



Chairman: Peter Parkinson
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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

and

HANSEN YUNKEN PTY LTD

AUSTAR INVESTMENTS (AUST) PTY LTD (AUSTAR)

DONGGA GROUP PTY LTD (DONGGA)

RE: ALLEGED SHAM CONTRACTING AND VISA NON COMPLIANCE

ROYAL VICTORIAN EYE AND EAR HOSPITAL PROJECT

30 NOVEMBER 2018

026-2018

STATEMENT

[1] The CFMEU notified a dispute on 21 November 2018 concerning allegations of sham contracting and visa non-compliance by Austar and/or Dongga occurring at the Royal Victorian Eye and Ear Hospital Project where Hansen Yuncken Pty Ltd is the Construction Manager under a procurement model with Department of Health and Human Services and the Hospital.

[2] The Chairman convened a conference of the parties on 29 November 2018. All parties attended. The MBAV appeared with Ms Brhi Sierak representing Hansen Yuncken Pty Ltd and Mr. G. Fanning appeared on behalf of the Royal Victorian Eye and Ear Hospital.

[3] The relevant Enterprise Agreements referred to in the CFMEU's notification are:

- *Hansen Yuncken Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018.*
- *Austar Investments (Aust) Pty Ltd t/as Dongga's Plaster and CFMEU Building and Construction Industry Collective Bargaining Agreement 2002-2005*

Whilst it is not entirely clear as to the application of the Austar Agreement in relation to this Project, for present purposes, and having regard to proceedings before the Panel in Matter No. 015-2018, the Panel has determined that for the Conference it is important that Austar and Dongga are represented which they were, by their Director, Gordon Dong. It is further noted that Hansen Yuncken's attendance was in the capacity of assisting the disputes resolution procedure pursuant to clause 15.4(f) of its enterprise agreement.

[4] Prior to the Conference the Panel received correspondence from Mr G Fanning, the representative of The Royal Victorian Eye and Ear Hospital, indicating a proposal to assist in resolving the dispute.

[5] During the Conference it was clear there had been ongoing concerns as to compliance with visa status and contracting/employment arrangements by Dongga as it admitted.

[6] The Panel referenced the similar issues which had been raised in Matter No. 015-2018 concerning Austar and referred the parties to the Statements it had issued in that matter for their review. The parties have been provided with a copy of the relevant Statements.

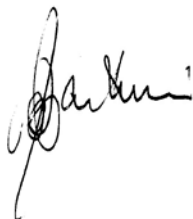
[7] Hansen Yuncken confirmed it had recently put in place a process to ensure visa compliance by way of regular auditing and checking of visa status via induction after having established that there was visa non-compliance occurring on the site. Hansen Yuncken was confident this would resolve this matter going forward. It acknowledged that any further specific relevant concerns of the CFMEU could be directed to it in writing for investigation.

[8] In relation to sham contracting and employee entitlements, Mr Fanning submitted that a formal proposal from the client had been presented to the CFMEU and the CFMEU Delegate as to a process to audit the arrangements for employees on site to ensure legal compliance in this regard with a view to resolving this aspect of the dispute. Mr Fanning made it clear that his client was concerned to ensure full compliance with all legal employment obligations by the employers on site.

[9] The Panel requested a copy of the proposal for its records. Mr. Fanning agreed and explained the proposed process of which he would be directly responsible for managing on behalf of his client, which was intended to get underway immediately. The Chairman indicated that this appeared to be a process which would address all the relevant issues going forward and recommended same with a review of the matters before the Panel in a few weeks time.

[10] After some discussion it was determined that the process proposed by Mr Fanning's client would commence immediately and that this together with the visa process implemented by Hansen Yuncken would be monitored by the parties with a further Conference before the Panel to review in a few weeks.

[11] Accordingly the Panel adjourned the matter to a further Conference of all the parties which will be held on **Friday 14 December at 10.00am at the Panel's premises.**



Peter Parkinson
Chairman

Daniel Hodges
Panel Member

Tony Cordier
Panel Member



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RE: ALLEGED SHAM CONTRACTING AND VISA NON COMPLIANCE

ROYAL VICTORIAN EYE AND EAR HOSPITAL PROJECT

14 DECEMBER 2018

026-2018

STATEMENT No. 2

[1] The CFMEU notified a dispute on 21 November 2018 concerning allegations of sham contracting and visa non-compliance by Austar and/or Dongga occurring at the Royal Victorian Eye and Ear Hospital Project where Hansen Yuncken Pty Ltd is the Construction Manager under a procurement model with Department of Health and Human Services and the Hospital.

