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ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne – 27 July 2004

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Mr L. Cross, Industrial Relations and OHS Manager, Master Builders Association of Victoria

The CHAIR — We welcome Lawrie Cross, industrial relations and OHS manager with the Master Builders Association of Victoria. Welcome to the Economic Development Committee's public hearing on our labour hire inquiry. Thank you for your earlier submission. Brian Welch has put in a submission, which we have noted. You would be aware that the proceedings today are being recorded by Hansard, so it is a formal public hearing. We will make sure that a copy of the transcript is made available to you in the next week or so, so you can correct any errors. What you say today is covered by parliamentary privilege, which ends when you go out the door, so — —.

Mr CROSS — So I can let fly.

The CHAIR — You can let fly, not that we expect there will be much need for that, but we just need to make you aware of that. Our intention is to try and deliver a report to the Parliament by the end of the year with recommendations that the government will respond to in due course but which the government is at liberty to accept or reject. So that is how we stand. It is an all-party parliamentary committee with members from upper and lower houses and from both houses so there is a cross-section of views.

I might invite you to speak to the Master Builders Association of Victoria submission, if you like, and then we will have questions and answers in the time that we have got available.

Mr CROSS — I think it is fortunate that at least this afternoon you will be dealing with one of the easier industry sectors rather than that gentleman who went before us, which sounded all very awkward. The construction industry is very well regulated in terms of labour hire, and I think you would see that expressed in our submission.

The Master Builders Association has been established for quite some time - since 1875. I do not know anyone around who is still lingering since foundation day but needless to say it is a very old association, probably the first employer association in Victoria. As our membership base we have approximately 4000 members. A thousand of those members are commercial contracting members and we have a very small portion of specialist subcontract members. It is in that portion where we have resident members who are in fact labour hire organisations or companies.

As you would be aware — I think, Chair, with some previous involvement in construction, you would know — that the CFMEU — Construction, Forestry, Mining and Energy Union — are intensely involved in the industry and are a major stakeholder with MBA and other kindred associations. The industry is very well regulated in the sense of industrial relations via awards — federal awards and enterprise agreements. The industry is in fact covered by a pattern agreement. That agreement is identical in its terms in respect to the agreements that labour hire companies hold who operate in the construction industry, so there is no difference. The employees of the labour hire agencies are covered precisely identically as other building workers would be who work for either general contractors or subcontractors. I think we need to establish that early in our discussion so that it is well understood that we have no issues with the union in relation to adherence to industrial instruments.

It follows as well that when it comes to occupational health and safety the commercial sector, again through a high degree of regulation, is very much aware of its obligations. Head contractors induct all subcontractors, and naturally included in that are labour hire employees, if indeed they are being used. The industry has recently gone through something called red-card training whereby construction workers undertake an 8-hour course on general construction safety in the industry. That enables them to minimise their time when they arrive at a new site such that they are only required to sit down and be inducted on the site-specific arrangements rather than sit through a repeat of something that they had on the previous site, which goes into the A to Z of safety. That does streamline the entrance to the site for most building workers now.

I think the other thing to add is that in so far as the industry's pattern agreement that I referred to earlier is concerned, the National Building and Construction Industry Award does not allow employers the facility of part-time employment, so employers are somewhat limited in their options when they have peak labour requirements, and the pattern agreement takes over in that regard. There is provision within the pattern agreement that the union, the CFMEU, allows the employer to avail themselves of, where if they have peak resource requirements they can use labour hire in limited circumstances. Our industry is really reflective of probably I suppose the least amount of use. Labour hire is used fairly sparingly rather than excessively.

The CHAIR — But you would accept it is still a substantial component for the industry.

Mr CROSS — It certainly is, and —

The CHAIR — It plays a vital role.

Mr CROSS — It does, and as I say, employers guard that flexibility jealously at the moment.

