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ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 15 November 2004

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Mr G. Tweedly, Chief Executive Officer, Victorian WorkCover Authority.

The CHAIR — The Economic Development Committee welcomes Greg Tweedly, the chief executive officer of the Victorian WorkCover Authority, to our public hearing today. As you know, we are conducting an inquiry into labour hire. We are getting close to the end of our hearings. We did get some information from WorkCover at an earlier point of time. There has been a bit of dialogue about that report, but we thought it was important to get you along today.

As you know, this is a formal hearing. We are taking evidence that is being reported by Hansard, and that will be made available to you, so a transcript will be provided and you can make corrections. With any written material you want to provide to us today, the committee has the discretion to have that material adopted as a formal submission and it will be added to all the other material that you have provided. Everything said today in evidence is subject to parliamentary privilege, but, as you understand, that stops when you leave the room when the hearing finishes. We wanted to get you along, Greg, to ask you 1 000 001 questions, but if you want to say anything in opening, you are welcome.

Mr TWEEDLY — I would be happy to. I have provided some slides to the committee which will assist in an opening statement. The objective of this slide show is to put an order that I think is logical for my understanding, and hopefully from the committee's perspective, that the definition of labour hire can be quite different depending on from where you get source data. I thought I would spend a little bit of time describing how we see it so that that can be reconciled with other findings that you may have.

We thought it would be important to update our submission on the size of the labour hire sector itself, very importantly, to try and make as clear as possible what the current legislative obligations are for the labour hirer and also what I will call the host. The 'person' or the 'client' is used in other places, but I will use 'host' in my comments. I would be keen to demonstrate what the incentive system is today for all players to look at the issue of occupational health and safety in an appropriate manner and then identify what we see as issues in both occupational health and safety and workers compensation premiums and some of the changes that we have in train to try and deal with problems that we know exist. I thought that would be an order which may facilitate the discussion.

On the second slide I have a definition of labour hire which reads as follows: 'workers (who are) "employed"' — I have that in inverted commas for a reason — 'and paid by a company which requires them to undertake the majority of tasks or functions for a host or client company and usually under that host company's direction'. By employed, depending on the definition you wish to have on employment, is it a contract for services or a contract of services? A contract of services is the typical employment relationship that we have in organisations with employee and the master-servant relationship, if I can describe it that way. The phrase 'for services' is the designated end point. We include both of those in our definition for labour hire. We do not differentiate on those. We also include in all the data that we are talking about group training schemes. We see that whilst they have a different business relationship, the issues for group training organisations are the same as the labour hire organisation. For the purposes of the Occupational Health and Safety Act, all employees of the labour hire organisation give the labour hire agency the obligations under that act. I will come back to that a little later.

By way of definition — and I think in the informal discussions we have had previously we collected data against two industry classifications for labour hire — the two classifications are predominantly one for white-collar labour hire and one for blue-collar labour hire. The classifications are based on predominant activity. That does not mean they are absolutely 100 per cent labour hire for blue or white collar, but they are predominantly so. Our data also shows some circumstances where an organisation hires only to one industry, that they may well be recorded against that industry rather than a labour hire Agency industry classification. I will come back to that. The next slide has a scale of the labour hire industry from the data from our submission of 1997–98 through to 2003–04. On the left-hand scale (LHS) line is the labour hire industry in 1997–98 had a remuneration basis of approximately $1 billion and by 2003–04 it is nearing $2.5 billion, so it has grown at 130 per cent, whilst the whole of the scheme has grown by 28 per cent. I thought the relativities of how big the labour hire industry is was an important piece of information.

The CHAIR — Could you give us those two figures again?

Mr TWEEDLY — It is 130 per cent over that seven-year period for labour hire, whereas the whole of the scheme has grown by 28 per cent. That proportion, as you can see at the bottom of the slide, has increased from 1.5 per cent to nearly 3 per cent of our total remuneration base in Victoria. The next slide differentiates the growth

rates for blue and white-collar workers. White collar, which is the middle line, has grown by 47 per cent over the same period whilst blue collar has increased by 160 per cent. I thought differentiating the two classifications would be worth while for the committee. Clearly they are both growing much more than the whole of the scheme.

Mr ATKINSON — What is RHS again?

Mr TWEEDLY — Right-hand scale for the top line. So if we just go back to the scale on the right-hand side, they are billions of dollars. The whole of the scheme is over $80 billion, which is the top line, and the left-hand side says labour hire, which goes up. As you can see, the middle line is around $1 billion, and the bottom line is nearly $1 billion by the end of 2003–04.

Mr ATKINSON — What is RHS?

Mr TWEEDLY — That just means right-hand scale, that is all it means, to assist in reading the graph.

The CHAIR — So it is not actually all to scale as such, but the numbers are indicative — —

Mr TWEEDLY — It is the growth. We are trying to demonstrate the growth rate.

Mr ATKINSON — So the 28 per cent on the previous slide is actually the total — —

Mr TWEEDLY — All the people we insure in the state has grown by 28 per cent on a remuneration base over that period.

Mr ATKINSON — And the 1.5 to 2.77 per cent is 130 per cent increase on labour hire?

Mr TWEEDLY — That is the increase of its proportion of the total marketplace. So it has gone from 1.5 per cent through to 2.77 per cent of the whole of the market, so labour hire as an industry is now nearing 3 per cent of our remuneration base in Victoria; it is growing much more quickly than the rest of the economy.

The next slide is entitled 'Claims frequency rate comparison', and I believe this is a very important one for the committee because it compares those organisations that are in the predominant activity of labour hire against the rest of the scheme. I have read a number of transcripts from the committee from earlier times, and hopefully this puts the anecdotes aside and these are facts that we have available to us on the data that we record. The first column is employment agency employers, so it is all employers. There are about 1200 employers who are classified as labour hire in the state and have a claims frequency rate of 0.57. What that means is there are 0.57 claims per $1 million of payroll.

The CHAIR — It is 0.57 claims?

Mr TWEEDLY — Per $1 million of payroll, and then you compare that to the scheme which has a claims frequency rate of 0.38, so labour hire has a higher rate of claim than the scheme as a whole. We have only two classifications, and ideally we would like more, but if we break it down to blue collar and white collar — for production, which is blue collar, the claims frequency rate is 1.03 to $1 million of payroll, and for those employers so classified in the rest of the scheme that do not have labour hire, they have 0.62 as a claims frequency. When you look at white collar, the ratios are the same at 0.3 between labour hire and non-labour hire in those classifications. So in fact the frequency of claims are higher for labour hire.

The CHAIR — Has any other state workers comp scheme undertaken a comparable level of research? Did these figures match breakdowns in other states?

Mr TWEEDLY — I am not familiar enough to answer that definitively. The classification system is different in each state, too, which makes like-with-like comparisons a little bit tricky, but in terms of the anecdotal information that we have — and I stress anecdotal — I think this is a common picture. Some of the collection of data is different, so I will talk a little bit about what we are doing for next year to help bridge that gap.

