

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 4 October 2004

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Mr R. Barber, Director, Employee Relations;

Mr G. Cooper, National Risk Manager;

Ms N. Gilders, National Training Manager; and

Mr N. Wakeling, Senior Employee Relations Adviser, Adecco.

The CHAIR — The committee welcomes a number of executives from Adecco. We have Rob Barber, who is the director, Nick in the middle, who was here before with the association, Naomi on the end and our final contributor, Geoff Cooper. What is your position, Geoff?

Mr COOPER — I am the group's national risk manager.

The CHAIR — Thanks, gents, and Naomi for coming along. We appreciate your time. You would be aware that we have been running this inquiry for some time and I know you have seen the terms of reference. Your submission today was to respond to some comments made by Dave Oliver in our last public hearing in relation to his reference to the notion of mobile permanents. I think we can spend a few minutes talking about that today if that is what you want to do. There may be other things that you want to talk about as well. That is fine.

Firstly, I will just remind you that because it is a formal public hearing your comments are being recorded and the transcript will be made available to you within about a week. You are welcome to make some corrections and send that back to us, and that ultimately will help us with our recommendations and writing of the report. Secondly, anything you say today is covered by parliamentary privilege. That, of course, stops as soon as you go out the door. If there is anything written you want to provide to us in the way of a submission, just let us know and we reserve the right to make that a formal submission which then becomes publicly available at a later date. But if there is nothing written that you want to submit today that is fine, we do not have to worry about it. Who would like to go first?

Mr BARBER — I will. Thank you for the opportunity to meet with you all this afternoon. As far as the make-up of those who are sitting before you, Nick has obviously been before you before on behalf of the Recruitment and Consulting Services Association. He is Senior Employee Relations Adviser for the group at Adecco. He is also the Chair of the RSCA Victorian and Tasmanian division, as well as on the national workplace relations committee. Geoff is the Chair of the Victoria and Tasmanian OHS committee for the RCSA as well and also sits as their national representative on the national committee for OHS. So I suppose while we are here as a company, we also have a fairly broad industry focus that has responsibility to take on board due to the size or the mere fact that we are Adecco and we are a global company. Also, the importance of Naomi being here is that she is our National Training Manager. As far as all training that we do with our internal colleagues to ensure that we understand all aspects on hiring employees, if you have any questions in relation to what we do there, she is certainly here to assist.

As far as a brief snapshot is concerned, Adecco is a Fortune 500 company, registered on the Swiss and New York stock exchanges. In the 2003 financial year sales exceeded 16.3 billion euros. Globally Adecco has 28 000 internal employees and a daily work force of approximately 650 000 on-hired employees. Then we also have 5800 offices in 70 territories around the world. As far as Australia is concerned, Adecco has been in Australia for 49 years previously as Ecco and Adia prior to their merger in about 1997. We approximately have about 14 000 employees on-hired each day and in Victoria last week we had 3400 employees who were employed by us and paid by us. We have 78 offices in Australia with 25 of those in Victoria.

Adecco has not made any formal submissions to the inquiry. This is due to the significant contribution that Adecco has made through the RCSA. As far as its submissions are concerned, Adecco endorses the submission made by the RCSA. As a member of the Australian Industry Group, Adecco has been pretty heavily involved in its steering committee and also with its submissions.

With respect to our reason for being here, it is my understanding that the AMWU made reference to some comments that I made at a national Work Force conference in my presentation, and I believe those comments to be incorrect. Hence I wrote to the committee to ensure that the correct position was put forward. Following that, I received a phone call from Ms Newitt, who suggested that I should come along and have a talk to you with my colleagues. Should you have any queries or questions in relation to Adecco, I am more than happy to answer those.

Whilst we have not done a formal submission, I have put forward a few documents which you probably received either on Friday or this morning. Attached are my notes from the presentation at the national Work Force conference. They identify a whole heap of issues associated with labour hire: the words 'labour hire', what ever they actually mean — on-hired employment, casualisation and different opportunities that might exist in the future.

Attachment 3 is Adecco's submission to the New South Wales labour hire inquiry of 2000. In attachment 4 are letters and brochures detailing the financial services and products available to Adecco employees through National

Australia Bank. Attachment 5 is a corporate overview of Adecco should you want to look at that further. That is pretty much the corporate overview we give to our clients as part of our sales package.

Since the 2000 labour hire inquiry one thing has remained constant: the continuing use of the term 'labour hire'. God only knows what labour hire means. As a company, we certainly do not understand the way that everyone else refers to it. Is it on-hiring employees; is it on-hiring independent contractors; is it some weird and wonderful contracting arrangement; or is it outsourcing a bundle of activities — say, maintenance and cleaning? It seems all these things have been called labour hire. Even when I spoke at a national conference in Adelaide late last year I spoke with a panel of very well-known lawyers and academics, and even their perception of labour hire was somewhat confused as well. They viewed labour hire simply as being either independent contracting or other things.

The biggest challenge this inquiry is going to face might be coming up with a definition of what labour hire is. Certainly one of the biggest developments in our industry since the 2000 labour hire inquiry in New South Wales is that we collectively (as an industry) went as far as to sit down and define our industry, which we are now trying to communicate out to the broader world. On that note, if we can provide any responses to any queries you might have about our company or about our views in the industry, we are more than happy to do so.

