

Statement by Kemalex Plastics Group:

Response to the campaign being waged against Kemalex Plastics by the National Union of Workers and the Australian Council of Trade Unions 23 May 2005

Union campaign against Kemalex

Members of the public may be aware that the union movement has been waging a national media campaign against Kemalex for about four weeks. In the press, and on television and radio, we have been accused of many things by national union officials.

So far, we have not made any responses to the accusations. We have not talked to the media. However, we have now decided to release this explanation so that anyone who is interested can understand what is going on.

Who are we?

We are a small, family-owned Australian business which began in Adelaide in 1947. We make plastic components for a variety of customers in the car and car parts manufacturing sector, for air conditioners and other products. We are part of the auto industry supply chain.

Our Adelaide plant: Our philosophy

We have always been a South Australian family business. About ten years ago we decided that we needed to make many improvements to the way we operated to ensure our survival and success in a competitive, global manufacturing environment. We believe that if we fail to constantly improve, we risk going out of business!

We did many things. One thing we did was to have a good look at ourselves and our relationships with our staff. We needed to strive for an internal focus in our business where everyone who works with us thinks like business people. We believe that master-servant, employment mentalities are the relationships of the past. We needed the ideas of the future. We decided to go down the path of the self-employed contractor.

Self-employed contractors are small business people, just like us. We think the same way. We focus on our customers' needs if we wish to succeed. In heading down the self-employed contractor path, we decided to follow some guiding principles:

- All of our existing employees would stay employees. It is hard for an employee to think like a business person. We could not expect them to change. They have security of employment and have a right to be secure.
- For new staff, we would find people who wanted the challenge of being like us, self-employed contractors.

Our Adelaide plant: What has happened?

Happily, over the last ten years:

- Our family business has grown. We have taken on additional people.
- All new people are self-employed contractors. This includes our office and management people and most of our production team. Some have now been with us for almost ten years.

In Adelaide, we now have 100 people:

13 management team (4 employees and 9 self-employed)
87 production team (13 employees and 74 self-employed)

Using an agency:

When engaging people as self-employed contractors, we found that if we engaged them directly, there were all sort of issues to deal with, including how to organize tax, ABNs

and so on. We found that if we used an agency that specialized in self-employed contractors then, under the law:

- People did not need ABNs.
- The agency is responsible for PAYG tax and the self-employed contractors do not need to do a BAS, and so on. This means that the self-employed contractors have a whole lot of the administration of their business needs managed on their behalf by the agency.

In addition, the agency:

- Helps organize all insurances and other matters.
- Will seek to find other work for people if we don't have enough work for them.
- Helps find more self-employed contractors at all skills levels for our business.

This is an excellent service that helps all of us, including self-employed contractors. And the agency we use has become an important part of our family team.

With our team of self-employed contractors, employees, the agency, our raw products suppliers and our very important customers, our business is profitable and growing.

Our Melbourne Plant: Purchase and plans

About 3 years ago, in 2002, we became aware of a small plastics company in Melbourne which was for sale. The Melbourne plant was in financial trouble, had been broke before and was being run by administrators. Employees at the plant had twice been through the trauma of a failed business and some had received redundancy payouts even though they were still working.

We purchased the Melbourne plant in the belief that we could turn it around. An important part of making Melbourne successful was our view that we would need to look at the self-employed contractor process similar to the one we used in Adelaide. But we knew it would take time. The employees at the Melbourne plant had had difficult times for many years and we understood they would have many concerns. We needed to respect their concerns. We worked with the union on site.

In 2003, we signed an enterprise agreement with the National Union of Workers (NUW) for the Melbourne plant.

- That agreement with the union allows us the right to use self-employed contractors at the Melbourne plant. We started using self-employed contractors in October 2003.

In 2004, we informed the union and the employees at the Melbourne plant that, in the future, we would look to engage all new people as self-employed contractors. We informed the union and all employees that:

- All existing employees would remain as employees.
- No existing employee would be forced to become a self-employed contractor. In fact, to force anyone would be against the law and against our philosophies about how to succeed. People are not truly self-employed contractors if they are forced into it.

Our Melbourne Plant: What has happened?

- Employees who were working at the plant when we took over continue to work at the plant as employees.
- Since 2003, some of our management contractors from Adelaide have come to Melbourne to help make our Melbourne plant successful.
- We have taken on new people who are self-employed contractors working through an agency.

In Melbourne, we have 82 people:

- 6 management team (2 employees and 4 self-employed)
- 76 production team (55 employees and 21 self-employed)

Our Melbourne Plant: Some problems

Our Melbourne plant is not productive.