The CHAIR — Just on that subject, Lawrie, I wanted to run past you something that struck me as odd. This came from our meeting in Canberra recently, where amongst other people we met with some fairly senior officials from the Department of Employment and Workplace Relations. They were fairly reticent to talk to us as it turned out, but at the end of it I was astounded that — I think it might have been an assistant secretary of the department — said, ‘What areas of the Victorian economy would labour hire really play a role?’. I am paraphrasing. We said, ‘Well, construction is one’. And he shrugged his shoulders as if to say, ‘You are kidding, aren’t you? We did not think it had any presence really in construction at all’. What astounded me was that that was the federal agency where you would expect that there would be a fair degree of knowledge of labour hire and workplace practices. After all, they had put a submission in to us about that and yet going on that encounter they had bugged all of an idea as to what was actually going on in the workplace. It surprised us. I do not know if you might have a separate view of the intelligence that goes around in that department, but we were astonished by it I have to say.

Mr CROSS — It is surprising, and I cannot add anything to that debate unfortunately. But perhaps it is due to maybe the lack of industrial issues that in some way may play a role there. But it is really all quiet on the Western Front in construction with labour hire.

The CHAIR — Does anyone want to open with some questions?

Mr DELAHUNTY — We have got a bit of a feel for this, but I would love to hear your position on this. In all the submissions we have seen and listened to it has been said that labour hire provides some flexibility and opportunity for both the employers and the workers — and you have mentioned your report a couple of times too. Can you outline those opportunities and also flexibility issues, from both what you see as the employers’ point of view and report from that area and what you see of it from the employees’ point of view, the workers’ point of view?

Mr CROSS — Certainly. The flexibilities for the employer are such that the National Building and Construction Industry Award, whilst it is a daily hire award in letter, is not that way in practice. By that I mean that if I were to hire an employee tomorrow and say, ‘Well, I am intending to enforce the terms of the award so therefore what I am saying to you is you are hired tomorrow but by Friday you could be terminated’, the union has been very aggressive in the construction industry for a long time now in terms of not allowing the employer to exercise that prerogative.

So the industry, through custom and practice, does not attempt to put people on under the award provisions or EBA provisions with a short-term expectation. The advantages to the employer become pretty clear if they are able to top off their labour needs for a week or two by using labour hire agencies. There is a disconnection there, if you like, with their immediate work force, and it is seen and accepted by the union as an acceptable practice.

With respect to the advantages for employees, I have heard through our contractors for many years that a lot of employees become disenchanted with hard-nosed union involvement on sites and not everybody enjoys or relishes the tactics that the unions sometimes deploy on site to enforce their industrial agenda. Quite often, as you know, safety is used. Most people who want to get up in the morning, come to work and do a day’s work want to do just that, they do not want someone telling them that they are going to sit in an Atco hut and do as they are told, or sit down for a period of time until the union tells them they can work. Employers say to us that a lot of their employees prefer not to be exposed to that on a project. For instance, where they may be involved in the construction of a high-rise building for two or three years the project will go through various stages of upheaval and industrial issues will come and go. Some employees find favour with the more transient lifestyle of labour hire and the employment and opportunities that go with it.

Mr DELAHUNTY — In the construction industry do they have stand-down clauses if, say, their material supplies dry up? Under your agreement here you tell me they are on daily hire, but if you say that, ‘We won’t be able to get materials for next week’, have you got stand-down clauses for a week or periods like that?

Mr CROSS — Yes, there are stand-down provisions that arise in the event of emergencies or circumstances that are outside the control of the employer, but I would say that they are either rarely or never enforced. Employers generally carry their employees on the payroll.

Mr ATKINSON — What do you see as the main impetus for the use of labour hire within the construction industry? Is it a workplace management imperative? Is it a sharing of skills or ensuring that skills are available? Is it because of the seasonality of projects — in other words, the completion cycle of different projects, with new ones starting in other places but perhaps having quite a different employer? What do you see as the main impetus or ranking of the reasons why labour hire is so important to the construction industry?

Mr CROSS — The association does not have a lot of data or evidence to hand on the reasons, but from a practical point of view we do know that the critical path on a construction project is very changeable and from week to week there can be a necessity for a work gang, if you like, to be put together at short notice to perform a certain task or function, whether it is a concrete pour or something that needs to be done out of hours to accommodate local council requirements. I think things of that nature would generally play more of a role than some of the other characteristics.

