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ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne – 28 July 2004

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Ms E. Underhill, Senior Lecturer, Deakin Business School, Deakin University.

The CHAIR — The committee welcomes Elsa Underhill to the second day of its public hearings. Before I invite you to speak briefly to your written submission, which we have received and which we thank you for, I will advise, as I am sure you are aware, that the Economic Development Committee of the Parliament, which is an all-party committee, has been asked to investigate issues pertaining to labour hire. You will have seen the committee's formal terms of reference. We are due to give a report back to the Parliament by the end of the year. We are concentrating on another report as well, so to this point in time we have spoken to a number of people in Canberra and Melbourne but this is the first of our public hearings as such. We have spoken to an array of people. You may have seen the list of people we spoke to yesterday and to whom we are speaking today. Your presentation and comments to the committee today are being recorded by Hansard, and we will issue you with a transcript of your comments for correction purposes within the next week. Anything you say today will be covered by parliamentary privilege, but of course as soon as you have finished here that privilege ceases.

In welcoming you and inviting you to make a few comments I should say your work was the subject of some discussion yesterday when we had the RCSA in, and we might talk about that a bit later. I understand that has been a point of some difference. Similarly, the VACC, which is coming in later today — in fact it is following you — has also made some comments on your work in its written submission, so we will run that past you as well. Welcome and please feel free to talk to us for a few minutes.

Ms UNDERHILL — I understand you have received a brief CV, so I will not go into the details of my background, except to restate that I am a senior lecturer at the Deakin business school at Deakin University. I currently teach organisational behaviour and human resource management. I started at Deakin earlier this year and before that was employed at Victoria University, where I taught occupational health and safety, industrial relations and a number of employment-related subjects. I hold a master of commerce from the University of Melbourne and I am currently undertaking PhD studies at the University of New South Wales. My doctorial research is on the consequences of labour hire employment for the health and safety of labour hire employees.

I have conducted quite a number of studies on labour hire employment, primarily in Victoria, since the late 1990s, and I have brought copies of those with me — 11 copies of each.

The CHAIR — In your written submission there are three references to three separate reports. Is that what you are talking about?

Ms UNDERHILL — There are more. I have labelled these study 1 through to study 7 to help us work through the different findings. Study 1 is the study with which you are probably most familiar — that is the WorkSafe analysis of workers compensation claims which was conducted in 2002. That was a study of all labour hire claims compared to claims by direct hire employees with the exception of self-insured direct hire employees.

The CHAIR — Can I just check with you, Elsa, that that is the study of the 200 labour hire and 214 direct hire workers compensation claims?

Ms UNDERHILL — No, that is a separate study. This was a study of all the labour hire claims, so each of the years from 1994–95 through to 2000–01.

The CHAIR — Do you want to speak about this report or go through the submission?

Ms UNDERHILL — I will go through each of these first, if I can. Study 2 was the review of the effectiveness of occupational health and safety management systems which was conducted for the National Occupational Health and Safety Commission in 2000. What I have given you today is one chapter of that report, and it is the chapter where the issue of labour hire employment was raised most. That was a study which involved key stakeholders across Australia and the list of key stakeholders is included in the last part of that chapter. Labour hire continually arose in discussions about placing constraints on the effectiveness of occupational health and safety management systems. The third study to which I will refer is one which I do not have a copy of because the analysis is still in progress, and that is the detailed analysis of 415 workers compensation claims. These were claims that were subject to investigation by the claims agency, and of those, 200 were by labour hire employees and 215 were by direct hire employees. This is part of my PhD, and it will be a report for WorkSafe Victoria.

The value of Study 3 is that when an injured worker's claim is investigated, the investigators typically take witness statements from co-workers, from supervisors and from the hire agency. In addition to that you often get the CV of the injured workers and you get the medical reports of the injured workers, so all up you have a really in-depth

understanding of what happened, and not only what contributed to the injury but also what happened to the rehabilitation of the injured worker. As I said, that study is not yet written but I will refer to data from that study.