- The agreement with the union requires us to pay employees for 38 hours, but they only work for 35.5 hours.
- We need to operate our machines for 24 hours a day, 5 days a week. This is what we do in Adelaide. The NUW agreement will not allow us to do this at Melbourne.

We have to fix these problems if our Melbourne plant is to succeed.

Our Melbourne Plant: The Strike

Our agreement with the union expired on 30 March 2005 and we needed to discuss a new agreement.

In March 2005, the union demanded that

- We had to get rid of all self-employed contractors. This was the first we had heard of this and it meant that the union wanted to break our previous agreement.
- Pay rises were needed for employees. We expected this and agree that we need to offer new, improved pay rates.

We had a number of meetings with the union where

- The union continued to insist we had to get rid of the self-employed contractors.

We

- offered pay rises of (a) \$49-a-week immediate increase (b) \$18-a-week increase next year; and
- said that if we are paying for 38 hours work, we wanted 38 hours work in return.

The union said 'no' to the pay increases and 'no' to 38 hours pay for 38 hours work.

Strike and picket

On Wednesday 27 April 2005, the union ordered the employees to strike and to set up a picket to stop all trucks moving in and out of the plant.

- 2 employees resigned from the union.
- 49 employees went on strike.

We have kept operating the plant with half of our existing Melbourne team. Only some of the employees are striking and picketing.

But

- Some employees forcibly stopped trucks and people moving into our plant. This is illegal. Unfortunately, we had to send 'first warning' misbehaviour notices to these employees.
- The police have had to come repeatedly to ensure that our truck could move onto and off our site. The police have upheld the law.

Since 27 April:

- Members of our team who continue to work have been abused, sworn at and intimidated. It is a very unpleasant situation.
- 13 employees have returned to work.
- The union started paying the strikers to stay on strike and have brought in other people who are not our employees to stand on the picket line.
- We have had three meetings with the union in the Industrial Relations Commission. The union continues to insist that we must get rid of the self-employed contractors.

We have now told the union that we do not want an agreement with them and will talk directly to our employees about an agreement. Industrial law allows us to do this.

Unions go national with media campaign

In the week of 9 May, the peak national union body, the ACTU, seemed to take charge of the campaign against us.

- A union picket was established at our Adelaide plant. It is made up entirely of paid union people who have nothing to do with our business.
- They padlocked our Adelaide plant gate.

- We have had to call in the police to ensure that people and trucks can move into and out of our Adelaide plant.
- ABC radio and television have run ‘shock horror’ union stories accusing us of all sorts of things.
- Newspapers in Adelaide and Melbourne have run false and accusing stories about us.
- The unions have dropped leaflets into homes and business around our plants.
- Politicians have made accusations about us.
- The unions wrote to our bank suggesting that we are in financial trouble.

The unions publicly claim that the campaigns are targeted to try and force us to get rid of the self-employed contractors.

We believe that we are now being used as a political football in a political campaign by the national union movement and political parties to try to score points against each other. We are not interested in this.

Our objectives

We want to run a good, successful, small plastics manufacturing business. We want to do this with a team of people who want to work with us and have a business focus like us. We want to be a good, reliable supplier to our customers. We want to survive and succeed in a tough global manufacturing environment where we can compete with the Chinese manufacturers, but on Australian conditions.

Melbourne Pay rates

What people are paid is confidential, private information. The unions, however, are making all sorts of accusations about pay rates. We believe it is necessary to give some facts without divulging personal information.

The agreement signed by the union at our Melbourne plant and registered with the Industrial Relations Commission requires us to pay employees certain rates. We want to pay more, but the union agreement stops us paying employees more. Self-employed contractors can receive more and they do.

- The union agreement prevents us paying employees more than the following:

<u>Full time production employees</u>	
	Per week per hour
Level 2	\$479.42 = \$ 12.62
Level 3	\$505.40 = \$ 13.30
Level 4	\$529.44 = \$ 13.93
Level 5	\$551.52 = \$ 14.51

Full-time employees also get holidays, sick leave and so on.

They are paid for 38 hours, yet only work 35.5 hours.

Most production employees are on level 2.

- Self-employed contractors, on the other hand, receive higher remuneration.

<u>Self-employed contractors doing production work</u>	
	Per Hour
Toolmakers	\$27.11
Die setters	\$24.65
Material handlers	\$18.24
Machine operators	\$17.31

However, self-employed contractors do not get holidays, sick leave and so on because they receive more for their hourly work.