The CHAIR — Does anyone else want to add to the submission, or do you just want to help out with the answers?

Mr COOPER — Just help out, I think.

The CHAIR — Thank you, Rob. I will kick off. Firstly, thanks for your submission. It is terrific. You have gone to some considerable trouble there, and we appreciate that. On occupational health and safety, I tend to ask most witnesses this next question. When we spoke earlier to the RCSA, they referred to an OHS code that their members observe. I understand that is one of the conditions of membership. When we have spoken to other companies, they have referred to internal systems on OHS and how they manage workers who are placed elsewhere. When we talked to Skilled they referred to an Australian standard. They are the only individual company that aspires to a standard, although that is not a system as such, as that is a reference point in developing a system. My question is: surely one of the reasons that labour hire generally has a higher injury rate than non-labour hour hire is a consequence of OHS systems that just vary all over the place.

Mr BARBER — Geoff is best placed to answer this question, but if you look at the systems or what we have to abide by, (obviously as a publicly listed company) there is legislation we have to comply with. We also have to comply with the Sarbanes Oxley Act in the US, which also puts a greater emphasis upon legislative compliance. There is the OHS legislative compliance which already exists. There is also compliance as far as our systems are concerned as an ISO 9000 company, and there are also the systems aspects of what we do as well. Geoff is certainly the best person to talk about what we do as a company for OHS.

Mr COOPER — The RCSA many years ago basically put together a booklet which contained guidelines on managing occupational health and safety within the labour hire industry. That was the title. The Victorian charter of the RCSA put that together, and it has basically been adopted by all states now. Apart from some change in the wording to reflect the various acts and regulations, New South Wales, South Australia, West Australia and Queensland have all basically adopted the very same booklet. That may be the code or the guidelines that some of the previous companies have referred to. Basically what we try to do is not rocket science. We are obviously very bound by what our clients do, as they have the ultimate control over the work site. This is the very difficult situation that the on-hired labour industry finds itself in: what degree of control do we have over what goes on in the workplace? One of the key areas that we found in the Maxwell report was that there should be some degree of control that dictates your responsibilities. There are times when labour hire companies will have 100 per cent responsibility over what goes on in the workplace, and there will be other times when we have almost zero responsibility.

What we were trying to do with the guidelines was to set out what it is we do — that is, we obviously have to audit the client as far as their systems are concerned. I do not put a lot of credence in physical site inspections per se, because what you see in a flash you can come back 30 minutes later and find rectified. What we want to see from our clients when we audit their systems and their OHS systems is the ability to manage and improve their own OHS procedures. That gives me a lot more comfort than seeing a ladder that might be strewn across a fire-escape or

something like that. Those things can be gone in the blink of an eye, but if they have the systems to manage themselves and monitor and improve, that is what I put a lot of weight in. And this is what we preach to our internal staff, so that they know exactly what it is they are required to look for when they go out and scope new clientele.

With regard to our industry and the rates of injury, it is very dangerous to say that our industry rate is twice as much as that of other industries. You have to compare apples with apples. What we find — especially here in Victoria, where we have only two very broad industry codes under workers compensation, white collar and blue collar, for want of a better description — is that we are quite often at the pointy end of the risk scale. If you look at the transport industry, there are many occupations that might make up the transport depot, from the front desk through to the managerial and clerical areas, and then eventually you get down to the guys who load the trucks and drive the trucks. We are quite often just supplying workers who load the trucks, so when you say we have had five claims and the rest of the industry has had only two, it is very difficult to compare. A lot of the so-called academic reports and studies that have been done on our industry have not really factored in the fact that you are looking at a particular type of occupation and not just the industry per se.

The CHAIR — I offered that as a generality, and I do not want to get into dissecting the report.

Mr COOPER — No, but it is a misconception that our industry is a poor performer in OHS. Our own studies, with the help of the Victorian WorkCover Authority, have shown that our performance is quite healthy and in fact on the improve. I have some figures here. For the employment agency services operating in industries that we would call blue collar, the average premium rate has dropped — this is the real sharp end of the risk scale — from 5.18 in 1998–99 to 4.24 in 2002–03, whereas all industries in Victoria over the same period have increased from 1.84 to 2.0. They are going up, and that is all industry, so there is a lot of clerical and white collar in there as well. Industry as a whole in Victoria is on the increase; labour hire blue collar is on the decrease. Labour hire white collar is also on the decrease.

The CHAIR — Perhaps I can put the question a different way. I do not want to get into a longwinded discussion about it.

Mr COOPER — No.

The CHAIR — I understand. We had correspondence from the RCSA about this, and I know it is a live point. We looked at a different submission that was made to us by the National Union of Workers, and it referred to the web site of the labour hire firm Westpower Resources. I have not checked this out, but I will accept in the meantime that this would be accurate. They have taken this off the Westpower web site, where Westpower makes a number of claims. It states that host employees stand to gain certain things by using their services, and one of the dot points is:

No more workplace health and safety issues.

