



Chairman: Peter Parkinson  
UNIT 1, 233 CARDIGAN STREET  
CARLTON SOUTH VIC 3053  
A.C.N. 110 263 182  
TEL: 03 9348 2613 FAX: 03 9348 2714  
[dboard@vbidb.org.au](mailto:dboard@vbidb.org.au)  
[www.vbidb.org.au](http://www.vbidb.org.au)

**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)**

**and**

**KANE CONSTRUCTIONS PTY LTD (KANE)**  
**DANAYNE CEILING PTY LTD T/AS DANAYNE CEILINGS (DANAYNE)**  
**ONEWAY ENTERPRISE GROUP PTY LTD (ONEWAY)**  
**CMM GROUP (CMM)**  
**ULTIMATE INTERIOR GROUP PTY LTD (UIG)**

**RE: ALLEGED SHAM CONTRACTING**  
**NORTHERN HOSPITAL, CROWN CASINO, STATE HOCKEY CENTRE AND**  
**OTHER SITES IN MELBOURNE**

**19 JUNE 2020**

**011-2020**

**STATEMENT**

[1] The CFMEU notified a dispute on 16 June 2020 alleging that the respondent sub contractors to the principal Kane were engaged in sham contracting arrangements with workers performing work on the Northern Hospital, Crown Casino, State Hockey Centre and other sites in Melbourne.

[2] The following enterprise agreements apply:

- \* *Kane Constructions Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016 -2018*

- \* *Danayne Ceilings Pty Ltd T/As Danayne Ceilings and the CFMEU (Victorian Construction and General Division) Plastering Enterprise Agreement 2016-2018*
- \* *Oneway Enterprise Group Pty Ltd and the CFMEU (Victorian Construction and General Division) Plastering Enterprise Agreement 2019-2020*
- \* *CMM GROUP PTY. LTD. and the CFMEU (Victorian Construction and General Division) Plastering Enterprise Agreement 2019 – 2020*
- \* *Ultimate Interior Group Pty Ltd and the CFMEU (Victorian Construction and General Division) Plastering Enterprise Agreement 2019 – 2020*

[3] The Panel conducted a video Conference of the parties on 19 June 2020. The Conference was attended by representatives of the CFMEU, Kane, Danayne, Oneway, CMM and UIG.

[4] The CFMEU confirmed that both Danayne and Oneway were now in compliance with the applicable enterprise agreements. Accordingly the Chair excused Danayne representatives from the Conference and confirmed the dispute with both Danayne and Oneway as resolved. The circumstances of this settlement are referenced later in this Statement.

[5] UIG is performing contracts of works with Kane at both Northern Hospital and a Clayton site with approximately 35 and 4 workers respectively. CMM is performing a contract of works with Kane at Northern Hospital with approximately 20 workers.

[6] The CFMEU stated that it based its belief that Sham Contracting, in breach of the applicable enterprise agreements, was being conducted by both CMM and UIG arising from information provided by its members that had been raised by delegates with site supervision. According to the CFMEU site supervision had said there was no sham contracting being conducted. The CFMEU sought the Panel's assistance in progressing the matter noting a reluctance for their members affected to be identified.

[7] Both UIG and CMM representatives confirmed that they understood their obligations not to engage in sham contracting as provided by the terms of the enterprise agreement.

[8] Kane representatives attended pursuant to subclause 15.4 (f) of the enterprise agreement to assist the Panel, which the Panel acknowledges and appreciates. The Chair referenced matter nos. 010-2018 and 015-2018, disputes where Kane similarly assisted in relation to sham contracting allegations against its sub contractors, arising from which procedures were adopted by Kane consistent with the Sham Contracting Compliance Checklist published by the Building Industry Consultative Council (BICC). Kane advised that it followed these procedures and had been investigating the allegations now made by the CFMEU. It was not apparent that either CMM or UIG had actually completed the BICC checklist. The Panel encourages all contractors to do so.

[9] Notwithstanding the procedures Kane has had in place since the earlier matters, according to the CFMEU, both Danayne and Oneway had conducted sham contracting on the Kane sites, but were now compliant following the CFMEU intervention. In response to the CFMEU's comments, Kane quite properly expressed its intention to immediately follow up with the CFMEU to review and establish what other lessons can be learnt as to its procedures, to ensure enterprise agreement compliance by its subcontractors and for the benefit of the industry generally. The Panel encourages this review.

[10] In relation to UIG and CMM, both agreed with the Chair that they would meet and present their records for urgent review with both Kane and the CFMEU to ensure they were compliant with the applicable enterprise agreements, and to take any action, if necessary, to comply. To be clear, there has been no admission by either UIG or CMM that sham contracting has been conducted, nor has it been denied. That will be a matter for the parties to address when they meet.

[11] Accordingly the Panel has directed that Kane, together with the CFMEU, meet urgently with each of CMM and UIG for these purposes. Kane agreed to facilitate these meetings.

