

- Thanks Ken. I am pleased to participate in a forum of this nature and I welcome you all here today. There has been considerable media attention regarding the construction industry recently and I have no doubt that the collective information provided by today's speakers will provide us all with a broad insight into the current state of play in the construction industry.
- Today I would like to give you an overview of my involvement in the industry and provide you with a bit of history about Troubleshooters and the obstacles and frustrations that we have been confronted with over many years.
- I have been involved with Troubleshooters Available for 24 years and since 1990 I have been a director of the Company.
- Troubleshooters is a Labour Hire Agency that provides construction personnel to the building industry. Our personnel range from skilled labourers and tradesmen to OH&S advisors, foremen and site supervisors. The majority of our clients are involved in the commercial and industrial sector. Our longevity in the building industry is testament to us having a place in the industry and providing a much needed service. However to this day we have been in a constant battle with the union to maintain our existence. I will elaborate on my battles with the union further on!

- Troubleshooters originally operated through a company called Odco Pty Ltd and supplied contract carpenters, labourers, shopfitters and other construction personnel to the commercial building industry in Melbourne. It was a core aim of the founders that the personnel they supplied would always be self-employed contractors and not employees of either the Odco agency or Odco's clients.
- They believed that this arrangement offered builders and contractors much greater levels of flexibility, productivity and efficiency. Contracts were set up to enshrine these arrangements and it was well understood and stated that the workers were contractors and not employees.
- Most of you here will remember the booming 80's when the building industry was at a peak. As you would imagine, the demand for construction personnel was significant and at the time we had approx 450 contractors assigned to numerous projects on a daily basis in Melbourne and around 750 nationally.
- That growth and the fact that our workers were present on commercial building sites in Melbourne avowing to be contractors did not endear them to the building unions. The unions set upon a campaign to eradicate our business. The BWIU as it was known at the time placed direct pressure on the clients of Troubleshooters Available with warnings that if their association continued their projects would be stopped.

- The standover tactics they employed were intimidating, illegal, and outrageous and they were basically given free reign to do so. I am yet to hear of this ever occurring in any other industry.
- The Union presence and threats escalated to the point that in 1987 our company was experiencing a substantial loss of trade. We had no other option but to commence legal proceedings against what is now the CFMEU that ultimately resulted in a landmark judgement for us. "The Odco decision".
- Mr Justice Woodward delivered the trial judgement and determined that the Odco workers were contractors and not employees of anyone. The awarded damages and costs against the union for breaches of Section .45 of the Trade Practices Act. The BWIU appealed the trial judgement but it was dismissed by the Full Court of the Federal Court. The BWIU then sought special leave to appeal to the High Court which was unanimously refused.

- Following those successes, the company founders saw an opportunity to spread their unique method of contract labour hire, which had now received endorsement in the High Court to other industries around Australia. Odco sold the rights to the system to Odco Contracting Systems, a company that was set up specifically to license the System. Odco Contracting Systems commenced licensing the system in 1994 and it is now operational in all states and territories in Australia. On any given day, there are approximately 9000 - 10,000 Odco contractors working in successful businesses across various industries.
- By the way, with regard to these licensed operations, the only organisations that have ever been targeted by the unions are those involved in the construction industry!
- Those early days set the tone for the relationship between Troubleshooters and the CFMEU. It has always been far from harmonious; in fact it has always been extremely volatile. Aside from the court battle, the union has never been able to come to terms with the fact that we operate outside the award and the EBA and that our construction personnel are bona fide contractors.

- We have never at any stage been anti-union or anti-EBA. In fact many of our contractors are paid up union members and they make a choice that is not influenced by us in anyway. As I mentioned earlier, we believe that contractors and builders alike can achieve greater levels of flexibility, productivity and efficiency by operating under the Odco system.
- All builders have a right to decide how they will engage their labour and how they will operate their business and all construction personnel are free to choose between being directly employed or maintaining their status as a bona fide contractor.
- The same rationale applies to the EBA's. It is not illegal or unlawful to operate outside the EBA. Each organisation and worker is entitled to make a choice. These decisions should not be made by the CFMEU and it is not a role that they should be permitted to assume. There are many construction companies that don't work under an EBA.
- Perhaps one day, elected industry representatives should get together with the Union and work out exactly what roles and responsibilities the industry would like them to take on board.