[2] The Panel convened a conference of the parties on 29 November 2018 and issued a Statement. That Statement is to be read in conjunction with this Statement.

[3] A further Conference was held on 14 December 2018. All parties attended. The MBAV appeared with Ms Sheena Hoey representing Hansen Yuncken Pty Ltd and Mr. G. Fanning appeared on behalf of the Royal Victorian Eye and Ear Hospital.

[4] Mr. Fanning reported on his findings in relation to the audit concerning the entitlements of Dongga employees which confirmed that the correct entitlements were identified in the material provided by Dongga.

[5] The matter concerning the application of the Austar Enterprise Agreement as raised by the CFMEU at the previous Conference remains with the CFMEU to provide relevant details to Mr Fanning if it wishes to press this matter.

[6] During the course of discussions it was asserted that the allegations of sham contracting and a failure to provide pay slips particularly concerned workers on site who were apparently conducting work within the scope of Dongga's contract but whom it was alleged may have been engaged by others.

[7] The CFMEU agreed to provide the names of the seven (7) individuals that it said were in this category and for whom some hand written statements attesting to their circumstances had been made. The Panel notes that discussions immediately subsequent to the Conference appear to indicate that the seven individuals concerned are not currently engaged by others and have been directly employed by Dongga since August 2018.

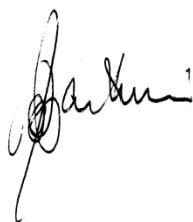
[8] It was agreed that this detail would be reviewed by each of Hansen Yuncken, Mr Fanning and Dongga and there would be a further report back as to the facts, and any actions required, before the Panel. To assist this process it was further agreed that copies of the relevant

payslips provided to Hansen Yuncken would be made available to the CFMEU on receipt of written authorization from the individuals concerned.

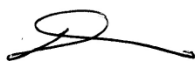
[9] Mr Fanning reaffirmed his client's intent to ensure full legal compliance with employee entitlements on the site.

[10] In relation to the visa non-compliance matter arising from the previous Conference, Hansen Yuncken confirmed that its new process to ensure visa compliance by way of regular auditing and checking of visa status via induction was providing them with confidence of compliance in this regard. The CFMEU submitted it was satisfied with this process and that there had been no further issues brought to its attention.

[11] Accordingly the Panel adjourned the matter to a further Conference of all the parties which will be held on **Wednesday 16 January 2019 at 10.00am at the Panel's premises.**



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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RE: ALLEGED SHAM CONTRACTING AND VISA NON COMPLIANCE

ROYAL VICTORIAN EYE AND EAR HOSPITAL PROJECT

17 JANUARY 2019

026-2018

STATEMENT No. 3

[1] The CFMEU notified a dispute on 21 November 2018 concerning allegations of sham contracting and visa non-compliance by Austar and/or Dongga occurring at the Royal Victorian Eye and Ear Hospital Project where Hansen Yuncken Pty Ltd is the Construction Manager under a procurement model with Department of Health and Human Services and the Hospital.

[2] The Panel convened conferences and issued Statements on 29 November and 14 December 2018. Those Statements are to be read in conjunction with this Statement.

[3] A further Conference was held on 16 January 2019. All parties attended. The MBAV appeared with Ms Sheena Hoey representing Hansen Yuncken Pty Ltd and Mr. G. Fanning appeared on behalf of the Royal Victorian Eye and Ear Hospital.

[4] During the course of the conference it became evident that the previous undertakings given by Dongga regarding the provision of payslips had only been partially met. The Chairman made it clear that this was unsatisfactory. Dongga committed to providing the remaining payslips to the parties for each of the 7 employees for the period of employment from late July/early August through to end December 2018 no later than close of business (5.00pm) Thursday 17 January 2019. This material would be reviewed by Mr Fanning in relation to his client's requirements and by the CFMEU. The CFMEU would also endeavour to reconcile the payslips provided against the actual payments received by the employees and by relevant third party providers. The CFMEU stated that on the material already provided that it had identified number of serious shortcomings.

