

CORRECTED VERSION

ECONOMIC, EDUCATION, JOBS AND SKILLS COMMITTEE

Inquiry into portability of long service leave entitlements

Sydney — 1 December 2015

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Ms Dee Ryall — Deputy Chair

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Mr Bryan de Caires, Chief Executive Officer, and

Mr Chris Delaney, Industrial Relations Advisor, Australian Security Industry Association Limited.

The CHAIR — Okay, so Bryan, Chris, allow me to welcome you to the hearing, of course it's a public hearing for Economic Education, Jobs and Skills Committee Inquiry into the portability of long service leave entitlements. All evidence taken at this hearing is protected by parliamentary privilege in accordance with the reciprocal provisions and statutes in Australian jurisdiction as if you were giving evidence in Victoria. Any comments you make outside the hearing may not be afforded such privilege. Any reporting of these proceedings enjoys qualified privilege for fair and accurate reporting as if the proceedings were in Victoria. Hansard is recording today's proceedings, we will provide a proofed version of the Hansard transcript so you can correct any typographical error. You will make an opening statement and the Committee members will ask some questions. Allow me to introduce the Deputy Chair, Dee Ryall, Don Nardella, Jeff Bourman, Peter Crisp, Chris Fyffe and Cesar Melham. Please state your name before you start.

Mr DE CAIRES — My name is Bryan de Caires, I'm a CEO of the Australian Security Industry Association and my colleague is Chris Delaney who is our industrial relations adviser. So firstly thank you for the opportunity of addressing the Committee. I suppose what I want to do is make a very brief two or three minute opening address, I'll get Chris to give some more specific comments in terms of some of our concerns that we would have. But to just give you some background, ASIAL is a nationally registered industrial organisation of employers. We have about 2700 members across Australia which includes a mixture of small, medium sized businesses through to the multi-national organisations.

In Victoria we have about—I think it's about 640 approximate members that operate within the state of Victoria. I think nationally you're looking at about 130 000 individuals who work in the security industry. In Victoria there's just over 27 000 licensed individuals who work in the security sector in a range of activities, including security officers, patrols, a whole range of activities. In most cases they are covered by awards, so some of them are covered by the Security Services Industry Award. There's the Cash in Transit Award, so depending on the activity they will be covered by a different industrial instrument.

I think one of the things that is probably worth noting as an industry there is a large proportion of the workforce casualised—due to the nature of the work there is a lot of casual employment within the industry. Another key thing is that the industry is often an entry point for a lot of people getting into the workforce, as a launch pad into better paying professions, so it's very much an entry level role that people come into and seek to move on to something else once they have established themselves. So I think that's pretty much—I don't want to go on for too long but that just gives a little bit of a snapshot. What I may do is I will get Chris then to give you some more specific concerns.

Mr DELANEY — I'm Chris Delaney, Industrial Relations Adviser for ASIAL. Just following on from what Bryan has said with respect to the casualization of our workforce, and before I go on to some other information, it's probably fair to say that many of those casuals are casuals with second jobs. They might have a primary employer in another industry and they will be working maybe Friday, Saturday night or a couple of days a week or evenings a week to supplement their first income. So that's important to know because that would be a significant percentage of perhaps those people who would be involved in things like venue protection, crowd control, those jobs that are just a couple of days a week and there are many of those.

The industry suffers from very, very low margins. Ibis World Industry report in August 2015 on the security services industry identified the industry has a very high employee turnover due to low average wages and often very difficult working conditions. Cost pressures, intense competition, low profit margins are expected to drive a decline in smaller operators increasingly out of the business and because of the financial burden that exists in the industry right now. Profit margins are forecast to decrease as costs rise and the pricing growth eases. Overall the industry profit is anticipated to fall from 7.2 per cent, which is incredibly low anyway as a profit margin you would appreciate, down to about 6.7 per cent by 2020, 2021. So that's a long way out but we are identifying that there are very low profit margins and there's a lot of stress on those margins and I'll go on to talk about that in a moment.

Obviously management of labour costs is very important in our industry and we are constantly discussing with our members their difficulty in meeting those labour costs. To that end a couple of years ago ASIAL approached the Fair Work Ombudsman to discuss some issues that it found in local government tenders. What we identified was very often local government, and the same holds true for state and federal government, but very often local government were letting tenders at the lowest possible price and in doing that put a lot of pressure on margins and we found that quite often the price that was being set by local government was less than the wage costs plus on costs that a compliant provider would offer and we reached an agreement with the Fair Work Ombudsman a couple of years ago that we would start a compliance campaign.