- The Union has claimed in the past that their concerns arise out of the fact that Troubleshooters contractors work shoulder to shoulder with those engaged under a Union approved EBA and it is their belief that the varying pay rates and conditions is a recipe for disaster.
- My response to that is that there are numerous labour hire companies out there and those contractors who undertake assignments with Troubleshooters do so of their own free will and with complete knowledge and understanding of the rates and conditions of the contract system. It is also our belief that the modern day working environment sees workers/contractors across ALL industries being engaged under varying awards, rates and conditions.
- We also have many contractors, some who are registered builders coming to Troubleshooters when they have finalised their own projects and are in between tenders or when they have finished on a major construction site governed by an EBA. In addition to that we have construction workers who are currently working elsewhere under an EBA who seek to gain additional work through Troubleshooters on weekends, RDO's and productivity leisure days. The union should freely accept the self-employed status.

- Now getting back to our battles that I touched on earlier. Over the years I personally have been abused, threatened, spat on and intimidated. I have numerous documented examples of union bullyboy tactics, a few which immediately spring to mind are:
 - A union shop steward who was unhappy that my client had Troubleshooters contactors on site, threatened him with warnings that he would not guarantee the safety of his workforce whilst he engaged the services of Troubleshooters.
 - A CFMEU official arrived at a building site on which Troubleshooters contractors were being used. He threatened to turn a client's project from a \$13mil job to an \$18mil job as well as nominating himself as the shop steward in order to come back and in his own words "and throw hand grenades around the site".
 - A letter was sent by the CFMEU to numerous building sites stating which labour hire companies could be used. Obviously Troubleshooters was not on the list. The CFMEU are renowned for directing builders to use the services of one particular union approved labour hire company.

- I anticipated that I may be questioned about who this particular union approved labour hire company is. Our company solicitor and I recently talked about this over lunch at a restaurant in Carlton, not too far from MC Labour Park. When I put it to him about naming the company - he advised me not to do so!

- Back to our Union battles:
- Troubleshooters Contractors and Clients have been advised by Union officials to sever their ties with Troubleshooters or they will be black banned from building sites.
- Union officials arrived unannounced and without permits at my client's site on three separate occasions over a period of a week. On each occasion they tried to coerce my client to sign an EBA and to sign his workforce up with the union. He was told that he must sign up his boys to make the union boss happy. When my client put it to him that it was up to the boys, he replied "no, it's up to you, you have to pay for the boys to be a part of the union."
- He was also told that he had to make them join and this particular union official would rip up their tickets at the completion of the project. The union official parted with the comment that his boys would be back. Sure enough the following day three car loads of thugs posing as union officials and shop stewards arrived at my client's site. The police were called to remove them.

- A union official threatened to gouge out the eyes of one of our contractors with his car keys because he didn't want Troubleshooters contractors on site.
- A builder in the Laverton area was visited by two union officials. They demanded that a CFMEU shop steward be engaged on the site. Further to this, they clearly stated that the crane operator would not be allowed to work on site until the union demands were met. This is a typical case of a secondary boycott that has happened on numerous occasions.
- I went to visit a client on site in WA who was having problems with union intervention. The union shop steward was a mountain of a Maori man standing about 6'5". I approached this person and while eyeballing his naval, I explained to him our legal position. He was unhappy to say the least and was ushered off site by a fellow union official so that he could cool off. At this time he was outside the fence but only a few metres away from me and he commenced with what I thought was a lesson on how to perform the Haka. It then dawned on me then that he wanted to beat the living daylights out of me. This is the closest I've come to a physical assault.

- I could go on but I think you will by now have painted a picture in your minds as to the manner in which some, and I emphasise some, of these senseless and very puerile union shop stewards conduct themselves. These guys, performing like angry little programmed robots go out on sites banging their chests and espousing the union culture and brotherhood. Their gutless superiors however, will claim that they have no knowledge of their antics and will not back their actions when confronted. Basically they are being used as scape goats to do their dirty work, in turn, putting the builders at risk.
- The Union has continually demonstrated that it has no regard for the High Court Odco decision, as I am constantly required to defend the rights of Troubleshooters to trade, and on a regular basis find myself contending with the union's harassment towards our Clients.
- During the years there have been cases where my clients have attempted to make a stand against the union interference. However when you are faced with an organisation that basically has a free hit at destroying the success of your project, commercial reality will normally see the builder backing away from using our services to ensure that their projects continue without disruption and within budgets. The old adage "once bitten twice shy" is applicable and the builder is hesitant or does not use our services again.
- Union interference has kept Troubleshooters construction personnel off numerous building sites simply because they are

not operating under a union approved EBA. Not only have their actions restricted the right of trade for Troubleshooters but they have affected the earning capacity of our contractors. As I mentioned earlier, many of these have been financial union members! Union officials throwing their own members off site. Union wages are paid by union fees - where is the justice?

