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 — 21 March 2005

Members

Mr B. N. Atkinson
Mr R. H. Bowden
Mr H. F. Delahunty
Mr B. J. Jenkins
Ms M. V. Morand
Mr N. F. Pullen
Mr A. G. Robinson

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

Staff

Executive Officer: Dr R. Solomon
Research Officer: Ms K. Newitt

Witnesses

Mr R. Sheers, Director, Operations Division, WorkSafe; and

Mr B. Cook, Director, Premium Division, Victorian WorkCover Authority.

The CHAIR — We welcome Rob Sheers and Brian Cook from the Victorian WorkCover Authority. Thank you for coming along today. I will invite you to speak to your submission for a few minutes and then we can take questions and answers from around the table.

Mr COOK — I will go through and cover the first little bit, and then I will hand over to Rob. In terms of our submission, we have addressed some of the issues raised in your interim report. The one I want to talk about briefly is the issue of the premium system and the information and the proposed changes that we are looking at making to the area of labour hire. I want to indicate that those changes should deliver the information that is required to identify the organisations in this state which are undertaking labour hire, and that the proposal would mean that we would be able to identify all organisations who register with us as labour hire — they will be separately registered. It will ensure that the insurance rates that they pay are more strongly linked to their workplace risk, which has not been there in the past with just the two classification systems. It will also provide better information regarding the placement of labour in Victoria. At the moment the information is there under two categories — the blue and white collar categories — so we do not get any indication of where within that wide range of industries people are being placed. We can then use that information to better target our OHS activities.

If implemented, these changes will require labour hire employers to provide us with details of their remuneration — which is their wages and their salaries, superannuation and that — of their workers against the industry classification that is used by all other employers in the system. They would actually be reporting against that classification system and be treated in that way, the same as other organisations. We would be reporting details of the place of work where somebody is injured, so we would have that information as well. We would also be separating their reporting on their own workers who are not labour hire.

The process for doing that will be through the premiums order. The premiums order is set up under the WorkCover insurance act. It is set up each year and it specifies how premiums are calculated in this state. That order will include labour hire so we will do a definition of employers who come into that category. Following on from that, we will continue our premium compliance activity which includes the auditing of workplaces. We audit the premiums of a number of employers across the state, and one of the areas we will be looking at, as well as the general run-of-the-mill employers, will be the labour hire industry. They get audited at the moment; this will be a bit more specific in terms of the information and the collection of it. That is just briefly what the proposal was. We see that that will provide the information we think you are probably looking for in terms of the registration proposal. I might hand over to Rob to talk about some of the WorkSafe issues.

Mr SHEERS — Brian has covered a lot of what was in our submission under part 1. There is some information in that part also around providing more guidance to the industry but I will cover that as I go through. Just looking at part 2 of our submission, with the opening line that there is already a capacity for agencies to report, I guess what is implied there also is they can be an employee of an agency as well, to clarify that. Those mechanisms exist now for people to, either anonymously or not, report issues to the authority through our 1800 advisory line. However, building on what Brian said, there is an incentive there for the agencies with high-risk host workplaces to be able to work more constructively to either discourage placement at those places or to establish a safer work environment. There are currently incident notification regulations and also an escalation of incident notification to the new act — those provisions exist.

In part 3 we are also highlighting the improvements to the new act to protect all parties against discrimination in workplaces. Those provisions have been strengthened in the new act and offer slightly better protection for people. Over the page on page 4 we have mentioned the potential for better representation in the industry through more flexible arrangements for health and safety reps. In particular, under the Maxwell recommendations, the provision to provide for roving health and safety reps will also be an advantage in the new act.

Under part 4 we are submitting that there are provisions in the new act that have a need for both the host and the agency to provide the necessary induction and training for labour hire employees and that that would continue.

Under part 5 there has been more clarity over control in the Occupational Health and Safety Act 2004. Our main submission here is that under these provisions in the new act there are essentially two employers who should be quite clearly looking out for the health and safety of an employee under these arrangements. We prefer those duties, as they are in the new act, to be if anything overlapping rather than in a clarification sense the potential for there to be either an underlap or, worse, a crack in the control and responsibilities people need to exercise.

What we are planning to do, which is already under way, is to keep clarifying those responsibilities and levels of control. Our expectations under the new act are through the form of guidance. That guidance is under development and we expect it to be complete by July 2005. It would need to be informed by this committee's findings.