I do not believe you could ever as a company get to a situation where you would never have to worry about workplace health and safety. I do not think that is possible. I understand there might be some particular circumstances where you would say, ‘Yes, we would ascribe greater responsibility to the labour hire company than to ourselves’, but to be advertising services as a labour hire firm and saying ‘Hire us and you won’t have to worry about workplace health and safety’ just smacks of irresponsibility to me. It seems to go back and reinforce this point about OHS standards in the labour hire area, where you have companies placing their employees into other people’s workplaces. I just cannot get around at the moment how it is that we do not seem to have an industry-wide standard for this. I understand there are different workplaces, but there do not seem to be in place standard checks that labour hire firms all adhere to. I am mystified about that, because I would have thought there would be a more compelling reason in the labour hire sector to do that than in the case where our workforce comprises all of our own permanent full-time or part-time employees.

Mr COOPER — I certainly think that boast by that individual company flies in the face of what the RCSA and certainly Adecco are saying.

The CHAIR — I do not know if they are an RCSA member. We might ask that later.

Mr COOPER — I would be interested to find out, because obviously our view is that we feel ultimate control for OHS, without subrogating any of our duties under the act, lies with the host. They control the plant and

the machinery, and they obviously direct and supervise the work flows and processes that are being used there. We act basically almost as a verification tool. We come on site; we look; we ask for recent completed risk assessments that might be pertinent to what our guys will be doing, whether it be plant and machinery or manual handling or whatever; and then we play a verification role. We identify the hazards and we try to control the risks by observing what the host has done and what their own assessments have developed. The reason there probably is not a national standard is that this methodology flies in the face of the legislation. At the moment the legislation is very black and white — you are an employer and the employer shall do this and that, which is wonderful, considering that most of them were written 18-odd years ago when labour hire was only a small concern.

Most of them are written for the traditional model — employer–employee — without factoring in the explosion in our industry in the last 10 or so years. The reason we have not developed a national policy per se is that our views really do fly in the face of the legislation to a certain extent. That is why the Maxwell report was so important. Given the fact that for once our industry was actually referred to in the terms of reference, we really need to work around this concept of control in the work site. We do not shirk our responsibilities under OHS under any circumstances at all, but at the end of the day what do we have control over and what do we not have control over? Do we have control over whether that machine is guarded or not? We can make the conscious decision to stop supplying work there or counsel the host and say, ‘You need to put a guard on that machine or all bets are off and we’re out of here’, but at the end of the day it is the host who has to make that financial and business decision.

As I said, we have released guidelines about what it is that labour hire companies should do prior to placing workers, but we certainly have not developed a national code. Here in Victoria our own industry stakeholders forum, together with WorkSafe and WorkCover, have tried to get off the ground the concept of a code of practice for our industry. But the unions and WorkSafe themselves have, shall we say, floundered with that concept.

Mr BOWDEN — I would like to start with your comment about the recent explosion in the use of labour hire in industry and commerce in the last few years and follow that on with a question. Your company is an international company and it is very sizeable, as you have provided information to us, so my question would be: to help the committee, would you be able to provide to us a suggested list of parameters or regulatory points that we could consider as a committee in the event the committee were to look at some regulation or some legislative approach? I am not saying we will; I am just saying that if you feel a contribution could be made to the welfare of the work force and the welfare of the business that you run, could you suggest some sensible regulatory regime that might be helpful to the committee. Would you like to comment on that, please?

Mr COOPER — When you say regulatory regime, do you mean with regard to our industry being registered itself?

Mr BOWDEN — Registration and minimum standards of OHS.

Mr COOPER — Standards that we would need to apply in a traditional placement?

Mr BOWDEN — Yes. And the second part is: how would you feel about the arrival, if it were to arrive, of such a legislative regime in Victoria?

Mr COOPER — I certainly think there needs to be a base standard that we subscribe to in any placement. To have criteria set in stone that would enable us to measure ourselves compliance wise and say, ‘Yes, we can tick that off, we have done our audits, we have done our reference checks, we have done this and we have done that’ would certainly be of assistance from an OHS point of view. I cannot comment on other aspects of regulation for our industry, but certainly from an OHS point of view we are screaming out for it. It is all right for the big companies — Adecco, Skilled. It is not an issue for us, but there are a lot of smaller players who do grapple with the concepts of OHS and where their responsibilities lie. What we are trying to get away from is the ambiguous situation now of who does risk assessments. It says the employer must: does that mean we have to? Some of our larger clients have 7, 8, 9 or 10 preferred suppliers of labour. Does that mean we all do risk assessments on the same piece of machinery as well as the hosts themselves? What kind of ludicrous situation is that? At the end of the day, who has got control over that machine? You do not want to cause ambiguity, so we say it lies with the host. You need to clearly set out what you want to achieve, what hoops you must jump through from an OHS point of view and what would be an acceptable standard.

Mr BOWDEN — And that clarity is not present at the present time?

