

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne – 27 July 2004

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Mr G. Wheeler, Managing Director, WV Management Ltd.

The CHAIR — Firstly, I welcome Mr Graeme Wheeler to the committee's formal hearing today. For those members not aware, Ms Morand and I met with Mr Wheeler at Milawa on the day after the committee's Shepparton visit earlier this year, so we have already had the chance to have a half-hour discussion with him. We felt that both that discussion and the earlier submission, which committee members have, were very illuminating. I am pleased that we have the chance to have Mr Wheeler here today.

As you know, Mr Wheeler, the committee is dealing with the labour hire inquiry. You have seen the terms of reference. Today's hearing, unlike our meeting at Milawa, is being reported by Hansard and what you say here today is covered by parliamentary privilege, but once you go out the door it is not. It is not that we anticipate there is much in what you will say that needs that protection, but we do need to point that out to you.

We are now a few months closer to presenting the report than we were back at Milawa, but a lot of the issues still require some clarification for us. You have given the committee an earlier submission but you have supplemented that today, I see, with a four-page presentation. Did you want to speak to that?

Mr WHEELER — I do not think I need to speak to it. I think it probably stands for itself, but I think it is necessary to point out that I find myself in a very interesting position because I am arguing in favour of labour hire knowing full well that in many circles it is somewhat on the nose. It is not well respected, and it is frequently seen to be a manipulative tool, and I would have to agree with those interpretations of labour hire when I look at many of the labour hire models that have been run throughout this country. And yet, without meaning to blow our own trumpet, we see the labour hire model that we have developed as being highly successful and somewhat unusual, and we believe it is worth fighting for because of the outcomes it has delivered to the workers, the host clients and the region. For that reason we decided that we really needed to respond to the inquiry to argue for a particular form of labour hire that protects workers' interests, that delivers all of the sorts of outcomes that are necessary and yet still exists within some sort of labour hire model, despite it being not very popular. That is the reason we have taken such an interest in this particular inquiry.

The CHAIR — I find your position in this debate, if you like, to be fascinating. As you say, you are speaking in support of labour hire and in defence of what you have achieved in perhaps one of the toughest fields going around, that being the meat industry and abattoirs, which have been a real industrial battleground in their own right over recent years. But that has not stopped you taking a poke at what we might classify as unscrupulous operators in the labour hire field who have indicated, and I think it is fair to say are motivated by, a desire to make a quick dollar rather than any genuine concern about the wellbeing of their employees. Perhaps I can start off, if I might. The committee spoke earlier today to the Recruitment and Consulting Services Association, which is I guess recognised as the lead authority or association for labour hire-type companies. Are you a member of that association?

Mr WHEELER — No, deliberately not, unfortunately.

The CHAIR — Can you explain that to the committee? In fairness, I should put on the record that the committee spent some time discussing with the RCSA what it was that bound its members together, and we tried to get some bearing as to how that differentiated them from those who were not members. It is a point I would like to consider a bit further.

Mr WHEELER — It is a very difficult one. I for many years have been very closely involved with industrial organisations such as the Australian Chamber of Manufacturers and others. I was also for a long time a member of organisations like the RCSA and also other bodies overseas. But when it came to looking at what we needed to do in Wodonga to in fact recreate 300 to 400 jobs by getting the meatworks reopened, we spoke to many of the organisations and we put some of our thoughts and beliefs to them, but we could not get support for the sorts of things we were raising. For example, we wanted to actually commit ourselves to some protection of employee entitlements. We believed there had to be a proper and due process for disciplining, for termination and those sorts of things that ordinary permanent employees expect as their right. We argued that these should also be part of the procedure for a labour hire situation. We could not get support across the board for these sorts of issues, and for that reason we finally said, 'No, we are going it alone'.

I believed at the time and I still believe passionately that what we have done is correct, but I still cannot get the others to accept it. It includes simple things. For example, the average person that we have on labour hire is usually not a very good manager of their own affairs. If you put money in their pocket every week by the end of the week it

is gone; they have spent it. In a labour hire situation people are paid their annual leave component normally in their weekly pay, so if we have a layoff for any reason those people are caught with nothing. I am not meaning to be derogatory to those people, but they really have never been trained and they do not know how to manage their own affairs. So if you have a downturn and the labour hire operation is suspended for a period of time — the client does not have any work, or whatever — those people have no resources with which to manage themselves. We argued that it was necessary for a labour hire organisation in fact to take on the responsibility of banking and managing that money and making it available to the labour hire workers as and when they would normally fall due for it. We cannot get support from anywhere on a basic principle of that nature. We cannot get support to say that a labour hire worker is entitled to the same due process and in fact is entitled to access to the industrial relations commission the same as anybody else. The answer that we get from them is, 'Why on earth they are only a casual?'