Accusations the unions have made against us

There have been many accusations made against us by the unions, politicians and others in the media. Below we have summarized the accusations that we are aware of and state our responses on the facts.

Accusation 1: We are going to force employees to become self-employed contractors.

This is false. We have repeatedly stated and placed in writing that we have not forced and do not intend to force any employees to be self-employed contractors. We have employees at our Adelaide plant and envisage we will always have some employees at our Melbourne plant as well. People have the right to be an employee. We respect that right.

Accusation 2: We plan to convert all staff to contractors.

This is half wrong and half right. We plan to keep all employees who want to stay with us as employees. For the future, at Melbourne, we plan to offer any new work to self-employed contractors. This is important to us because we want and need a small business, customer focus at every level in our operations. This is a free country. We have a right to make that choice. We have a right not to be forced to be a master-servant employer. We don't want that. But the union want to force us to be a master-servant employer.

Accusation 3 Contractors are required to have an ABN, fill out BASs and to administer their own superannuation.

This is wrong. Because our self-employed contractors work through the agency, they do not need to do any of this. The agency looks after all these things.

Accusation 4: Contractors don't have sick leave, annual leave and other employee 'entitlements'

This is true. Because self-employed contractors are paid much more than full-time employees they are paid for what they work. This is like all small business people. When people are employed, however, they have money taken away from them and held back until they are sick or take holidays. Employees risk losing this 'entitlement' money if the business goes broke. The employees are actually forced to make a loan to the employer. Self-employed contractors are paid all their money for every hour they work. This is much safer.

Accusation 5: We have delivered threatening letters to employees

Letters were sent to employees who stood on the picket line at Melbourne and physically stopped vehicles and people coming into our plant. These actions are illegal. We sent formal legal letters to these people giving them a formal warning that they were breaching industrial relations and other laws. Under industrial relations laws, a person can be sacked after three warnings if they have behaved illegally. Fortunately, all these employees have stopped their problem behaviour. We hope it does not re-occur.

Accusation 6: According to one newspaper, we used '18 motor-cycle bikers wearing helmets and bandanas to conceal their faces...' who were '... used to break up the women's picket...'

This is false. Our truck needed new tyres. We arranged for our local tyre supplier to bring new tyres to our Melbourne plant and fit them to the truck at the plant. Unknown to us, the people who own the tyre supply business are motor bike enthusiasts. They and a group of their motor bike mates were going to the funeral of a friend. Before going to the funeral, three of them drove down with their delivery truck, stopped at our plant and continued to the funeral after the new tyres were fitted. The first thing we knew about it was when they turned up on their bikes. We understand that three of the men entered our site to change the tyres and about eight of their friends parked down the road waiting. However, as always with good media stories, the number seems to have grown with each report.

Accusation 7: The federal government is undertaking an investigation.

We are not aware of any investigations. We have had phone calls from government departments with general inquiries being made. We were not able to give much

information because when the phone calls were received, we were not fully aware of all the accusations being made against us. We hope this information helps.

Accusation 8: We are using a legal loophole and making ‘sham’ arrangements.
This is not true. We engage self-employed contractors, through an agency, under totally legal arrangements, secured (as we understand it) through several Federal and High Court judgments, which comply with tax laws, work safety laws, equal opportunity laws and all other work-related laws. We do not use ‘legal loopholes’ but legal arrangements which are part of everyday commercial arrangements. There is nothing odd, strange or different about what we do. We do not support ‘sham’ arrangements. Rather, we support government efforts to make sure that ‘sham’ arrangements do not occur.

Some final comments

We hope this information helps to establish the facts.

It seems that our small business has been targeted by the national union movement for grand political purposes. We assume that we will be subject to lots more accusations.

- Just last week, two self-employed contractors reported that they were woken from their beds by union officials and invited to make accusations against us. One was offered many thousands of dollars to make accusations against us.
- Staff report that they have been told by employees on strike that they (the strikers) are being paid ‘full wages by the unions’.

We can only guess at what media and publicity stunts the unions have planned for us next.

From now on, when we become aware of accusations made against us, , we will investigate, and as soon as we can obtain the facts, we will post updates on this Website.

We believe that we have been turned into a political football. We don’t like it. But we are determined to stay focused on what we must do—that is, to be a good business that supplies high quality products, in a reliable manner to our customers. To do this in the future we must strive for constant improvement. Our belief in quality, business-focused people relationships inside our firm is the key to our future. Self-employed contractors help us achieve this.

To our loyal customers, our teams at both our plants, our suppliers and the general public, our thanks for your patience. We intend to deliver!

The team at Kemalex Plastics.