Study 4 is titled 'Temporary agency employment enabling or undermining a better life-work balance'. This was a conference paper which I presented in Brisbane last week to the international working party on labour market segmentation. This paper is based primarily on a survey and focus groups which I conducted of labour hire employees late last year, and it focuses primarily on work and life issues. It focuses on issues such as why labour hire employees work as labour hire workers, their attitudes, benefits and flexibility, and it particularly draws out the differences between nurse agency workers, who are much more attracted to labour hire work and control their hours of agency work to a much greater extent, and the rest of the agency workers that were part of the study.

The study, which I will call Study 5 this morning, was the report I wrote for Trades Hall Council and is part of its submission to this inquiry, so I have not brought copies with me. That, again, was based on the survey and focus groups of labour hire employees conducted late last year. It covers a broader range of issues than Study 4.

The CHAIR — We will be talking to Trades Hall in about four weeks time about our next public hearing. They could not make this session so we will refer to that in detail with them I imagine.

Ms UNDERHILL — Study no. 5 is an analysis that I conducted in 1998–99 of a major industrial dispute in the Victorian labour hire maintenance sector. That study was based on documents from the Australian Industrial Relations Commission.

The CHAIR — Can I just check. I think that is Study 6.

Ms UNDERHILL — Yes, it is — my mistake. That study was based on documents from the Australian Industrial Relations Commission and interviews with key players — with the union and with the labour hire companies that were involved in the dispute. I have included that study as a submission because it gives a brief account of the history of labour hire employment in Victoria and also of the regulation of employment for labour hire in the late 1990s.

`Study 7 is my rebuttal of claims made by the RCSA and the ACIL Tasman group on my report to WorkSafe Victoria. You probably know now that the RCSA issued a media release on 15 June 2004 which was highly defamatory and included false accusations concerning my report. In a media release they attacked my personal and professional reputation on the basis of a false premise. Each of the five specific concerns which they report in the background document to their press release was misconceived and proceeded on a misunderstanding of my report and the literature surveyed in that report.

The CHAIR — I do not want to ask you about the actual disagreement with you — you have got legal advice on that and that is fine, we will not touch that — but I am curious and I would appreciate your advice: yesterday when we had the RCSA here, and perhaps their response is typical of some other groups as well, we asked them about those labour hire firms, for example, that would not join the association. They acknowledge that there are 'shonks' in the industry — I think that was the word I used, and they agreed with it — so why is it that they chose to launch the attack on you? It seems to me that there are a number of groups coming to us giving evidence and saying, 'Yes, we accept that there are some very shoddy operators in the industry', and it might well be that your findings, in fact, reflect more on the shoddy operators than those who accept that there are shoddy operators, so I do not quite get why did the RCSA then launches into you. They must have seen that you were having a go at them as an association.

Ms UNDERHILL — I never mention RCSA in my report at all; all I do is look at labour hire employment claims across Victoria. I do not know why they have chosen to attack me and to defame me. They are represented in committees before WorkSafe Victoria and they may feel that they are therefore the main representative voice of the industry. I cannot explain why.

The CHAIR — Okay. It was just a curiosity. I sort of have a bit of difficulty understanding how this confrontation arose, but anyway we will move on.

Ms UNDERHILL — The analysis that I did, the data I have, would enable me to identify who were RCSA members and who were not — if I knew who were members. I have not done that analysis; it never occurred to me to do so.

The CHAIR — But that was not something that was in your report? It was not a feature of your work as such?

Ms UNDERHILL — No.

The CHAIR — Okay.

Ms UNDERHILL — The other point I would raise with respect to the RCSA accusations is that, in fact, no attempt was made by the RCSA to raise any of the alleged flaws in my report with me prior to the publication of their defamatory material released to the media as a whole, so I have included in my submission here my response to their accusations.

The CHAIR — That has given us an awful lot to work with. I thought I was just getting on top of the reading backlog. What would you like to talk to us about in particular detail? We are meant to finish this interview at 11.00 a.m., but we might extend that to 11.15 a.m. to give you more time, because your evidence is particularly valuable for us. Would you like to focus on one or more of those reports?