Mr ATKINSON — Just on the 0.38 for the scheme, particularly the blue-collar one, if we focus on that, the 0.62, what is the trend line on that over a number of years?

Mr TWEEDLY — If you turn the page — I predicted that question, thank you for that. If we look at the blue-collar ratios over time, the top line goes from 1.4 over seven years to about 1, which is just the 1.03, which relates to the 1.53 on the page before.

Mr ATKINSON — That is the blue collar?

Mr TWEEDLY — That is the blue collar, so there has been a 27 per cent decline in the frequency of claims being reported over that period.

Mr ATKINSON — That is the total scheme?

Mr TWEEDLY — No, that is the blue collar. The total scheme is the middle line, which shows a 17 per cent reduction over time, and if you look at the white collar it is near enough flat over that same period. The previous slide talks about what it is last year. This slide tries to map that trend over time, so the scheme is improving. The blue collar is improving faster than the scheme, but it is significantly greater than the scheme even now.

Mr JENKINS — And that is the improvement in the labour hire sector?

Mr TWEEDLY — Yes, only the labour hire sector.

Mr JENKINS — And how do they compare with the improvements —

Mr TWEEDLY — That is the labour hire. That is the scheme. The scheme is the middle line, both are blue collar, and the white collar is stable at the bottom. So that is the frequency of claims.

The next graph is about cost of claims, and the claims cost ratio is the cost of claims in percentage terms comparing the scheme with the labour hire industry itself. So employment agency employers have a cost of 2.02 and the scheme of 1.28. It is the relativities here that are important rather than the absolute number. You can see there that it is somewhere in excess of 35 per cent higher in costs. If you look at the blue-collar comparisons, it is a ratio of 3.75 against 2.21, and with the white collar there is a little bit in it from 1.03 to 0.94.

Mr ATKINSON — What does claims cost ratio comparison exactly mean? That is the cost of settlement of claims to you?

Mr TWEEDLY — The total cost of claims for the year divided by remuneration for that year, so that is a rate for all claims that have been reported.

The CHAIR — The message here is that labour hire gives consistently higher figures in terms of injury rates or claims?

Mr TWEEDLY — Correct. If I just pause there, that was an approach to try and give a feeling for the size of the industry and what the data we collect from all employers shows.

The next slide is trying to focus on what are the duties today of all players. What are labour hire employers meant to be responsible for and what are the hosts meant to be responsible for? Under the general duties of the Occupational Health and Safety Act an employer is required to understand and to fulfil the duties under that act and the Dangerous Goods Act. In doing so they need to know of someone that they are outsourcing to another organisation, what is the nature of work that is going to be provided by a host employer, make sure that they have due regard of which worker is provided and what is the appropriateness of them for that task.

Inquire to determine that a worker is properly inducted at a work site: when I say ‘inquire’, that means in every case, inquire and if things are not satisfactory, do something about it. So the obligation is for each employer to make sure that they do not put an employee in an unsafe workplace. So when I say ‘inquire’, that is what I mean each time. Over the next page, to make sure or inquire about the suitability and progress of the worker whilst they are there; inquire if the occupier or controller of the workplace have operating procedures to be adhered to; inquire if the occupier and/or controller of the workplace conducts a hazard identification process; immediately notify specific serious injuries or deaths; and to generally be aware of the workplaces that they put an employee in. All of these obligations are obligations of all employers at normal sites. The mere fact that they are putting a person into another site does not take away their responsibilities.

The CHAIR — To what standard do these obligation have to be discharged? I know we go on here to talk about a host employer as well, but with hazard identification process, if that is a hazard — and I have made a note — an auditor coming in to do a very detailed analysis — —

Mr TWEEDLY — Correct. In terms of the nature of the act as it stands today, there need to be reasonable steps taken. That is a judgment call. In terms of the exercise, taking those steps is not reasonable. Taking a tick-the-box approach without actually looking at it carefully is not reasonable. These are points in the preparation of today's meeting that I was very keen to highlight: this is the sort of level that we would normally say if you do them fastidiously, that would be a reasonable thing to do.

If we go to the next slide and talk about what are the host employer's obligations, in reading the transcript people are confused about what the host employer is responsible for. Specifically, in the act — and I have quoted a couple of sections there — the host employer has obligations under section 21(3)(b) where the duties of employer extend to such an independent contractor and the independent contractor's employees, in relation to matters over which the employer has control or would have had control but for any agreement between the employer and the independent contractor. So in that sense the host cannot abrogate their responsibilities of having a safe work site by merely bringing people in from outside. That is the point I am trying to demonstrate there. And further, in section 22 of the act, every employer and self-employed person shall ensure so far as is practicable that persons, other than the employees of the employer or self-employed person, are not exposed to risks to their health and safety arising out of the — —

Mr BOWDEN — I have a question on this specific point. Just for clarification, is it possible for a host employer to require a contractor to provide a hold harmless or a waiver of any kind so that the host employer can say to a contractor, 'We want you to do this work for us as a contractor, but he has signed this as a hold harmless on us'? Can they require the contractor to sign away the contractor's rights under RTW and OHS — —

Mr TWEEDLY — The obligation on the host is non-delegable, therefore they cannot in terms of prosecutions or anything that they may or may not do get rid of their responsibilities under the OHS act. I am going to talk about hold harmless as well. That does not mean there may not be some side financial deal, but in terms of the prosecution and obligations under the act, they cannot. I thought I would then go through and say what are the obligations of the labour hire agency for the insurance side of the business, workplace injury insurance duties. Again, I have provided a list which I will read out for the record: obtain and keep in place a workplace injury insurance policy; inform agents of changes which will affect the policy; provide summary of information to workers; maintain a register of injuries, submit claims in a prescribed form and within set time frames; pay compensation to injured workers; re-employ injured workers and provide suitable work; and develop occupational rehabilitation programs and risk management programs. That is depending on the size of the employer and the circumstances. Appoint return to work coordinators, and prepare, monitor and review RTW plans for injured workers. They are obligations which sit with all employers, and for labour hire where there is the direct employment relationship those responsibilities rest with the labour hire organisation.

How do those two pictures fit together? I thought it would be worth while just very quickly showing the incentive process for all parties. In terms of the pyramid I have drawn, both the health and safety and the return to work, the largest proportion of that triangle in both cases is the premium system. The premium system, which was significantly revamped this year, is designed to have a much stronger relationship to the frequency of claims and the duration of claims that occur. The premium price reflects that. If you have more injuries and they are more costly, your premiums will go up more than they otherwise would. The premium system is part of the dynamic to provide an incentive to the players to have safer workplaces and improve their return-to-work practices.
Section 138 of the Accident Compensation Act is a section which allows the authority to pursue negligent third parties. In the case of labour hire that is where a person puts an individual into a site and the negligence of the host has caused or partially caused that injury, then the authority has the ability to pursue the full costs of those claims outside the premium system. We have been progressively ramping up that facility over the last couple of years. That is a financial incentive for the host still to take safety seriously.

