

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne – 28 July 2004

Members

Mr B. N. Atkinson
Mr R. H. Bowden
Mr H. F. Delahunty
Mr B. J. Jenkins

Ms M. V. Morand
Mr N. F. Pullen
Mr A. G. Robinson

Chair: Mr A. G. Robinson
Deputy Chair: Mr B. N. Atkinson

Staff

Research Officer: Ms K. Newitt

Witnesses

Mr K. Bieg, Company Secretary; and
Ms J. McBeth, Corporate Affairs Manager; and
Mr R. Fitzgerald, National and Industrial Relations Manager; and
Ms K. Horne, Victorian Manager, Occupational Health and Safety, Skilled Engineering.

The CHAIR — Welcome. You that know the Economic Development Committee, one of a number of standing committees of the Parliament, an all-party committee, is currently investigating and reporting on matters pertaining to labour hire. You would have seen the terms of reference, and we appreciate the time the company took earlier this year to make those fairly detailed submissions. Our intention is to produce a report for the Parliament by Christmas, and out of that the government may or may not accept the recommendations, but it will respond in due course.

Today's proceedings are part of a formal hearing. We have had formal hearings yesterday and today, and have a number of witnesses with expertise in the labour hire field. They are being recorded by Hansard, and we will provide you with a copy of the transcript. You should get that within a week so you can correct any typographical errors or meaning which need to be corrected. This will form part of the evidence that the committee uses to make its recommendations in the report that we deliver to the Parliament.

Anything you say today, because it is a formal hearing of a parliamentary committee, is covered by parliamentary privilege, a common feature of these sorts of hearings. That extends only as far as the time in which you give evidence, so just be conscious of that, although I do not think it is anything that you need to worry about too much.

We have received a submission, and you have kindly provided us with a small document as well. It might suit us best if we were to invite you to speak to the submissions you have made for a few minutes, and then we can just have questions and answers if you like.

Mr BIEG — First of all we welcome this inquiry, and we thank you for the opportunity to participate in it. We did, as you have said, provide a submission earlier. It is not our intention today to repeat that presentation, but we have handed out some presentation notes in terms of wanting to touch on certain issues just to flesh them out so the position Skilled has in this matter can be understood by this committee.

By way of starting we have put a structure of the presentation in there. It broadly consists of some background on Skilled. Our view of the labour hire industry both in Victoria and Australia and our approach to a number of what we regard as important facets of the industry in terms of OHS, IR and skill shortages. We have some views about what needs to happen to this industry, and we are prepared to share those with you. Are you happy with us to proceed along those lines?

The CHAIR — Yes.

Mr BIEG — We will take questions on both this presentation and our submission following that. For those that do not know, Skilled is a company which specialises in the provision of work force services, both to industries in the private sector and also in the public sector. We are Australian owned. We were listed in 1964. In fact we celebrate our 40th birthday this Saturday night. We had revenue in the vicinity of \$650 million for the 2002–03 financial year and 70 offices nationally. We employ over 15 000 people — and I will come back to and emphasise that we employ those people. We have a somewhat diverse work force, although our specialty is in production, trades and, more recently, nursing. We have 6000 clients spread across Australia, and in Victoria in particular. We are Victoria's largest labour hire employer with some 2800 employees servicing 1000 customers from 11 branch offices.

I said that I wanted to come back and emphasise that fact that we employ these people because there does seem to be some confusion from time to time around this point. A number of people refer to our clients as host employers. We reject that notion. We believe that the use of that term is confusing about the real relationship that exists, and you will notice on page 7 in that pack that we have actually provided a diagram to clearly show that the relationship exists between Skilled as the labour hire company and our employees. There is a totally separate relationship between Skilled and the services it provides to the client. There is no direct relationship to the client and the employee. We say that because, as I said, there is some confusion. These people are our employees. We are responsible for them, and we readily accept that responsibility. We pay their wages, we pay their superannuation, we provide the long-service leave and we pay the payroll tax — we do absolutely everything. We have a social club to encourage them to be part of the Skilled family, and anything which potentially causes confusion in terms of that relationship we would prefer to distance ourselves from. So we have taken just lately — this is a fairly new trend — every opportunity we get we get someone uses the term, 'host employer' to question them and say, 'What is it that you mean?'

In terms of the industry, we have seen over the last 40 years some very significant changes. First of all our estimate is that the revenue from this industry in Australia is some \$12 billion and it is growing at about 10 per cent per annum. This is not a trend which is unique to Australia. It is seen world wide that labour hire or whatever description one likes to put around it has become part of the fabric of industry. That exists for a number of reasons, and obviously provides a number of benefits both to our clients and to our employees. I do not intend to go through those benefits because they have already been covered in our previous submission.

What I will say is that in Victoria we actually do not know how many labour hire companies exist. We actually put someone to the task internally in preparing for this inquiry; they spent a day just going through newspaper advertisements and whatever. They certainly got to 800 and they believed that they really only touched the surface of it. There could be as many as 3000. I do not know whether information has been presented to you which is more accurate than that, but we find that fact that we cannot define the industry in Victoria itself is somewhat curious.

