is likely to result in improved input by all parties into the contract making process.

Safety

- 4.13 Members have raised concerns with the Union that some owner drivers are working excessive hours, speeding, overloading and not properly maintaining their vehicles in order to make ends meet. It is the view of the owner drivers that the economic pressure applied by the low rates of pay offered by earthmoving contractors, combined with the inability of the owner drivers to negotiate improved rates pay and other conditions, increases the risk of owner drivers cutting maintenance costs below safe levels, working too long hours (and so driving whilst tired) and otherwise engaging in practices that endanger not only the owner driver but also other members of the public.
- 4.14 Studies in both the long-haul and short-haul trucking industries have noted the tendency of customers to emphasise low costs, which creates economic pressures

on owner drivers that can result in compromises to safety. The final recommendations of the 2001 Inquiry into Safety in the Long Haul Trucking Industry in New South Wales included:⁴

- prohibiting the payment of bonuses or penalties in relation to arrival times, given their tendency to induce unsafe practices such as speeding and "driving out-of-hours";
- enforcing minimum award rates, and introducing a safety rate as "there can be no question that the payment of low rates to owner/drivers which do not cover normal operating and capital costs and encourage cuts in relation to vehicle maintenance or efforts to fit in extra jobs constitute a serious risk to safety"; and
- the introduction of protections for owner/drivers and others who refuse to engage in unsafe practices, in the light of the "disturbingly large number of cases" where drivers and trucking companies were threatened with cancellation of contracts if they were not willing to engage in unsafe practices.

4.15 Focusing on the short haul road transport sector, a recent New South Wales study has found:⁵

- fatigue, with its associated adverse implications for safety, is a significant problem in the sector;
- the critical determinants of fatigue are workload, time pressure and work rate;
- work pressures influenced drivers' choice of fatigue management strategies, with drivers tending to use strategies that did not require taking a break, despite the drivers recognising that strategies that provide respite from the demands of work are more effective; and
- financial pressures contributed to drivers engaging in unsafe practices such as speeding.

4.16 The study concluded:⁶

⁴ Quinlan, M., 2001 *Report of Inquiry into the Safety in the Long Haul Trucking Industry*, prepared for the Motor Accidents Authority of NSW, pages 308, 309 and 312.

⁵ Friswell, Williamson and Dunn, August 2006, *Driver Perspective on Work Fatigue and Occupational Health and Safety in the Light and Short Haul Road Transport Sector*, NSW Injury Risk Management Research Centre, University of New South Wales, pp 91, 149-150.

The findings of the study provide some clear directions for improving the workplace safety of light and short haul drivers. Raising awareness of the issues of fatigue and the particular risk factors associated with it in this industry sector would be useful. Companies should take steps to assess whether their drivers experience high levels of work pressure and frequent stress. If so, interventions that reduce time and workload pressure on drivers would be expected to reduce the incidence of stress, fatigue and injury. Owners [i.e., owner drivers]...in particular are likely to benefit. As suggested by the drivers, better monitoring of workloads and building greater flexibility into tight schedules would help to reduce work pressures.

- 4.17 The lack of negotiation between owner drivers and earthmoving contractors means that there is currently no process through which owner drivers' concerns regarding the impact of their work conditions on safety can be communicated to earthmoving contractors. The result is that changes in work practices that may be acceptable to all parties and would enhance safety are unlikely to be adopted. Collective bargaining would provide not only a means by which owner drivers' concerns regarding safety can be communicated to earth moving contractors (and vice versa), but importantly would do so in the context of negotiating work conditions. Work conditions can thus efficiently be adapted to address safety issues at minimum cost to all parties.
- 4.18 The Union submits that collective bargaining, by providing a process by which safety issues can be included in negotiations between owner drivers and earthmoving contractors, creates a benefit not only to the owner drivers and the earthmoving contractors, but also to the public at large.

Efficient business viability

- 4.19 The Union submits that the proposed arrangements will assist in ensuring the viability of an efficient earthmoving industry in the Brisbane region. It submits that a collective bargaining process will provide greater certainty to participants regarding the terms and conditions of work. It is also likely to improve the level of information available to owner drivers regarding industry developments. The improved certainty and level of information is likely to improve the allocation of resources in the sector, enabling participants (both earthmoving contractors and owner drivers) to make better informed business decisions, including decisions regarding investment in equipment such as trucks and trailers, or indeed a decision as to whether to enter or exit the market.

⁶ Ibid, page 154.

5. **TERM OF THE AUTHORIZATION**

5.1 The Union submits that an appropriate term for the grant of the authorization is five years.

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure A

ANNEXURE B: LIST OF EARTHMOVING CONTRACTORS

Number	Name
1.	Timms Haulage
2.	Byrne Earthmoving
3.	APA Tippers
4.	Rockin Haulage
5.	Landtrek
6.	Coastal Tippers
7.	Coast to Coast
8.	D&M Plant Hire
9.	Greens Tipper Hire
10.	North Brisbane Tippers
11.	Bulk Granite
12.	Thiess
13.	Boral
14.	Torque Haulage
15.	Effective
16.	Peter Munns Holdings
17.	Tims Holdings