Mr COOPER — No, it is not; far from it. From Trades Hall to WorkCover inspectors, our industry body and the courts, they all have a differing view over who should be doing risk assessments. If you interpret the law to its strict letter, then the employer must. We are an employer; then it has to be us. But, firstly, we are not and do not profess to be experts in all industries; and secondly, we have the laughable situation, as I said before, where you may have 10 or 11 people doing risk assessments on the same piece of machinery. What the hell does that mean?

The courts can only interpret what it says in the acts, so people tend to run scared after a judge makes a decision. They think, 'Struth, we all need to be appropriately qualified to do risk assessments and what not'. We would be broke tomorrow if we had qualified people doing risk assessments on all our machinery. It is just ludicrous. So yes, I would be most happy to work and put down my thoughts as to what we would need as an acceptable standard for the due diligence, if you like, of OHS pre-placement.

Mr BARBER — Can I just confirm, was that question simply on regulation for OHS, or was it regulation — —

Mr BOWDEN — I stipulated it was regulation per se, but if you wanted to confine it to OHS that is fine.

Mr COOPER — I can only comment on OHS.

Mr BOWDEN — That is fine, but it is just to help us understand the position that your business may have to face in that area.

Mr ATKINSON — Can I just perhaps give Naomi a go for a minute. Naomi, I am interested in training and apprenticeships and the commitment of your company to that area, and indeed the industry reactions to that whole skills-development issue at this time. One of the concerns that is expressed about labour hire companies generically is that they have exacerbated the problem of industry not investing in training and skills development, and particularly the diminished commitment to apprenticeships in traditional trades. In other words, companies see that they have an opportunity. Are you preparing to jump in on Naomi?

Mr BARBER — I am.

Mr ATKINSON — Let me just finish the question. I am happy to have more than Naomi.

The CHAIR — I think he is allowed to, Bruce.

Mr ATKINSON — He probably is but Naomi has not spoken yet. This situation, though, of those companies seeing that they can simply employ the skills that they need directly by using the labour hire company and escape the investment in apprenticeships or skills development for the future, is a live issue it seems for us as a committee given some of the submissions that we have had, and I guess in public policy terms it is a very important issue.

I am interested in hearing what your observations are of that area as a company, and particularly the commitment that your company might be making to any initiatives to address that skills development, that training, that apprenticeship development?

Ms GILDERS — Considering that Rob is so keen to jump in first, I will let him go.

Mr BARBER — I just want to add one thing and then I am very keen for Naomi to talk about this and give you a bit of an indication about some of the things that we do. I suppose there are three different aspects of training. One is the training you get on the job, and for an on-hired employee, if you work on multiple sites you are learning more than quite often the client's or company's own employees who work on the one machine or the one process all the time. The second one is formal training through, let us say, the formal apprenticeship scheme which might last three or four years. The other one is more the traineeships which might last twelve months. So I suppose there are three different aspects of training in itself.

As far as apprenticeships are concerned, as a company we would certainly be committed to do a lot more apprenticeships if we did more work in trades. It is great to see companies like Skilled and a few others who work in that arena who can invest in that sort of apprenticeship, and for the entirety of the term. As far as our company is concerned, we do not have that much work in trades.

Mr ATKINSON — The theory is that is covered by traineeships then?

Mr BARBER — We certainly have gone out and seen many clients about it. The biggest problem for us is that I would say 65 per cent of the labour that we engage is on a temporary basis for a short term, so we have gone to in the last 12 months at least 20 or 30 companies and suggested traineeships to them: 'We are going to on-hire to you these people, not as casuals but on-hire permanent employees, and we are going to put them into a traineeship, and we will even give you the government rebate as well.' But I suppose the reality is that most clients use labour hire firms for the flexibility they offer, not to commit to training.

Mr ATKINSON — Can I have your assessment of the uptake of that then from those 20 or 30 companies that you have approached? I do not see it as a criticism of your company; I see it as a problem with some client companies seeing that if they are going to pay they would rather have a skilled tradesperson that comes in and is fully up to speed right away rather than a trainee. What has been the response of those companies to this point?

Mr BARBER — It has not been great. We have got a few trainees here and there but nothing substantial. Their biggest concern is that if they cannot retain the trainees, how will we? The view of many companies is that the current traineeship system is not adequate. I suppose if you look at the current federal election you have got both the Liberal Party and Labor Party focusing on different avenues as far as training is concerned. Certainly the Labor Party has introduced potentially two new policies on achieving training with a lot more placements. So it is obviously an issue, as far as the country is concerned, that we are facing. Whether it is labour hire specifically I do not know, but as far as the answer to your question is concerned, the uptake has not been great.

Ms GILDERS — From a traineeship perspective and from an apprenticeship perspective, I guess most of our clients would be looking at doing the recruitment via our means and then negotiating and having the training on site themselves. So they would be using us more from the payroll perspective to manage that employee, but the training would then be negotiated with the client so that they would be having an apprenticeship and the up-skilling of that apprenticeship on site. That would mostly be the way that we would be handling those types of clients.

As far as our other candidates are concerned, as Rob suggested, most of our clients do take them on short-term assignments, anywhere up to maybe two weeks, so therefore what we need to do is to make them as job-ready as possible. What we have done is to implement some strategies with our standard recruitment processes that enable them to be aware of aspects on site, including a detailed induction. There is often a site induction, especially in all the industrial positions. Therefore if it is a short-term assignment, it is mostly then taken over by the client as their responsibility to continue that training.

