

CoSBA



Combined Small Business Alliance of WA (Inc)



Date: 6 August 2014

Mr Rod Sims, Chairman
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

RE: TWU EXEMPTION

In the matter of the action of the Australian Competition and Consumer Commission (ACCC) in respect of Toll Holdings and the Transport Workers Union (TWU), highlighted in an article published in today's edition of *The Weekend Australian* newspaper under the heading 'Institutionalised union harassment no laughing matter' (copy attached below), whereby the ACCC granted the exemption to the TWU from the law so that it may make what we understand to be a repugnant and unlawful agreement with Toll Holdings.

In this matter, given the role of the ACCC, as outlined on your web site: "*to enforce the Competition and Consumer Act 2010 and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians*", and "*to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians*", CoSBA finds the action of the ACCC both inconceivable and wholly reprehensible.

Accordingly, in our strident objection to the action of the ACCC, we wish to advise that we totally and unequivocally adopt and support the submission of the Independent Contractors Australia (a member of our), that it has lodged with you.

A compelling question asked in the newspaper article and one to which we seek an answer from the ACCC is: "*Will the ACCC really give the TWU a legal clearance to represent small-business owners in contract negotiations with Toll?*"

Yours faithfully

**Combined Small Business Alliance
of Western Australia Inc. (CoSBA)**

OLIVER MOON
Chief Executive Officer

cc Hon Bruce Billson, Minister for Small Business; Mr Ken Phillips, CEO, Independent Contractors Australia

Institutionalised union harassment no laughing matter

GRACE COLLIER, THE WEEKEND AUSTRALIAN, NEWS LIMITED, JULY 26, 2014

EVERYONE is getting very impatient, especially me. The Australian Competition & Consumer Commission must make its position clear on two matters.

First, does the ACCC think it is legal to pay union officials to use their right-of-entry powers to harass businesses that are in competition with you?

Toll Holdings and the Transport Workers Union have a contract until 2017 that requires the union to spy on, harass and extort money from five of Toll's competitors a year, for a union-owned entity to earn \$50,000 a year. The royal commission into union malfeasance has the contract and the confession that it was entered into for anti-competitive reasons.

I assume ACCC action is already under way, but no one else shares that view.

The ACCC will not confirm or deny anything and everyone I talk to in industry and government says the ACCC people will do nothing, are useless and should all be sacked.

This depressing view was supported by a decision the ACCC has just made, which leads us to the second matter on which it must reveal its position. Will the ACCC really give the TWU a legal clearance to represent small-business owners in contract negotiations with Toll?

Toll uses contractors, called owner drivers, to supplement its employee workforce. Owner drivers are not employees; they are small-business people with their own vehicles who provide services to Toll under commercial contracts.

Under workplace law, employees have the right to bargain collectively. But under competition law, business people are prohibited from collectively bargaining because it is price-fixing.

The TWU wants to move outside of its traditional role of representing employees to represent Toll's Queensland owner drivers in a collective contract negotiation with Toll. In May, the union applied to the ACCC for an exemption from the law so that it may do so.

This week, despite having full knowledge of the goings-on between Toll and the TWU, the ACCC granted the exemption, in the interim. The parties are allowed to start negotiations but cannot sign contracts just yet. The ACCC has invited submissions from people and will consider these before allowing any contracts to be signed.

Ken Phillips, from Independent Contractors Australia, has lodged a submission opposing the exemption because "Toll and the TWU have been involved in collusive behaviour for the purposes of harassing Toll's competitors" and "are not fit and proper organisations to be granted authorisation" and "should both be investigated for breach of Australian competition laws with a view to possible prosecution".

Phillips says the parties "will engage in anti-competitive behaviour if granted collective-bargaining rights under competition law".

Toll shareholders should be alarmed. Toll has told the ACCC it will not be opposing the union's application for exemption.

The company has cost and productivity issues, it is in bed with the union and the mismanagement is going to extend to the contractors, who are now becoming unionised. Management's excuse for the collusive conduct has been absurd; it is along the lines of the "my mistress made me murder my wife" type of defence. It is time the board took some action.

Government people should get their act together, fast. They are supposedly running the country and if they cannot get the ACCC to do their job then I don't see what the rest of us can do.

As for the rest of us, all we can do is watch the ACCC and wait. Either it is legal to hire union people to harass businesses or it is not. If it is illegal, then we can expect to see a prosecution and the exemption reversed.

On the other hand, if it is perfectly legal, then the entrepreneurial among us may as well copy the TWU.

I can easily set up a business offering union harassment of companies across plenty of industries.

Undercutting the union's current prices shouldn't be too hard either. For about \$8000, I can find a union person to go into any business, do a wages audit, a bit of general harassing, and we can put all the information into a nice report.

There will be plenty of people who will pay for this service, too, provided it is lawful.

I wish the ACCC would hurry up and let us all know, either way, because it is a great business model. Perhaps you think I am joking. I assure you, I am not.