[12] A further video Conference before the Panel will be held **Friday 26 June 2020 at 10.00 am** where the parties are to report on the outcomes of these meetings. In addition the Panel expects that Kane and the CFMEU will have met to review the circumstances attaching to both Danayne and Oneway and will be in a position to report to the Panel any lessons/steps that may assist in eliminating the problem of sham contracting consistent with paragraph [9].



**Peter Parkinson**  
**Chairman**



**Esther Gruszka**  
**Alternate Panel Member**



**Tony Cordier**  
**Panel Member**



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**RE: ALLEGED SHAM CONTRACTING**

**NORTHERN HOSPITAL, CROWN CASINO, STATE HOCKEY CENTRE AND  
OTHER SITES IN MELBOURNE**

**26 JUNE 2020**

**011-2020**

**STATEMENT NO. 2**

[1] The CFMEU notified a dispute on 16 June 2020 alleging that the respondent sub contractors to the principal Kane were engaged in sham contracting arrangements with workers performing work on the Northern Hospital, Crown Casino, State Hockey Centre and other sites in Melbourne.

[2] The Panel conducted a video Conference on 19 June 2020 and issued a Statement which is to be read in conjunction with this Statement. In that Statement the Panel recorded that “*the CFMEU confirmed that both Danayne and Oneway were now in compliance with the applicable enterprise agreements. Accordingly the Chair excused*

*Danayne representatives from the Conference and confirmed the dispute with both Danayne and Oneway as resolved.”*

[3] A further video Conference was held on 26 June, 2020 to receive a report back from the parties, as required by the Panel, concerning the remaining allegations of sham contracting being conducted by UIG and CMM.

[4] The CFMEU reported that the required meetings had proceeded and that both CMM and UIG had admitted that their workers on the sites, totalling approximately 107 workers for UIG and approximately 29 workers for CMM, had been engaged under individual ABN's since 20 September 2019. This was admitted by CMM and UIG. CMM also confirmed it had engaged 4 labourers correctly under the Enterprise Agreement. Both CMM and UIG accepted that the engagement of the workers via ABN numbers as a contract for services and not as employees as a contract of employment, was not in compliance with the applicable Enterprise Agreements. The CFMEU advised that both CMM and UIG had now agreed to conduct its employment arrangements in compliance with the Enterprise Agreements.

[5] The Chair enquired as to the working arrangements that had been undertaken by the workers. The responses provided by both CMM and UIG was clearly reflective of an employee/employer relationship, not one of genuine independent contractors.

[6] Both CMM and UIG confirmed that they would now act in compliance with the applicable Enterprise Agreements.

[7] The CFMEU submitted that it was not at this stage seeking a specific remedy in relation to the breaches by CMM and UIG. It sought that the principal Kane should be referred by the Chair to the relevant State Government authority pursuant to Sub clause 15.4 (g) of the applicable Enterprise Agreement having regard to the matters raised in these proceedings and the previous allegations, as referenced in paragraph [8] of the previous Statement.

[8] The Chair referenced the remedy available, should it be necessary, as set out Sub clause 15.4 (h) of the applicable Enterprise Agreements. The CFMEU confirmed it was not pressing the penalty at this point in time.

[9] Kane, the principal contractor, explained that its arrangements required compliance by its sub contractors and its arrangements included the relevant requirements as set out in the BICC recommended Checklist in its tendering and contracting documents. The Chair requested that Kane provide extracts of the relevant documentation to demonstrate same to the Panel. The Chair indicated that a formal requirement to complete and sign the Checklist is encouraged. Kane explained that arising from the information now known in relation to this matter it was continuing to investigate and to take appropriate action.

[10] The Chair raised a number of questions concerning the practices in the industry generally and noted the importance of all participants working to eliminate sham contracting practices.

[11] **Having regard to seriousness of the conduct acknowledged in this matter and having regard to the conduct that has previously been brought to the attention of the Panel, the Chair determined that the matter will be referred to the relevant State Government Departments including IRV.** It is noted that whilst there is an inspectorate within IRV, its role may not extend to enquiring into the conduct of sham contracting and at this point the legislation concerning Wage Theft is yet to be effected. In the meantime the Chair explained that by referring the matter in this way it would bring further attention to the problem.

[12] The Chair noted that actions independent of this matter were also underway with various State Government Departments in an endeavour to identify additional measures that might be available to eliminate Sham Contracting from the industry. Kane said it was happy to participate in any discussions with the relevant Departments if it can assist in this regard.

[13] The Panel will keep the file open on this matter for a period in the event that the CFMEU determines it wishes to press the matter further including any penalties that may be available under the Enterprise Agreement.



**Peter Parkinson**  
**Chairman**



**Esther Gruszka**  
**Alternate Panel Member**



**Tony Cordier**  
**Panel Member**