Ms UNDERHILL — I have gone through and listed a range of points in the order of the issues which you are required to inquire into and report on. I started with the extent and breadth of labour hire and moved on to consequences.

The CHAIR — Terrific! That will help us.

Ms UNDERHILL — So far as the extent and breadth of labour hire in Victoria is concerned, firstly, we know with respect to their employment status that the majority of labour hire employees are casual employees. The ABS estimates, which are the most accurate we have, suggest that 80 per cent are casual employees. In terms of the industries in which they operate, anecdotal evidence suggests that they have expanded into a very wide range of industries. The only evidence I have on what industries they operate in mainly comes from the nature of workers compensation claims, and when Study 3 is completed that will also give me a better sense of which industries they work in.

Mr DELAHUNTY — If it is only coming from claims that is a very inaccurate summary of where they are working, isn't it?

Ms UNDERHILL — It gives you a rough indication of where they are. In particular the point I would like to make is that the claims have changed quite dramatically since the mid-1990s. In the mid-1990s, 31 per cent of claims by labour hire employees were by tradespeople and 51 per cent were by lesser skilled workers who are classified as intermediate production, transport workers, labourers and others. By 2000–01, six years later, the proportion of claims by tradespeople had fallen from 31 per cent to 13 per cent of claims, and the claims coming through from semiskilled and unskilled workers had increased from 51 per cent to 63 per cent. Workers compensation claims will not tell you about the extent of employment in the clerical area, which I believe is still the main area of employment, but they can show you they are moving into more high-risk occupations because that is where the claims are coming through.

The CHAIR — We are building up an interesting picture, given the submissions we have had. There is no general agreement. We have had some groups saying, for example, that labour hire is not growing. That is contested quite strongly by others. I think amongst all the material we get we will be able to give a reasonably good picture. I do not know that the committee will determine that it needs to try to pinpoint precisely statistically what the makeup is, because we accept that it is changing all the time.

Mr DELAHUNTY — I am nervous about making assumptions when you say 'clerical people' and that stress leave has been a big demand on WorkCover claims. If you are going to use that as a picture to try to paint it, we are seeing — and I think you have picked up in some of your reports into white-collar workers — it does not give us an accurate picture. It gives us an assumption, but it does not give us an accurate picture of where the labour hire work is coming from. At this early stage I would say that on the assumptions we have seen more going into the white-collar work force than there is in the blue-collar work force — more into the professional trades than there is in the technical trades. I am just trying to clarify where you were coming from in relation to the assumption you have already made that it is, what you have said to us here before, over those 10 years. When you say you are not

getting information from clerical workers, does that give you an accurate basis then to be able to make the assumption you have made?

Ms UNDERHILL — The proportion of claims by clerical workers has remained pretty static over the six-year period. The growth area is coming through in the blue-collar semiskilled and unskilled work force with respect to workers compensation claims. Generally speaking stress claims make up only a very small proportion of claims for labour hire employees. If there is an increasing proportion of clerical workers with stress claims that is not necessarily going to show through clearly with labour hire.

Mr DELAHUNTY — Did you do an analysis of the figures for direct employee claims as compared to labour hire claims?

Ms UNDERHILL — Yes, but because I spent quite a lot of time in focus groups and arranging focus groups, the anecdotal evidence suggests, I would have thought very strongly, that the growth area is in blue-collar areas, particularly manufacturing, food processing, they are the ones that come to mind — call centres, construction.

Mr DELAHUNTY — You call call centre workers blue-collar workers, do you? Clerical workers or nurses, what category do you put them in?

Ms UNDERHILL — Nurses I would call white collar, but the proportion of nurse agency workers is diminishing.

Mr DELAHUNTY — Yes, it is.

Ms UNDERHILL — Call centres I would probably call pink collar, because it is white collar but it is very manual work.