We have broken down the industry into three tiers: we believe that there are tier 1 players, who tend to be the major companies that are dedicated to the provision of labour hire services. They tend to be large companies with good cash flow. They value their reputation. They are very committed toward things such as OHS and IR and workers compensation and ensuring that the appropriate industrial relations mechanisms are followed.

Tier 2 companies tend to be smaller. They do not have the same resource base although they may have the same desire in terms of compliance. Tier 3 — which we have a number of names for, but we will call them tier 3 here today — tend to be small players, very much one-man bands with maybe just a handful of clients. Essentially all you need to do to enter this industry is have a little black book with some names in it and a phone. In these days of mobile phones you do not even need to have an office; you can do it in your car. There are people out there running labour hire companies in that particular way. Because of their size and because they have an extremely low profile they tend to fly under the radar of the authorities. Certainly we have had discussions with the Victorian WorkCover Authority when it has wanted to focus on the labour hire industry simply as a part of its industry focus. We know how much difficulty it has in identifying where these people are, except by accident.

We specifically raise the issue of the structure of the industry because it goes to the core of what we conclude as our proposition a little later. I will not talk about the next couple of pages because they are capable of being read. We are concerned about the failure generally to distinguish between what we call the cowboys — the tier 3 players — and the ethical operators such as those you find in tier 1, and Skilled Engineering includes itself in that group.

There is a perception in the community and amongst a number of sources that labour hire operators are delinquent in their responsibility not only to their employees but also to their obligations to pay their way, if you like, in terms of workers compensation, payroll tax and attendance to occupational health and safety. That negative image has been further encouraged by statements from some of the unions and some of the academics. They tend to be general perceptions, as opposed to matters that have significant supporting evidence. So you finish up with the players who want to be good corporate citizens and who are doing the right thing being tarnished with this negative industry perception. The thrust of our submission is about how we go about doing something about that.

I particularly want to talk about occupational health and safety because it is something which we as an organisation are passionate about. Our objective is to have zero injuries, and we believe that every employee should return home safely each day. That commitment starts in the boardroom and permeates throughout the entire organisation. We note that we are the only labour hire company in Australia to have OHS accreditation under ASNZS 4801. Unfortunately the commitment that Skilled can express is not typical of all labour hire companies, and we particularly note that the tier 3 companies would have no commitment to OHS and that many of the tier 2 companies would simply not have the resources to fully embrace their obligations under OHS. We are committed to providing fair and equitable compensation in the event that somebody is hurt at work. We have a very strong philosophy towards rehabilitation and return to work, and I guess because we have 15 000 employees and 6000 client sites across Australia we are in a better position than most to provide the opportunities for that rehabilitation and return to work.

Since 1997 we have reduced our loss time injury rate by 94 per cent, and on comparisons that have been provided to us by CGU Insurance Australia Group we are performing at better than industry comparisons on key OHS statistics.

The final point we would make on workers compensation is that we would not find it surprising — and yet we have no evidence to support the proposition — that a number of the tier 3 companies would not be paying any workers compensation.

The CHAIR — So at the bottom of page 14 that is actually ‘pay’ not ‘say’?

Mr BIEG — Sorry, that should be ‘pay’, and it was the typo from this morning, and we said we wondered who would pick it. While we are on the subject of OHS, we wanted to touch on the Maxwell report. Chris Maxwell was engaged by the Victorian government to review the Victorian OHS legislation, and he has now published his recommendations — and there are numerous recommendations. Overall, Skilled supports the majority of those. We do have an issue, and we have spoken with Chris and Minister Hulls about this. We have issues with the union right of entry to investigate potential OHS issues, and there are a few reasons for that, not the least of those being that the responsibility for that squarely belongs with the Victorian WorkCover Authority and it ought to be something which they should not delegate.

Again, we find ourselves subject to fairly significant scrutiny from the Victorian WorkCover Authority, and we do not have a problem with that. What we do say is that we are the easy targets. In labour hire, people will know organisations such as Skilled Engineering, Manpower, Adecco, Drake Personnel and Integrated Group, so we are the easy targets. If you want to talk about labour hire, go and knock on their door. But because the tier 3 companies tend to fly under the radar, they do not get the same attention. We would welcome the VWA having the resources to apply that attention. We have a problem with on-the-spot fines, which I will not go into. We do strongly support the need, which Chris Maxwell identified, to be very clear about the rights and responsibilities of the client and the labour hire companies. At times there is some blurring of that.

I also want to touch on the issue of WorkCover recoveries, which is an issue that has particular importance to the labour hire industry. Essentially, section 138 of the Victorian WorkCover Act enables WorkCover to recover workers compensation costs being incurred from a party other than the employer in circumstances where it can demonstrate a degree of negligence. What happens is that as more and more of these recoveries occur, clients start demanding what is called a hold harmless indemnity, which means that if they become subject to a WorkCover recovery action and are found liable to pay, the hold harmless indemnity means that Skilled pays. This is a trend that has followed on from what is happening in South Australia.

The CHAIR — Has that hold harmless clause, or forms of that clause, been tested at law?

Mr BIEG — No. There is a suggestion that if you were to take it all the way and test it through the courts it would not stand up.