If we move on to page 5, under the new act the equivalent concept of that being in the form of a legally binding document, such as a code of practice, would be a compliance code, so codes of practice or the issuing of a formal guideline are terms under the old act. Our normal development processes for those sorts of instruments would be preferably to use only guidance material, and test that in the market for its effectiveness and efficacy, get the valuation, formally evaluate it and use that as a basis for going forward on a more formal, legal approach. Under part 7 there is a brief comment around the use of regulation. We would be subject to the Subordinate Legislation Act to complete a regulatory impact statement and what have you. We just thought the committee should know that. I might actually hand back to Brian to briefly mention our return-to-work strategy.

Mr COOK — At the moment the authority is reformulating its strategy on return to work. Certainly while there are no specific initiatives for labour hire, there are some initiatives that apply to labour hire employers and other employers, including job seeking assistance where an individual worker is unable to return to their employer following an injury. So there is assistance for them to seek alternative employment. We are just pointing out that education and enforcement obligations relating to the return-to-work strategy have certainly been changed with the recent changes to legislation, but within the Accident Compensation Act the legal obligation is still on the employer, which in this case is the labour hire organisation. We are also highlighting that we make recoveries against negligent host employers. Where they have contributed to the injury, we make recoveries for the cost of the injury — that is, the cost of the claim — under the act. So perhaps I can leave it at that.

The CHAIR — Thanks Brian. Can I kick things off by thanking you for your earlier advice on the content of the premium review. In our interim report we recommended that we support VWA's work in reforming the premium structure. We had some earlier advice from Greg on that. It is good to receive some more detailed descriptions of what that entails.

To begin the questioning can I pick up a point with Rob just on item 2 in your response — the reporting of unsatisfactory occupational health and safety standards. It seems to me that the VWA is principally looking to use the reformed premium system as a means of identifying or tackling unsafe workplaces. But my perspective, after the work we have done to date in this inquiry, is that not all dangerous workplaces end up being workplaces in which there are accidents or fatalities. There are far more dangerous workplaces than there are workplaces which record injuries and deaths, and it is just good fortune that we do not have accidents at those workplaces rather than good management. We can use the premium system and we can use notification where there are injuries and deaths, but I am concerned about those workplaces where there is risk which does not result in an injury; we still need to try to tackle those.

In its submission, the RCSA referred to a survey which indicated that something like 49 per cent of its members had at one stage or another refused to provide labour to a host company on the basis of concerns about safety. I have an enduring interest in this issue because it seems to me that in that case no-one is picking it up. Labour hire companies are saying, 'We are not providing labour; it is an unsafe workplace', but it will not necessarily be unsafe to the extent where it is reflected in a higher premium, let alone if injuries are reported. It will not necessarily have a thorough investigation if there is no death in that workplace, but it is a problem. Simply to sit here and say, 'That will somehow take care of itself' is not adequate, particularly in an industry where people are going to put their workers into that workplace. I am not satisfied with that. I want to explore that further, but to start with I want to get your response on that.

Mr SHEERS — We certainly target our proactive prevention work on a targeting model that accounts for pure risk. So we do not need to see an injury before we tackle an issue in the market. We tend to use incident notification and injury notification through claims and what have you as an indicator of where risk concentrations are occurring, but we would certainly not be limited to that information being the only information we would use for targeting. We also have an emphasis on consulting with workplace parties through the stakeholder forums that we run. We run specific workshops on identified hazards to embellish a purely statistical and numbers approach with a more qualitative and rich text, if you like, to where our efforts would best be directed. But it is a game of prioritisation and at WorkSafe we certainly have to make those hard decisions about where we will go and where we will not go. But we are certainly not working on a system of once someone has had an injury then that is where we go.

In a labour hire sense, through our other programs of targeting certain hazards in the workplace — it might be falls from heights — we often have general hazard-based targeting models; and forklifts has been a recent successful campaign. Those sorts of campaigns work regardless of employment arrangements. They are targeted at a certain hazard; establishing in WorkSafe a clear standard of risk control that we expect, and then in a prioritised way going to those workplaces where that hazard exists, as a pure risk model, rather than knowing there is a lack of control in that workplace. So, for instance, we might target the whole market sector.

The CHAIR — At this time does the WorkCover Authority have the power to go to a labour hire company and say, 'We would like you to tell us of any workplaces to which you have refused to provide labour out of concerns for occupational health and safety'?

Mr SHEERS — We do not have any powers under the act to force that information from a labour hire agency, but we have certainly run campaigns along similar lines where we have asked for people to come forward, and they have been successful in the past. It is a bit of a dob-in-a-workplace type arrangement.

The CHAIR — What would be your response if the committee was to consider recommending that power be given to the WorkCover Authority to request of labour hire companies copies of any advice that they had provided to companies saying that they were not going to provide labour out of concern for health and safety or risk in that workplace?

