C O R R E C T E D V E R S I O N

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 11 October 2004

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Ms I. Stitt, Branch Secretary, Victorian Private Sector Branch; and

Ms J. Katsoulas, Organiser, Australian Services Union.

The CHAIR — Thank you for your patience. We welcome you as representatives of the Australian Services Union to the Economic Development Committee's public hearings this afternoon into our inquiry into labour hire in Victoria. You would be aware of the background of this inquiry. We are an all-party committee, due to make a report by 31 December. This is a formal hearing, so your input is being recorded by Hansard. We will make available to you a copy of the transcript within about 10 days to 2 weeks. You are welcome to correct it and send it back to us. The transcript is the basis of our formal evidence.

Anything you provide to us in writing — you have done that today — by way of a submission the committee has discretion to make formal, and at some future time it will be publicly available either on our web site or by request.

We welcome your attendance. Please give your submissions, after which we will ask questions.

Ms STITT — Thank you for the opportunity today after being given relatively short notice. We appreciate that. I have provided a very brief background paper. The Australian Services Union did not put in a formal written submission but was heavily involved in the development of the Victorian Trades Hall Council submission.

I will give you some background on where we come from in the ASU. We are from the Victorian private sector branch of the union. We cover clerical, administrative and customer service employees in the general private sector. I have listed a few of the industries in which we organise members. The employment of the vast majority of our membership is regulated by either federal awards and/or certified agreements in the federal jurisdiction. It is fair to say that as a white-collar union we have been dealing with labour hire for many years. In particular the notion of the office temp has certainly been something that we have dealt with industrially and throughout the course of our work for probably nearly 20 years now.

Our experience has been that unless there are some mechanisms in place, either informally in the workplace or through a more formal provision in a certified agreement, labour hire arrangements can undermine permanent employment, job security and employment conditions within an industry or sector. It is very common for labour hire employees or agency temps to be placed with a host employer for significant periods of time, and if those employees were engaged initially on a casual basis it would be more than likely that they would be made permanent within about 6 to 12 months if the employment was ongoing, but that is certainly not what happens with labour hire arrangements.

Over the years we have tried to deal with labour hire arrangements through certified agreement provisions, and in particular we have sought to have consultation clauses over the use of labour hire by host employers. We have also tried to ensure that labour hire workers within our organised workplaces enjoy the conditions of employment that the permanent work force enjoys through certified agreements or awards. In some sectors we also have provisions whereby labour hire arrangements are only for a specific project or for a seasonal requirement in that workplace or sector. Notwithstanding those efforts it is particularly difficult to ensure that labour hire arrangements do not undermine permanent work in the long term. It may be that it will be a little easier to ensure that labour hire workers are not on a lower set of safety net conditions with the common-law procedures that are being implemented in Victoria as we speak, and certainly before the abolition of state awards in Victoria there was that level playing field for when labour hire or agency temps were placed with a host employer.

I guess the experience of our union is very similar to those documented in the research and the submissions that have already been put to this inquiry, and in particular the research conducted by Elsa Underhill. We had a number of our members participate in that research through the focus groups and the surveys, specifically from the call centre sector. Certainly the issues that have been highlighted in those submissions are the same issues that we find commonly raised by labour hire employers, and I have listed some of those in the background paper.

Our experience is that there is certainly a much higher percentage of labour hire workers in some of the newer or emerging industries which we cover and organise in. In particular the call centre sector is one that stands out for our union. It is our experience that labour hire arrangements in this sector are far more prevalent and represent a much higher proportion of any workplace with labour hire employees, and it is not uncommon for a call centre to have 40 per cent or higher of its work force made up of labour hire employees. More often than not those labour hire employees are not covered by the same industrial instruments as the permanent employees or the directly hired employees. There is a view among many employers in that sector that because of the short-term or fixed-term nature of the commercial contracts they enter into there is a need for a flexible arrangement such as labour hire; but we find that a bit hard to reconcile, given that a lot of these workers tend to be around for as long as some of the

permanent employees, and sometimes the lines between direct and indirect employment can become very blurred. An example of that is that more often than not in the call centre sector labour hire employees will be subject to exactly the same performance appraisal measures — sales targets and the like — as the permanent work force, so it is a little bit of a contradiction in our view.

We certainly think a difficulty arises when a labour hire placement ceases. There is no explanation forthcoming from the labour hire company or the host employer about why that is, so there is no access to any kind of dispute settlement procedure for these workers. Often they do not ever get an explanation as to why their placement has ceased, when in some circumstances clearly the need for the employment is ongoing.

In terms of the ASU's proposed solutions to the extent of labour hire, particularly in the call centre sector, we concur with the remedies that have come out of the research conducted by the Trades Hall and Elsa Underhill, and we would support a system, if the inquiry were of a mind to recommend that, of registration and licensing of labour hire companies, and certainly the access to permanent employment with a labour hire agency and setting maximum placement times and conversions to permanent employment status with the host employer, particularly if there is a compelling argument to say that that work will be ongoing in nature. We would also support the establishment of a safety net for all of Victorian workers, including labour hire workers, through the common ruling of the existing federal awards, something which is beginning to be implemented in Victoria as we speak. I am happy to take any questions that the committee may have.