At the top of the pyramid, which has prosecutions and enforcement, clearly those are the consequences of a regulatory regime for any breaches of the act. Our prosecution numbers may not be that large in the scheme of things but the enforcement activity underpins that where inspectors go out and put notices on organisations for potential breaches of the act and give them time to deal with them. I thought it would be useful to understand that hierarchy.

The CHAIR — How many workplace visits would VWA officers make during the year?

Mr TWEEDLY — During any one year we would have 40 000 visits — some places more than once.

The CHAIR — Are you able to say how many labour hire visits would take place?

Mr TWEEDLY — No, I cannot break it down on that basis. In short, I cannot answer that.

The CHAIR — From your understanding it would be several hundred you would imagine?

Mr TWEEDLY — Yes. That would be visits to either the principal or the agency and/or the host. I thought that hierarchy was useful to understand the scale under section 138, which is not well understood. During the last financial year more than $7 million was collected from host employers for their role in being negligent. It is important to note that section 138 has a commercial test not a criminal test whereas prosecutions have a criminal test. On that basis, to successfully prosecute a person for a breach of the Occupational Health and Safety Act it has to be proven beyond reasonable doubt, whereas commercially it is on the balance of probabilities. The prosecutions are the hardest to prove in any particular process.

In terms of prosecutions, which is the top of the pyramid under the Occupational Health and Safety Act, we have only prosecuted 11 since 1999, nine of which were successful. From those, and again the issue that people are talking about is who is responsible for what portion of negligence or breach, in five of the cases the magistrates assigned equal culpability and in four they put more emphasis on the host. Under the legislation today there are obligations on both parties and depending on the sets of circumstances they may well be equal or different depending on what actually occurred in the specific circumstances. Two prosecutions we put forward unfortunately were not successful. That is the scale of the prosecutions, which is not very many.

Mr ATKINSON — Why is it not very many?

Mr TWEEDLY — We have not put a lot of emphasis on the labour hire industry. In terms of the scale of labour hire compared to all of the other activities that we do, labour hire has not had much focus for the past two years in the organisation. Clearly by the rate of its growth I would expect its interest will be significantly greater going forward.

Mr ATKINSON — You suggested earlier on that it has a higher incidence of workplace mishaps. I would have thought that that perhaps would encourage you to look a little bit more and provide a little bit more scrutiny as far as possible for prosecutions or certainly investigation.

Mr TWEEDLY — In terms of the investigations we do, a large percentage of them do not have sufficient evidence to take through to prosecutions. However, it has not been high on our priority list because of its relative size in the whole of the market; there are plenty of other very dangerous places in our work force, I am afraid. However, clearly because of its rapid growth, because of its incidence then it is expected to be a higher priority going forward.

The CHAIR — Working on that statement, VWA accepts that the labour hire sector is going to continue to grow rapidly, particularly in the blue collar area.

Mr TWEEDLY — Yes. In summary, I just want to focus in on some of the issues — —

Mr ATKINSON — Can I just ask a question? Why do you think it will grow? It has been put to us by some people, perhaps not always explicitly, that in fact people are trying to avoid their obligations and are using labour hire to do so. Is that an issue that you have identified as part of that growth factor or are there other reasons that you ascribe to why it is going to grow?

Mr TWEEDLY — Many employers will always look to minimise their costs as a way of going forward. Legally that is absolutely fine. In terms of the ability for us to respond to changes in the marketplace in a speedy way, this particular sector, which I am going to conclude on, is an area where we need to act differently because we are not quick enough to see the changing nature of the marketplace. By only having two industry classifications, then the relative price of those industry classifications against those industries where they put people is lower and therefore there is a price incentive at the moment for employers to look to arrange their affairs in a manner designed to reduce the price structure. [Some of the issues I am about to talk about hopefully will not cause artificial price

variations, if I can put it that way.] Yes, we think it will still grow going forward and there is nothing on the landscape which we see would suggest otherwise. As a regulator we have to be far more adept and much faster in responding to a change in the marketplace to ensure that people do not avoid their responsibilities.

As a snapshot of what the issues are, employees of labour hire firms have a greater likelihood of suffering injuries and remaining off work for longer periods. There is a wide variation in practices across labour hire organisations. There is as a generality less consultation and employee representation. As a generalisation there is poorer training and induction of labour hire workers. Younger employees and unskilled labourers are overrepresented. An item I mentioned a little earlier is the group training schemes, which we do classify as labour hire organisations. They do not like to be classified as labour hire but while they have a different business relationship, they actually have exactly the same risks and the same duties as labour hire, and we do not see a reason to change that.

The CHAIR — Is it fair to say that they as a component of the labour hire sector are better equipped or better execute what you consider to be appropriate risk management strategies? We have had a couple of them come and talk to us about it. The Victorian Automobile Chamber of Commerce runs a big training scheme and it talked extensively about what it does do.

Mr TWEEDLY — Just as they would have some very detailed programs, so a number of large labour hire organisations do. There is quite a mixed bag. I have very much talked about the global position of relativities, and the risk regime of group training overall is very similar to the rest of the labour hire. That does not mean there are not good ones in it.

The CHAIR — For the good ones in it, there must be others that are not going so well.

Mr TWEEDLY — Correct, so I thought I would just highlight that particular point. One of the challenges across jurisdictions on all matters of policy is something that we have to be acutely aware of. South Australia, through the NOHSC arrangements, were given a lead agency role for labour hire and at the moment they have some paperwork, which I provided to the committee offline, as a reference point. It is too early to call the impact of those but they are the lead agency across the country.

Mr JENKINS — On that slide where you talk about younger employees, employees overrepresented and unskilled labourers, is that is generally the case, not just the case in labour hire?

Mr TWEEDLY — It is generally the case with labour hire, when we compare labour hire as we have it against the rest of the scheme, that labour hire as employees has more younger and more unskilled labourers than the average. That is what this is trying to convey.

Mr JENKINS — It is not a case of them having younger employees who are injured necessarily?

Mr TWEEDLY — I am not drawing that conclusion from that statement, I am just saying in terms of employees.

Mr JENKINS — In terms of group training schemes, given the cross-section of employees in group training schemes, can you do a comparison again a similar age group?

Mr TWEEDLY — I do not have an immediate recall on that point but that is something we would be happy to take on notice and provide to the committee separately, if that is satisfactory.