Mr SHEERS — I would have to turn my mind to that to make sure that we do not get some inadvertent behaviour by going down that path. We would certainly encourage people to report a workplace that they feel presents an unacceptable risk, but in doing so we certainly would not want to encourage a lot of information to go underground as a result.

The CHAIR — From what we can gather the situation at the moment is that the industry body is saying that its members quite often refuse to provide labour out of concerns about safety in a given workplace, and the information does not seem to go any further. I am looking at how we might recommend a system where that information can go further. Presumably it is still in the labour hire company's interest to refuse to provide labour on the basis of safety concerns — they do not want to put workers into unsafe workplaces — but I am looking at how the committee might think about ensuring that that information comes to the attention of the Authority whose reason for existence is to tackle that very problem — or at least that is one of its focuses. You might want to respond to us a bit further down the track about that.

Mr SHEERS — We would have to take that on notice to think about how that might be best implemented.

The CHAIR — You might have an arm's-length reporting system so the labour hire companies themselves are not having to make disclosures. They are not having to tell the world that the authority has the right to request that information of them.

Ms MORAND — I wanted to clarify something in part 2 where you are talking about the incident notification regulations and that WorkSafe has the capacity to require notification of a specified site of injury. Would it be compulsory or mandatory that they name the site? On the first page you talk about reporting of the place where on-hired workers were engaged. Where they have been sent to is mandatory reporting, but is it mandatory to notify you where the injury took place?

Mr SHEERS — The workplace in which it took place, the site?

Ms MORAND — Yes.

Mr SHEERS — I would have to check that in the details of the regulations, but certainly it is our practice to get that information at the time of the notification.

Ms MORAND — It would be good to know if it was compulsory. I would have thought it was mandatory.

Mr SHEERS — It is possible it is mandatory for the employer to report. It may be implicit that it was at one of their workplaces.

Ms MORAND — Then you would have a record for any injury of an employee of a labour hire company but you would not necessary know the source of the injury, the industry or the site where it occurred.

Mr SHEERS — Yes. Our practice is to get that information as part of the notification. We would have to check whether it is mandatory or not.

Mr COOK — We would also use that information if there was a possibility of recovery. It is there, but whether it is mandatory we are not sure.

Ms MORAND — On the front page of your response you refer to the reporting of remuneration paid to labour hire employees under the industry classifications. What detailed information do you get on that? Do you get how many employees are in each category or the total payroll as opposed to the components of the payroll?

Mr COOK — This is the proposal. What we will get is the remuneration, so it will be the salaries. It will not be the number of workers although we do ask for the number of workers. However, the important thing for the premium calculation is the dollars paid in wages and salaries. That would be broken up over the various industries in which the labour hire organisation puts workers.

Ms MORAND — I am asking that because some of the unions are interested in this. It is not just an issue of occupational health and safety or whether people are being paid appropriately. That might be a way of testing that because you can get a total payroll and it will not tell you if people are being paid award classifications necessarily.

Mr COOK — No. We ask for the number of employees, and the records are there but they are not used in the premium calculation. While they would be a good indicator, they would not be as accurate as what you would need for that sort of determination.

Mr JENKINS — Could you clarify again the issue about control and who has that responsibility? On page 4 you are talking about the changes to the Occupational Health and Safety Act having brought some clarity to the issue and not wanting to pursue that any further, and yet a whole range of people have come through and said that is a key issue. People were well aware of the changes the 2004 act was bringing in, but still thought control was a big issue. It still seems to be to me, but you are saying it is all resolved, all fixed, all hunky-dory.

Mr SHEERS — I am saying that we want to issue guidance to further enhance what is in the act. We see this as a threshold issue for duty holders to fully understand their requirements. The issue of control would need to be a big part of that guidance material. However, we are also submitting that it is clear under the act. At the moment it is clear that there are two employers who have a responsibility for the health and safety of a worker in this market, which are overlapping and non-delegable. It should offer the protection needed, but we need to clarify what all that means for stakeholders.

Mr JENKINS — Clarify for stakeholders? The VWA is satisfied that it is clear for stakeholders but that explanation, that understanding is yet to get through to the stakeholders and that is the issue — that there is in fact clarity.

Mr SHEERS — I believe so. I believe the issue is to get down to some detail on what that means for people — for instance, as the agency I have a duty to my employees but in practice how would I exercise that duty with diligence under this act? I think it is that 'how-to' type guidance that people are looking for. At the same time that gives them more clarity about where their level of responsibility ends and where the host employer's responsibility gets taken up. Our goal is to write that guidance so that we are, if anything, overlapping those duties to a small extent so that there is no doubt and no cracks.