Mr ATKINSON — What about training in the industry? There are some people who would suggest that labour hire has enabled a number of companies not to make the same commitment that they would have done historically. Do you see that labour hire contributes to an erosion of training and skills development in the industry?

Mr CROSS — No. On the contrary, when employers look for labour hire people they are looking for people who are just as highly skilled and have as many tickets, whether it is a machine operator, hoist or crane driver, first aid tickets and so on. They are the most flexible to have temporarily on the site because they can be deployed in a number of different areas. We do not think it is an excuse or opportunity to avoid training obligations. I do not think we have ever had cause to contemplate the use of labour hire in that regard.

Mr ATKINSON — Has the association ever done any work or has it any research available on the number of workplace incidents or accidents involving labour hire employees compared with direct employees?

Mr CROSS — No, we do not. WorkSafe or WorkCover might be able to break stats down to that degree, but there certainly seems to be no evidence that those persons involved in incidents or accidents more commonly come from labour hire, no evidence at all.

Mr PULLEN — First of all I was a bit disappointed in your submission. It made certain allegations that were clearly wrong. I want to point them out as a first comment or statement, and then I will ask just a simple question. On page 3 you say, referring to what Rob Hulls said, that in announcing the inquiry the MBAV is concerned that the focus of the inquiry is the apparent belief that there are widespread problems with the labour hire industry. It goes on to quote Rob Hulls, and I point out the word he used was 'some'. I think that was a negative to start off with. It then says that the terms of reference reinforce the apparent focus of stress and perceived negative factors, including casualisation of the work force. When I look at the terms of reference, all it says is 'the contribution to the casualisation of the work force'. I do not see that that is any negative whatsoever.

We then go down to where it addresses the Victorian terms of reference. It reads:

...will attempt to provide a counterbalance that illustrates the need for and benefits of labour hire.

I can make it quite clear to you that this is a joint parliamentary committee, as was pointed out by the Chair. In my discussions with fellow members of the committee none of us had any preconceived ideas and we are completely open. We do know whether we are in favour or against or where we are at the moment, that is why we are having the inquiry. Those sort of things put me off at the start.

I go further on to page 4 where it reads:

Whilst it has been suggested by the Bracks government that the labour hire sector has expanded over the last decade there are no figures to support this.

I do not know who from the Bracks government suggested or did not suggest, but you then plagiarise a report from New South Wales on the growth of labour hire — page 15 — where you use virtually the same words. Those particular figures came from Adecco in their submission, at page 2, that was put to the New South Wales inquiry:

The number of labour hire companies in operation in New South Wales has increased significantly, as have the number of employees engaged by them.

I got a little bit annoyed when I saw that stuff. I will not go on to any more of it, but I am making it quite clear that we have a completely open mind on this particular inquiry. Throughout the paper you refer to the New South Wales labour hire inquiry, which I referred to. Are you aware of how many of their recommendations have been taken up?

Mr CROSS — No.

Mr PULLEN — Only one of them has, but I think it is a good thing that a lot of the stuff that has come out of New South Wales — I think we had someone in Sydney refer to them as a dead-end government or something like that, and that may be true — but we may take up some of those ideas. I just wanted to get that across because it annoyed me a bit when I saw it. We do not have any preconceived ideas of what we are going to do with this inquiry. That is why we are having the inquiry. We have virtually just got started on it.

There is just one question I did want to ask you, Lawrie. Bruce asked a question a short time ago in relation to injuries and stuff like that. If it gets to 35 degrees out in the heat the workers knock off and go home. If it gets a bit too wet they go into the shed and all that. Do those same conditions apply to labour hire workers on building sites?

Mr CROSS — Well, actually, when it gets to 32 degrees they are already in the sheds and packing for home; but yes it does, it applies to everybody.

Ms MORAND — Just following on from your submission where you say on page 4 of your document that our government has said that there is no expansion, the industry association quite clearly disagrees with that. In their submission they talk about the fact that there is a trend towards labour hire, so there is a differing of opinion there. They represent some 600 corporate members who are making something like \$10 billion in sales in Australia in labour hire, and they would say that it is growing. In relation to the construction industry, would you say that it is a relatively dangerous industry?