From the research that I have done there are clearly problems in the application of industrial relations, OHS and workers compensation legislation. To focus firstly on the rights and obligations of labour hire employees, agencies or hosts under industrial relations legislation, the majority of labour hire employees are casual employees and this impacts on their employment rights in a number of ways. As with other casual employees they are not entitled to various leave such as annual leave, sick leave, parental leave and long service leave, although that is subject to a case at the moment. That means they can only take unpaid leave.

Casual employment is said to include a casual loading, but the extent to which labour hire employees receive that casual loading to compensate for the lack of leave entitlements depends on a number of factors. It depends whether they are employed under Schedule 1A of the Workplace Relations Act, in which case there is no legal obligation to pay them a loading. While I do not have any evidence on this, anecdotally it is likely that the fringe labour hire companies, the smaller labour hire companies, are likely to be operating under schedule 1A of the Workplace Relations Act, and that is also likely for the non-unionised larger labour hire companies.

To give you an example of this, one of the call centre workers that participated in a focus group indicated that she received no penalty rates for weekend work and at her workplace she was paid $16 an hour for weekend work and permanent host employees were paid $36 an hour and they were doing virtually the same work except the permanent workers had easier more mixed tasks. If they do not receive penalty rates then it is unlikely that they would also be paid the casual loading, because there is no legal obligation for it to be paid. If they are employed under federal awards, then yes, you would expect them to be paid a casual loading to compensate for the lack of leave entitlements. However, it has to be recalled that award rates of pay have not increased as much as rates of pay in enterprise agreements, so even with the casual loading they may be receiving less per hour than the host employees they are working beside.

If they are employed under an enterprise agreement, then it is most likely they would receive a loading, but it is unclear how common enterprise agreements are in the labour hire industry beyond specific trades.

The CHAIR — Elsa, do you have a view as to whether the evolution of schedule 1As, as industrial instruments, has encouraged labour hire-type activities, because it seems to me we are dealing with a coincidence of changes here? What you say here is that the greatest risk of losing an entitlement through an industrial instrument would be if you were a labour hire employee working under a schedule 1A? That would seem to be

when you are at most risk. To what extent does one follow the other, though, or is it just that at this particular point of time you have the two running parallel and if you end up in that circumstance tough luck; or is it not possible to really say at this stage? I ask because a lot of the submissions coming in, particularly from unions, are talking about casualisation, and that seems to me to be something that is going on in the work force that may or may not be related to the labour hire phenomenon.

Ms UNDERHILL — Casualisation across the work force is clearly the case, and because such a high proportion of the labour hire work force are casuals then you would have to see it as contributing to casualisation. But the relationship between Schedule 1A and labour hire I think is probably a bit more ambiguous. What strikes me is that in New South Wales they talk about a higher proportion of self-employed or independent contractors working for labour hire companies, and you will know that independent contractors are not covered by awards and enterprise agreements and their conditions and rates of pay are usually much poorer. I have not seen a lot of evidence of independent contractors working for labour hire in Victoria, and I suspect that might in part be because they are employed under Schedule 1A instead, so that labour hire companies that operate in such a way to offer the least entitlements in Victoria can do it under Schedule 1A and in New South Wales — and I have not looked at New South Wales in detail — they may be inclined to hire them as independent contractors to achieve the same result.

The CHAIR — Which would create all sorts of definition and interpretation problems as to whether they genuinely are independent contractors.

Ms UNDERHILL — Yes. If we move on from unpaid leave to the question of how labour hire employees are able to take unpaid leave, there is an extreme reluctance that has come through from focus group participants. They are reluctant to take leave because if they do turn down an offer of a placement because they want to take leave there is a fear that they will not receive any further placements, so that the taking of leave is effectively resigning from their job. They are also reluctant to take leave because they believe that when they return from their leave they will not return to the same host workplace. So even if they have been at the same workplace for a number of years they will find when they return from leave their job has been taken by someone else. They may return to the same labour hire company, but they do not return to the workplace they are familiar with, with the same work mates, where they know the job et cetera, and they clearly do not know where they will end up being placed when they return from leave.