If it is a long-term assignment, what we are talking about there is we have got on-line learning available for our associates that continues that development. Things such as OHS issues, HACCP, is the latest one we have available to them. So there is continual learning and development available for our associates on site. What we have then also done is that by doing that we are recognising that those skills and the development that they are having through us and providing them with what we are referring to as a skills passport, that enables them to take that accreditation through to other clients to go and have that skill-base available to them on their resume and also in their future employment.

Mr ATKINSON — I wonder if you would hazard a guess — we have had quite a few submissions that have suggested to us that employees provided by labour hire firms are worse off in the workplace than employees who are subject to direct employment relationships — so I wonder if you could just give me an estimation of what percentage of employees that you supply on a labour hire basis to companies would be on inferior conditions or awards to other employees who have direct employment working in the same workplaces?

Mr WAKELING — As we have indicated to you, we employ 3400 people in Victoria alone so I could not specifically talk about the numbers, but it would be very few if any that are on inferior conditions. If you take the industrial sector, most people or virtually all people who work in the industrial sector are going to be paid site rates. It certainly is accepted if you are working at a TWU or AMWU site, that at those sites the practice is that people will be paid site terms and conditions. In fact there are memorandums of understanding that we have with a number of unions and also certified agreements that we have, certainly with the AMWU where there is an expectation that we would be paying site rates.

It is known amongst our clients that the expectation is that people will be paid site rates, and also in the market that we are in, economically if you do not pay people at site terms and conditions, people will move on and work

elsewhere. In fact in the industrial arena it is very difficult to get people to work under inferior terms and conditions, because they can easily pick up a job at another site, next door, where they will be paid site rates. So not speaking from the RCSA but from an Adecco perspective, that is the position that we take as an organisation and we certainly have no difficulty finding clients and no difficulty in supplying labour who are being paid at site rates.

Mr ATKINSON — Just swapping your hats, is that an RCSA policy position as well?

Mr WAKELING — The RCSA as an industry body — I do not have the specific wording with me at the moment for their policy but in a general practice — its view is that people should be paid site terms and conditions.

Mr BARBER — If I could add to that, I suppose the difficulty with this argument and one which has raised its head, and certainly has raised its head in the New South Wales secure employment test case is: what is 'site rates'? What does that mean? Is it a reflection of a rate of pay, is it a reflection of site terms and conditions that were widened in order to get a higher rate of pay? This is one of the things that the New South Wales Labour Council has been considering for at least the last four years before putting in an application. It is the issue of: what is it? That is something which is to be considered.

Mr ATKINSON — Conditions can vary and you are not always talking apples with apples in terms of direct comparison but certainly we have had some union-led submissions that have indicated that in some manufacturing premises, in particular, people were being employed at significantly lower wages, starting wages and inferior conditions in other areas as well, clearly as a means of bringing down the cost of production, and there was no apparent — if the submissions are accurate — attempt to meet what you would have expected with the existing site awards and conditions that had been in place by direct employment.

Mr WAKELING — Could I also say there are clients we deal with where their own employees are not being paid site terms and conditions and there have been occasions where because of the education process we go through with our consultants on how to obtain EBAs off the Internet and determining rates, confirming those rates with the client, to have a client turn around and say those rates are higher than what they are paying their own staff — so in many respects we are educating line managers and staff about how the rates are determined. A lot of major clients where EBAs are negotiated by their HR departments and that then goes down to the payroll department but in terms of what the site supervisors know in terms of rates of pay et cetera, their level of knowledge is very low. You ask them what EBAs apply on site and they would have no idea. So in many respects we are actually educating the clients themselves in how their EBAs are applied.

Mr COOPER — That often has extended to OHS as well. I have helped many companies who have moved shop to set themselves up in their own right and have been totally naive about their OHS responsibilities, and we have sat down with them and set them on the path about how to manage contractors as they get themselves set up and established — the whole box and dice basically.

Mr ATKINSON — As the Liberal Party small business spokesperson I get hauled over the coals all the time about red tape. One of the interesting things about this inquiry is that many of the organisations that get stuck into me about red tape are suggesting a licensing system for the labour hire industry. I wonder how you react as a company to the licensing-system notion for labour hire companies, and in one sense I would be particularly interested if you are supportive of them, how you would respond to the argument that perhaps a licensing system involving large companies like Adecco might well prove to be an effective barrier to entry to some new competitors coming into the market place?

Mr BARBER — There are certainly those who believe that when major companies talk about this it is because we would have no problems doing it and there is a belief by many in our industry that the presence of some sort of accreditation/licensing regime would actually make it difficult as a barrier to entry. I believe there have been some discussions about this in the New South Wales government and this is possibly why the New South Wales labour hire inquiry recommendations have not been followed, is that having a licensing regime might cause some issues under the Trade Practices Act as far as restricting the capacity to enter business. That is an avenue which needs to be considered.