Mr DELAHUNTY — I was interested in your wording of the definition; I know you did not give us a definition. We grappled with that right at the start of our report. Do you have your definition of labour hire within the VWA?

Mr COOK — No, I do not at the moment. We will be developing that as part of the premiums order if the proposal goes ahead. It will be along the lines of the employee-employer relationship within the definition of our act, but then recognising that those individuals are on-hired to other workplaces. I can give you further information on that but I do not have the details.

Mr DELAHUNTY — At this stage the VWA does not have a definition of labour hire?

Mr COOK — There is a concept there. It certainly has not been put down into a premiums order or anything like that. We are in the process of developing the premiums order recommendation to government at the moment.

Mr DELAHUNTY — Can the VWA tell me if a person is what could be titled labour hire or casual or contractor? Can it break them down into those three categories?

Mr COOK — The difference between a contractor and labour hire is clear under our act — when I say clear, it is defined within the act. There are some clarity issues about when a contractor is deemed to be an employee and so on, but that is there. Labour hire falls under the same definition in terms of an employee or worker for the labour hire organisation, and from there the classification looks at where they are moving on to other areas.

Mr DELAHUNTY — But you cannot break down a person who could be a casual employee?

Mr COOK — A casual employee from our point of view under the Accident Compensation Act I think would be an employee — they would come into that definition of a worker.

Mr DELAHUNTY — On the first page you talk about the new reporting requirements for labour hire. I am trying to get hold of what your position is on the labour hire industry. From the VWA's point of view what do you see in the breakdown of the categories of labour hire between blue-collar workers and white-collar workers? What percentage would be labour hire that come through your books in both those categories?

Mr COOK — You are looking at the current classification. I think they are about 2 to 1 in the white collar versus the blue collar in terms of the remuneration and salaries. However, the proposal would remove that distinction, and we would be classifying them by the exact industries in which they are operating, whether they were in the meat industry, a storage area, telecommunications or transport, rather than the blue and white we have at the moment. That would be done in the same classification system as the rest of the employer network.

Mr DELAHUNTY — For your information, it was interesting that in this report we found that education, health and community services took up about 30 per cent of the labour hire employees. When we look at the number of employees — these are the 2000–01 figures; they were the best we could get — more than 1 million employees were in the health care and medical area. There is a big area there that was using labour hire. I am interested in how you look at it from the VWA's point of view and going back to that definition. A lot of industries use it. We know the focus of this report has been on occupational health and safety but, as you said, with OHS 33 per cent of them come from the white-collar workers.

Mr PULLEN — Just one thing, Brian. Our recommendation 5.1 on page 78 says:

> The committee recommends that the Victorian government establish a labour hire registration system, to be located within the Victorian WorkCover Authority …

On your paper here it says that the VWA does not support a specific OHS regulation for the labour hire sector. The second paragraph on page 2 says:

> Traditionally discrete licensing systems in OHS policy areas are reserved for the most significant hazards and where there is a clear benefit to the broader community, like the systems used to license and monitor major hazard facilities …

and so on. What sort of licensing system is that? I am not that clear on what it is.

Mr SHEERS — We have systems, as mentioned here, where we would licence either an operating company or an individual in the main to provide certain evidence of having met OHS standards, to a very high standard obviously, over significant hazards, such as these where you have a risk potential that is unacceptable if those standards were not to be met. Major hazard facilities are typified by the large chemical-using and manufacturing facilities. Under the explosives suite of regulations there are different licence types. You might be licensed to sell or use, that sort of thing. There is a range of these where the hazard is considered to be of such high consequence that these regimes are needed. They are often very expensive.

Mr PULLEN — What is expensive?

Mr SHEERS — The cost of both the operator meeting the licence requirements as well as the administration of that licensing regime can be quite costly, but again that is usually justified in a regulatory impact statement, that the cost benefit is there.

Mr PULLEN — The reason I raise it is the removal of asbestos. I am led to believe that there are a few, they may not necessarily be from major hire companies, individuals now starting to do this, which places a lot of people at risk. If a company had to employ five or six people, or something less than that, it can do it without registration, or is that not the case?

Mr SHEERS — An asbestos licence, a removalist's licence, would not have any of those criteria. It can be an individual getting that licence.

Mr PULLEN — If they do it without a licence?

Mr SHEERS — They have broken the law.

Mr BOWDEN — I have a question on which I would be most interested if you could pass a comment. From time to time there is a suggestion that either industry-specific or site-specific circumstances report industrial relations disharmony and difficulties between a union and the employer. That can be the labour hire employer or it can be the site host employer. Often the suggestion is that the disputes are over occupational health and safety things on which one would expect WorkCover to be potentially in the background. I am just wondering if WorkCover is ever called on occasions to arbitrate or offer an opinion when you have those at times quite distinctive differences of opinion based on health and safety issues between employees, representatives and so forth, and an individual enterprise? Do you have an arbitration role? Do you give opinions? Are you ever asked? If you could just give me a flavour on that I would appreciate it.