Early in the campaign in 2014 it was an education campaign to educate local government in their responsibilities in ensuring their contractors were compliant and particularly private security providers. That campaign ran for about 12 months on the education side, realising that section 550 of the Fair Work Act required that people not knowingly be involved in a breach of the award. As we speak that compliance campaign is now an auditing campaign and various local councils are being audited around the country by the Fair Work Ombudsman to ensure that their security contractors are compliant with awards and legislation and that these tenders have been let properly with due diligence.

The effect is that at the top of the supply chain when the demand is put on the tenderer to come up with a low price we find that the tenderer decides that he will use a sub-contracting arrangement, in all probability a sham sub-contracting arrangement or we'll go to what we call ABN holders, and because of some legislation in Victoria with respect to security licensing ABN holders are allowed to operate a business without having a business licence. So they sort of fall under the radar a little bit and unscrupulous employers will engage those people at very low rates in order to get a contract and when you've got the council pushing the contract price down that seems to happen, or they might use some—I'd better be careful what I say—some dubious labour hire arrangements that allow people to be paid less than award rates of pay.

We have worked—I'm going to say tirelessly and it has been tireless with the Fair Work Ombudsman to avoid that. But it doesn't stop that skinny margin from existing right at the top and when we start to talk about the environment that we're in right now where there is a Senate inquiry into portable long service leave. You have got your inquiry into portable long service leave, the costs of which would be somewhere in the vicinity of 1.6 to 2 per cent, that's going to come off the margin and there is no productivity increase that comes with that. We know that in our industry it is a high turnover

industry, it's an entry level industry.

It's an industry where wages are low and where margins are low. It is an industry where employees don't stay in the industry, they leave it, they move on to other more lucrative positions and very often it's migrants who enter our industry who have come from overseas who may not understand the proper laws supporting them in terms of employment law and they are moving through from this industry to another one eventually and because they don't understand their rights as employees, unscrupulous employers can take advantage of that and we end up in that situation that we were talking about earlier. So margins are driven right down and compliant employers are missing out on work and finding that they've cut to cut their margins to as skinny as possible to get work.

I might talk about the ACT in a moment where we do have a portable long service scheme which has fairly recently been introduced, but before that we find that most of the employees who would eventually be entitled to long service leave in some way or other are already with their employer and being engaged and would work to their 10 years or 15 years and so on. But many employees who might be the beneficiary of a portable long service leave scheme will never see that money. It will be contributed by their employer and it will go into a fund, but those employees will leave the industry before they have even hit five years of service, they will leave the industry and go into another industry. So they won't ever see any benefit arising out of that.

We find, and Bryan alluded earlier to the fact that many of our members and many involved—up to about 80 per cent of those involved in Victoria and other states of Australia in the security industry are small enterprises, small to medium and they have reported to us that they suffer cash flow problems for instance and if they have to make contributions on a regular basis throughout a year or whatever, that does come to affect them. They also find it very difficult to pass that cost on and because most of them don't take any provision for those costs, so until an employee has reached five years many of their employees that they would make a contribution for don't get to that five year period and they can't recoup those costs from their client.

We have seen the VECCI report and we've seen the ACCI report as well. We support those views, we don't make any comment about whether portable long service schemes are archaic in nature. The world has changed, we will change with it but the costing impost we think on our members would be significant, particularly amongst those who are the small to medium enterprises. I think that's about all I have to offer.

The CHAIR — Thank you, Bryan and Chris. How was it that portable long service leave in the security industry in the ACT operated and have you heard any members raised any concerns?

Mr DELANEY — Yes, look, we were involved in the discussions surrounding portable long service leave in the ACT. The rate that's deducted in the ACT is 1.68 per cent for security companies—security employees. Our information from our members is that the administrative costs that is on top of that for them to create all of the paperwork and so on to go with that scheme takes it up to about 3 per cent. It sounds a bit high but that's what they tell us. We haven't got any definitive information on that.

Mr BOURMAN — How does it go up to 3 per cent?