This constraint on taking leave is supported in both the data in Study 4 and Study 5, which was the focus group and survey of labour hire employees. In Study 4 it was found that 46 per cent of non-nurse labour hire workers often or always had a problem taking holidays, and 30 per cent of the non-nurse labour hire workers reported that they often or always had problems participating in family activities. A number of quotes from the focus groups are in that paper — Study 4, the one which focuses more on work and life balance — which illustrate the problems this raises for them and their families. From the analysis of individual claims that I am still undertaking for WorkSafe and my PhD, it also appears that the constraint on taking leave — not being able to take sick leave, the risk of taking a day off and being replaced — means that labour hire employees are more likely to work with injuries. They do not have the option of taking a sickie to recover from muscular strain. As they work with their injuries, those injuries become severe.

Another issue related to their status as casual employees is that they can be dismissed without notice or without a reason being given unless they are classified as regular or long-term casuals under the Workplace Relations Act. This is a problem in respect of three issues in particular: their capacity to express a grievance about a workplace issue or occupational health and safety condition without threat of job loss; their ability to know whether or not they are performing their work at a suitable level — because dismissal is often arbitrary; and the likelihood of them being offered further work after a workplace injury.

In the study of the survey and the focus groups conducted last year it was found that of the 50 per cent of labour hire employees who had raised a workplace concern or an occupational health and safety issue, 16 per cent were dismissed in the sense of being not offered another job. Those employees would have had rights under unfair dismissal protection had they been permanent employees.

Study 5, which is a report for the Trades Hall submission, also highlights the extent of discrimination and harassment associated with occupational health and safety representation, where 10 per cent said they had been harassed or discriminated against for being OHS representatives. It also talks about 17 per cent claiming

discrimination or harassment for talking about joining a union; 21 per cent for being a union member; 13 per cent claimed they had been harassed or discriminated against for being a union delegate. This inability of temporary agency workers or labour hire employees to voice their concerns is not just unique to Australia, it is also being found in overseas research. If these employees were permanent employees then labour hire companies would have obligations to warn employees of any pending dismissal, explain why they were dismissed and give workers an opportunity to respond. They certainly could not be dismissed for union membership or for being OHS representatives, but as casual employees, this does not occur.

The second issue relating to dismissal concerns their ability to know they are performing at a suitable level. Because they can be dismissed without reason they do not know when they are working well enough to avoid dismissal. In general neither the hosts nor the labour hire companies appear to have performance management processes in place to provide feedback to labour hire employees on their work performance. This in turn has contributed to an unsafe level of work intensification because labour hire workers are inclined to work as hard as they can to reach an invisible barrier, and again there are quotes in Study 4 which illustrate the way in which work intensification has contributed to workplace injury. This potential for arbitrary dismissal and not having sufficient feedback about performance also contributes to a perception of employment being dependent upon favouritism rather than performance related issues. Again, this could not legally occur if they were permanent employees protected by unfair dismissal.

The third aspect of lack of protection against unfair dismissal concerns the individual claims I have looked at in Study 3. What I have found is that when the injured worker is capable of returning to work he or she is not offered any further work. I will not say that that is the case all the time, but of the 200 labour hire workers I looked at, only one-third of those were offered further work. They were not offered a return to work on lighter duties or on modified duties, instead the agencies simply offered no further work, which was effectively dismissing them, although not legally dismissing them. If they were permanent employees they would need to be returned to the workplace once they were fit for duties, and of the 200 claims I looked at, when the labour hire workers were returned to the workplace they were much more likely to be permanent employees of the labour hire companies. It is the casual employees who do not get the return to work offer.

The CHAIR — I am interested in that finding. I believe you said that one-third of injured labour hire workers were offered no further work when their injuries healed. Are you aware of whether the WorkCover authority has done any work to see what happens to those people in their working life beyond that? I presume if they are offered no work, they leave that labour hire firm in the search for work. Does the fact that they have been injured at a previous labour hire firm, if they go to a competing firm, follow them around? Do you know whether anyone has done any work on that? It would be fascinating to try and find out what happens in the longer term.