Mr SHEERS — Certainly. Our inspectors are often called to those situations, as you described them, and the role of the WorkSafe inspector in that situation is to look at the health and safety matter on its merits, form an opinion as to the validity of the OHS matter as either a matter that needs to be dealt with under the act — a compliance or non-compliance, essentially — and then they would use our current compliance and enforcement policy in those circumstances to either issue a notice or direction or accept voluntary compliance on the day, that sort of thing. The difficulty for an inspector in those situations is to make sure they are well outside and above whatever is the industrial relations component, and just deal with the physical health and safety matter that is presented to them. By and large that is what they have to do — make sure they are what I used to call playing a very straight bat. It is about health and safety, and the other matters that might be influencing that situation are outside our scope.

Mr BOWDEN — Those opinions are documented?

Mr SHEERS — Certainly. Every visit that we conduct is documented in a field report, and if an inspector formed the opinion of a non-compliance, then that can be, as I said, dealt with under voluntary compliance. That would be in the field report. If it cannot be complied with on the day, they would issue a notice which is also documented and attached to that field report.

The CHAIR — I draw attention to page 3 of your submission. You have indicated that the VWA will implement a compliance and enforcement program which:

> will be supported by the development of sector-specific guidance material that will provide 'minimum OHS standards and procedures for the labour hire industry'.

We welcome that advice because it is very much in keeping with our recommendations, particularly recommendation 5.2, but I just want to quiz you on this program. Firstly, is it going to be a continuous program or is it one which the authority is aiming to have a go at it for six months and then come back and have a look at it a year later? What is the thinking?

Mr SHEERS — With all our programs that we are running where we have targeted a certain hazard or sector of the market where we believe there is a risk concentration that needs to be improved, we plan that program out and then evaluate. We are also very conscious of sustainable change, so in the evaluation of the success or otherwise of a program — and this would be true of the one we are talking about here — we would be evaluating it at critical points through that program. Is it making a difference or not? Are we having the desired effect on the

industry or the hazard or the issue at hand? And we would be looking to form some opinion over the sustainability of what we have done. To the extent we believe it is not sustained we would continue that program until we felt there was a sustainable change occurring in the market.

That is always our goal going into those. We do not tend to enter these things without that. The exception to that would be what we call a blitz-type program where it is about a very specific issue, and we get in to raise awareness in the market through a quite concentrated and short-lived style of program. They tend to need recurrence over time. But by and large this type of program would not be run as a blitz. It would be a more long-term approach, and that would be subject to annual business planning within the VWA.

The CHAIR — The committee noted the research done by Elsa Underhill and the material provided to us by the authority on injury rates. The feeling is that the labour hire sector's above-average injury rate is not going to be tackled successfully by just a blitz; it has to have a continuous focus by the authority, and we appreciate that advice. With regard to the guidance material that will provide advice on minimum occupational health and safety standards and procedures for the labour hire industry, I gather those will cover things such as workplace induction, risk assessment — the sorts of things we have outlined in our recommendation 5.2 — looking for a whole suite of those things? We have also included the provision of personal protective equipment and OHS training. Although that list is not exhaustive, we have the luxury of being armchair critics on this subject. We do not actually spend our days involved as you do.

With OHS training, one of the unions put to us a submission that there should be mandated OHS training days, and we understood that to be a pro rata arrangement for the labour hire sector, the theory being that labour hire workers are being placed into different workplaces and therefore have more of a need to have some refresher courses on this than perhaps other employees. Do you have a view on that as an authority? I mean, if we were to work on a number — say there is pro rata for a full-time employee and a full-time employee gets four a year, or something like that, then the company would provide the equivalent standard of training for a day.

Mr SHEERS — I guess we have not turned our minds to that specific level of detail. My initial reaction to that type of thing is that we would expect the training to be effective, and I guess we as an authority are often trying to ensure effectiveness rather than mandate activity, as the option you have just presented. Having a number of days of training that are not effective will not really solve the problem. We will be trying to form, as part of our program and our guidance, a clearer indication of what effective training looks like and is, and then leave it to the market to achieve that performance standard in the training rather than quantifying a number of days.