Mr CROSS — It is certainly regarded as a higher-risk industry.

Ms MORAND — Based on what?

Mr CROSS — I think the basis for that is the nature of the work that is undertaken. It is far different, of course, to a static production or manufacturing facility. It is an ever-changing workscape, and subject to changeable weather conditions and so on.

Ms MORAND — And there are a number of workplace deaths in the construction industry every year, as you would be aware.

Mr CROSS — Yes, the number of workplace deaths has been reducing since about 1997, when it peaked at 13. Since then the stakeholders have put considerable effort into applying resources and training to reduce that to probably 5 or 6, so it is a significant reduction.

Ms MORAND — I think you said earlier that there is no evidence that the risk to a worker who is employed under a labour hire arrangement is any greater than the risk to a permanent employee.

Mr CROSS — No, I think the question was: is there any evidence to suggest that the injured workers are more often labour hire employees. That was the question, as I understood it.

Ms MORAND — I am just trying to clarify what your statement meant. Are you saying that there is no difference in claims data or risk for somebody who is employed on a labour hire basis compared to permanent.

Mr CROSS — Yes. We are not aware of — —

Ms MORAND — That is your contention?

Mr CROSS — Yes. We are not aware of any evidence that suggests that there is any difference.

Ms MORAND — And you are not aware of the work that WorkCover have done?

Mr CROSS — No.

Ms MORAND — The Underhill study?

Mr CROSS — No.

Ms MORAND — One of the submissions has put the contention that there is evidence that it is a higher risk, but other submissions have not agreed with that premise. Do you think there is an increased risk to occupational health and safety when a worker is exposed to a new and unfamiliar environment? Do you think that in itself creates a greater risk?

Mr CROSS — That would create a greater risk in any work environment, notwithstanding whether it was the construction industry or any other. Certainly that is where the industry has spent a lot of time and effort in going through the red-card training with all construction workers over the past couple of years.

Ms MORAND — So by the nature of the situation a person employed on a labour hire basis would be going to a new and unfamiliar work site.

Mr CROSS — Yes, but that is very much in keeping with the nature of construction, and all workers whether they are labour hire or not are confronted with new environments and new workplaces from time to time.

The CHAIR — Just to recap on what Noel said.

Mr CROSS — Yes, I am still quivering from that.

The CHAIR — That point about there being no figures to support labour hire sector growth, we would not accept that based on the earlier evidence we have received. I think the RCSA claims that it is growing, the federal department claims it is growing, and the parliamentary library in looking at figures claims it is growing. We are not going to necessarily conclude that it is growing by a given rate, but we would conclude that it is growing.

Mr CROSS — We will agree to disagree, and you know that when I get back to the office I am going to whip the author of this to within an inch of their life, but we will respond to that.

The CHAIR — We are happy to get some figures, but we have received evidence from at least three separate sources that it is growing, so much as we would not necessarily agree — —

Mr CROSS — If we are wrong we will correct the record.

The CHAIR — I wanted to try and relate to comments you probably heard the previous witness, Graeme Wheeler, make. We were talking about entitlements of employees of WV Management Ltd who worked a variety of forms. He said that they had set up bank accounts and done all of that. My understanding about the building and construction industry — and perhaps this in part characterises that industry, differentiates it from others — is that bodies like Incolink have been doing that, in effect, for a long time. Am I right in understanding that Incolink, which looks after the super, I think — —

Mr CROSS — No, it is redundancy.

The CHAIR — Redundancy, sorry. You have redundancy, long service and super which are governed by those sorts of arrangements. There is an industry-wide body that — —

Mr CROSS — They are industry-specific funds, and they are the only funds that employers contribute to on behalf of the employees.

The CHAIR — So if I worked for a labour hire firm in the building and construction industry I would be caught up in all of that, I would be covered by them?

Mr CROSS — Because your employer is covered by an industry pattern agreement, that agreement prescribes those industry funds.

The CHAIR — We accept those as standard in the building and construction industry?

Mr CROSS — Yes.