If we go to the issues on workers compensation, at present we have two classifications — these do not send the right price signals. We acknowledge that and we will be doing something about it in 2005–06. The whole premium system changed for 2004–05 and we were unable to deal with this particular issue in time for 2004–05, but we have a discussion paper which is with the industry in which the preferred option is getting close to consensus — we hope to draw it to consensus by the end of the year. It provides for organisations that are in the activity of putting people in as employees in a placement sense to have a separate classification. The rest of labour hire would then be grouped, and they would record their payroll against where they put people and actually have to classify anything up to 518 classifications if they had such a span of business. They would have to declare the remuneration commensurate with the risk to which they are putting people in, as distinct from saying, 'I am a labour hire blue-collar organisation. So if I am putting people into the meat industry, into the manufacturing industry, into

shipbuilding or whatever I will have to record, as the labour hire organisation, where I put those people and my premium will be calculated based on where I put them.

The CHAIR — Hypothetically, how would that work in the case of, say, WV Management — the Wodonga meatworks?

Mr TWEEDLY — In those particular circumstances, where I think the labour hire agency is predominantly providing services to the meat industry, they would be classified as the meat industry and their premiums would be based on the industry first, and secondly, on their own performance.

The CHAIR — They have been doing that, I think, for about four years and they have stated that their claim rate is down around 4 per cent.

Mr TWEEDLY — Yes.

The CHAIR — And the meat industry rate is around 8.5 per cent, I think, or 9 per cent.

Mr TWEEDLY — Yes.

The CHAIR — How would that go with them? If all other things were equal and we heard what they were saying to us, they would say that as a result of good management they have been able to deal with occupational health and safety issues, so I do not think they would be that rapt about the premium rate doubling.

Mr TWEEDLY — The industry rate they are operating on at the moment is, I think, 7 per cent, and their own experience enables them to come down to — you have said 4 per cent so I will take that at face value for today — to 4 per cent. If they were classified as the meat industry their own claims experience would enable them to go from 8.4 to much less than 8.4. The premium system has two components: one which deals with the industry which you are in, and your own claims experience. The larger you are the more your own claims experience dominates the price.

Someone of their size would probably have a split somewhere near fifty-fifty — 50 per cent to do with the industry you are part of and 50 per cent your own claims experience, which gives a composite figure as a result. That is how they would be somewhere near 4 per cent; I am not across exactly where they would be. Be it them or any other labour hire company they are actually putting a person into that industry with that risk profile. I have had discussions on that particular industry in other places and one of the concerns there has been in those sorts of industries is the cost of organisations that go out of business — and I think that was quoted in WV's submission; the issues of phoenix companies and the like was commented on. Those costs that are left behind have to be picked up by the industry of which they are a part; someone has to pay for it. The change process here will put a different profile, but it will put the pricing signals in place commensurate to the risk a person has been put into as distinct from, 'I am a labour hire organisation and this is the rate'.

The CHAIR — Presumably, this would address, at least in theory, an issue that has been raised with us that says labour hire practice allows for a company to come in and undercut the existing work force. Because it has no claims history it gets the broad classification which is less than the industry-specific classification. It starts building up claims histories that are unfavourable then three years later it goes out of business and mark II comes along; it starts from scratch and again it continues to exploit that pricing differential.

Mr TWEEDLY — Yes, that is theoretically possible today. There are a series of detections to make that hard but not impossible, and this change process is proposed to try and take away the incentive of arranging your affairs in one manner as distinct from dealing with the underlying issue of safety. If you deal with the underlying issue of safety the prices will go down and those good operators will have an opportunity to have lower prices. That is exactly the principle we have going forward.

Then we have the hold harmless clause as an issue. Let me give you a couple of examples to illustrate what that might look like in a financial sense. The section 138 example I gave earlier would be, for instance, if the principle or the host was negligent and we said, 'You should be paying for the full cost of those claims', then the host will say, 'Fine, because I am going to be reimbursed by the hold harmless clause I have with the other organisation'. Therefore, not only will the labour hire agency pay the premium on their workers, they will also be paying for the full cost of the claim that they would otherwise have been indemnified for. So whilst they might be okay for the

short run, that will put cost pressure on the labour hire agency to put it up and that will decrease — not eliminate but decrease — the propensity to give hold harmless. That is our sort of response to that problem. The issue of occupational health and safety, which was a question a little earlier, was that the host will still be prosecuted. Whilst they may get their legal costs and/or any fines associated with hire paid for via hold harmless subject to a separate agreement, they will be the ones who are legally identified as being guilty and their reputation risk will come into play. Hold harmless clauses do exist — we know they do — and the pricing dynamics are not quite aligned at the moment. Hopefully by putting the pricing changes in place we will reduce the propensity to have such arrangements.

The CHAIR — Why are they allowed to exist? Since this was first raised with us we have struggled to understand how it could be legitimate, in the sense that if the host employer is seeking it, it is only on the basis of trying to avoid financial requirements that are attached to obligations. We think it is the total antithesis of good occupational health and safety practice and that people ought to fully accept their responsibilities; yet hold harmless seems to be designed to avoid this.

Mr TWEEDLY — From an occupational health and safety perspective you are still liable, but there is nothing in the act to say that you cannot have a separate contractual arrangement with someone to deal with some moneys of an event.

The CHAIR — But it strikes us as just poor practice.

Mr TWEEDLY — I would agree with you.

The CHAIR — Delusional practice.

Mr TWEEDLY — I would agree with you totally, but at the moment as a matter of law they are free to do so.

The CHAIR — So you cannot offer a perspective on why in Victoria and presumably elsewhere in Australia there is hold harmless insurance?

Mr TWEEDLY — I think the policy response is that we prosecute the host under the Occupational Health and Safety Act, and if they are found guilty and they are published as found guilty then who pays that bill is a matter for them. If they pay it and then get reimbursement from a third party that they choose to have a separate contract on, that is morally totally wrong — but if they have it there is nothing in the law to stop that from occurring. That might be something on which a recommendation could be made to say that a hold harmless clause in this space is illegal.

The CHAIR — Are you aware of any other jurisdiction that does outlaw them?

Mr TWEEDLY — 'No' is the short answer.

The other issue on workers comp. of concern is return-to-work performance. Return-to-work performance in the claims side is quite difficult for most employers, depending on issues such as severity of injury, what sort of work is available and the like. But the obligation is on the labour hire agency to in fact manage a person back to work. Clearly, as I have already seen from the evidence from others, this is seen as a very difficult thing to do. But the consequences of not doing it for the labour hire organisation is that those costs are more expensive, their premiums will be higher and therefore the price they will have to subsequently charge future clients will be higher. So they do have a financial incentive to try to improve it. However, doing so is difficult. There are some organisations that I think have some very good programs in place at the larger end, and there are many that have virtually nothing in place. But the pricing system will catch up for the latter if they have not got people back to work more quickly.

The CHAIR — We have talked about return to work as a lead issue. I think it came to our notice when we first spoke to some Victorian WorkCover Authority (VWA) people some months ago, when comment was made to VWA that return to work was an area of particular concern among labour hire firms.

Mr TWEEDLY — Yes it is.

