

# CORRECTED VERSION

## ECONOMIC DEVELOPMENT COMMITTEE

### Inquiry into Labour Hire Employment in Victoria

Melbourne — 4 October 2004

#### Members

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Mr R. H. Bowden  
Mr H. F. Delahunty  
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#### Witnesses

Mr G. Fleiszig, Director;  
Mr L. Fleiszig, Director; and  
Ms J. Fleiszig, Consultant Psychologist, A.B. Oxford Cold Storage Co. Pty Ltd.

**The CHAIR** — I welcome members of the Fleiszig family in their capacity as directors of A. B. Oxford Cold Storage Co. Pty Ltd. As you are aware, this is an all-party parliamentary committee, which has been asked to examine matters pertaining to labour hire employment in Victoria. It has been asked to report back to Parliament by the end of the year. It has had probably five or six days of public hearings. As a public hearing the proceedings today are being reported by Hansard and a copy of the transcript will be made available to you. That will probably take about 10 days to two weeks. Anything you say today in your presentation is covered by parliamentary privilege, although that ends once you go out the door. The committee reserves the right to adopt as a formal submission anything you wish to present to the committee in written form, but if it is adopted it becomes publicly available as well. So if you want to do that, we can talk about that later on. I invite you now to make your opening remarks and then we will take questions and answers.

**Mr L. FLEISZIG** — Thank you for the opportunity to speak to the committee. We are here in response to a submission made by the National Union of Workers. We have prepared a short written submission, of which we have copies for the committee. We understand that Oxford has been given the opportunity to address the committee for the reason that Oxford was referred to in the recent submission of the National Union of Workers. This submission is accordingly a response to the NUW submission.

Two areas are sought to be addressed: firstly, matters which are particular to Oxford, and secondly, issues of a general nature which are relevant to the labour hire industry. It is submitted that a number of allegations arise either expressly or implicitly from the NUW submission, all of which are adverse to Oxford. These allegations include: that Oxford deals with a disreputable hire company, Westpower Resources Pty Ltd; that Oxford seeks to exploit its labour hire personnel by paying them less than what is appropriate; and that Oxford improperly seeks to avoid WorkCover premiums by engaging labour hire staff.

These allegations are all denied. Oxford has dealt with Westpower for a number of years, but is unaware of any evidence that it is in any way disreputable. The NUW has offered no verifiable evidence to prove that Westpower is engaged in any illegal activity. Oxford considers that casual rates of pay are appropriate for casual work. Oxford labour hirees are given full-time work and casual rates are therefore not appropriate. Nevertheless the rates paid to labour hirees exceed those payable to casuals pursuant to the appropriate award. They also exceed the rate payable to full-time storepersons under Oxford's enterprise bargaining agreement. The rate payable to such full-time storepersons is \$16.53 per hour, whereas Oxford understands labour hirees are paid a minimum of \$17.10 per hour. Oxford pays its labour hire providers a fee which includes provision for statutory payments, including WorkCover premiums, and there is no reason to believe these obligations are not being fully discharged.

Oxford is committed to using permanent full-time employees in its operations. Since 1994 the number of its permanent staff has grown from about 50 persons to over 160 to date. Oxford uses labour hire as a way of vetting workers prior to engaging them as permanent employees. The reason why Oxford presently has a substantial number of labour hire staff is that the company has recently experienced large and sudden growth. Oxford's policy is not to offer permanent positions until candidates have proved themselves over a number of months. More than 40 current full-time employees at Oxford were previously labour hire workers. Not a single permanent employee has been made redundant and replaced with a labour hire worker in the approximately 30 years that Oxford has been in business.

At Oxford labour hire workers, unlike casual workers — of which Oxford has none — are offered long-term, ongoing work and receive full induction, company training and all the occupational health and safety and antidiscrimination benefits. Oxford supplies protective clothing to all workers at its site and treats all workers, whether labour hire or permanent, as valued members of its team. Oxford values its staff highly and many of its current employees have been with the company for more than 10 years, with several having more than 20 years' service. The turnover of permanent employees is almost negligible. Oxford recognises that it must offer permanency to staff if they are to be retained in the long term and for this reason labour hire employees found, after a trial period, to be competent, reliable and team players are offered permanent positions.