Ms UNDERHILL — I do not know of anyone who has done that work. The claims that I have been looking at follow it up to some extent, but from the workers compensation claim files you cannot work out where they end up because once the claim has finished, that is it.

The CHAIR — We will follow that up with the WorkCover authority.

Ms UNDERHILL — Moving on to the consequences for the application of occupational health and safety legislation, the data analysis that I did of the claims for workers compensation over the six-year period found that there was a higher incidence of claims from labour hire employees compared to direct hire employees. The Recruitment and Consulting Services Association claim that my analysis is distorted because of the group trainee claims. In fact this is a false accusation. My report clearly states that group trainees are excluded, and representatives of the RCSA attended WorkSafe meetings where that exclusion was stated, and discussed, and recorded in minutes. The point I make in the rebuttal of the RCSA claims is that if I had used ABS employment data to estimate the rate of claims, which I did not do and was advised by WorkSafe not to do, the incidence of injuries in 2000-01 would show 36.6 injuries per thousand labour hire employees compared to 13.7 for non-labour hire employees, excluding the self-insured.

The CHAIR — On that matter of the group training companies, I mentioned earlier the VACC had a view. It stated the following:

> Research prepared by Underhill, E., *Changing Work and OHS — The Challenge of Labour Hire Employment, 2002*, (as cited in Maxwell.) is flawed due to the reliance on inadequate data. For instance, a literal interpretation of the data relied on by Underhill in

research would suggest VACC's group scheme to have an appalling workers compensation claim level. In fact, the data does not even include VACCs group apprenticeship scheme, due to the assumption that all group schemes fall within —

particular industry codes. If it is not possible for you to give a response right away, I would be happy to give you a copy of that and you could respond, in time, but we would like a response to that.

Ms UNDERHILL — That would be good, I will do that.

The CHAIR — We have just been talking about group training, and I thought this was probably the time to raise it.

Ms UNDERHILL — I completed a separate report on group training for WorkSafe after the labour hire report because of the need to separate out the two groups.

The CHAIR — We would like to investigate that a bit further, and we will do that by getting a copy of that to you.

Ms UNDERHILL — Continuing on, not only do they have a higher incidence of injuries, but the time off to recover from the injuries shows quite a different pattern from that for direct hire employees. In particular, labour hire employees are much more likely to require more than 10 days off, and up to two years off. In Study 1, 56 per cent of labour hire employee claims involved from 11 days up to one year, and only 40 per cent of direct hire employees. The two factors that seem to influence this longer claim period are, first, the injury may be more severe and therefore it takes more time to recover, but also because they are less likely to return to work on lighter or modified duties so they remain on workers compensation income for a longer period. The second distinct pattern with respect to time off for claims was that labour hire employees were much less likely to make a claim that involved 10 days or less, or that involved a claim of up to around $450, which is the regulative minimum.

The explanation for labour hire employees having fewer claims for minor injuries — those requiring less time off — is that they do appear less likely to make a claim for minor injuries because they are afraid of losing their job. This was supported in comments made by the focus groups, and it is also reported in the data of study no. 5, where we asked labour hire employees why they did not make a claim when they had been injured. Again, because they are less able to make claims for minor injuries or take sick leave for minor injuries, they are more likely to continue until the injury prevents them from working, so the injuries become more severe and ultimately require more time off. With respect to the factors that contribute to the higher rate of injury, the overseas research on labour hire workers indicates that they are more likely to be doing more repetitive tasks, more heavy lifting and high-risk tasks — what we colloquially term the 'contracting out of the risk'.

Mr JENKINS — Regarding your comment on the rate of injuries — less claims for shorter term injuries, more claims for longer term injuries — how do you get a figure that is the real figure about the rate of injury for labour hire compared to non-labour hire employees?

Ms UNDERHILL — The comparison is based on the number of claims per million dollars of remuneration which is lodged with labour hire companies for workers compensation premium purposes.

Mr JENKINS — So even taking into account that there is less likelihood, as you just explained, of the labour hire employees making a claim for shorter periods of time or for more minor injuries, the rate of injury is still higher?