The CHAIR — We accept it is probably an issue right across business, not just with small companies, but we accept that labour hire companies have a higher injury rate and small labour hire employees are probably where

the return-to-work performance is most acute. Committee members have been wondering among themselves how realistic it is to expect small companies effectively to be able to manage return to work. We understand it is a continuing problem and that despite the efforts of the VWA it is still a problem, and I think it is a problem in other jurisdictions as well.

Mr TWEEDLY — Yes.

The CHAIR — Committee members have tossed the idea around of whether it would be realistic to say to small companies, 'We will give you an option. You can pay an additional premium, or industry premium based on your claims experience to relieve yourself of some or all of your return-to-work obligation, and the proceeds that are there raised will be used to provide an incentive to other larger employers in those sectors to take those people on in a return-to-work capacity. Is that something that has been thought about at all as an option?

Mr TWEEDLY — Yes is the short answer. Over the years we have had a number of programs endeavouring to provide incentives for people to take on return-to-works and provide for payment of a portion of their salary for a period of time to try to encourage them, so that people can say, 'This is an injured person, but really they are better and if you give them a chance that will be good'; and therefore for the first 13 and 26 weeks I think we would subsidise their wages for a period of time. That is one mechanism that has been attempted — not in great volume, but it has certainly been tried. We have not pushed very hard down that path for the last year or two, but it is an area worth exploring for sure to try to encourage people.

The one thing I have not gone into in terms of individual labour hire is the nature of the relationship of individuals that work for labour hire, how they are engaged and the like, because they are quite diverse as well. Some are easier than others. There are some that are clearly direct employees and some are casual. So that combination makes it more complex. But it is an area where we acknowledge we have not done enough. It is an area that is significantly crying out for improved policy to be made to in fact improve the return-to-work prospects of people in this industry.

The CHAIR — Are you able to break down, by labour hire sector, figures on what the return-to-work performance is like as opposed to other sectors of the industry?

Mr TWEEDLY — The claims-cost ratio graph that I showed you in the presentation was an attempt to look at the relative costs, and that is a surrogate for how long people are off work or the severity of injury, or it might be a mixture of both. We have not broken down the data into the injury severity, but the weekly compensation and all the associated medical costs are incorporated in that ratio. So either it is more serious and/or it is more dislocated and harder to return them to work, or a combination of both. That is what that graph is trying to show.

The final slide relates to what we are doing going forward. We are now reinitiating the labour hire project, which has only just begun. In regard to consideration of guidance material, whilst we have said the obligations of employers are the same whether they are labour hire or not, clearly some more customised guidance material is necessary, because as seen from the paperwork that we have provided offline, we do not have much that is specific for the labour hire industry, even though the general duties are still relevant for all. So that will be a significant emphasis going forward.

The final point, which I have already mentioned, is changing the premium system for 2005–06. They are the three pieces of work that are high on our agenda.

The CHAIR — Thank you for your comprehensive presentation. That is tons of information to work with. It probably already answers some of the questions we had.

Mr ATKINSON — I refer you back to the statistical incidents slide, which shows labour hire is a lot higher in terms of injury rates — 17 per cent. Let me just ask: the figures for the scheme are taken from all workers, is that correct?

Mr TWEEDLY — Yes.

Mr ATKINSON — In other words, is it possible, or would it be true to say, that some of the reason why labour hire has a poorer performance compared to the total scheme is that it is more likely to be used in higher risk

areas, which historically do have a higher claims record; and that in fact some of that 17 per cent drop could well reflect a shift of some of the higher risk from scheme to labour hire? For instance, nursing — bad backs; the construction industry; and production machinery are all particularly high-risk areas, and they seem to be the areas that labour hire is moving into. So is there some statistical comparison? They are not exactly comparing apples with apples, and in fact the statistics could reflect a different position.

Mr TWEEDLY — Let me say that all the data that I have provided means that in terms of an apple-for-apple comparison there has to be some judgment in the numbers as well, and I am happy to explore some of those issues. But the trend in a global sense is more than solid in terms of the conclusions that can be reached. There is no doubt that the blue-collar workers that are labour hire, by the definitions of which industries they go to, would be more dangerous than others.

Mr ATKINSON — Do you mean the industries?

Mr TWEEDLY — Yes.

Mr ATKINSON — The industries are the higher risk industries.

Mr TWEEDLY — But there is also a large number of employees who work in those industries who are not labour hire who have lower rates of injury. So it is a relative measure, which is why I have tried to set up these slides to try to give the relativities. If I go back to — —

Mr ATKINSON — Would it be possible for the committee to have that sort of profiling?

Mr TWEEDLY — Yes.

Mr ATKINSON — Can you see the discrepancy that I am suggesting exists when you compare labour hire to total scheme?

Mr TWEEDLY — Yes.

Mr ATKINSON — But the point that you have just made is actually more instructive because it compares people in the same high-risk profile areas.

Mr TWEEDLY — That is why if I can refer you to the fifth slide, the claims frequency rate comparison, that graph is trying to answer your question. It is saying that employee agencies as a whole are more risky than the scheme, which is the first two columns and which is your proposition.

Mr ATKINSON — Yes.

Mr TWEEDLY — But if I look at the next two columns saying 'Production industry employment agencies', the 1.03 per cent on that column is the rate of frequency for those who come through the labour hire process, and people who are in that same group of industries in the scheme as a whole are the 0.62 per cent. So there is a whole swag of people in those industries doing their job who have a frequency of 0.62 per cent and the labour hire people who are also in the industry is 1.03 per cent.

Mr ATKINSON — So exactly the same industries are profiled there?

Mr TWEEDLY — Yes.

Mr ATKINSON — In terms of what you have outlined today it seems to me — and correct me if I am wrong — that you were fairly clear in terms of what the respective obligations were of labour hire and employees, that your operating administrative policy was fairly well defined by legislation, by process and indeed even by prosecutions. Do you find difficulty in dealing with labour hire compared with the others?

Mr TWEEDLY — Absolutely! My comments were saying that the law is clear. The way in which we may well have communicated those policies is a long way short of where it needs to be.

Mr ATKINSON — But you are saying the law is clear?

Mr TWEEDLY — In terms of the obligations of the employer under the general duties, yes.

Mr ATKINSON — And you think the respective positions of both types of employment are clarified by each of those instruments — that is, the prosecutions, your own processes, the legislation?

Mr TWEEDLY — Clearly from the evidence that you have already seen the marketplace does not think so, so we have not been able to educate the marketplace as well as we ought. But under the law there is an intersection between the host and the labour hire organisation. There is not a black line to say, 'This is yours and this is the other side of that equation', and the obligations exist for both parties, so in that sense the law is clear for people to do that. It then comes down to the way in which people are educated and the way in which there are enforcement activities to make it more meaningful.

Mr ATKINSON — How many labour hire operators out there do you think you have not got covered for workers compensation at all?

Mr TWEEDLY — That is obviously a question on which if I knew the answer I would know who they were. The number that we have registered that have as their predominant activity labour hire, we have approximately 1200 employers. They are required to have a policy, and if they have a policy we know who they are and where they are. There may well be an organisation which has put up its shingle and not actually registered for workers compensation. I do not expect it to be a very large number. I do not know how big it is.

