

Senate Economics References Committee

Insolvency in the Australian Construction Industry

CFMEU Response to Questions on Notice from Senator Edwards

1. Head contractors determine which subcontractors are engaged on particular construction sites by the letting of contracts to those subcontractors. There is a significant number of subcontractors working on construction sites at any one time who do not have enterprise bargaining agreements with the CFMEU.

2. Members of the committee should read the Slevin Report for themselves. The CFMEU does not accept the summary in the preamble to question 2 is accurate. With this in mind, the answers to the specific questions are:
 - a) The CFMEU seeks to advance the industrial interests of its members employed by all companies by extending the more beneficial terms and conditions of enterprise bargaining agreements to those members as well as ensuring that all lawful employee entitlements are paid.
 - b) See a) above.
 - c) Darren Greenfield.
 - d) The CFMEU understands that Elite Scaffolding no longer operates.
 - e) See d) above.
 - f) The enterprise agreement continues to operate in accordance with the terms of the *Fair Work Act 2009* although as the company is not currently operating, it has no work to do.
 - g) The company is not currently operating and the CFMEU understands that through the efforts of Mr Greenfield in late 2014, all arrears have been paid to workers. Should the union become aware of any outstanding entitlements it will pursue the recovery of such entitlements through all available legal processes.
 - h) No specific steps to recover entitlements were taken in relation to the evidence of Mr Westerway to the Royal Commission in September 2014. The events that Mr Westerway gave evidence about occurred in late 2013. Mr Greenfield continued to pursue arrears from Elite Scaffolding throughout 2014 until the company ceased operating in late 2014.
 - i) Yes
 - j) No and no.

3. It is not correct to say that '*the CFMEU had intended that (Capital Workforce) would assume the business of Active Labour and Metropolis*'.

a) The Branch Committee of Management was concerned that the company would not adhere to the terms of the proposed agreement and determined that it was not in the interests of its members to proceed with the applications.

b) Enterprise agreements are entered into by employers and employees. The CFMEU becomes involved in negotiations for agreements on the basis that its members benefit from union representation in the bargaining process. The CFMEU does not elect to be bound by agreements to 'reward' certain companies, whether they are potential phoenix operators or not. It does so where it believes this to be in the interests of its members and assesses each potential agreement on this basis.

4. a) ASIC records show and the CFMEU is accordingly aware that Athina Alex was a director of Active Workforce (NSW) P/L from 2010 to 2012 and a director of Active Labour Pty Ltd in 2012.

b) ASIC records show and the CFMEU is accordingly aware that Mazen Hourani was a director of Active Labour Pty Ltd from June 2013 and was a director of Capital Workforce Pty Ltd in April 2014.

c) ASIC records for Active Labour Pty Ltd do not show Mr Joe Antoun as having been a director of Active Labour Pty Ltd.

d) Yes

e) Mr Greenfield who was responsible for recovery arrears dealt with a number of persons involved in the Elite businesses including persons who were directors of the Elite companies. He dealt with Mr Alex because Mr Alex had some connection with those who ran the business.

f) No.

g) Mr. Alex has no 'involvement' or 'relationship' with the CFMEU.

h) Yes

i) Yes

j) Yes

k) This matter is currently the subject of an inquiry by the Royal Commission. The CFMEU understands that entries were made in financial records of companies involved in the Elite scaffolding business describing certain payments as "union payments". Those entries were described that way, according to Mr Westerway who kept those financial records, based on instruction from Mr Alex and Mr Antoun. Mr Westerway said that those payments were given to Mr Antoun or Mr Alex. He said that at no time did he see any payments being made to a union official. He further said that he suspected that Mr Alex and Mr Antoun were keeping those payments themselves. Mr Alex gave evidence that those payments were made to Mr Antoun's brothers. The CFMEU has no records of receiving those payments and the officials who dealt with Mr Alex, Mr Parker and Mr Greenfield, say they were never given money by Mr Alex or Antoun for any purpose.

5. a) The submission was authorised and supported by evidence to the Royal Commission. The submission is available on the Royal Commission's website.

b) The question misstates the findings in the Slevin Report. The Slevin Report considered the steps taken by the Branch following Mr Fitzpatrick's complaint that a death threat had been made. It dealt with more than the investigation and report of Ms Mallia. It also considered an investigation and report by former Branch Secretary Don McDonald and the deliberations over the issue by the Branch Committee of Management including an extraordinary meeting on the topic. The report concluded that the death threat was adequately resolved within the Branch. The report concluded that Ms Mallia's conclusion that she could not be satisfied that the death threat was made was sufficient to deal with Mr Fitzpatrick's complaint. The CFMEU agrees that the conclusions in Ms Mallia's report were sufficient to deal with the issue.

c) Multiple inquiries were undertaken into the allegation as detailed in evidence to the Royal Commission and in the Slevin Report. The union informed the police of Mr Fitzpatrick's allegation.

d) The statement is factual and not a 'smear'.
6. a) The Slevin Report noted that ACIRT had claimed that it did not have accounts for the Elite Holdings group of companies. It was also noted that this was contrary to bank statements held by the Branch indicating that payments had been made. It was also noted that accurate records of arrears were difficult to obtain. Following the report and in response to evidence in the Royal Commission the union provided a statement to the Royal Commission in October last year outlining the precise amounts recovered from the Alex related companies. The total amount recovered was \$1,638,143.78. The actual amounts recovered were:
 - i. In the period May 2012 to June 2014 \$1,036,790.31 from Active Labour companies;
 - ii. In the period July 2013 to August 2013 \$205,634.86 from the Elite companies; and
 - iii. In the period January 2014 to August 2014 \$395,718.61 from the Metropolis companies.

These amounts were recovered as a result of the work of the CFMEU and its officers. None of it was recovered by any Government agency.

- b) No.
 - c) See (b) above.
7. a) No comment.

b) The CFMEU has been at the forefront of the campaign to combat Phoenix companies over many years and will continue in that role. The union has recovered millions of dollars or workers' entitlements.

c) Mr. Parker indicated his reasons for stepping aside in a media statement dated 9 June 2015.

d) and e) These are matters for the relevant decision making bodies of the union which have not considered the issue at this point.

8. a) The CFMEU is aware from media reports that this practice is adopted by some sub-contractors. The union does not support such activity.

b) The CFMEU is not aware of the arrangements between debt collectors and subcontractors. The question should be directed to employer organisations such as the Master Builders Association.

c) The CFMEU is not aware of the specific arrangements associated with Mr Gatto's activities in the industry.

d) No.

9. a) See answers above and those provided in Hansard at the hearing on 12 June 2015.

b) See a) above.

c) The CFMEU has no such 'history'.