The CHAIR — So the resistance is more a philosophical one than a recognition that signing up to those sorts of arrangements would entail messy obligations and time consuming paperwork and procedures?

Mr WHEELER — I think it is both. Firstly, yes there is a philosophical component to it, and again from where I stand if you cannot adjust to that philosophical component of it you really do not have the right mindset to take on a fairly delicate thing such as labour hire. Secondly, if you want to do it on the cheap that is fine, but you cannot really do justice to the sorts of protective things that you should provide. Just because a person is in labour hire does not mean that they are not entitled to reasonable entitlements and reasonable protection. They are entitled to due process the same as anybody else.

The CHAIR — I might invite Hugh if he has a question.

Mr DELAHUNTY — I apologise, I am just catching up.

Mr WHEELER — I am sorry. I have become quite passionate on the subject, as Tony knows.

Mr PULLEN — I was very interested in those comments that you made then, Graeme, because I had asked earlier what was the general average down time for your workers in the lead-in to the chore? You were talking about the bloke or the lady could be out of pocket without money for a week or two or three because they have spent their money that you are referring to.

Mr WHEELER — It varies a little bit according to whether a person is new into the industry or whether they have actually found their feet and have now made a commitment to the industry. If I exclude probationary employees — that is, those who are new, coming in, learning and developing — and I talk about those who have actually got through that probation period, the average would be less than one week per year that we have no work for them.

Mr PULLEN — It is very interesting to hear that because that is sort of similar to the answer I got. I did not think they would be out of work for a long time. I keep coming back to the fact of a labour hire employee trying to get a loan at the bank. Contrary to what I have heard here today, if I work in a particular company, after I get off my six month probation period and I am employed by them I can go into a bank and generally I can get a loan. Labour hire employees to my knowledge can go into a bank and they will say, 'Oh, we will need to see your figures for two years', similar to a self-employed person, and with those figures they will even discount their income even up to 50 per cent'.

Mr WHEELER — We ran into that problem in 1997 when we first started the labour hire operation. We realised that it was a problem, and we went around to the building societies, the credit union and the banks in the Albury-Wodonga region and we sold them the message that these people were — so far as we were concerned — employed on an ongoing basis. Yes, there could well be seasonality, there could be economic factors that may mean they have a drop off, but their employment was intrinsically about as stable as that of an ordinary permanent employee. Every time anyone wants a loan, we provide them with a letter of support and details of their earnings, and we include a quite definite commitment that barring unforeseen circumstances and that individual's own performance we expect them to have an ongoing relationship. Personal loans, car loans and housing loans are high amongst our own membership, our own employees. It does work. All it means is that the employer needs to take the time and effort and go out and sell the message to the financial institutions. It is so patently obvious to me, but it does not seem to be to others.

The CHAIR — Please continue, Graeme.

Mr WHEELER — So we are very committed to the whole process. In relation to the organisations behind the Recruitment and Consulting Services Association and others, we find it difficult to support them when they find it — I do not know whether ‘impossible’ is the correct word — but they certainly find it hard to accept the sorts of things that we have done. One of the difficulties that we faced when we first opened the operation at Wodonga was that the old operation under McPhee Brothers, which had closed down in 1995, had left huge debts. The employees had been left short on long-service leave, holiday pay, superannuation payments and PAYG tax had not been paid. There was a massive raft of problems.

One of the things that we believe that has to be done is to commit a labour hire operation to fully fund the entitlements of the employees. By that I mean not just saying it is there on the balance sheet, because if you look at many large companies they can fund their holiday pay, long service leave and redundancy entitlements off the balance sheet. But that balance sheet is really only valid as long as the entity is a viable proposition. If it hits a full stop those assets cease to have much value. We believe that a labour hire operation needs to actually collect the money each week that it needs to pay superannuation, employee tax, workers compensation, holiday pay, provision for long service leave — all of those things — and actually put that money aside.