The CHAIR — Thanks, Ingrid. I take up the fourth dot point under recommendations:

> The establishment of a safety net for all Victorian workers, including Labour hire workers, through the common ruling of existing federal awards.

When we were in Sydney earlier this year, and I cannot recall who it was precisely that we spoke to — I think it was a labour lawyer or a labour law expert — they said the most vulnerable people who would come to labour hire were those on schedule 1A awards in Victoria who were employed casually; so not only did they run the risk of being told at any time that their services were no longer required, they had less entitlements, less reliance on any conditions than anyone else in the country. To what extent is that changing? We have had a couple of witnesses today who have said that the common rule is now coming in on 1 January, so in fact that will not be much of a much problem from now on if the conversions happen as quickly as we think they will. What is your comment on the rate at which that will happen?

Ms STITT — It may be that some people will slip through the net. It depends on whether they are permanently employed — in my view anyway — by the labour hire company as to whether they would in turn have access to all the provisions of that particular federal award being common rule in Victoria. If they were a casual employee of a labour hire company then I would say that other than some minimum conditions they would not be in a much better position than they are now in terms of the precarious nature of the employment. I imagine there would also be some debate about which award would cover them, depending on what sort of work they performed. The process that we have been involved with with the common ruling has seen the awards roll out in a kind of a staged process, and it may be some time yet before all of the field is covered. For example, in the call centre sector we have not applied for the award that we say is the most appropriate award to be common ruled yet.

The CHAIR — The second and the third dot points — the access to permanent employment for labour hire employees and the setting of placement times — let us assume the committee was thinking of taking that up, what is a realistic time frame. We have had lots of evidence about the experience of labour hire employees — how long so many of them spend on a site, and with different industries it tends to be different time periods. What would be a realistic time that a right to permanent employment ought to provide — 3 months, 6 months, 12 months, 2 years?

Ms STITT — Our view would be that when you start as an employee of a company when you are permanent, certainly the awards under which we operate require that you are on a probationary period for three months, so we would have thought that three months would be a reasonable period of time. Before then there would be a trigger about whether that employment be converted to permanent or not. I know there are examples in other awards of six months for a type of deeming provision. Certainly in some of the blue collar areas I am aware of the existence of some of those clauses.

The CHAIR — I have a concern because I think there is an issue with how appropriate that is. When you think about nursing agencies, the typical experience with nurses is that they will work much shorter periods of time in a whole series of different places. They are on call and will go around. So if we said three months, it might be okay in your sector but it might be totally inappropriate for nursing. In fact nursing might say they are not interested in a conversion rate because nursing historically has had its own labour hire arrangements through agencies. It is just something where we have had different people present us with different evidence.

Ms STITT — I think from the point of view of the Australian Services Union (ASU) and the sectors that we work with, particularly the call centre sector, people do not tend to move around as regularly. They may stay with one host employer for a bit longer.

The CHAIR — So it might be a horses-for-courses argument, saying that the threshold needs to be developed in accordance with the different awards or the different sectors we are talking about.

Mr BOWDEN — I have the submission and would like to ask you a question about dot point 1 on the rear. It says, 'The ASU are supporting the following initiatives', and about dot point 1 says, 'Registration and licensing'. Could you help the committee by providing any information that may be available about why you are proposing that, or supporting it? Is it perhaps a history of failure of the labour hire companies to meet obligations; is there a substantial history of that? What would be the ASU's main driver toward recommending that?

Ms STITT — My understanding is that there is no formal process of registration in Victoria currently but that some of the employer peak bodies have a voluntary code for things such as health and safety training. Our view would be that that would be a lot more desirable to have as something mandatory and something in order to ensure that people were not setting up labour hire arrangements as a way of avoiding certain other obligations, whether it be health and safety or industrial instruments, that a registration process would really keep everybody honest in that regard.

Mr BOWDEN — So it is precautionary rather than reactive to an existing series of problems?

Ms STITT — I think probably a little of both. There tends to be, in our experience, labour hire companies that specialise in a particular type of placement and we believe that having a registration and licensing procedure that they need to go through and certain provisions that they would have to meet as a minimum would be something that would ensure that the labour hire industry is cleaned up.

Mr PULLEN — There are a lot of industries that do have registration, for example the motor car industry, real estate industry and so on, but you still get shonky dealers here, there and everywhere else. Even in the motor car trading industry they get out of it some way. Would part of the requirement of registration include such things as the other dot points, particularly in relation to the application of permanent work and the like?

Ms STITT — I guess it would be no surprise that the union would think that would be desirable, particularly trying to create that level playing field or safety net minimum of employment standards that could not be dropped below.