The CHAIR — But in the dim, dark recesses of my mind, from the little I remember of first and second-year law and negligence, it was very difficult to indemnify yourself by way of some clause like this for negligent acts you had committed. Anyway, we might revisit that at some stage.

Mr BIEG — Just bear in mind the issue here is that the proceedings are civil proceedings. The civil environment sits around it. WorkCover has the authority under the act to pursue criminal proceedings, which are for prosecutions under the Act itself. If somebody is found guilty via a prosecution they cannot indemnify themselves. You cannot be indemnified where it is in pursuit of criminal proceedings, but this effectively becomes one of contract law rather than anything else.

The CHAIR — So are you suggesting to us that one of the things we or the government of the day should look at legislatively is to invalidate hold harmless clauses?

Mr BIEG — Yes.

The CHAIR — Because I do not think you put that in your formal recommendations, but building on this point, that would be a natural extension of it.

Mr BIEG — That would be correct. I might say that the consequence of that as a process, where you have the recovery actions, then the client response is to try to protect themselves and therefore insist on the hold harmless clauses, is that when it occurs the party who was responsible does not pay because it has an indemnity to

protect itself so any incentive that was meant to fall out of that process for people to more closely comply with their obligations under OHS is lost, so that becomes the issue there.

If I could talk quickly about industrial relations, we do operate within all the statutory requirements, including responsiveness to federal awards. We note that we have in Victoria over 20 union negotiated EBAs; 52 per cent of our employees are in fact union members and those EBAs are recognised by and provide for union rights.

Mr JENKINS — Is that 52 per cent clustered in certain occupational areas? I would assume that a great swag of your white-collar organisational and clerical staff would not be, so it would be higher than 52 per cent of your blue-collar members.

Mr BIEG — Can I just clarify that? The incidence of white-collar employees by Skilled is somewhat low. Our focus is on what we call the concrete space and the technical and trade space, so whilst we do have some white collar it is very much oriented to the industrial area. I might ask Ray to respond to the question itself.

Mr FITZGERALD — It is pretty much in the trades, production, warehouse distribution and trades assistant types of areas, yes.

Mr BIEG — Obviously for us to have survived for 40 years, to have built the business in that time and to be able to say we have 15 000 employees means we have to have our IR right, because if you do not have it right you are not going to attract the people and particularly in some of the scarce skilled areas. What we do say, and again we can only provide anecdotal evidence of this, is that there are certainly some players in the labour hire market that would fall a long way short of that both in terms of not paying award rates and not complying with appropriate conditions, and not meeting certain of the other employer and employee-related situations. We say that because when we lose business and go back and it is about price, and when we start looking at the price differentials and we know that the provider is a very small player, we know it just cannot be. They cannot get to that price and meet all of the obligations.

I would just like to touch on skill shortages. Again it is an issue that I guess affects all of industry, but we have a particular interest in it. I do not think we have any doubt that Australia does have skill shortages, and unless we do something about it they are going to get worse. They tend to have come about through an ageing population, by people training in a particular area and then moving on to other areas, by people exiting the actual career path, and through a lack of new training and apprenticeships. This is our space. We are talking now about the sorts of people we need to run our business, so we have a very vested interest in retraining and in developing those skills. We currently have about 550 apprentices and recently completed traineeships, and we are looking to expand on that. We have launched a program called Operation TECH, specifically to address the issues associated with skill shortages.

Mr JENKINS — It is going to be the standard question as people come in, I think: by 'new apprentices' by definition you mean new apprentices and not new apprentices? We have the four-year typical, traditional apprentices and then we have the new apprentices who attract a training subsidy and there is not necessarily any mention of training. How many of the 550 — —

Mr BIEG — These all have training attached.

Mr JENKINS — How many of that 550 are actually the traditional four-year trade apprentices and how many are the new apprentices that attract — —

Mr BIEG — Unless Julie can help me —

Ms McBETH — I was going to say that I do not have a specific breakdown of those figures, but you are right that some of them are full apprenticeships and others are trainees.

Mr JENKINS — Even an estimate at some time in the future would be handy.

Ms McBETH — Certainly. We can get back to you.

Mr BIEG — I understand the point that you are making though.

Mr ATKINSON — Can I just check that that figure is a national figure for the company?

Mr BIEG — Yes it is. In Victoria I think the number is just over 100. Julie?

Ms McBETH — Yes.

Mr BIEG — Operation TECH was introduced, firstly, to improve job satisfaction for our current employees to make sure that they remained in the trade. Secondly, it was to look at how we could win back those people who had a trade and had moved on. I guess we have all heard stories about the person who is qualified as an electrician but suddenly has found that working as an unskilled labourer on a building site actually gets them more money. How do we rebalance that sort of situation, and how do we stimulate the development of apprenticeships?

We do not claim to have all the answers in this space, but we do have a commitment and we do have a number of initiatives and a number of discussions under way to endeavour to participate in this whole subject. Again these are subjects in which the major players all have vested interests but in which the smaller players have got absolutely no interest. I guess that brings us to the main theme of what we have been wanting to talk about: the skill support measures that will lift the bar and raise the standards of labour hire both in Victoria and nationally. We obviously have a vested interest in removing the tarnished image that the industry has in some sectors. We do want to see initiatives taken to protect the safety of and prevent injuries to not only labour hire employees but all employees; and to ensure that everyone is paid appropriately.