Mr ATKINSON — Would it be likely to be a number inconsistent with people who were doing any other sort of business putting up a shingle?

Mr TWEEDLY — I would have no reason to think that the non-compliance for registering for workers comp. would be any different in this industry than any other. It would be a relatively small percentage.

Mr JENKINS — I want to back go to the next page after the one you talked about. I understood this graph to be just about labour hire — blue collar, white collar and total. That is what it is about, and a reduction, a decline in the frequency of claims.

Mr TWEEDLY — Yes.

Mr JENKINS — There is a similar decline in the frequency of the claims generally across the scheme if there has been a reduction of 27 per cent of claims by blue collar in the labour hire industry?

Mr TWEEDLY — I may have answered an earlier question slightly incorrectly. If you just go through the top line, it shows that over seven years the claims frequency of blue-collar labour hire organisations has reduced by 27 per cent. That 27 per cent reduction is good, but blue collar, as you can see from its position on the line, is substantially worse than at the bottom line, which is white collar, and the middle line, which is the scheme as a whole. The scheme as a whole has shown improvements of 17 per cent and blue collar has improved 27 per cent, so the gap has reduced but it is still more than double the rate.

The CHAIR — Just following that, does the VWA have objectives regarding performance of the labour hire sector and claims frequency rates looking two, three or four years ahead?

Mr TWEEDLY — No, we do not. We want them to go south, obviously.

The CHAIR — But you do not make estimates looking forward as to where these trend lines are going?

Mr TWEEDLY — As a corporate goal we are always aiming to reduce the frequency and the severity of injury. That is a goal that we set every year. We have set reduction targets for frequency across the scheme of 3 per cent for the current year as a reduction in one year. So then we put together our plans to focus on industries with the greatest opportunity for improvement to achieve that goal. So rather than have a three or four-year program at a hit, we certainly have an annual program which we set to look at the results that we have just achieved and say, 'Right, we are going to strive for further and better improvements'. Last year we improved the claims frequency rate by 3.8 per cent across the whole of the scheme, and we are aiming for 3 per cent next year. We constantly set those sorts of goals. If we like to look three to five years ahead then clearly we want a step change in frequency and a step change in the costs of injury in this state. In occupational health and safety over the last two or three years we have seen some gradual reductions, and we are trying to set ourselves greater goals into the future.

Ms MORAND — You have already gone over obligations and responsibilities under sections 21 and 22, but I want you to comment on the Maxwell report. I am sure you are familiar with the report and the fact that he has talked about the issue of control.

Mr TWEEDLY — Yes.

Ms MORAND — He says that there that there needs to be a better definition because there is considerable confusion and concern about the content of the duty under section 21. In his view control should be added to the list of practicability factors. I wonder if you could comment on that.

Mr TWEEDLY — Whether the government chooses to respond to the Maxwell report, clearly we are still awaiting that outcome, but the Maxwell recommendations were to say that the clarity of the legislation needs to be improved, and in particular the area of control. I think in answering the questions I have had during the course of today is identifying that one of the key issues that we have as an organisation is making sure that the community understands their obligations and I think Maxwell's report was saying, 'If you add the word "control" to the legislation, that will enhance the understanding', but that does not mean that control is not relevant today. So our interpretation, in the way I answered earlier, was very much that the duties are there, and that those duties need to be explained with better guidelines and the like, which would reinforce some of the recommendations of Maxwell. Whether or as a response to the Maxwell report the government response is to put those words is still a matter for decision.

Ms MORAND — Or the host could decide that the host was in control and therefore had a greater duty or obligation to that person?

Mr TWEEDLY — Yes. In the prosecution data that I put forward this morning they are, but in four of those cases the courts have found that the host had more obligations than the hire organisation.

Mr BOWDEN — I would appreciate some clarification if it is possible.

Mr TWEEDLY — Sure.

Mr BOWDEN — Going back to the second slide definition of 'labour hire' and the last point, that is very clear that the labour hire agency is a direct employer under the Occupational Health and Safety Act.

Mr TWEEDLY — Yes.

Mr BOWDEN — I would appreciate your comments on this point — that is, that it would seem to me for the sake of clarification and control that the employee is very much expected to be under the influence, supervision and control of the host.

Mr TWEEDLY — Yes.

Mr BOWDEN — I am just perplexed to a degree as to why it would be considered the employee is really under the direct employment of the labour hire agency because to my mind the labour hire organisation is providing a service — in this case the employees to do a task — but the actual control of the workplace situation and many other occupational health and safety issues, equal opportunity and other things that go with it, is really influenced by the host employer. I am just wondering if it is possible to take away the shades of grey and make it more of a black and white situation where the host employer is the direct employer, and the labour hire agency their service provider.

Mr TWEEDLY — In answering that question I might have to go back to why organisations choose to use labour hire rather than employing people — and they do so obviously for a range of purposes that suit each organisation. If, however, a person is employed by the labour hire agency, by doing so the agency has an obligation as an employer to look after that person. The mere fact that they put one person in a site controlled by another does not take away the obligations for that organisation — the labour hire agency, so they have to ensure that they do not put someone out into a place which is fundamentally unsafe.

Under the law as we see it that is clear. The host, however, who has control of a site does not abrogate its responsibilities for still having a safe site. You are right in terms of the fact that it may control the day-to-day work and therefore it also has a responsibility, but for a labour hire organisation to put a person into such a place which is

unsafe means that it has not taken due regard to looking after its people by putting them there. All of these are measured with the word 'reasonable', you know — what it is 'reasonable' to expect. So as far as the host is concerned it is employing someone through an agency for a purpose that suits its business requirements; it does not want the responsibility of doing payroll tax and involvement with the issues of equal opportunity et cetera. That is a part where it does not necessarily have to have an obligation and is happy not to. But the host still has to have a safe site. It cannot have anyone just wander on the site doing a task and assume, 'Oh well, I do not have to worry about that person'. If it does it will be up for prosecution.

Rather than black and white, if we are talking complementary responsibilities I think the better way to describe is complementary in a sense that both have an obligation to do it and there is less chance of someone falling between the cracks. When you have a black and white line often you have a gap or a chasm; by having an overlap it improves the probability of safety.

The CHAIR — We had in an earlier presentation a claim made to us that one labour hire firm was advertising its services in a way that was quite unreasonable. I want to quote the advertisement — I have it here before me. It was put to us that it was in effect saying, 'Use our services and the benefits for the employer is that you absolve yourself from all the worries of occupational health and safety ; we will take care of it all for you'. We had that company in, and that particular claim on its web site has now been removed, but we are not aware if there is any state law prohibiting a company putting out an ad in that way. It seems to me that a company should not be allowed to advertise in that way. There was some reference to the Trade Practices Act did not permit it to advertise that way.