Mr PULLEN — On call centres, what sort of membership do you have in the call centres? Do you have any idea of percentages and such — half of them may be operating in India or somewhere else like that where it might be a bit hard to get membership?

Ms STITT — Well, there are two types of call centres. There are the in-house call centres that have been around for a long time, and in which we have an established membership in the order of about 2500. Then there is the newer sector which is the contract call centre sector where the contract call centre bids for work from other companies and those companies out-source the work to the contract call centre. The union density is a lot lower in the contract call centre sector because it has not been around that long, but we are certainly trying to turn that around.

The CHAIR — I want to pick your brain if I can. In dot point 1 to which Ron Bowden referred: about registration and licensing — I suppose because as a member of Parliament we get exposed to legislation and regulation, I see a difference between registration and licensing. I think licensing is probably the far more formalised system — that is the state granting a licence — whereas registration is not necessarily that, but more about monitoring more closely the activities of individuals, or companies, or organisations. We have had a number

of industry representatives, and every union representative not surprisingly says to us that a registration system would be tolerated because they think that there are some problems within the industry itself and they want to lift standards. Very few people have said to us what that registration system ought to entail.

For us that is like saying, 'Pick a colour' because you can have all shades of registration systems. You can have something that effectively brings to bear those responsibilities which are already in place but managed by different agencies like WorkCover in particular, which is probably the principal one, right through to a system which imposes very onerous registration fees, and you could use those fees for training. I think some of the unions have said that. All of them would be registration systems but the effect of them would be quite different. Have you thought about the registration or licensing system and what the specific requirements ought to be? That is going to be a question of some weight for this committee.

Ms STITT — Sure. Perhaps it would be easier for me to highlight what we think are the major issues arising out of labour hire and precarious employment, and if there is a way in which that can be dealt with through a registration system, we would see that as being desirable. The major problems that we see are the fact that quite often in a number of the sectors that we organise the labour hire employees are on a lesser standard of employment conditions than are the host employees. So for us it is about lifting that standard up to something acceptable. That is why we have made the comments about the common ruling implementation that is going on in this state.

The other major problem that we see is the effect that the precarious employment arrangements have on employees and their families in the area of — I think the last witnesses raised this — the difficulty of getting home loans, the difficulties of not being able to budget as a family. We think that currently labour hire has really meant that casualisation has exploded, and that is why we raise the issues about access to permanent employment even if that is through a labour hire company. It is not out of the realms of possibility for a registration system to have some minimum standards in regard to those two issues.

The other reason for us raising registration is to ensure that it is a legitimate labour hire company and not just a provider of labour being set up for the purposes of undermining conditions of employment in that sector. I am not sure whether I have answered your question?

The CHAIR — In my mind the second comment you have made there about owning up to the responsibilities that they have for their employees is probably something that you would more readily achieve through a registration system. It seems to me the issue of creating rights to permanent employment is not actually a function of registration, that is a function of changing other laws or introducing new laws in terms of entitlements in the labour market.

It seems to me — and I am just thinking out loud here — that one purpose of registration would be to introduce some barrier to entry from the absolute rogues who, currently, as it is being put to us by some industry representatives, only need a mobile phone, an address book and nothing else. If labour hire companies are to discharge their responsibilities insofar as managing workers' entitlements are concerned and you have got workers working in a whole series of workplaces, and return to work, which is probably a bigger problem for some of the smaller labour hire firms than it is for some of the larger ones, and proper occupational health and safety, then a registration scheme might more properly allow for those things to be monitored where it is considered amongst those smaller companies to be a greater risk.

Now at the moment we have had a number of witnesses say to us, 'These things can already be done, the WorkCover authority has this power, it just does not exercise it very assiduously'. It could be that one registration option is to use the WorkCover authority to more vigorously identify those companies which may be at risk of not being able to discharge these obligations in the labour hire sector and using the authority to more closely monitor them — to call them in and ask them questions, point them in the right direction and so on.

That is just me thinking aloud but of all the material that has been put to us that is where I am at, at the moment, in terms of registration. I do make the distinction that I think registration is quite different from licensing, but I do not think as a general comment that the people who have made submissions to us have clearly distinguished between the two. They have used the terms interchangeably, which is fine.

Can I just ask about 'hold harmless' clauses? Have you any familiarity with those? Providers of labour hire employees to call centres are not asked by the host employer to sign 'hold harmless' clauses that indemnify them for any OHS?

Ms STITT — Not that we have come across. The type of health and safety and injuries that occur in call centres are probably very different to what might occur in a blue collar sector. Not that there are not injuries and health and safety issues, but we have not come across that.

The CHAIR — I do not have any other questions and no-one else does, so thank you for your time. We will make sure a copy of the transcript comes to you in about two weeks and you can make corrections to that, and also when our report is out at the end of the year we will make sure you get lots of copies of the report.

Committee adjourned.