The CHAIR — Can I also ask about minimum OHS standards and procedures? One of the things that struck me when looking at the submissions in this inquiry was that apart from one reference by Skilled Engineering to a standard that it has in place, no-one else is using benchmarks at all. They say, 'We have got induction procedures', but it does not relate to any benchmark or national or international standard as such. I am not sure that the standard Skilled Engineering quoted was actually an OHS system. I think it was a compliance system or something against which OHS can be measured. Has the authority got a view as to what would be an appropriate standard? Is it a matter of starting with a clean sheet of paper and developing one or a series?

Mr SHEERS — We can certainly be informed by other jurisdictions. From a national perspective South Australia comes to mind as one of the lead agencies that is placing some benchmarks in the market for us to be informed by. But part of our approach here would be again to establish the benchmark for the industry in Victoria through the guidance material. The current best practice we have for guidance is certainly clarifying what is an unacceptable standard, what is an acceptable standard and what is the aspiration — what would be very good practice, if you like. We would be hopeful of applying a similar clarification for this industry. It gets down to our making sure that we are focused across the main issues for this industry and setting standards for each one.

It is a bit hard for me to answer this question in specifics. For induction training that is clearly a key component when you have got someone being placed into a new workplace, whether for a shorter or longer period of time. We would be trying to establish clarity in the market of what would constitute good induction training, what would constitute unacceptable levels and where there might be some interim controls, as we call them — the halfway ground towards attaining best practice.

Mr JENKINS — I was listening to the last answer and trying to get some clarity. It did not seem to me to be all that clear on what you are looking at. You talk about clarity but seem to be shying away from setting a

benchmark or a standard that can be evaluated externally, if you like, and coming up with suggestions in the ballpark of what might be good, what might be not so good and what might be excellent and something to get to. That does not seem to be all that clear. I am trying to work out why the VWA seems philosophically opposed to having some standard regulations to say broadly that in this sort of industry people must understand this, this and this. That is the way it came across, or am I not getting it right and there is more clarity than that? Or is there some philosophical problem with having standardisation on the health and safety front?

Mr SHEERS — No, we certainly aspire to our guidance being as clear as you just said, so there is not much, if any, doubt left as to what is required. Certainly we can after the submission today provide you with — —

Mr JENKINS — Some examples would be good.

Mr SHEERS — Yes, provide information on where we are going with that and what we have in draft at the moment. Sorry if I have made a meal of this answer, but the intention is to be very clear on an element we have chosen — and there will be a number of elements in good guidance. If we pick on induction training, we are very clear about the standard we expect to be achieved. We are often aiding that by making sure that we say what is unacceptable. We understand that might be where some of the industry is starting at. We certainly offer some people what we call 'interim controls' — you have to walk before you run — and so we may say we can do it this way as an interim step, but we want you to get to here. That is acceptable but perhaps unsustainable. That is the shorter term focus. But we need to get some control in place, and in the longer term you need to be here. That is needed more, I suppose, with high-cost solutions.

I am struggling to think of one we are seeing in this market, because often the controls that are needed for this type of thing would be, in the main, procedural and not perhaps a huge investment in plant and equipment needs, although PPE and some other equipment needs will be there. But in this case it might be a bit simpler for the industry to understand its requirements and get there in one step rather than two. We can certainly follow up with some more detail, if you would like, on what we are proposing in the labour hire sector.

Mr JENKINS — On the issue of the avoidance of premiums and abusing the mechanism of labour hire, and the example of a company being a labour hire firm through that door to an office and through another door to a meatworks — to make a hypothetical out — currently the premium is based on the labour hire agency's premium for all its employees. Let us say, for instance, that half of its employees are hired out to the meat industry and half of them are agency nurses — that is a pretty good mix, I would have thought! Currently how does the premium apply, and with the new code how would the premium apply?

Mr COOK — In that case currently what happens when you have one area from blue collar and one from white collar is that it would be the predominant activity — where they predominantly place people gives them their classification. Then from that we would use the experience of the labour hire organisation built up over a long period of time. So you have the two classifications, and that is it. It is based on the predominant activity of where you are hiring people to. The proposal is that we would classify all the workplaces a person went into. So meatworkers who go into meatworks would be classified, for industry-rating purposes, as the meat industry rate. If nurses are going into hospitals, they would be classified at hospital rate, and so on. So it would break it up, and you would get a better reflection of the underlying risk — if you want to use that term — of the activities undertaken by the people being placed. On top of that we would look at the three-year history of the employer against those industries, where the employer in this case is the labour hire organisation. So you would not be comparing their history against the history of the labour hire organisations, wherever they might be, but against the industry in which they are placing people.

Mr JENKINS — So in the new system they would be paying a premium based on that history in the same way as they were in the past, but then depending on what percentage of their agency staff went out to one agency or another, there would be a mix of that premium that applied, or would you still look at the predominant activity?