Just within the last fortnight Oxford has completed negotiations of its enterprise bargaining agreement with the National Union of Workers (NUW). Whilst the National Union of Workers at first insisted on restricting Oxford's use of labour hire — as you can see in the attached log of claims — ultimately it abandoned this claim completely. Oxford respectfully submits that the total abandonment of this claim indicates that the union's level of concern in relation to labour hire is not of a high order.

Labour hire is a social and community benefit. It provides a path to permanent employment and it removes people from the social security system.

'Bad' operators of labour hire businesses are no different from 'bad' operators of any other legitimate business. There is therefore no need to license labour hire operators. Alternatively, it would be necessary to license all business operators. To a significant extent, the overregulation of businesses has given labour hire companies the opportunity to exist.

There is no evidence that there is a higher incidence of illegal conduct within the labour hire industry than there is in any other, and accordingly there is no justification for imposing upon the industry a special regime of regulations.

Many of the alleged problems associated with labour hire companies involve breaches of existing laws. Those operators who are in breach of existing laws can also be expected to breach any new regulations. The impositions of further regulation will therefore result in placing a greater administrative burden and cost upon the industry without the compensating advantage of remedying perceived problems. The appropriate course is therefore to ensure that existing laws are properly enforced.

The union movement has a vested interest in pressing for regulation of the labour hire industry and rendering it less attractive to employers. This is because labour hire is in direct competition for available work. In the absence of proved illegal conduct, there is no justifiable basis for the removal of competition in commerce, and indeed the removal of competition may be expected to lead to a loss of productivity. In addition, steps designed to reduce competition would be contrary to the policy and purposes of the commonwealth government's Trade Practices Act.

For the committee's benefit we have attached to our submission a copy of the log of claims which was originally served by the NUW. It refers to a number of clauses seeking to restrict or eliminate the ability to engage labour hire. All those clauses have been surrendered in the current agreement.

**Mr G. FLEISZIG** — That probably puts our position as well as we could put it.

**The CHAIR** — It puts it pretty clearly, I think.

**Mr G. FLEISZIG** — The only additional thing we can perhaps bring to the table are some further figures that we have extracted from our records, which show that since 20 January this year we have had 129 labour hire employees who left. Twenty-one of them left the job of their own volition within five days and others within varying time frames. But the turnover in labour is enormous. If you hired these people as permanents at the beginning of their service, you would have a banana case on your hands — you could not function as an industry. So it is really a boon to industry to have labour hire as a method of vetting staff and getting good people on board.

**The CHAIR** — I will make just a couple of opening remarks. The committee was pleased to have you come along because the National Union of Workers had referred to your company, although that was more in the context of its reference to Westpower Resources, and you are a client — as you have mentioned — of Westpower Resources.

In fairness to the NUW's submission, it did not accuse Westpower of doing anything illegal. What it referred to were practices that might be considered to be unethical or below standard. You have refuted that it is involved in any illegal activity. I do not think that was the question that was put to the committee in the first place. It might seem a minor point.

But on its web site — and I am taking this second-hand, but I believe it is accurate — Westpower advertises and says that employers using its services will find that the results include no more workplace health and safety issues. I would have thought the notion of joint responsibility in Victoria under the Occupational Health and Safety Act meant that no company could ever get to a situation of saying, 'We will never have any workplace health and safety issues'. In fact, I would be suspect about the motivation of any company thought about hiring in workers through a labour hire firm to achieve that. That seems to me to be a case, at face value anyway, where what Westpower is advertising does not meet the standards that I think labour hire companies should fulfil. That might be something you do not want to comment on, or it may be something you might want to comment on indirectly?

**Mr G. FLEISZIG** — We are very happy to comment on it. I think occupational health and safety is not a matter that a third party can contract a company out of. We recognise our responsibilities. This particular item of advertising on the web site certainly has not influenced our minds, and we have no level of comfort out of it. As to why the company has placed it on its web site is a matter we cannot respond to, but it is certainly well known that the workplace has the ultimate occupational health and safety responsibilities, and we run our business accordingly.

**The CHAIR** — Sure. I am not suggesting for a minute that that influenced your decisions at all to hire them, but I am just making the comment that it has been put to the committee that that is one of the things that the company as a labour hire company advertises, and on face value at least it concerns me that it would advertise on that basis.

**Mr L. FLEISZIG** — I think to be fair to Westpower, it refers to ‘no more workplace health and safety issues’. Whether this means no responsibilities is a moot point, but in any event we believe the company cannot be accused of anything more than perhaps misleading advertising. And if that were a great crime I think all our political leaders would be in jail!