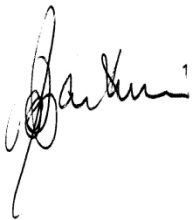
[5] The Panel acknowledges the valuable assistance being provided by Hansen and Yuncken in this matter pursuant to its Enterprise Agreement and by Mr Fanning on behalf of the principal client. The panel encouraged dialogue between the CFMEU and Mr Fanning in an endeavour to settle the facts sooner rather than later.

[5] During the course of discussions Dongga also admitted that there had been occasions when employees had not been paid on time in accordance with the Award, purportedly as a result of 'cashflow issues'. The Chairman expressed serious concern over these apparent breaches and made clear to Dongga that there are consequences for such matters.

[6] The CFMEU noted that it may receive written authorisation from additional employees for which payslips would need to be provided by Dongga. Dongga agreed to provide such payslips upon receipt of any such authorisations.

[7] In relation to the material presently before the Panel, the Panel is concerned as to Dongga's capacity to meet its relevant obligations and requires it to demonstrate real actions and evidence to provide it with confidence of compliance. The Panel determined that a further Conference would be held at which time it expected that actions will have be taken one way or the other to bring this matter to a conclusion.

[8] Accordingly the Panel adjourned the matter to a further Conference of all the parties which will be held on **Tuesday 22 January 2019 at 2.00pm at the Panel's premises.**



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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DONGGA GROUP PTY LTD (DONGGA)

RE: ALLEGED SHAM CONTRACTING AND VISA NON COMPLIANCE

ROYAL VICTORIAN EYE AND EAR HOSPITAL PROJECT

8 FEBRUARY 2019

026-2018

STATEMENT No. 4

[1] The CFMEU notified a dispute on 21 November 2018 concerning allegations of sham contracting and visa non-compliance by Austar and/or Dongga occurring at the Royal Victorian Eye and Ear Hospital Project where Hansen Yuncken Pty Ltd is the Construction Manager under a procurement model with Department of Health and Human Services and the Hospital.

[2] The Panel convened conferences and issued Statements on 29 November, 14 December 2018 and 16 January 2019. Those Statements are to be read in conjunction with this Statement.

[3] A further Conference was held on 8 February 2019. All parties attended. The MBAV appeared with Ms Sheena Hoey representing Hansen Yuncken Pty Ltd and Mr. G. Fanning appeared on behalf of the Royal Victorian Eye and Ear Hospital.

[4] The CFMEU immediately sought a separate Conference with the Panel absent the other parties to explain its position before proceeding with the Conference as scheduled. The Panel adjourned the Conference briefly to hear from the CFMEU alone.

[5] Upon resuming the Conference the CFMEU alleged that it was concerned that Dongga had threatened its employees by requiring its employees to first seek approval from Dongga before being able to meet with the union delegate. The Chairman indicated that these were serious allegations and if proven, unlawful. Mr. G. Dong for Dongga refuted the allegations and confirmed that he would not seek to influence his employees from engaging with the union.

[6] The CFMEU informed the parties and the Panel that in relation to the various allegations made including with respect to underpayments to employees, it had decided that it would issue separate proceedings and that for now it requested that the matters before the Panel be set aside.

[7] The Chairman noted the CFMEU's position and requested the Mr Fanning update the Panel on the enquiries he had undertaken on behalf of the Hospital. Mr. Fanning advised that his investigation was proceeding.

[8] Mr Dong presented four sets of documents to the Panel that he said represented his payroll records for the last 4 pay periods for his employees which demonstrated he said, that he had now paid his employees on time and correctly. He undertook to provide electronic copies of

the documents to all parties including the Panel by email before close of business that day. Panel members cautioned Mr Dong to redact any information that may otherwise breach privacy laws.

[9] The Chairman and members of the Panel encouraged Mr Fanning on behalf of his client and Mr. Garlick representing Hansen Yuncken, to take whatever steps they could to ensure compliance.

[10] The Chairman indicated that there was nothing further the Panel was able to do at this juncture given the CFMEU's request for it to set the matters aside, having regard to its intention to issue separate proceedings, other than to encourage the parties to comply with the law.

[11] Accordingly the Panel has determined to adjourn the matter to a later date should any of the parties seek its further assistance. The Panel requests that the CFMEU keep it informed of the separate proceedings and in the event a resolution is reached the file will be closed.



Peter Parkinson
Chairman



Lawrie Cross
Alternate Panel Member



Tony Cordier
Panel Member