As far as licensing and accreditation is concerned, it depends on what sort of licensing regulation you are talking about. We spend a lot of time with the union movement. After all, our products are our employees so we need to understand where they are (the unions) coming from the same as we need to understand where our clients are coming from. So we know that when they talk about regulation, they talk about industrial regulation and they want

to see something in legislation that reflects the site rates et cetera, and I am pretty sure that Mr Pakula would have mentioned that when he gave his submissions last.

From our perspective we believe industrial regulation is already there, especially in Victoria and especially with the reintroduction of awards which will reintroduce certain terms and conditions that have unfortunately failed to be here since 1993 for many employees. As far as regulation is concerned, we at Adecco recognise that we have a responsibility as an employer. That is a responsibility for health and safety, it is a responsibility to ensure that we have the money to pay our employees. It is a responsibility for compliance, taxation, superannuation, all those things, but the responsibility that is binding upon us is no different to what is binding on any other employer, whether it be logistics, manufacturing or anything else.

There are already laws in place as far as regulation of our industry goes. I know previous people spoke about education schemes and these sorts of things. I honestly believe at this point in time if you cannot define labour hire, then how can you give anyone any guidelines as to what they are supposed to do?

Mr WAKELING — Can I add on that from an industry perspective that the industry is discussing this issue and is cognisant of the fact that it is something that is being talked about as a future issue. We are mindful of the fact that in other states they have got a regulation system in place, it has been changed or wound back, but putting that issue to one side, certainly the industry is discussing these issues and from an industry perspective they believe that these issues should be discussed and there should be further input about this issue to try to develop a model. From our own organisation, as a major, we would want to be part of that process, but I certainly do not believe that there is one hit at the moment because you have got to firstly determine exactly what you are trying to achieve. It is difficult to put a system of regulation in place if you do not know what you are trying to achieve at the end.

Mr ATKINSON — If a company comes to you and asks you to take short cuts on conditions or anything in terms of the supply of labour to bring those costs down, what is your reaction as a company to that? If it is to say goodbye to the client company or the prospective client, what do they do, where do they go?

Mr BARBER — We have done it before and we will do it again — we have said no. Whether that be when we have a client who has an industrial dispute where he wants to supply labour across picket lines: no. If it is providing labour for unsafe practices: no. So I think as far as the industry is concerned, it is very understanding in the fact that it has a responsibility as an employer. Where do they go? Perhaps they have to do it themselves, I do not know.

Mr COOPER — My phone runs hot with consultants out there in the field saying, ‘I have just come across a workplace where the guys are being required to do this or that which was not part of the original agreement, what do you think?’. Basically we just go back to the tried and true. We assess the risk and if it is unacceptable, we are out. Sometimes it comes across so blatantly over the phone that we just pull the plug right there and then. Others may need more investigation but it is something we are not scared of doing.

Ms GILDERS — You are right — sometimes it is just a case where you need to educate the client, that there is a gap there and once that is done — —

The CHAIR — That is a pretty ad hoc system, is it not? Go back to the RCSA submission early this year: that is the pertinent point where I think the finding was that 49 per cent of RCSA clients had reported at some stage — part of an RMIT survey — that they had had the experience where a client had said to them that they wanted labour provided for the following purpose or circumstance. The labour hire firm said no way that was substandard, it does not meet with OHS. You would be a mug to think that in all those cases the client woke up to themselves and thought, ‘Hold on, obviously what I have been doing is wrong. I have been educated through this process’. They are going to go out and try and source many of them. That is going to continue until something else gives in the case of those companies seeking to avoid — whether they are conscious of it or not — their OHS responsibilities.

As much as we say we need an education campaign and all of that, while we do not have one this is perpetuating a big problem. It is not like we are talking about someone missing out on collecting a little bit of tax here or there, people are being exposed to real injury risks.

Mr COOPER — Where does the fault lie there?

The CHAIR — I am just posing the question. We would be mugs to think — —

Mr COOPER — I agree. A big labour hire company like Adecco probably has a greater spread than the WorkSafe inspectorate. We are almost pseudo inspectors in a lot of cases — we see things that WorkSafe does not.

The CHAIR — In fact, there would be RCSA — indeed Adecco might be in this position — members who are being alerted to something going on in a workplace that is a bit substandard, where there is an intention there to try to hire workers in to do something which is substandard in an OHS sense, but WorkCover will not find out about it then because you are not obliged to pass that back to WorkCover and dob them in?

Mr COOPER — That is right. We are about educating our members as far as the RCSA hat is concerned. As far as the Adecco hat is concerned, we are making sure that our branches do not dip their toes into industries or workplaces like that. Where our obligations lie beyond that — we try to help any client but there are those who thumb their noses at us and say, ‘You do not tell me how we are going to run the ship here’, and we do turn our backs.

The CHAIR — Let me take up Bruce’s point about licensing. I think there are two questions. Most of the submissions we have received as a committee this year have had a view of licensing where they are either absolutely red hot for it; or they say yes, they think it is warranted but they are not so sure about what is in it. On the threshold question about licensing, by and large I think it is fair to say people are supportive of it.

Mr ATKINSON — It is me versus the rest; except for the last people — they were good.