Mr DELANEY — The ACT is somewhat unique and with the scheme there you will realise there will be people who work outside of the borders of the ACT and inside the ACT. Employers have to separate the time that people work in one jurisdiction and in another and that pulls it up to that higher rate. They also have to run obviously a separate payroll type system for it but I haven't got any definitive information on how that comes up. Our members have told us that it runs up to about 3 per cent for one of the major organisations that's working in the ACT.

Mr CRISP — That's what we used to call cross border problems.

Mr DELANEY — We would imagine that those problems would occur, there are all sorts of other problems that occur in border regions with industrial relations and payments and so on, they've been fixed a little bit by changes in going to a federal system of awards. In the old days we'd have a Victorian employees' award on one side of the border and a New South Wales one on the other side of the border and you'd have to split the rates of pay.

Ms FYFFE — That was before computers.

Mr DELANEY — Yes, it is, well even after computers we had that for a while. But we also have licensing issues either side of the border and we even have, believe it or not, issues about whether a public holiday applies to an individual on one side of the border versus the other side of the border and even within Victoria. I mean you can have the Bendigo picnic races. If you live in Bendigo and you want to work in Bendigo you go and get double time and a half on that day, but if you leave the Bendigo picnic races security to somebody who comes from Melbourne and they bus all of the people up, those people only get paid single time. So nobody in Bendigo gets any work for the Bendigo picnic races. So there are all these border issues and those sorts of things and that imaginably could happen with the portable long service leave scheme.

The CHAIR — Deputy Chair.

Ms RYALL — Thank you. Can I sum up what you have said in relation to the movement out of the industry and the low margins? Essentially business and small business are paying in and that money ends up sitting there, never to be seen by employees and never to be recouped for reinvestment into the business in terms of training or recruitment or whatever it is that the company can do that, so essentially creates a net block.

Mr DELANEY — There's no productivity gain for the employer, there is absolutely no gain in paying an extra 2 per cent or whatever it might be for portable long service leave. The employer gets nothing out of it.

Ms RYALL — I take your point on the changes going through in Victoria, we won't go into those at the moment in relation to councils but actually may serve to put further pressure on tendering to lower costs.

Mr DELANEY — We would be encouraging all levels of government to recognise what the actual costs are of providing employees into any tendered arrangement and take the lead, quite frankly.

Every day—I take these phone calls personally so every day I find somebody who is ringing me up saying I missed out on a tender by \$300,000, they couldn't possibly be paying the right rates of pay and when we investigated and we don't have very strong investigative powers, as you would appreciate, when we investigate it we find that, you know, somebody is using sham sub-contracting arrangements or they're underpaying wages or you know, they might be doing something like 7 Eleven has done in Queensland, perhaps I shouldn't mention that but using people who aren't aware of what their rights are in terms of the law. I'm not going to say it's rife in our industry but it is a problem in our industry.

Ms RYALL — So if margins are decreasing over the next five, six years according to what you've ...

Mr DELANEY — That was the Ibis report that is the Ibis World Industry report 07712 investigation and security services in Australia dated August 2015. That's an independent report that comes out from time to time.

Ms RYALL — So if margins are strapped, already tight. Not strapped but tight already and they're decreasing, what do you see is the impact on employment in the industry?

Mr DELANEY — In terms of employing extra people what we think the impact will be is that the smaller operators are just going to go out of business. They will have a cash flow effect as well as the extra cost. They will either go shonky, quite frankly or they will go out of business or they'll start trying to use contractors so that they can avoid some of the on-costs that exist. On-costs in the security industry are around about 30 per cent, so you have an employee worth \$20 an hour, that's the minimum rate, \$19.40 for a level 1 security guard, so say \$20 and you've got all of the on-costs that exist, you know what they are, annual leave, sick leave, insurances, public liability, sometimes professional liability, workers comp, it all adds up and gets between 25 and 30 per cent, throw another 2 per cent into the mix. If you use an ABN holder or a sham sub-contracting arrangement you're 30 per cent better off than the guy who is paying a direct employee.

Ms RYALL — So to sum that up, it's either go out of business or don't comply ...

Mr DELANEY — Go out of business, don't comply ...

Ms RYALL — That's a consequence of not complying.

Mr NARDELLA — There is also the Tax Office, there is also the Fair Work Ombudsman that you've been working with.

Mr DELANEY — Yes.

Mr NARDELLA — So there's a number of ways of dealing with this, not just saying ...

Ms RYALL — No, but the question was more about what will be the impact on employment, that was the question.