- In 2002 I gave evidence under oath at the Royal Commission. My evidence was supported by correspondence, file notes, diary entries and transcripts of recorded conversations.
- The CFMEU responded with outrageous statements ranging from people working while on the dole to avoidance of all obligations including taxation. It was no surprise to me that their solicitor at no stage asked them to provide evidence to support their claims. In fact I was not at all surprised that no one from the CFMEU accepted the offer from the Commissioner to come forward and provide a statement or evidence to refute my own claims.

- At that time the union made a big deal about my recording of telephone conversations. Whilst my actions may seem unethical to some, as I mentioned earlier the union has had a free hit at destroying our business for many years and out of pure frustration I resorted to this measure. Desperate times call for desperate measures and I strongly feel that my actions were insignificant compared to those dished out by the Union over such a long period of time.
- My reasons for offering such detailed records to the Royal Commission were to provide evidence to the building fraternity and the general public of the intimidation, blatant disregard for the law and the rights of others and stand over tactics used by the CFMEU.
- Throughout the Royal Commission I made a point of speaking to the workers who were gathering outside each day, apparently, in protest. I can honestly say that the majority of guys I spoke to were in attendance at the direction of the Union officials and would rather have been at work.

- Over the years I have applied numerous strategies to negate the illegal antics, stand over tactics, intimidation and propaganda carried out by the CFMEU. Having gained a reputation for standing up to unions, builders who were frustrated and fed up with Union interference were regularly contacting me seeking advice.
- In 2004, coinciding with the establishment of the Interim Building Taskforce, I started the Builders Alliance Group along with a few builders who were concerned with the debilitating effects that the activities of the CFMEU were having on the industry.
- Basically it is a forum for sharing information and advice. The group has proven to be highly effective and successful and now has 150 members. It does not convene any formal meetings; it simply shares information and strategies on how to curb the unreasonable demands placed on them by the CFMEU.

- Our plan of attack is simple; builders who find themselves on the wrong end of union intervention circumvent any further action by immediately writing to Martin Kingham. It is clearly stated that they are fully conversant with their rights and responsibilities and it is strongly communicated that the builder will not hesitate to use any resources available should the illegal union intervention continue. There is a lot of bluff and bluster put out there by the union. I am a great believer that if the union know that you are aware of your legal rights, they are very wary of going down the militant path.
- A copy of the correspondence is sent to the ABCC, Troubleshooters, and other members of the Group. In all cases the union intervention has ceased and the projects have continued without any further interruptions. There was a period there when numerous letters were being sent to Martin Kingham. These are now few and far between.
- I have no doubt that the establishment of the Interim Taskforce, which has since transferred its functions to the Australian Building & Construction Commission (ABCC), has contributed to the success of the group and to the reform that we are now seeing within the industry.

- This independent body has grown into an effective watchdog to ensure that unlawful activities by all parties involved in the industry is policed and acted upon. Its giving builders confidence and the much-needed support they need to stand up to the union and other parties involved in unlawful activities, which ultimately impact on the health and future viability of the industry. No doubt John Lloyd will provide us with fact and figures that reinforce the successes of the Commission to date.
- It has also been particularly pleasing to see the return of several of our clients who had previously been threatened and warned off using our services.
- However, I do feel that there are some larger construction companies who are being intimidated and controlled to a degree by the CFMEU. I realise and understand that budgets and time constraints play a major role in decision making however these big guys in the industry need to stand up and be counted. Being at the top of the food chain, their actions or rather their inaction has a domino effect within the industry.

- Just last month we were set to provide a new client with 6 contractors for a period of 8 weeks. When the principal builder on this large project got wind of the fact that his contractor was engaging the services of Troubleshooters to provide construction personnel, my client received a phone call advising that the principal builder would pay 50% of the cost of the construction workers if they were sourced from that well known Union approved labour hire company. I found that appalling.
- I'm sure I am not alone when I express my concerns about the possibility of the return of a Labor Government. Their campaign to date has taken many turns regarding Workplace reforms, unions, etc. Six weeks ago I wrote a letter to Julia Gillard on behalf of the Builders Alliance Group and builders in general. I expressed our satisfaction with the reforms to date and made it clear that we wanted the industry to continue to make steps towards a better future. To date I have had no response.
- In order to maintain the impressive results created by the reforms, the industry and the Government, regardless of who it is, must continue to support the ABCC's efforts and continue to strive for compliance with the principles of the National Code. We need to be vigilant and exert as much pressure and influence as possible within the industry and politically to ensure that the progress we have made to date continues and is not wound back in any shape or form.

- It's heartening to see that we are all experiencing a fair run and not being dictated on how we should operate our businesses.
- Finally and most importantly, it would be a very brave government to rid itself of an organisation largely responsible for the considerable reform that has been achieved. It is only through industry wide commitment to these reforms that a possibility of a Labor Government can be prevented from rolling back progress in return to union dominance.