Ms UNDERHILL — Yes, that is right, and because they are less likely to make claims for minor injuries it does suggest that there is a degree of under-reporting of injuries.

The CHAIR — I know we are going to have a few questions, Elsa, so can you just wind up your presentation? I think we are probably going to have to meet with you again because there is so much material to get through. I apologise that we did not see that. Our public hearings will go on. Whether we meet again through a public hearing like this or we do it informally, the committee will work that out. I do not think that we are going to exhaust our questions totally by a quarter past, but could you finish up in a couple of minutes and then we will go around with some questions.

Ms UNDERHILL — I will just raise a couple of other points in relation to the injury pattern. The study of the 200 claims that I have looked at found that labour hire employees were much more likely to be injured within

the first month of placement with a host employer — 36 per cent of the claims I looked at were made within the first month of placement compared to 5 per cent of those involving direct hire employees. This was a comparison of claims for similar occupational groups. The fact that they are injured much more early is consistent, again, with overseas data, but it also points to the problem that they have with respect to insufficient training for working with unfamiliar equipment and unfamiliar tasks — and that data is provided in Study 5.

The problem of injuries early on may also be related to lack of familiarity with the tasks and the workplace. Of the claims I looked at, 29 per cent had not had any work experience which was related to the task they were placed to perform. Almost a third were being placed in tasks they had not done before. That compared to 6 per cent for the direct hire claims I looked at. Another contributing factor may be the younger age group. Of the labour hire claims, 20 per cent involved workers of less than 25 years of age compared to only 10 per cent of direct hire employees; and of course younger workers are less experienced, have less skills, and are more likely to be injured.

Study 2, which is the one on occupational health and safety management systems, highlights the problems of the lack of application of a host occupational health and safety management system to labour hire workers. It talks about the value of integration between labour hire company systems and host systems, and a very common point that was raised was that because of the intense price competition in the labour hire sector there is insufficient regard paid to occupational health and safety and managing occupational health and safety, and there is a willingness to accept clients, irrespective of the level of occupational health and safety risk. So there are clearly problems in terms of injuries, but there are also problems with respect to the rehabilitation of injured workers.

The last point I will make is that the current workers compensation industry classification system for labour hire companies appears inappropriate and does not reflect the nature of the placements that are being made. Workers compensation industry classification involves two classifications for labour hire: one is employment services to production services, and the second is employment services to the service sector. The production services one has a higher premium than the service sector because the service sector is assumed to be safer.

When I analysed the workers compensation claims over the six-year period, only 32 per cent of claims of workers for agencies providing employment to the service sector were in fact claims by white-collar workers, the rest were by blue-collar workers. So the assumption that those companies classifying themselves as employment services to the service sector are providing workers to safer workplaces is not actually borne out if you do it on the basis of occupation.

Mr BOWDEN — If we accept the premise that labour hire is here to stay — the form may vary, but as a business it is fundamentally here to stay — I would appreciate your professional thoughts about where the cost or the responsibility should lie in terms of one of two places. Should it be with the host employer, or should the responsibility/cost be with the labour hire company?

Ms UNDERHILL — It depends on responsibility for what. From looking at day-to-day occupational health and safety issues it would seem to me that the host is in the best position to be responsible for managing occupational health and safety, but it is the labour hire company that selects the person to be placed with the host most of the time, so they also have a responsibility to know or to ensure that the person is the right fit for the job, that they have appropriate experience and appropriate qualifications, and that they are going to be placed in a workplace where they will be protected from a health and safety point of view.

Mr BOWDEN — So which of the two would you have, given a black-and-white choice?

Ms UNDERHILL — If I had a black-and-white choice I would go for the host.

Ms MORAND — There is no such thing.

Ms UNDERHILL — Because I think in a practical sense it is much easier for them to look after OHS.

Mr BOWDEN — If the legislature would grant one piece of legislation that you would want, what legislation would that be? What would be the wish that the legislature would grant?

Ms UNDERHILL — It would be — and I know this is not possible — to require that they be hired as permanent employees because they would have so much more protection if that were the case.