If I can summarise, the labour hire industry in Victoria is fragmented and it has very low barriers to entry. We do have a situation where some operators are impacting negatively on the reputation of the industry as a whole, and we believe that the only way to address that is via industry regulation. It is our proposition, in particular, that there be a licensing regime for all labour hire companies. We note with interest that one of the strong recommendations from the New South Wales labour hire inquiry some three to four years ago was, in fact, the same issue. As I understand it, it was one that received bipartisan support but nothing has ever happened with it. We also note with interest that as recently as this month the Queensland government has indicated that it will look at the licensing of labour hire companies. As I said, we would certainly support that as a mechanism towards increasing regulation and would certainly seek to have a role to play in how that was initiated.

The CHAIR — Thank you very much, Ken, that has been fulsome. There will be lots of questions in the half hour we have available, and Noel is going to kick off.

Mr PULLEN — I was interested in page 7, the labour hire relationship. Of the employees who directly work for you, I notice that 63 per cent are casual, 29 per cent are permanent and 9 per cent are contractors. I am interested in this 29 per cent of permanent employees, and even the casual employees. When you say they work for you, does this 29 per cent of employees work 52 weeks of the year for you or on to some particular company?

Mr BIEG — They are employed by us as permanent employees, but they are on-hired to our clients, so if there is no work they still get paid.

Mr PULLEN — Right, from — —

Mr BIEG — By Skilled.

Mr PULLEN — We have also had put to us that if a person has been a casual for a certain length of time they can become a permanent. Did that happen with these people? How did they become permanent, compared to being casual?

Mr BIEG — For all sorts of reasons. Firstly, it depends on the skill base. It is a supply-and-demand driven situation. If you have people with scarce skills then obviously you want to employ them and you want them there full time. Other people will be there because they have been with the company for some time, they have a good reputation with clients and we know about it, and we know that we can find work for them. Having said that, there are some people who have been with us for many years as casuals and we want them as permanent employees. In fact there is one chap in Queensland who has worked with us for something like 20 years as a casual and will not work any other way. I do not think there is a single response to that question.

Mr PULLEN — I was quite impressed with your tiers, your levels of labour hire companies — and we will not have tier 3 companies knocking down the door to get in here to put their points. It is interesting that when we have inquiries into different things we hear that there are people out there who are not doing the right thing. I do

not know how we are going to find them. The industry obviously knows them, and I wonder whether they should let us know who they are, or whatever. Do you want to expand on that in any way? You mentioned that you looked through the phone book and there were 800 to 3000 — who knows? — but obviously they would rear their heads somehow or other. Do you think a licensing system would overcome this?

Mr BIEG — Correct. It would mean that if you wanted to be a labour hire provider you would have to satisfy certain minimum, regulated standards. At the moment the biggest issue for, I guess, this inquiry, for the various authorities that sit around the whole employment relationship and for us who are in the industry, is that you cannot identify who they all are. You just hear about them anecdotally. You hear about the small labour hire company that suddenly crops up at grape-picking season and provides the labour for that, such as illegal immigrants and people who are paid nowhere near any award condition. By the time you have identified them they have gone. All you can do is talk about those sort of things anecdotally. The fact that we cannot actually put definitive information before you does not mean that they do not exist.

Mr PULLEN — No. Just one other thing. The second-last paragraph on page 6 of your submission to us, under the heading ‘Tarnished industry image’, reads:

There has been a lack of research undertaken into the labour hire industry in Australia. Often academics have relied upon overseas statistics whereby the relevance rests on the extent to which overseas labour hire employment practices and legislation imitate those in Australia.

The question I would like to ask is: okay, we are having some sort of an inquiry here at the moment so it may be an Australian first — we know they had one in New South Wales but not a great deal came out of it — and I am interested particularly in whether you know anything about overseas experiences and whether or not there is a licensing system for labour hire companies at all.

Mr BIEG — I cannot answer that, in all honesty.

Mr DELAHUNTY — I am very interested in your comments about the labour hire relationship, where you repudiate the host employer thing. That is on page 7. Then I go to page 16 about the hold harmless clause. I am trying to marry all these things together. You are saying that you are the direct employer, and I understand you are, but then we are trying to get some responsibility or accountability for on-the-site workplace safety and those matters. How do we marry all of that together? If you employ me and I go and work for Maxine, but she has got very unsafe work practices, why should you wear the pain and not her?

Mr BIEG — If I could just take you through that as a process. I might get Karen to talk this through, but I will give you the overview. First of all, at the time that we were going to enter into a relationship with the client we would undertake a site inspection and we would form a view about the safety standards that exist around that work site. That would consist of a couple of things. Firstly, you very quickly get a view about the attitude of management and the commitment they have to providing a safe work site, and secondly, there are the more specific tangible things that you will look for around that. We have had situations where we have undertaken that and we have refused to enter into the relationship. Just because someone wants somebody from Skilled does not mean to say that we will provide them if we cannot be satisfied about that situation to start with. If having been satisfied we then send our person to work on that work site and they are injured, it is our responsibility. We do not walk away from that. We do not resile from the fact that the person is our employee. We are responsible for their safety.