Mr DE CAIRES — The industry's still growing, particularly the manpower sector which is seeing

more and more services being outsourced, so a lot of activities that used to be done in-house is now being outsourced, as an industry if you look at the security threat around the country and around the world, there is a growing demand for security services. We cover both the manpower and the electronic sectors, which includes alarm installation, cameras and all that sort of stuff. On the manpower side the big issue is margins, is to make sure that—and the challenge we have, we try and make sure our members do the right thing and the feedback we often get is if we do the right thing all the time we're not going to win another contract and we're trying to say no, you've got to keep going, you've got to do the right thing so that's why as I say initiated that campaign on the approach to our work to say let's educate government.

Hopefully government can lead and we'd like to see state government getting on board and basically go for best value rather than the lowest price because we see it in other states the use of ABNs as a way to work around your obligations and all the entitlements by just calling them an ABN holder and they do the work. So as Chris said, the big companies employ a lot of people but there's a lot of little companies around the country who employ people and also contract to the bigger guys who don't have the geographic footprint to cover every corner of New South Wales, Victoria because it's a big country and they don't have operations in every single corner so they do have to sub-contract but everybody along the way has to make a buck basically and the person at the end of it is entitled to be paid a fair day's wages.

So trying to get that is difficult when the price is really compacted at the top and procurement is driving it down to the lowest common denominator where you can't meet entitlements legally, so you push other models like sub-contracting or some of the more questionable labour hire firms. So it drives it down to the lowest common denominator which from an employees' point of view is not the best outcome and then from the client's point of view because they may have people turning up who are probably not competent or capable of doing the job they're employed to do.

Mr DELANEY — I just want to expand on that, on your statement a little more Mr Nadella. I absolutely agree that there are regulators who can do something to assist that process of people not paying the right rates of pay and so on. We work very closely with the Fair Work Ombudsman, in fact five or more years ago we made the first approach to the Fair Work Ombudsman to take our industry for—and perhaps this is something the union should have been doing, but we asked them to take our industry as an industry for audit and they did that and they found a significant level of non-compliance in the industry. They went back a couple of years later after we got involved again with them on an education campaign for our members and for the industry generally. We spent a lot of time and effort doing that. They came back again and found that compliance levels had improved dramatically.

Since then I think yes, there has been an increase and improvement in compliance levels. But wherever you've got really skinny margins there's always going to be somebody who wants to find a way around those issues and we are constantly looking at those, we talk to the Fair Work Ombudsman about it quite a bit. But one of the things that we find, and I will use the term that the Fair Work Ombudsman uses with us and that is that without a warm body the smoking gun is not much good. The greatest difficulty we find is the employee who will not make a complaint. The ABN holder, perhaps, or the so-called sub-contractor or the person getting cash in hand doesn't want to make a complaint because very often they are complicit with the situation.

Mr CRISP — In your submission you talked very much that the majority of employees will never qualify for long service leave, but what we're looking for is some data around that which is really your worker recruitment retention data for your industry and perhaps with the scheme the ACT has recently introduced. Does it have a mechanism within its legislation to capture that retention or the comings and goings? So we will have good data about the advantages this may or may not offer?

Mr DELANEY — We had hoped to have that data for you today but as of sitting in the chair over there 10 minutes ago it hadn't come through to us from the ACT unfortunately, so I can only give you anecdotal information on that.

Mr CRISP — Our Inquiry has a little time to run through the Secretariat if that data becomes available could that be submitted to the Committee, please?

Mr DELANEY — Indeed.

Mr DE CAIRES — Another possible avenue, I'm not sure if the regulator in Victoria may be able to help as we don't have that data but as they issue individual security licence they may be able to provide a report of when those people first applied and whether they have maintained that licence, so you would have a bit of an idea then—we don't keep it so that's coming straight from the regulator there, they capture the date of issue for the first time that an individual was issued a licence and how long they carried on working.

Mr CRISP — I think that's some research the Committee could undertake.

Ms RYALL — Because they have to do something.

Mr DE CAIRES — So to obtain a licence you have to meet certain criteria requirements, so you have to apply for a new licence every year, I think three years, so they would go to the regulator to apply, they can't work without this licence.

Ms RYALL — It looks like just the beginning.

Mr DELANEY — Yes, you'd see the churn from that.

Ms RYALL — If they don't have to do anything to maintain it for a year or two years?