Mr JENKINS — You talk about a number of other variables that can affect the rate of pay, such as younger workers and labour hire firms having more younger workers. To what extent do those variables account for the greater degree of claims for injury amongst labour hire, or could it be explained more?

Ms UNDERHILL — I do not have the data to know to what extent a younger work force contributes to the higher rate of injuries. I would like to think that when I finish the analysis of the detailed claims that I will have a better sense of the contribution of training in OHS and task-specific training, but at this stage I do not have that completed.

Ms MORAND — I have a related question. When you are analysing the data claiming that the incidence of injury is higher amongst labour hire employees, is it the case that injury rates are higher amongst employees during the first period of their employment, say in the first six months?

Ms UNDERHILL — Yes, especially in the first month.

Ms MORAND — So there is some data that shows injury rates are higher within the first four weeks of employment, because you often hear about people being injured on their second day of work, for example, because they are not familiar with the work place. That is not necessarily because they are labour hire, but they have just started their employment. If you are looking at the whole of the population at work it is not separating out the two categories. Are the injury rates higher within the first month of employment?

Ms UNDERHILL — I do not think Australian data has been conducted looking at that. I know that is certainly the case with the British data, but when you look at labour hire employees, and 36 per cent of the 200 detailed claims I looked at were injured in that first month, if that were the case across the whole of the work force, then the level of claims would have to be much higher than it is now.

Ms MORAND — So we do not know whether the claims are higher amongst the broad work force within the first period of employment?

Ms UNDERHILL — Well, they normally are in a very early stage, but when I took my 200 labour hire claims and compared them to 215 direct hire based on occupation, and their having been investigated by a private investigator, then only 5 per cent of the direct hire employees had been injured in the first three months. It would have to be a much lower rate.

Ms MORAND — Do you think that could be related to a better induction or because they are going to be permanent there is a different level of training provided for ongoing employees rather than someone who might be there for the short term?

Ms UNDERHILL — I would think that, and perhaps also because they go through more comprehensive selection and recruitment processes. It is quite hard to know exactly why, but you would think that training, selection and supervision — all of that — would contribute to a different outcome.

Mr DELAHUNTY — I was interested to have a quick look through your Study 4, and particularly where your study groups and focus groups were. You said you had one in a regional centre. As a person who comes from rural and regional Victoria I would be interested to know what centre that was. You were saying that in those groups there were only four female attendees, and I looked at the industry sectors you covered. What I am hearing is that there are a lot more females who want to have flexibility in their work arrangements, therefore they are more inclined to be involved in labour hire. I am wondering if you want to make a comment on that. Is it your anecdotal evidence that more females want flexibility, therefore they are involved with labour hire, and has that skewed your survey? As you say, there were only four female attendees at that one there.

Ms UNDERHILL — I can tell you that none of the females who attended the focus groups wanted the flexibility that they allegedly had, and one of them comments about how in the almost 12 months she had been there she had never had two days off in a row and how she would have preferred more time off to share with her friends and family. The nurse survey responses, which are detailed in Study 4, do indicate that they are much better able — —

Mr DELAHUNTY — What page is this one?

Ms UNDERHILL — It is on page 9. Nurse respondents — and they were all female workers — certainly preferred the flexibility that they achieved through agency work.

Mr DELAHUNTY — I know that South Australia looked at some changes and the impact on government agencies, departments and statutory authorities. Do you know the incidence of employment through those agencies? Would you have that sort of detail?

Ms UNDERHILL — No, I do not.

The CHAIR — Thank you very much. We started a bit late and have gone over time, but there is a lot more we could talk to you about. We will have to arrange another time. Thank you for the material you have provided. I think we only came across your name when we were up in Sydney. I think Michael Quinlan was the first one to suggest your name to us, then we became more aware of the work you had done as part of the Maxwell review, so to get all this is welcomed. We just have to get through it now. We will stay in touch. Kirsten will make sure we get a copy of the VACC submission to you, and we would welcome some feedback on that. We will be in touch.

Ms UNDERHILL — Thank you.

Witness withdrew.