WorkCover will come in and it will say, ‘Yes, you do have that obligation’. But in addition a particular client had a responsibility for this particular piece of equipment — it did not have a guard on it, or whatever it may have been. As the occupier of the premises, as opposed to the employer-employee relationship, we believe you have something to contribute towards the cost of that workers compensation claim. We do not think there is any confusion about our employer-employee relationship.

Mr DELAHUNTY — The next step is how does an authority like WorkCover work out the appropriate costs, you might say, of that responsibility, of the return-to-work programs? To me it would be a nightmare.

Ms HORNE — It is not a nightmare. WorkCover already has been consulting with a lot of labour hire companies, including ourselves. As Chris Maxwell has said in his report, there need to be clear responsibilities delineated between the employer — in other words, companies like ourselves — and the client. Where there has been a lot of confusion in the past is that WorkCover itself has not been sure of what the rights as far as the responsibilities of labour hire and the clients are concerned. My role is at the ground floor level. I am regularly

going into sites, I am regularly working with clients, and I am also regularly working with the WorkCover inspectorate. It depends on which WorkCover inspector you speak to, it depends on which WorkCover manager you speak to as to what response you get, as to who has responsibilities, and that can get a bit frustrating at times. It is not that hard.

We are responsible for our employees. We provide employees who should be competent, who should be inducted, who should have the correct qualifications, the correct licences. We go into the client, we work in with the client, we have a partnership with the client as far as assessing the conditions and systems of work, what training and supervision is required from the client. In the event of an injury they are our people, and it is up to us to rehabilitate that worker. We will ask that the client occasionally assist with the rehabilitation process. Nine times out of 10 the client will assist us in returning that person back to his pre-injury state.

Mr DELAHUNTY — Do you have a legal contract with them in relation to those matters?

Ms HORNE — No, we do not.

Mr DELAHUNTY — So it is just a gentlemen's agreement.

Ms HORNE — Yes. Occasionally with some of the smaller clients you will find that someone is injured and they will say give me another one, give me another worker, but most of the time we do not have a problem. We work in very closely with our clients.

Mr DELAHUNTY — While I am on this topic, on page 14 you say that Skilled's average days lost are five times less and 50 per cent less in average cost claims, and all those types of things. We have had a witness here today saying that labour hire workers are the opposite of what you are saying. They are more likely to be injured in the first five days of employment, and all that type of thing.

Ms HORNE — That possibly could be looking at all labour hire companies, again from tier 1 through to tier 3. There have been lots of different research papers put out recently. I have looked at them; I have looked at the 113-page document that came out recently. I looked at the report and I would like to know where all of the information came from for her, from that person to come to such — —

Mr DELAHUNTY — So you repudiate what was said in that report — you disagree?

Ms HORNE — I would like to query where she got that information from.

The CHAIR — We should say, Joy, that the 'she' in this case is Elsa Underhill. She was our first witness this morning. We were going to query her about the report which featured prominently in the RCSA submission to us, but she then added about another six reports to it that she had done in this field. She did acknowledge that the intention of her work had not been to try and determine what size labour firms were reflected in the claims history that she looked at, but she indicated that under certain circumstances she would be happy for further work to be done on that. We think that is potentially of some value because we tend to think the lower end of the market, the tier 3s, would account for a higher number of the claims, but in the absence of any quantitative evidence that is just an instinct rather than a proven fact.

I want to talk about OHS. You have drawn attention to AS/NZ4801 and you are the only labour hire company in Australia, I think you said.

Ms HORNE — Yes, that is right.

The CHAIR — I am interested to know — because OHS is featured prominently in the submissions to the committee — how OHS excellence is actually determined, and by what mechanisms? You have achieved that level of accreditation. Is that something that everyone else in the industry could achieve as well, and is that the only thing that makes you better on occupational health and safety than other firms?

Ms HORNE — With any standard that is set, whether it is in safety, whether it is in IR, whether it is in excellence in business management, it is what your goals are and what the industry standards are. The standard that we use, the Australian standard for occupational health and safety management systems, is a minimum standard. That was something we set as a target for Skilled to achieve. It was a goal we set a couple of years ago. We said, 'We want to have an effective safety management system. What can we do, what can we put in place to work

towards that? What do we need to aim towards?' We talked about, and you have probably all heard about the Safety Management Achievement Program, the Victorian WorkCover initiative that came in a few years ago. We initially looked at SafetyMAP and then we thought we really should go for a national safety management system. Again it is resources, it is management commitment, it is leadership, it is setting your goals, setting your targets and sticking to them, and also having the day-to-day involvement of your people on the ground. Without them — —

The CHAIR — I hear all of that, but I guess my question is: if we are looking at making recommendations about objective standards that you can actually tick off, all of what you have just told me is terrific, but it is very difficult to put down on paper and say, 'We have achieved that standard'. I mean it is intentions rather than objectively based delivery.

Ms HORNE — Any company can have a safety management system. There are small companies that have safety maps — for example, tiny asphalt companies. A company with 10 people can have a safety management system. It is really having a policy, planning and implementation and a review of what you have done.