The CHAIR — I think the secondary question is what is in a licensing system. By rights you could have WorkCover — Troubleshooters Available made the observation that they have some contact with labour hire firms — they could just flag each one of them with a new data entry. That is a registration system, no-one pays anything for it and it might be absolutely meaningless but it is a registration system. You mentioned in your conference contribution, Rob, and I think I have this correct, that one of your concerns, and you might have linked this into the need for a licensing system, is how labour hire firms are actually managing their cash flow to cover employee entitlements. You think that is one of the real perils?

Mr BARBER — If you look at that nature of the industry, you are on-hiring your employees, you are then paying those employees and billing the client for that money. As far as paying employees and getting money from a client goes, it is not going to happen at the same time. There needs to be something to ensure that a company has the capacity to pay the money to its employees.

The CHAIR — And you have seen plenty of instances in the labour hire sector, or you have heard of instances where that has — —

Mr BARBER — I have come across situations.

The CHAIR — It seems to me that one of the values of registration, if we are talking about an education system, is that registering companies more directly allows a government agency or the government directly to put the obligation on them to say, ‘These are the rights and responsibilities of you as the labour hire company, the people who you employ and the people for whom your employees work — this being the education campaign’. If you ever actually get a licensing/registration system, you can very directly go out and say to those participants, ‘There is no mistaking what everyone’s obligations are and from this point forward we are going to police them a lot more tightly’.

Mr BARBER — I actually worked for an employer association for a number of years, and I came across exactly the same plights in every other industry as well: it is not specific to labour hire, it is a broad comment.

Ms MORAND — I would like to pick up on something the gentleman in the middle referred to. You were saying that regulation has been wound back in other states. Can you give us an example of what you meant by that?

Mr WAKELING — I do not have the specifics.

Mr BARBER — I can. There is a review of the licensing regime in Queensland currently going on; I believe there is also some consideration of other licensing regimes. I suppose there is a sort of broad hat drawn over, ‘It is recruitment, it is licensing’ but there are different things. If you look at what a recruitment firm does, it

might on-hire employees but it also might act on behalf of its clients to source permanent placements — you see a job ad in the paper and it is not the recruitment agency advertising internally but advertising for somebody else to try to process that and provide that service.

The licensing that is in South Australia and Queensland, and one is currently being reviewed, is that type of licensing where you basically go through the paper trail process, pay \$50 and you have a licence to act as a permanent placement firm.

Ms MORAND — A placement firm?

Mr BARBER — Providing permanent placements.

Ms MORAND — As well as labour hire?

Mr BARBER — The licensing does not cover labour hire at all, it focuses more on permanent placements and agents.

Ms MORAND — So when you say regulation is being wound back, there isn't any regulation in other states for labour hire?

Mr BARBER — On the provision of labour hire, no

Mr WAKELING — I suppose it comes back to our original point in terms of the definition. Some people would view that as regulation of the industry, but it is not actually regulation of the industry. That is being reviewed as to its effectiveness. I suppose it comes back to the point I was trying to make before — if we are talking about regulation, we have to firstly determine what it is we are trying to achieve and then determine what form of regulation, if any, would be most suited to achieve that outcome.

Ms MORAND — Have you put forward your position on what you think would be a reasonable licensing scheme?

Mr WAKELING — No.

Ms MORAND — Would you like to do that?

Mr BARBER — We have — it is not necessary.

Ms MORAND — You do not want any regulation?

Mr BARBER — As far as regulation is concerned, there already is regulation. There is industrial regulation which defines what rates of pay and terms and conditions have to be paid as a legal minimum, as a standard safety net. As far as OHS is concerned, there is already an OHS duty of care, there is already OHS legislation defining what has to be done.

Ms MORAND — Are you saying that the system works perfectly?

Mr BARBER — No system works perfectly.

Ms MORAND — You don't think regulation might improve that?

Mr BARBER — Perhaps we could also look at maybe manufacturing, logistics and other industries as we have highlighted in the last hour as far as some other issues that are faced there as well. When you look at the issue of labour hire, automatically a lot of people — I am not suggesting you specifically — think we have an issue with casualisation in this country.

If you look at the number of casuals as shown in the Australian Bureau of Statistics figures, it was close to 1.7 million as of 2002. Of that total number of casuals, only 300 000 were engaged by labour hire firms. If you look at the proportion of casuals engaged in the industry, it is not that great as far as overall casuals are concerned. Sometimes I think when we hear about labour hire inquiries, whether it be here or the reviews and Stevens report in South Australia or suggestions up in New South Wales, there is this issue of, 'We need a labour hire inquiry to focus on the issue of casualisation'. I am not sure we do.

The CHAIR — I just want to clarify a point here. You do not agree that there should be a licensing system because you believe there are enough systems in place at the moment. However, and I am paraphrasing this from your Work Force 2004 conference, you said consideration should be given to a licensing system. Are you seeing a distinction between registration and licensing? Have I misunderstood what you are saying here?

Mr BARBER — ‘Consideration’ means more than happy to discuss it.

The CHAIR — You are saying you do not believe there should be a licensing system, but you are happy to discuss it, so you are really saying you do not think there should be one regardless of how long we discuss it?