The CHAIR — To the extent that Graeme Wheeler was saying that these are the sorts of things that ought to apply more broadly in the labour hire sector he is familiar with, we can say that that particular issue is being dealt with satisfactorily? Okay.

Can I now turn to occupational health and safety. We have had a few different views expressed to us on this. What I am referring to in particular is the joint responsibility notion. Who is responsible? Is it the client, the host employer or the actual labour hire firm? I think it is fair to say that there are two separate camps on this: one that says that the notion of joint responsibility might not be perfect but it is the most equitable in the circumstances and we are happy to leave it as it is; the other is that host employers, because they are dealing with day-to-day management, are in a position to advise the worker more readily than is the labour hire company, therefore they should bear a big burden. What you are saying is that you, or the association, are quite satisfied with the current arrangements under the Occupational Health and Safety Act which says joint responsibility?

Mr CROSS — That is very much the case, and again the head contractors in the commercial sector take the lead agency in that role, beginning with the induction process and carrying on throughout the building process with toolbox meetings, job safety analysis and safety committees that are part of that structure, so no-one is excluded by dint of their employment relationship, if you like. So yes, we would be satisfied that it is an equitable arrangement.

Mr DELAHUNTY — I would like to develop something that Maxine talked about. I read with a lot of interest about claims on WorkCover and that type of thing. I do not know if you have this at your fingertips, but you have talked about workplace deaths coming down. Obviously we see that injury and that type of thing would be coming down, I would imagine, so I am trying to get a picture of whether that is reflected in your WorkCover premiums compared to what I call the other type of injuries which WorkCover pays out on, like stress leave and all that. We can see maybe with the police force and with teachers that there is a ballooning out of that, therefore a premium increase would probably happen in those instances. Are we seeing a decrease in the premium percentage because of improvements in workplace accidents on a construction site?

Mr CROSS — Generally some reductions are starting to occur with premiums in the construction industry. The WorkCover Authority has been working with industry sector groups that have typically generated the highest incidence of injuries. I talk of manual labour tasks carried out by form workers and concrete companies, such as steel tying and some rigging involved with that, which have generated probably higher incidences of WorkCover claims. The authority and a number of those companies now are working on a project aimed at reducing the risk of manual handling and all sorts of other work-related tasks. So yes, something is happening, not only to generally reduce fatalities and major accidents in the industry but also trying to design out, if you like, the risk of injury where it is very obvious in a particular work classification. So yes, some things are happening. I do not have data at my fingertips, but we could certainly try and provide some material to you.

Mr DELAHUNTY — I know that WorkCover premiums are related to the incidence of accidents. I would be interested to see if that is translating into lowering the premiums.

Mr CROSS — I believe in some sectors it is.

Mr DELAHUNTY — The other thing is that I want to go back to and highlight the flexibility issue. I sometimes hear that people sometimes would like casualisation for flexibility of workplace agreements. They can be direct workplace agreements or through labour hire. Are you seeing a growing demand for that sort of flexibility from employees?

Mr CROSS — Not in the construction industry. It is still something that the employees are happy to leave in the hands of the union in terms of collective-style agreements.

Mr DELAHUNTY — That is fair enough.

The CHAIR — Laurie, I do not have any further questions for you. I thought we would be too easy! I am happy to offer the comment that I do accept that labour hire has probably been around longer in the construction industry and fills and plays a role which is more readily appreciated than it is in other industries. That is part of what Bruce talked about — that is, the boom-and-bust mentality and the inability of companies to carry large

construction work forces indefinitely with project management the way it is. Going back to my comments earlier, we also accept that the industry has been able to deal with the issues of portable long service, redundancy and superannuation perhaps better than some other industries. Anyway, it does not mean that we do not have views about how it could be improved further.

Thanks for your time. We appreciate it. We may come back to you again to follow up at some later stage. Some unions will be coming to talk to us in the public hearings next month, so no doubt that will raise some issues and we might come back to you either formally or informally. We hope that would be okay. As I said, we will get a transcript to you in a week's time, and certainly our intention at this stage is to have a report completed by the end of the year and we will certainly make copies available to the Association.

Mr CROSS — Thank you for the opportunity. I would love to come back.

Committee adjourned.