The CHAIR — And a system that is more broadly recognised than within the company; that it stands up to some degree of scrutiny.

Ms HORNE — We are independently audited by NATA. Skilled decided that it would get independently audited so that it could get the certification, but the actual management system 4804 is achievable by any company that has the commitment.

Ms MORAND — A few submissions have supported the idea of a licensing regime. Could you elaborate on what you would see as the minimum standards for being registered as a labour hire company? One minimum standard that was put to us this morning was that if you had placed an employee with a client for longer than six months, then that person should be offered permanent employment with that post or client rather than staying as an employee of the labour hire company. So that is one example that was put to us. Could you elaborate on what you see as the bars that you were talking about to establishing that?

Mr BIEG — Could I first of all turn to that particular example. It would be our position to absolutely refute that proposition. It comes back to where the relationships are. There are two issues in what you said. One is whether there ought to be an entitlement for a casual who has been regularly and consistently employed for a period of time to be able to opt to convert to permanent employment. We think that is one agenda item, and certainly we are sympathetic toward that situation. However, the other proposition has been put to us that where our employee has been engaged on a client's site for more than six months, or whatever the period is, that that employee should have the opportunity to become a permanent employee of the client, and we absolutely dispute that and say that that person continues to be our employee. The fact that they happen to have worked for six months on that particular site does not mean to say that they could not have worked on a number of other sites as our employee.

Ms MORAND — The point is that if they have worked permanently for one person or one company, what would be the advantages to that person in staying employed by you rather than being employed directly by that company where they are working permanently on a full-time basis, for example, for six months, and there is no end in sight for that contact; it is ongoing?

Mr BIEG — I think there is a separate situation where it is absolutely assured that there is ongoing work and that the client says, 'This is the person that we need. We need to convert this into a full-time permanent position on our staff as opposed to a labour hire situation'. That happens consistently and we are able to accept that and to reach agreement on that.

Ms MORAND — How often would that happen?

Mr BIEG — I would be — —

Ms MORAND — Rarely, frequently?

Mr BIEG — It would be more than rarely, but less than commonly, which is no answer at all!

Ms MORAND — I struggle to understand the benefits to a person continuing to be employed by a labour hire company if they have found somewhere where they are happy and have full-time employment and that company wants them to continue.

Ms McBETH — You need to look at it more as people who are unemployed and then trying to get into a full-time job. For a lot of people who work for us, this is their lifestyle: they enjoy being able to move around.

Ms MORAND — I understand that.

Ms McBETH — That is part of the reason why they are working for a labour hire company in the first place. In a lot of cases they perceive that they are getting a slightly better pay rate because they are working for a labour hire company and not in full-time employment. So it really comes down to the choice of the employee as to what they perceive is for their lifestyle.

Ms MORAND — As long as it is always a choice.

Mr FITZGERALD — The alternative is not all that good either for the person who might be forced by legislation to take somebody on and then in two months' time when they run out of work they are terminated, whereas with a labour hire company they move around those jobs. So there are some severe downsides on the metal industry. The federal award changed a couple of years ago to allow for the casual conversion after six months. As companies we have all lived with that. We have an EBA in Victoria with the metal industry that allows for conversion after two months, but, as we have said, we do not get very many takers who want to convert. Therefore the union try to push that, so we want them to convert. What happens? We lose people. They will go to someone who will put them on as casuals. We should not assume that all labour hire is casual. That seems to be the push by a lot of people — that is, it is casual — but it is not. We cannot have casual employers being disadvantaged by our permanent employers because they are all engaged in the same industrial instruments in a lot of cases. As companies we are not so opposed to having conversions to permanency if the need is there. We do have a lot of permanent people.

The CHAIR — Building on Maxine's question, is there anything in your contract with the client that prohibits them from approaching one of your employees who might have been placed there permanent, for six months or more, to say, 'Look, you are a terrific worker. We would like you to work for us full time', and the employee says, 'I would love to do that'. Can they do that?

Mr FITZGERALD — They can do that, and it does happen from time to time. We have an ongoing relationship with those companies, and people will leave those companies and go elsewhere too.

Ms MORAND — Before we go on, you have not answered the question about what standards you would apply for licensing. Would you mind answering that before you move on?

Mr BIEG — First of all, we do not profess to have all the detail of this. We are still dealing with the conceptals and we would like to work through, or have the opportunity of working through, the detail. We would be looking for minimum standards, no matter how we define it, in terms of OHS and IR in particular. I guess you would need to be satisfied that all of the regulatory requirements are being met — that is, if I worked for a labour hire company I can be absolutely certain that natural rights, such as superannuation obligations, are being met, and that WorkCover would know that the appropriate workers compensation premiums are being paid. I think it is really about setting those minimum standards. I am not talking about raising the bar up so that nobody could ever possibly participate in this industry, but it is about saying that there are certain minimum things that anybody wanting to exercise proper corporate governance should have to meet in order to participate.

Ms MORAND — Therefore we have got a register, then WorkCover can identify companies and make sure they are paying the appropriate premiums or whatever it might be.

Mr BIEG — Yes, and that they have not been found guilty of 12 prosecutions for OHS breaches in the last 12 months or whatever.