Mr BARBER — When the parties adequately define what labour hire is to break it down to various aspects as to whether it is on-hired employment, permanent placement, independent contracting — once it gets to that point we are more than happy to sit around a table.

The CHAIR — If we were to say that we understood as a committee the problem to be where employees of one firm are placed into another workplace to take direction regularly — it is not an incidental thing, they are not delivering something to that workplace but are being placed there and taking instruction day to day — and we believe that situation has a higher than acceptable OHS risk to it and there are issues about whether at the lower end of the scale those people are being adequately protected in terms of their workplace entitlements and all of that, however we classify that — and that is what we want to address through a registration system of sorts — that is something you are not ruling out altogether, you are simply saying you would like to talk about that in more detail?

Mr BARBER — When that time comes to discuss something more specific like that, we would welcome an opportunity to sit at that table. If there is to be a solution to that situation, it needs to be provided by all of the parties involved — it would be government, labour hire firms and unions; that is probably the best way to look at it.

The CHAIR — What you do not want from this committee is a bland recommendation which says the answer is a widespread, non-specified licensing system where everyone will pay a fortune in fees and it will hopefully solve a problem?

Mr BARBER — I think the term being bandied around in the federal jurisdiction at the moment is ‘one size fits all’. We would certainly be afraid of a system that sought to regulate an industry where the people doing the regulating did not understand that industry. That is certainly my concern.

The CHAIR — If the recommendation of the committee was that in that situation I have outlined there should be an OHS standard which is accepted more broadly and understood what it was designed to achieve, that should be adopted and the companies which fall short of that should be subject to some other form of penalty, or if it believed entitlements were at risk, they should be monitored in some way that is currently not being done or that we should ban ‘hold harmless’ clauses to stop people trying to subvert the intentions of the WorkCover scheme, those sorts of things are or are not unreasonable?

Mr BARBER — We certainly would be willing to discuss them further.

The CHAIR — That is a very non-political answer.

Mr BARBER — We would welcome some clarity as far as some sort of recommendation dealing with on hire — —

The CHAIR — I do not think the committee is hell-bent on finding a global solution here. A lot of stuff has been put to us about casualisation and I think it is fair to say the committee’s view is a lot of that deserves further consideration but in the time frame available to us we are not going to be able to solve those problems.

Mr BARBER — From an OHS perspective we would certainly welcome some recommendations from the committee in relation to certain standards. As best we can we know what a person’s job is going to be and what they are going to do and we can make sure we recruit the right person to do that job. They are inducted, they have the necessary skills and inherent requirements for that job to be able to perform it well. When we actually put that person on site, that is where the issue of proportional responsibility will come in.

Mr WAKELING — To build on what Rob was saying, it is difficult to support the implementation of a system unless you know exactly what it is trying to achieve. If there are clearly identified points you are trying to

achieve, I suppose the next question is whether they can be achieved through current legislation. They may well be best achieved through changes to the Occupational Health and Safety Act without necessarily needing a licensing regime. The next question is whether simply having a licensing regime is going to achieve the outcomes you are seeking. We are not shirking the issue but we are saying it is difficult to agree to a system unless we know exactly what is inside that system.

The CHAIR — What you are saying is we are going to have to do our work as a committee and not just put forward one page of recommendations?

Mr WAKELING — We could have provided you with the answer to that but we have not.

Mr BARBER — I did not explain what the skills passports I have given you are.

The CHAIR — We were hoping for a real passport — we are a parliamentary committee which has not been overseas in this reference!

Mr BARBER — What we do with that is when someone goes out to a site — probably the best example I can use is Mitsubishi in Adelaide — when we put people in there, because they have workers in different departments, to ensure that they are adequately trained and skilled for those various areas they get a stamp in their passport. When they go to a different department, we, and the manager of the client, know precisely what they are trained to do and what they are able to do. We apply the same thing with multi clients in Victoria as well so they can take that to various employers.

The CHAIR — I have the skills passport for an individual who is named at the front of it, does he want it back?

Ms GILDERS — Yes. They were for display only, but I wanted to give you one that was completed so you could see the end result — the blank one does not give you as much information.

Mr WAKELING — The benefit of that is if they leave Adecco and register with another agency, they have their skills which are transportable and the agency and the clients they will then work at know exactly what level of skills they have. In the normal workforce, if a person moves across they will not have that information already supplied. As you can see, if they are working on five different assignments over a 12-month period, there is a whole range of skills they can pick up.

The CHAIR — And that is by virtue of the fact that the next client they might work with is an RCSA member or is it more broadly accepted?

Mr BARBER — Any of our clients.

Mr WAKELING — It is an Adecco-specific document but if they leave our organisation, the benefit for the employee is that they have those skills already documented in a passport which they can show another employer.

The CHAIR — So typically these would be people who worked in a call centre?

Ms GILDERS — In this example, yes.

Mr WAKELING — We have them for all industries so it could be anything.

The CHAIR — Terrific. Thank you very much for your time today, we appreciate it. We will send you a copy of the transcript. If we have any further questions, we will be in touch.

Witnesses withdrew.