Mr DE CAIRES — It lapses. It's a finite period, so you get—I think it's one year or three years, but once it's gone if you don't renew it, it's gone.

The CHAIR — Sounds good, Cesar.

Mr DE CAIRES — They can have quantitative data really.

The CHAIR — All right. Cesar.

Mr MELEHM — Thank you. I think most of this is that employers would like to have a return of 6 or 7 per cent but I take it—and I accept the industry is very competitive and I think you've some difficulties to work with, there's no question about that. Would it be ideal then what you're saying about compliance which I agree with you should be there in legislation then to say you cannot put a tender out below award rate plus on costs. I mean do they mandate that? I mean for example say governments can do that for their own tender, local government can do that, federal government can do that, so the tendering process is award rate 20 per cent, \$20 for example, say the on cost is 25 per cent or 30 per cent including long service leave and that should be the minimum rate of which nothing below that. Would that fix your problem?

Mr DELANEY — Well that would solve the problem of contracts with government. I don't know that it will solve the problem of contracts with anybody else.

Mr MELEHM — So you can't enforce that?

Mr DELANEY — But section 550 of the Fair Work Act already says that if you knowingly or should have known that your contractor is not compliant and you get involved in that contract, then you can be liable for any breach. Now, I don't know whether you're aware or not but there's only been half a dozen or a very small handful, if you like, of prosecutions in that area and they're very hard to get and there have been some areas where eventually the Fair Work Ombudsman and the respondent employer or organisations reach some accommodation, some agreement about how they might proceed in the future. We're depending on that part of the industrial legislation in our local government procurement initiative. But certainly we would welcome any legislation that created that situation for members. But that's one part of the iceberg and there's the rest of it. You know, most times clients just say look, it's not our problem, we don't care what you have to pay your employee.

Mr MELEHM — It's down to you.

Mr DELANEY — Well it's amazing because frankly we know people who say to us, well look, they're just not going to pay me enough money to do the work. We say well don't do the work. Usually they expect our members to under-pay their employees to get the work.

Ms FYFFE — They still expect the quality.

Mr DELANEY — Yes, they do expect the quality and then complain about the quality when they're paying peanuts for it. Look, it's a problem in our industry we've been working on for years and will continue to work on because part of what ASIAL was about is improving the professionalism of our industry.

Mr MELEHM — Just to follow up. It's part of—you know part of your tendering process for example, your members will tender for a new contract. Is long service leave components taken into account for example as part of the tendering process or similar to the cleaning industry for example which is quite common, they build in a component. Is that the same in those ...

Mr DELANEY — No, it's not and you will know that federal government some time ago changed that requirement for cleaning and we would have hoped that something like that could have happened

for security, quite frankly. But we find that tender documents vary from council to council and state to state. Some of them have a very low threshold of information that they want from the security provider. Others want all of the information that we would expect.

Mr BOURMAN — Just quickly, accepting the fact there is very few people that reach 10 years to get their long service leave in the security industry, other than the portable long service leave can you think of any other mechanisms that might protect those people that do make it but go through various employers?

Mr DELANEY — No, frankly. The portable long service leave would be the way to protect it but some of the down side when there are changes of contract for instance, the employer wants his employee to stay with him but if there's portable long service leave the incentive to stay with the one employer is lost and they might want to go and stay with the contract rather than with the employer.

Mr BOURMAN — That would depend on the value of the employee I guess.

Mr DELANEY — Well, not necessarily, I mean you might—let me take an example, you might have the National Library. Now, that's a pretty good job if you're a security officer. It's interesting, it's not difficult and that contract could change hands two or three times. Now, the security contractor might very well have the airport, a few other government contracts around town and wants to keep that good employee but can't keep them at the National Gallery. Now they might say well, look, you know you're not going to work at the National Gallery anymore but I want you to work out at the airport or I want you to work at this other government instrumentality but the employee says—

Mr BOURMAN — Sorry to interrupt, but that wouldn't cover the situation we're thinking of because that person would be with the same employer just at a different site. So if it was ...

Mr DELANEY — Yes, but he wouldn't have any interest in staying with the employer if it was easy for him to stay where he is and go with a new contractor and have portable long service leave.

The CHAIR — Any questions now? Any other questions? No. On behalf of the Committee I would like to thank you for your time and your evidence.

Mr DELANEY — Thank you.

Witnesses withdrew.