Mr COOK — No, you would have the mix. You would not be looking at predominant activity; it would be segmented.

The CHAIR — Does the VWA currently have a medium- or a longer-term target injury rate for the labour hire sector? I ask that because we spoke to Elsa Underhill at length and we spoke to the Authority before our first report came out, and we understood that the injury rate is about 50 per cent higher in the labour hire sector. It does not matter which way you slice it, it comes out as being unacceptably higher. If that is the motivation for us to

make recommendations as we have, and I understand some motivation for the Authority to tackle the problem in the ways that you have outlined, is there an objective to get it down to a level of half of what it is now, or reduce it by any ballpark figure in the next few years?

Mr SHEERS — We have only set global objectives in our business planning at this stage, in line with the national OHS strategy that NOHSC has agreed, and our minister has signed up to, but in achieving those global reductions we obviously have to focus our efforts to where there are higher than average rates of injury and then work on those. I do not believe we have set an actual figure for the labour hire industry in our current program. However, in developing the program in the business planning cycle we are in now, the compliance and enforcement program referred to in our submission would set aspirational goals for injury rate reductions as part of that evaluation of are we making a difference or not. But that would be under a suite of indicators of are we making a difference or not, so we would certainly be looking at lead indicators as well, some improved risk control in the market, and that sort of thing. But ultimately we measure our effectiveness in a lot of cases — not all, and it would certainly be applicable to this — by tracking our injury rate and aspirationally setting goals to see that come down. We have not done that work in the business planning to that level of detail yet this year. My feeling is that under the new system we would certainly be looking towards at least achieving a situation where you are no more at risk working in an industry sector as an labour hire employee than a regular employee, and that is just a logical aspirational goal to have.

The CHAIR — A statement of principle.

Mr SHEERS — A principled goal.

Mr DELAHUNTY — Rob and Brian, we have received a lot of submissions and other material. We received material which said that if a job is unsafe it should not be done. Does WorkCover also take that approach?

Mr SHEERS — The new act has specified objects and principles as part of it, and that is just a re-wording of some of the principles in the new act. One is that people should have the highest level of protection in Victoria. The limitation in our act is the practical limitation of what is reasonably practicable, of which cost is a factor. But having said that you would have to be assuring yourself as an organisation that you are not transgressing that principle that you talked about there — that is, that you are not asking people to do a job that is unsafe.

Mr DELAHUNTY — My position is that we have to minimise risk, because different people have different work placements and different risks will entail. You and I are pushing pens most of the time and listening to people, whereas for a firefighter there would be an element of risk. It is about minimising risk. I do not like the statement, 'if it is unsafe'. Driving on the road is unsafe, but does that mean we do not travel down from a country electorate to come to Parliament because it is unsafe? It just cannot be done. This leads me into one of the committee's recommendations — that is, recommendation 4.5, which was dealing with hold harmless clauses. I note in the submissions that I have read from the VWA that you have not made any comment about that. As a committee we are not comfortable with those clauses in contracts. Does the VWA have a position on it at all?

Mr SHEERS — I would probably refer to the previous submission by our CEO, Greg Tweedly. There are statements in it to that effect. I would be paraphrasing, but it would probably be best to refer to what we did say.

Mr DELAHUNTY — I apologise if Greg has made comment on it. If he has made a comment on it we probably do not need to go further.

Mr SHEERS — It was only briefly mentioned as part of the slide packet that we submitted last time. If I was to paraphrase them, it would be that we regard them as ineffective. I was trying to remember the exact words, but that is pretty much how we see them.

Mr DELAHUNTY — So you have made comment?

Mr SHEERS — Yes. Certainly that has been borne out in our prosecutions. The effectiveness of them is limited to cost only. They certainly will not hold you harmless under our act for your breaches and prosecutions.

Mr DELAHUNTY — It is interesting that your submission says that you can only take it to the host employer. It says you can claim your funds back accordingly. I think that is what it says.

Mr COOK — I think that is to do with recovery. A premium system works against the employer. In this case it is the labour hire organisation, but where there has been negligence in the workplace and injury caused, we have the rights of recovery, so we go for those recoveries.

Mr DELAHUNTY — So you can go not only to the host employer, but go back to the — —

Mr COOK — No, we would go to the host employer because they are not covered by the Accident Compensation Act. That is my understanding of it.

Mr SHEERS — Under the OHS Act we have certainly enforced compliance on both parties, and have dealt with investigations and prosecutions. I think Greg's submission last time summarised some of the outcomes. But certainly hold harmless is ineffective under our act.

Mr COOK — Rob is talking about the Health and Safety Act.