Mr TWEEDLY — That is false and misleading advertising.

The CHAIR — I am surprised that companies can do that with impunity at state law at least. Is that something that has been discussed at all?

Mr TWEEDLY — No, we have not pursued that at all. My response to the question whether it is under the Trade Practices Act would be that we have nothing in the pipeline in that regard.

The CHAIR — It struck us as being unwise and unethical for companies to advertise in that way. Can I get an understanding of the way in which WorkCover inspectors would currently scrutinise a labour hire firm? Typically what are the ways of visiting the worksites? In other words could you just visit the labour hire firm itself or could you visit the work site which was hosting those employees? Can you give me a feel for this?

Mr TWEEDLY — Our inspectorate undertakes its activities through two primary sources: one is to support the broad strategies that we may have — I will come back to that — and the second is when we are called out for an alleged breach. Let me deal with the overall strategy. We will set up a program — there are various industry programs of which we have a number — to say, 'That industry needs specific emphasis and effort', and we will organise, for example, 100 visits to the site to check out whether or not they are meeting their obligations. We would look to 100 organisations where we have the highest suspicion that there is an opportunity for improvement.

The CHAIR — You did this in the food industry a while ago?

Mr TWEEDLY — Yes, our whole process of the proactive work that we do is to identify the industries where we think we have the greatest opportunity for improvement, and then to put our inspectorate resource into those industries where there is that opportunity and send it into look at the systems, practices, procedures and environment of those organisations to see whether they are meeting their obligations. We would like to think that 70 to 80 per cent of our work is in that space. From time to time we get called out by a health and safety representative who says, 'I have an alleged breach here', and our inspectorate will then go and visit the sites accordingly. I have no information readily available about the distribution between labour hire and non-labour hire; that would only be anecdotal in nature. The process is, however, the same where the inspector will go out and inspect the relevant site. Now that would include both host and/or home base of the labour hire. The home base of the labour hire may well be an office, and it is not really where the risk is, so the probability of going there is very low. If we are called out, looking out the window with the construction site behind us, then we would go on to that site, and if there were a situation of labour hire on that site then it would be picked up on visiting that site.

The CHAIR — You have commented that you have made the assessment as an authority that labour hire sites — the sector — require greater attention because of the statistical material that has come to your notice and the trend the supports that. Bearing in mind what you have just said and the higher statistical incidence of injury claims in the sector, at what point would the authority say, 'Well, we have now allocated enough time and energy to that sector; we think other things are now taking precedence'? It seems to me that you are saying contrary things. You are saying in one sense, 'We need to put more energy there because it is statistically important but traditionally we would move those resources around', yet we would not expect to see a dramatic improvement — or maybe we would — in the labour hire sector given the relativity of rates, would we?. I mean it is not something that you would expect in the middle of next year to say, 'Well, we have done enough there for now'.

Mr TWEEDLY — Again in terms of our strategy of being proactive, it is important for us to have a presence across industries. Then there is what we could describe as a blitz in a particular area. In that sense every year we will have an underlying plan, and we will increase it in certain areas as we see fit. We do not make knee-jerk reactions to any industry at any point in time. What we tend to say is that the annual plan is this, and we will then assess the process. We made a choice two years ago to scale down labour hire. At the same it was made because there was some other risks that were assessed as being greater. The evidence of the growth and everything we have talked about today indicates that is not the way forward because the increase in the frequency and the size is something that will be put back onto the priority list going forward.

The CHAIR — One of the things that has been put to us by a number of parties in this inquiry is the need or the desire for a registration or licensing system. Indeed it has some acceptance across the industry itself. It is not just being pushed aggressively by unions; there are a number of labour hire firms that see some merit in some model. The problem, however, for the committee is in assessing what might be an appropriate form of registration. One of the ideas that has been tossed around which I think is okay to discuss with you is to look at using the VWA as the basis of the registration system, with some enhanced monitoring of the performance of the sector. That would be different from what is being done now, obviously, because if it were undertaken it would be done in a permanent sense and not in the sense that resources would be taken in and out. Do you have a response to that as a very general and undeveloped proposition?

Mr TWEEDLY — Again from reading through the transcript of some of the other sessions I have seen suggestions about licensing rather than registration, because I think that term has been used more often. Arguably we already have organisations registered. In terms of the registration of the fly-by-nighters or those who seem not to be complying with even registering for workers compensation, we actually know who they are and where they are, so arguably we have registration already. When you then take the next step of licensing, that poses a few questions in answer to the question — that is to say, what are the criteria upon which an organisation gets a tick and becomes satisfactory to be licensed? What are the criteria of company A versus company B? We have not put our minds across that at all.

The pricing signals that I mentioned at length before really mean that irrespective of the relative merits as an organisation, its performance will be caught up in pricing subsequently. But licensing by its very nature means that you have to have another regulatory regime across that to ensure compliance to some standard. What that standard is for labour hire is something which again people have talked about it in a very generic sense, saying, 'That's fine', but the devil is in the detail about what that might look like. If it means there need to be accreditation processes or training processes and the like, that will need an infrastructure for regular review. If one is looking for knowledge about where they are and how they are performing, I think the existing regime can actually show that. If you are looking for more than that in terms of licensing, quite a bit of work will be necessary to determine what that process might look like.

The CHAIR — In looking at what the standard should be for labour hire companies, I come back to something that was raised with us by Skilled Engineering. It talked about having a risk management procedure that is to an Australian standard — I cannot think what the standard was. I think it is the only company in the sector that has even aspired to that. How do we develop a satisfactory standard for risk assessment for things like workplace inspection and induction procedures? At the moment it seems to us that apart from a voluntary code here or there, there is no standard other than some people reading the act and, as you say, coming to a conclusion about what would be reasonable in the circumstances to undertake. It is all over the place. That would be okay but for the fact that we are talking about quite serious injury rates here. How do people go about constructing a standard? Is it possible to achieve a certified standard of assessment in this field?

Mr TWEEDLY — The instrument that is used to a large extent is for organisations to get SafetyMAP accreditation. That is not labour hire specific; it is about having processes in place to ensure that you do a risk assessment. Every single workplace will have some nuances that are different from others, and the mere fact that you sit down and actually work out what all the risks are or might be and then have some mitigation strategies against that is important. Using Skilled Engineering as an example, as a labour hire organisation it actually does that and is concerned enough to ensure that it puts people onto sites where it has made a conscious judgment of what the risks are and what needs to be done to ensure that risk is mitigated. So there is an instrument; the extent to which it can be or needs to be adapted or varied for the labour hire industry, I personally have not set my mind to. Risk assessment, by its very nature, is one where you have to assess the specific circumstances for your place of employment or your type of employment, and labour hire is no different.