Mr BOWDEN — It was suggested to us in previous submissions that on many occasions, particularly in the underskilled-unskilled area, that injured workers are often denied re-engagement at the place where they may have been injured, or often denied re-engagement. The other suggestion to us was that workers who raise OHS

issues are often denied further work or it is limited and so forth. I know it is a sweeping generalisation, but I would value your comments to that, and then I will have another question after that.

Ms HORNE — I agree, it is a generalisation. Again it depends on which company you work for. With a Skilled employee, if they are injured we try and put them back at the place where they were injured. As I said earlier, most clients will take them back. Occasionally that will not happen, so we will provide alternative work for that person in another location or at a Skilled location. We actually have agreements with clients who purely return to work sites. We have a couple of sites in Melbourne where we have put workers in who have been injured, and it is very basic and easy work where there is no risk of aggravation of their injury. So we do endeavour to get them back to work as quickly as possible. The second question?

Mr BOWDEN — Raising OHS issues on the job. Yes.

Ms HORNE — Again it depends which client you are working for, and also which labour hire company you are working for with the Skilled workers. Our workers are encouraged to report a hazard as soon as they see one. Our representatives are out on site on the client's site straightaway. I have a team of OHS professionals in Victoria. We have a team throughout the whole of Australia who are ready at our beck and call to go out and follow up a safety concern on the site.

Mr BOWDEN — So the worker is not victimised for raising an issue?

Ms HORNE — No.

Mr BIEG — Could I just go further than that, we actually have regular what are called tool-box talks, which means that we go out to client sites looking to talk to our employees — and these are our area supervisors. Everybody through the management structure, including directors on the main board, goes out and does this on a regular cycle. The purpose of that is to engage people in discussions about a whole range of issues, not the least of which is OHS, and we actually encourage people to raise hazard-type issues. The outcome of that is that we finish up not only talking to our own employees but invariably a whole lot of our clients' employees.

Ms HORNE — Yes, we talk to clients.

Mr BIEG — The client's management — and there have been a number of instances where they have been so impressed with the process they have wanted us to participate, for us to take that concept and drive it through further. If I could just also talk about rehabilitation to close that off: rehabilitation or return to work is at the cornerstone of workers compensation claims management. Fundamentally we believe that the sooner we can get someone back to work doing something, the better off everybody is. To that extent in New South Wales in what is a new initiative for us we actually have established a — I am not too sure exactly what you would call it — what is effectively a rehabilitation centre. It is for injured workers to return to work. It is set up so that we actually have work that we perform and we take not only people who are Skilled employees but we actually agree with certain clients who are not able to provide a proper return to work strategy and who are looking for one of the same opportunities. We would say that we are probably against the trend that you indicated.

Mr BOWDEN — On page 7 — I would just value your thoughts on this please — under the headings 'The benefits of labour hire' and 'Benefits to clients', the second last one on reduced costs, I was just wondering if you could just clarify it for me please the general pattern as to why that would be so?

Mr BIEG — If you have a need for — and I will just give you an example — an electrician, but you only need that person for 50 per cent of their time, then broadly you have two alternatives: you either employ them for 100 per cent of the time, and wear the 50 per down time, and try to find some other things for that person to do; or you use a labour hire-type facility whereby you will only pay for the time you do use. If the activity that you want to perform is part of your absolute core activity, you will tend to say, 'I am going to wear that cost, that is part of me being in this business'. But if it is part of the periphery of things that companies need to do that are not core, then you will endeavour to look for, 'How can I actually achieve the service that I want without paying premiums for it?'

Mr BOWDEN — Thank you very much.

Mr ATKINSON — Just on the licensing system, I do not quite understand how it is going to be that much better than what we have now. I mean, with a bad employer all that you see are problems in terms of the employer meeting their obligations. Basically they are chargeable now for those things. They are responsible for those things. A licence is not going to all of a sudden make them responsible for things that they are not currently responsible for. A cowboy can be a cowboy with a licence or anything else. With a licence I guess I am concerned about a new level of red tape for a whole lot of other companies and in fact are we really advancing the process? How would it work to advantage where these people are not already responsible for those things? Who would run it?

Mr BIEG — Let me answer the first part first. I would like to think that if I were building a house the person who was going to build that house for me would be a registered builder and had all the core competencies. Currently I can do that. I can actually go somewhere and say, 'This person is a registered builder'. I am sure that the industry is still full of cowboys but at least I have an opportunity to go and say, 'This person is registered and therefore has met a whole range of minimum standards'. The extent to which, as you quite correctly said, cowboys exist today and what would actually prevent them from existing tomorrow, well unless you are going to actually identify them and incarcerate them, probably nothing. At least, however, what you will be saying to the community is, 'There is a minimum set of standards, and I can tell that the minimum set of standards is being met because that person has got an accreditation, has got a licence to operate'. There is almost a little of let the buyer beware if he or she deals with somebody who does not have that accreditation.

Mr ATKINSON — It always amuses me, and I am sure I have heard this from Skilled as well, but I have portfolio responsibility in my party for small business and every company comes to me, and every industry organisation, complain to me about red tape yet at every table I sit at with those companies they in fact propose more red tape. Inevitably they are the companies — —

Ms MORAND — Depends on what you call red tape. Good governance !

