

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE *TRADE PRACTICES ACT 1974*

BY

AUSTRALIAN BUILDING CONSTRUCTION EMPLOYEES AND BUILDERS' LABOURERS FEDERATION, (QUEENSLAND BRANCH) UNION OF EMPLOYEES

AND

DARYL KEITH KERR

This is an undertaking given to the Australian Competition and Consumer Commission ("the Commission") by the Australian Building Construction Employees and Builders' Labourers Federation, (Queensland Branch) Union of Employees ("the BLF") of 366 Upper Roma Street, Brisbane, in the State of Queensland and Daryl Keith Kerr ("Daryl Kerr") of 13 Jones Street, Rockhampton, in the State of Queensland, pursuant to section 87B of the *Trade Practices Act 1974* ("the Act").

Background

- A. The BLF is a registered organisation under the *Industrial Relations Act 1999* (Qld) and an organisation of employees within the meaning of the Act.
- B. Daryl Kerr was at all material times employed by the BLF as its organiser and representative in the Rockhampton region of Queensland.
- C. CQ Crane Hire ("CQ Crane") is an unincorporated partnership which offers mobile crane hire, lifting and dogging services to, inter alia, building contractors and subcontractors on building sites throughout Central Queensland, including Rockhampton. CQ Crane is customarily engaged by building contractors and subcontractors in Central Queensland to provide these services.
- D. Between June 1998 and December 1999, Daryl Kerr in his capacity as an organiser of the BLF and in the course of his employment:
 - (a) said to various building contractors and subcontractors on various building sites in and around Rockhampton (being the Birch Carroll and Coyle cinema site, and the Riverbank Development site) that they were not permitted by the BLF to engage the services of CQ Crane on those sites;
 - (b) told the principals and various employees of CQ Crane to leave the said sites without performing the services they had previously been engaged by building contractors or their subcontractors to perform there; and
 - (c) made or sought to make an arrangement with building contractors that they would not engage, or permit their subcontractors to engage, CQ Crane to perform services on the said sites notwithstanding that those persons had previously been accustomed to using the services of CQ Crane;

because CQ Crane did not have an enterprise bargaining agreement (“EBA”) with the BLF.

- E. As a result of the conduct described above (“the conduct”), CQ Crane states it was hindered or prevented from providing its services to building contractors and subcontractors, including established customers of CQ Crane who were accustomed to acquiring their mobile crane hire, lifting and dogging services from it, at the said sites.
- F. It is the policy of the BLF to advocate and actively encourage persons, including building contractors and subcontractors, to enter into EBAs with it. The BLF believe that agreements such as EBAs provide a more productive and efficient industry and reduce the potential for conflict or dispute. The BLF believes accordingly that the entry of contractors into agreements such as EBAs is of benefit to both contractors and their employees. It is not, however, the policy of the BLF to compel persons to enter into EBAs with it by excluding, or seeking or causing others to exclude, persons who do not have an EBA with the BLF from building sites on which BLF members are working. No person has authority of the BLF to exclude, or seek or cause any other person to exclude, any person from a building site for the reason that that person does not have an EBA with the BLF. Any person purporting to do so is acting without the consent, authority or approval of the BLF.
- G. The Commission has raised its concerns with the conduct with the BLF and Daryl Kerr. The BLF and Daryl Kerr acknowledge that the said conduct may have been in breach of sections 45D and 45E of the Act and/or the Competition Code of Queensland (“the Code”). Daryl Kerr was unaware that the conduct might contravene the Act and the Code and neither the BLF nor Daryl Kerr engaged in the conduct with the intent of contravening either the Act or the Code.

Commencement of Undertaking

This undertaking comes into effect when:

- (i) the undertaking is executed by the BLF and Daryl Kerr; and
- (ii) the Commission accepts the undertaking so executed.

Undertakings

The BLF undertakes that:

1. The BLF shall, within 3 months of the acceptance of this undertaking, at its own expense, establish a Trade Practices Compliance Program to ensure that all of its employees are aware of the provisions of sections 45D and 45E of the Act and their obligations thereunder.
2. The BLF shall provide a draft of the compliance program to the Commission within six weeks of acceptance of these undertakings and shall make such changes to the program as the Commission may reasonably require.

3. The BLF shall not, whether by itself or by its officers, employees or members, for a period of 2 years from the date of acceptance of this undertaking:
 - (a) engage in any conduct in Queensland;
 - (b) encourage, counsel or procure its employees, members or any other persons to engage in any conduct in Queensland; or
 - (c) be knowingly concerned either directly or indirectly in any conduct in Queensland,
by which any person is hindered or prevented, or threatened to be hindered or prevented, either directly or indirectly, from acquiring mobile crane hire or lifting or dogging services (“the services”) for the reason, or for reasons including the reason that the person providing the services does not have an enterprise bargaining agreement with the BLF or any other union.
4. The BLF shall, within 7 days of the date of acceptance of this undertaking, cause a copy of this undertaking to be delivered to:
 - (a) CQ Crane;
 - (b) McMasters Pty Ltd.
5. The BLF will not, and will use its best endeavours to ensure that its employees and members do not, cause or procure damage, loss or disadvantage to any person for on account of that person having assisted the Commission in relation to its enquiries into the conduct or furnishing information or documents to the Commission in relation to its enquiry into the conduct.

Undertakings of Daryl Kerr

Daryl Kerr undertakes that:

6. Daryl Kerr shall not, for a period of 2 years from the date of acceptance of this undertaking:
 - (a) engage in any conduct in Queensland;
 - (b) encourage, counsel or procure the BLF, its members or any other persons to engage in any conduct in Queensland; or
 - (c) be knowingly concerned either directly or indirectly in any conduct in Queensland,
by which any person is hindered or prevented, or threatened to be hindered or prevented, either directly or indirectly, from acquiring or supplying mobile crane hire or lifting or dogging services (“the services”) for the reason, or for reasons including the reason that the person providing the services does not have an enterprise bargaining agreement with the BLF or any other union.
7. For the purposes of these undertakings, a person is not hindered by reason only that the BLF or its employees (including Daryl Kerr) advocates to that person the lawful benefits of persons into EBAs with unions.

Acknowledgments

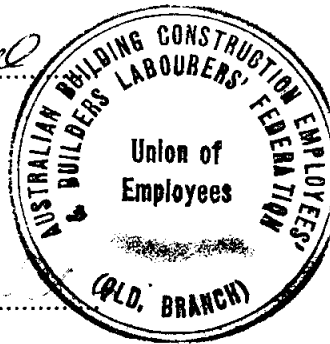
The BLF and Daryl Kerr acknowledge:

- (i) the Commission's right to make this undertaking available to the public including by placing it on a register, publishing it and allowing third parties to publish it;
- (ii) that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to the undertaking; and
- (iii) that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

The seal of the Australian Building Construction Employees and Builders Labourer's Federation (Queensland Branch) Union of Employees was hereunto affixed under the hand of



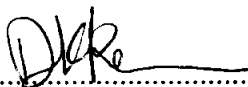
Greg Simcoe
Secretary



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Carl Purcell
President

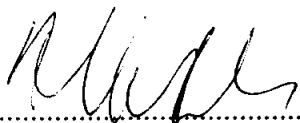
this 9th day of May 2000.

Signed sealed and delivered by Daryl Keith Kerr
this 8th day of May 2000.



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Daryl Keith Kerr

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Trade Practices Act 1974*



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Professor Alan Fels (Chairperson)

this 17 day of May 2000