I think we have to give a bit of latitude to people in advertising their business. Some client of theirs may have cause to complain perhaps in the future, but I do not think that necessarily means that health and safety issues are in fact a problem as far as employees are concerned.

**The CHAIR** — Let me put another point to you that has been raised during our deliberations, and this came from the Recruitment and Consulting Services Association Ltd in its submission. It had RMIT conduct a survey of its members some time ago, and as I understand it, it has several hundred members. I think the finding was that 49 per cent of the association’s members reported that at some stage they had been asked by a client company to provide labour for work or work circumstances that they felt were substandard, that did not achieve OHS standards, and they had refused it on that basis.

My question to the Association, much as I thought that was a positive response from its members, was what happened in all those cases; whether the host company simply said, ‘Obviously what we are doing is not up to scratch and therefore we need to change our ways’, or — and this seems to be quite likely in a number of those cases — whether they simply went out and sourced a provider of labour who was prepared not to ask those questions. That, to me, is not the outcome we want. We do not want people agreeing that labour will be provided in situations where the OHS standards we have are not being achieved.

**Mr L. FLEISZIG** — With respect, I think that comes back to the point we made in our submission: bad operators are bad operators, and if they cannot get someone from labour hire, they will get someone casual, or they will get someone they pay under the table — they will get labour in some way or other. It will not solve the problem to license the labour providers. You will not get rid of bad companies that do not adhere to occupational health and safety standards. The only way to eliminate those is to prosecute them under the Occupational Health and Safety Act or such other law that they may be in breach of.

**Mr G. FLEISZIG** — Also on that point, we have a range of customers — and I am sure the experience is similar with other industries as well — who require us to give undertakings that we meet occupational health and safety standards, and they will not deal with us unless we do. So it is business driven in any case: whether or not you want to, you have to meet the standards. The system itself is already such that it ensures that if one is to observe the law the standards will be observed as well. As Luis quite rightly says that if you are dealing with dishonest people, you cannot legislate to eradicate dishonesty. There will always be dishonest people who will find ways and means of undermining any system, but today industries are very difficult to operate. They have to be very professional. Shonky operators, by and large, have gone over the years. The standards are such that really I think we can be proud; we certainly are very proud of the way our company is running.

**The CHAIR** — Okay. So if I understand your perspective, it is that we do not need a licensing system, we have existing laws in place, and if we find standards, situations or companies that are not living up to those standards, we should throw the book at them under the existing laws rather than find new ways of doing it?

**Mr G. FLEISZIG** — Precisely.

**Mr L. FLEISZIG** — The existing laws are adequate, and to put in other laws which may also be breached will not assist. You can put as many layers of legislation over the problem as you want, but it will not cure the problem if you do not prosecute under laws that are already being breached.

**Ms MORAND** — Excuse my ignorance, but what is the business of A. B. Oxford Cold Storage?

**Mr L. FLEISZIG** — Cold storage.

**Ms MORAND** — What sort of work do your 160 employees do?

**Mr L. FLEISZIG** — We store various goods, mainly foodstuffs — ice-cream, vegetables, meat and other goods — and we manage inventories for large customers and arrange logistics, distribution and so forth of these goods.

A large part of the work involves a measure of skill, which has to be obtained through training, so we have to invest a lot of training in our people. We have a warehouse management system, which is a computer-driven system, which has to be understood. People have to know how to use it and various items of equipment such as reach trucks and various other types of specialised equipment. People who get training become valuable assets to the business. That is why we seek to retain our people: we invest in them. It is not a case of simply having people lumping bits of meat from one corner to another. It is not unskilled. Today in modern industry you have to invest in knowledge and skills. People who obtain those assets become valuable to the business. Businesses seek to retain those people. They must if they are going to compete in a service industry.

**Ms MORAND** — Just to get this clear in my mind, what is the rate of pay for people employed on a labour hire basis compared to the permanent employees?

**Mr L. FLEISZIG** — It is better than that of a permanent employee who is starting at the base as a warehouse man.

**Ms MORAND** — Doing the same work?

**Mr L. FLEISZIG** — Substantially similar work. We start them on a higher level than those people.

**Ms MORAND** — On a casual rate?

**Mr L. FLEISZIG** — We do not have casuals. If we employed casuals they would get a still higher rate because there is a 22.5 per cent loading for casuals. The rate of pay for the next level is somewhat in excess of what we pay the labour hire people, but, of course, once a labour hire person is made permanent they immediately jump to the second level. They do not start at the bottom because they have been skilled up.