Mr FITZGERALD — I think you are right. There are small and large businesses out there that you could equally say are not doing the right thing. One has to wonder sometimes why there are inquiries into labour hire companies who are in the country because we are an employer. Why are we any different? We might have people — we do not make widgets or gadgets or whatever, we are people — but we still have to be bound by awards and we have our enterprise agreements. We are bound by the occupational health and safety rules. We are employers. I do not know why there has to be an inquiry but there is, and you have to ask why. We are happy to participate, and if it means cleaning up the industry we are very happy to do so.

Mr JENKINS — Can I just move on. First of all thanks for putting and distilling all that into an easy format which has really highlighted a lot of the issues that other presentations have made today. There are a couple of issues that I want to take up, particularly highlighting that the on-the-spot fines and right of entry issues that may give you a bit of fear out of the Maxwell report would seem to be ones where if everything is going hunky-dory and the organisation is good and you have all the OHS policies in place, then it would only be another way of separating the shonks from the legitimate organisations. It concerns me that there seems this paranoia about right of entry, for instance, and on-the-spot fines. I suppose some people would like there to be less fines on just about everything.

You have already answered whether you have any international experience, but I suppose there seem to be more organisations hiring labour in Australia for companies that do work overseas. Does Skilled do that where people are contracted to work in a whole number of overseas locations? Are you involved in a group training type of scheme at all, or are you registered as one?

Mr BIEG — Where would you like to start? If you start off with the union right of entry and on-the-spot fines, again we have a concern. I take your point that if that actually raises the bar of performance then we ought to be applauding it, but the problem is that it is still only those labour hire companies that are identifiable which attract that sort of attention. Unions, OHS inspectors or whatever, do not go anywhere near the small players. They go nowhere near that sort of problem. If you are asking us whether we are fearful of our OHS performance, no we are not. Yes, we do have a problem with giving OHS inspectors as individuals a discretion to simply slap fines on when we already have an environment that WorkCover acknowledges, provides too much authority to individuals with no right of review. If you talk about union right of entry, we might challenge the motivations that sit behind it but fundamentally we say, 'Why does somebody else need to be doing the work that WorkCover should be doing right now?'. It is WorkCover's responsibility to promote and ensure the compliance of OHS in this state. What are

we doing — going to outsource it? Whether it be to a union or another private organisation, it does not matter, there is an abrogation of responsibility. That is our concern.

Mr JENNINGS — We have spent a lot of time discussing that to and fro I am sure, so let us go to the other question is about hiring labour to companies that are using it overseas.

Mr BIEG — We used to. Ray can probably answer this better than I can because his history is longer, but we certainly had a presence in Asia going back into the mid-1980s. We do not have that presence now. Our activities are essentially confined to Australia and New Zealand. Every now and again — and it would be a rare occurrence you send someone overseas. Certainly we sent some people to Timor when Timor first occurred, and that was at the courtesy of the Australian government.

Mr JENNINGS — And an involvement with good training — —

Mr FITZGERALD — A good training organisation.

Mr JENNINGS — And I found out why people have got so much against this work by Elsa Underhill. Our version is missing a page. Mine says 112 pages, it must be that 113th page.

The CHAIR — I do not think it has enough pictures.

Mr PULLEN — I asked this question twice yesterday and got two remarkable answers to be honest in relation to home loans for casuals. We had one case where a labour hire company said that it would give a letter to a casual worker and that the worker would not have any problems getting a home loan. I have my doubts about that, but I will accept that as an answer.

The second one came from the RCSA, which was absolute garbage, and the answer was that it was not a problem. It is a problem. In fact there is an article in today's *Age* on page 2 concerning a particular lady who is trying to get a home loan. I do not want you to comment on RCSA, but what is your position with casual workers if someone says, 'I am a casual worker. I need to get a home loan et cetera. I have worked with you for 10 years'. Are there any arrangements there for something like that?

Mr FITZGERALD — I am not aware of any complaints from any of our people that that has happened, but certainly if we were able to assist that person if that were a difficulty, we would do our utmost to do so.

Mr PULLEN — What happens is that generally a lender will only consider the casual workers wages as 50 per cent of what it actually is when they apply for a loan, compared to that of a permanent employee. That is the fact. It is interesting that you have not had that come to you.

Mr BIEG — I know that research is being done on that and evidence is being presented on that very subject at the secure employment test case in New South Wales. I do not know the full extent of it though.

The CHAIR — We are well past 3.00 p.m. so we will let you go. Thanks very much for your attendance today. We found what you had to say very useful. It may be that over the course of the next couple of months the committee will feel the need to come back to you and talk to you further. I do not know that it will necessarily be through a formal hearing like this; it might be something we do informally. We hope that it would be okay with you. Can I just say as well in closing that your presentation of the three tiers is useful for us. Further to what Maxine or Brendan or Noel said, any examples we can get of typical tier 3 practices would be very useful. We have a lot of people in the industry acknowledging that there are shonks — people whose performance leaves a lot to be desired. We would like to know more about what characterises them. You have given us some information, but the more we can get in the way of practical examples the better. We will make sure the transcripts are available, and that copies of the report are available too.

Witnesses withdrew.