The CHAIR — In the few minutes that is left to us I want to touch on the old chestnut of the illegal work force. This has come to us through a submission very recently from the AWU. It is an issue which the committee is familiar with by virtue of its two previous inquiries into the culturally diverse work force and rural exporting industries. Particularly up around the Goulburn Valley and Sunraysia, a constant complaint every summer of the picking season is that there are people providing labour illegally. They are not registered with WorkCover, they are not paying any of the taxes we associate with those industries, and this creates a real problem for the AWU and others. We understand that the other side of the coin is that whether we like it or not the illegal work force satisfies a demand that growers have, and they get very frustrated about it. But I think it is fair to say that the AWU's perspective is that it does not believe enough action has been taken to stamp out the illegal providers of labour in rural industries. Do you have a view on that? Do you have any estimates as to the number of people in the hidden work force?

Mr COOK — In a sense for premium in the Accident Compensation Act those workers are covered and they should be declared. If we pick them up through audit activities and things like that, then there would be penalties for not paying premium on them. It is not the workers who register with WorkCover. They are automatically covered by the act as a worker, then the premium follows that activity. We would certainly see them as being covered for premium purposes.

The CHAIR — Sorry, I will just clarify that. That would not necessarily be the case if they were temporary protection visa-holders. In our previous inquiry we understood that quite a few TPVs were engaged in picking. We did not ask the question as to whether they were picking in a legitimate way or were working in a way that was not legitimate. Would a TPV picker be covered as you have just outlined?

Mr COOK — You are probably getting into a level of detail for which I do not have the information. I can certainly find out for you, but in general if they are workers then they are covered. My understanding was that resident status did not affect that. There might be some other legal implications.

The CHAIR — A head is nodding vigorously behind you. In fact we have two heads, so we will take that as — —

Mr SHEERS — Certainly under the OHS Act they are protected whether they know it or not.

The CHAIR — In that case the real villain in the piece is the organiser of that labour, who we assume for the purpose of this discussion is not paying a premium on behalf of those workers and is just operating with a mobile phone and an address book.

Mr COOK — Again it would depend on the arrangements, whether the person who is employing them is the organiser or whether they are organising on behalf of the operator of the organisation that is doing the picking, or whatever. I am not sure, but certainly there will be somebody there who will be deemed to be an employer, and we would expect that they should be declaring premium and be registered.

The CHAIR — How many cases have there been in the last few years of these people being picked up and being prosecuted — that is, employers who are not paying a WorkCover premium?

Mr COOK — I am not aware of the numbers of that particular group of employers, but we have a uninsured indemnity scheme which covers the claims and costs. As a result of that we take action against employers who are not registered. There are penalties, and they can be held liable for claims, costs and so on. We are recovering costs as we can and also applying the penalties.

The CHAIR — It would be hard to follow them, though, would it not, if they do not have a post office box?

Mr COOK — It certainly is, yes.

Mr DELAHUNTY — I am not sure if you can answer this question now, but do you have a definition of contractor with you, or can you give it to us?

Mr COOK — There are two parts within the Accident Compensation Act which define a contractor and a deemed worker, and things like that. We can provide you with those details. They are complicated parts of the legislation, but we can certainly give them to you.

Mr DELAHUNTY — So you have got that defined?

Mr COOK — It is defined under the Accident Compensation Act, because it defines who is a worker, essentially, and therefore who is eligible for benefits.

Mr DELAHUNTY — Is it done on hours of work per week compared to where they work at other things?

Mr COOK — No, it is more on the contract of service, and whether they are holding themselves out to the wider world to provide services. But I can give you some more detail on that.

Mr DELAHUNTY — I live up in Western Victoria and if there is some criticism of the VWA it is that there is not enough understanding of the definitions of things like contractor. One example I have is that silo manufacturers cannot get information from the VWA of how they can attach a ladder on the sides of silos. So now they are not doing it. They are not putting them on the sides of silos, so farmers and those people buying them are just putting something there. It could be an old wooden ladder they have in the back shed, which is far more unsafe than what was there. Those types of things would be very beneficial. But I have digressed a little bit; I had better not wear out the chairman's hospitality.

The CHAIR — It is all right. It is 28 minutes past 2. You have timed it well once again. I do not have any further questions. Thank you very much for your time. I apologise for our late start but it has worked out quite well and I think we got all we needed. We look forward to getting more information from you, as we have mentioned. This report is due by 31 May, so our intention is to both get some commentary on the recommendations we have made — and you have done a good job in providing us with detail today — as well as canvassing a range of other issues that we were not able to spend too much time on up until now. We thank you for your time.

Committee adjourned.