The CHAIR — At the moment I understand companies in the sector run any number of different approaches: one is, 'Yes, we'll have an induction with our own employees. We'll tell them what to expect about that workplace, but we might not actually do it out on the site. We are not obliged to do it. Yes, we'll have a conversation and reach an understanding with the host employer, and at some point we'll go over and talk to our employees while they're on the site or after the job, but we might not actually do that face-to-face with them on the site looking at the assessments'. Everyone in this triangular arrangement is ticking off and saying, 'We have reached some understanding with another party', but it is never done on the site looking at the risks together.

Mr TWEEDLY — I describe that approach as necessary but not sufficient.

The CHAIR — In some cases, though, that does happen?

Mr TWEEDLY — Yes, I am sure it does, but physical reviews are as important a part of that journey as the paperwork. The paperwork just gives you a map of what you are said to have done rather than what you actually do. It is crucial that the assessments be done and seen in a physical sense.

The CHAIR — Obviously that only gets to be tested when it fails. At the moment your inspectors do not sit down and go through those steps and ask?

Mr TWEEDLY — We visit sites where, as I said before, there is evidence that there is need for improvement in that particular industry. That does not mean that a specific tragic event has occurred on that site. As part of the process, those things are reviewed — hopefully before things occur — and therefore opportunities for improvement are identified before any event occurs. Our inspector does a lot of that.

The CHAIR — It has been put to us in this inquiry that the opportunity for occupational health and safety issues to be raised in the labour hire sector is somewhat constrained by the disproportionate number of casuals who work in the sector, who say, 'It is not in my interests to raise an issue of occupational health and safety because I might find I just don't get the call for any more jobs because I'm creating problems'. A number of people have given submissions to us saying that somehow we need to protect the right of people in the labour hire sector, especially casuals, to make these complaints and not to lose their employment. We do not yet have our heads around how to actually do that. Is that something that has been raised with or within the VWA, given your experience of dealing with workplace complaints?

Mr TWEEDLY — It could be said it is more acute in the labour hire industry rather than saying it does not exist everywhere else. If a person chooses to put their hand up with a concern, there is always a worry that the ramifications of doing so might be detrimental to that individual — not always, but sometimes, depending on the nature of the workplace. You asked if anyone has put their mind to finding a solution to that problem; we are in a similar situation of saying there are elements of protection available, but it is not sufficient to prevent people concerned about being called out tomorrow for a job saying, 'It's not worth it. I'll just keep my mouth shut and keep moving'. Obviously that is far more of a concern in the labour hire industry than anywhere else — far more.

Mr PULLEN — Greg, I am interested in the eleven cases that have been prosecuted. In comparison, what is the number outside the labour hire industry, because this is only such a small number?

Mr TWEEDLY — It is and that is over a four-year period. In the last financial year, 2003–04, 206 prosecutions were run, so you can see it is a very small percentage. I cannot recall every other year prior to that, but scale-wise it is small.

Mr JENKINS — You talked about the labour hire project resource starting in October 2004. I want to get a bit of a handle on what that actually means practically and when the WorkCover authority becomes aware that there is a workplace where labour hire is the predominant method of employment. For instance, the Morwell briquette factory, which is the oldest installation in the Latrobe Valley, is a good example because it reopened and the employment has gone from having permanent employees, owner-operated and employers; now I understand it is split into three, so one company actually owns the facility and provides it in some fit state to an operating company which is operating from day-to-day using employees from a labour hire firm. This has only happened in the last three months. At what stage would the WorkCover authority say this is something it has to have a look at? It is a high-risk industry. In its previous lives it had a high injury rate, now it has come in with this extra factor. As I said, I think it is actually split into three and not just two — host and hirer. Would this project or this new awareness by the VWA ensure that inspectors look at that differently?

Mr TWEEDLY — The first issue is how soon we become aware of such a set-up is. That is question no 1 — to look at our responsiveness. The second is: what is the basis for us to visit? In a project sense we try to get that into the proactive space as distinct from reactive, and therefore the length of time between the creation of such an instrument or set-up and us being aware of it would be a lot more than three months. I think it is a matter of principle. But the expectation of any project, be it labour hire or elsewhere, is that we try to maintain as much market intelligence as possible, saying in that particular environment that should be high on our list for early business. I do not know the personal circumstances of that particular case, but the order of events is to size the job, identify where the targets are to actually visit, and then go and visit. When we do visit, then the steps will be as I outlined earlier in terms of the way in which an inspector will go in and look to see what is in place — the procedures, practices, environment et cetera — and then they will try to understand which company each of the players are responsible for. That is part of the process.

Mr JENKINS — On a related point, when we talk about the extra costs involved in monitoring and supervising the labour hire industry, at what stage would those costs become great enough to affect the premium of an industry operating with labour hire rather than somewhere else?

Mr TWEEDLY — That is a very hard question. It depends on how large the regulatory regime would be across it, but every dollar that is paid for by the authority across the scheme gets built into the price for all employers. In this particular set of circumstances one would argue you would have to build that into the price for regulating the labour hire industry. If we look at the premium that was paid by the labour hire industry in the last financial year, which is approximately $65 million, then if there were a cost of $500 000 or $1 million that would certainly have to be added to the price. A few hundred thousand might be seen as a rounding error, but once you get more than that then it would be built into the price.

Mr ATKINSON — You mentioned before that quite a lot of companies decide to engage labour hire companies for a whole range of reasons. Correct me if I am wrong in my perception, but I would have thought one of the key factors in this, so far as the WorkCover Authority is concerned in particular, is that it might well be a company that has experienced a fairly high injury rate with a fairly high risk profile, and with some difficulty in managing that workplace so far as workplace injuries and incidents are concerned. Those companies are the most likely to engage a labour hire company, because the crudest form of it would be a handball of that responsibility, and at a more responsible level it might be seen that this is a way of perhaps trying to improve their performance. Given the statistics you have given, it might be a reasonable conclusion that a lot of those companies were high-risk companies before, and that the labour hire bringing down the incidence by 25 per cent is actually a pretty good performance.

Mr TWEEDLY — There are no doubt examples where employers would do it as a handball, to use your expression, and there is no doubt that the speed at which we catch up with such arrangements is slower than we would like. I did bring some props just in case, but in terms of the premium order, this booklet is produced once a year so that if someone does something now then the prospect of it being known and understood and put in place for an equivalent booklet for 2005–06 is unlikely; but for 2006-07 it is likely, so you tend to open up windows of 18 months to two years to constantly change. While you have two classifications, rather than more than two, then the incentives are there for that to occur. We are trying to take away some of those incentives. For 2005–06 we are working currently to improve our responsiveness but also to make sure the decisions are not made simply to reduce premium. Our goals are fine. Actually getting the speed is our challenge.

The CHAIR — Thank you very much, Greg, it was most illuminating. Most of our queries, if not all of them, have been satisfied. Kirsten Newitt or Russell Solomon, whom you have met, will possibly be in touch with you. The committee is working closely to a deadline of before Christmas. A copy of the transcript will be sent to you within 10-days.

Witness withdrew.