**Ms MORAND** — So they are paid more if they become permanent?

**Mr L. FLEISZIG** — They will be paid more than somebody who came in as a permanent on a base level, because these people are trained and vetted and by the time they are offered permanency they are considered to be valuable.

**Ms MORAND** — What proportion of your labour hire employees become permanent?

**Mr L. FLEISZIG** — That is a difficult question because many — —

**Ms MORAND** — Would it be the majority?

**Mr L. FLEISZIG** — Quite a lot of them leave fairly early. Some people leave after an hour because they say it is too cold.

**Mr G. FLEISZIG** — With the gear that we have put on them. You never see it again.

**Mr L. FLEISZIG** — With the equipment that we give them. It happens. Some people last a few weeks. The majority will eventually get permanency because we interview people before we put them on as labour hire. We do not let anybody in the gate until they go through a process of interviewing. We are not interested in

engaging labour hire people who have no prospects of becoming permanent. This tends to diminish the rate of attrition, but there is still a certain rate, unfortunately.

**Ms MORAND** — My final question is on your injury rate and whether it varies between labour hire employees and permanent employees?

**Mr L. FLEISZIG** — No, it does not vary. It is very low. We have invested hundreds of thousands, if not millions, of dollars in occupational health and safety and we are very mindful of the fact that we have to protect all persons who work at the site, irrespective of whether they are legally our employees or not. There is no higher rate of injury. The rate of injury at the site is, I should say, negligible — apart from occasional sprains and that sort of thing, which are unfortunately inevitable where you have a certain amount of manual handling, which is a necessary part of the business at this time.

**Mr ATKINSON** — No frostbite?

**Mr L. FLEISZIG** — We have not left one body inside yet!

**Mr PULLEN** — I presume the labour hire people are all casual?

**Mr L. FLEISZIG** — Casual to the labour hire company — we assume they are. We do not become involved in the relationship between the labour hire company and its employees. Whether they are casual or full time, we do not know.

**Mr PULLEN** — Do you employ casuals direct?

**Mr L. FLEISZIG** — We do not.

**Mr PULLEN** — In their submission the NUW contends that host employers benefit from their dealings with Westpower Resources because:

They outsource their WorkCover premium to another company, and that is why the most hazardous jobs (for example, container packing by hand) are the ones outsourced to Westpower first.

On page 2 of your submission today you say:

Oxford pays its labour providers a fee which includes provision for statutory payments including WorkCover premiums and there is no reason to believe that these obligations are not being fully discharged.

Has that been checked at all?

**Mr G. FLEISZIG** — To the extent that we know there were a few injuries, that WorkCover payments were received by those labour hire people and we were not the ones making those payments and they subsequently returned to us as labour hire employees, we know that those payments were made. Beyond that we cannot take it.

**Mr BOWDEN** — Just a very quick question to clarify something. In reading and listening to the submission, I take it that one of the main interests of Oxford Cold Storage in using labour hire is to be able to arrive at decisions and assess people as to whether they will translate into adequate employees?

**Mr L. FLEISZIG** — Correct.

**Mr BOWDEN** — So it is not looked at by your company as an opportunistic or other slightly negative approach. You are really trying to acquire a bank of permanent employee prospects?

**Mr L. FLEISZIG** — Yes. I think it has to be understood — and this is what I think the union fails to grasp — that we are a service industry. Our success or failure will depend upon the level of service we can give to our customers. It is not that we charge a few cents more or less. If we do not give a quality service, we will not succeed. To give a quality service you must have quality people. This is the main driver of the whole process: to acquire and retain quality people. With quality people you can succeed in the industry; without them it is impossible. It is as simple as that. This is why we have retained people for 20 or 30 years. Even people who reach retirement age are routinely asked to stay on if they want full-time or part-time work, because they have skills that

are valuable to us, so we want to retain them — because it is good business. It is not through some altruistic motives — we acknowledge that; it is simply smart business to do this.

**The CHAIR** — You have been very generous with your time. Thank you.

**Mr L. FLEISZIG** — You also.

**Mr G. FLEISZIG** — Thank you for the opportunity.

**The CHAIR** — We will send you a copy of the transcript in about two weeks.

**Witnesses withdrew.**