We have got an interesting running battle with the tax office because they do not know how the heck to deal with us because we have money in a bank account which is half controlled by us and half controlled by our employees. It is a trust account and each week the money for annual leave goes into that account. The tax office says, ‘We do not know what to do with it. We want to tax you on it, but we cannot because it is not all yours’. We are saying, ‘All it is is the employees’ money. We have put that money into that bank account’. It comes back out of there when an employee takes leave. We have done the same thing with long service leave. I believe casuals and temporary staff — irrespective of law cases that are going on at the moment — are entitled to long service leave.

The CHAIR — We asked the previous witnesses we have had today on this inquiry from Group Training Australia and the Recruitment and Consulting Services Association what compliance mechanisms were in place to make sure all obligations they both had to their employees were being honoured or satisfied. In particular I had in mind this exact thing. None of them has given answers anywhere near as explicit as yours: this sense of bank accounts being set up directly. I imagine that when the RCSA referred to a professional code of conduct, or I think it is a code of practice that they talk about, it does not go anywhere near this. It falls well short of this thing of having money set aside.

Mr WHEELER — No, it does not, and the thing that annoys the heck out of me is that if you actually look at RCSA members — and I have gone through the margins and so forth that many of them use — the margins that they apply include all the on-costs of employment, and one of the on-costs of employment is the provision for long service leave. So they are collecting it off their client but they are not putting it aside. The argument is, ‘Oh well. None of these people will actually earn long service leave’. I say, ‘Well if you do not expect them to earn long service leave and if you do not expect them to be under your employ for 10 years I think it is immoral to charge the client for that sort of money’. We charge the client for that money; we put it in a long service leave account as a trust account. At the end of every year with each one of our clients we go through the exercise of calculating the liability for long service leave for our people who are working with that client and if there is a surplus of that money left over, it is refunded to the client. That keeps it revenue neutral, but it means that at every step of the way we have committed ourselves to protecting the entitlements of that employee. If we stopped tonight the money for employees for leave, for long service leave, superannuation, workers compensation and redundancy is in the bank.

We also believe — and we have had a massive fight with the others over this one — that there should be some form of redundancy allowance for labour hire employees. They receive a casual loading because they are casual, but if they are going to be an ongoing person, we believe that there has to be some provision for redundancy for them in the event of a full stop. We have actually built that into the certified agreements and Australian Workplace Agreements that we have with all of our people. We have put it on public record. This is the same as the way we treat annual leave and the same as we treat long service leave. It is all on public record.

The CHAIR — I imagine one of the responses that might come from other people involved in labour hire is, ‘What you are doing is fine and good, but if we all signed up to that none of us would make a quid’.

Mr WHEELER — Why not?

The CHAIR — I imagine this would be one of the responses that you would get from people in the industry, but you are adamant that you can do all of this and still make a good profit on the operation?

Mr WHEELER — Absolutely. Let me clarify that. We sell a system to our client. We do not sell to our client cheap labour. What we say is, 'We will take on the whole of labouring or a section of labouring for that site and we will provide you with a total solution. We look after the whole of the employer-employee relationship. We give you a service and it is a cost-effective service because we can outsource and spread over a number of clients the cost of human resource management, technology and information systems'. We spread that over a quite a range of clients and so therefore the cost per individual employee actually comes down.

There are a whole range of things that we can do on scale that help us to contain our costs and enables us to do it more effectively and efficiently. For example, with 350 people at the meatworks normally we would have spent a lot of money and the meatworks would spend probably pay \$40 000 or \$50 000 for a payroll system. They would have a full-time payroll officer. Because we have been able to integrate that with other work and other sites we have developed our own systems. For the meatworks that has 350 employees we use one person one day per week to do the whole of the payroll. We could not have got to that stage had we merely been the employer with 350 people in the meatworks. These are the sorts of things that have to be taken into account when getting to a result. If people view it honestly and fairly then, yes, you can make a quid out of it. We are making quite good corporate profits. We are not the cheapest, but our clients are hanging in with us because we are delivering a reliable solution. I think that is really part of what it is about.

The CHAIR — I want to go on and ask about occupational health and safety, but are there any questions?

Mr DELAHUNTY — I am just interested going on with that point. I apologise that I missed the start. As a country member, I am interested in the flexibility and the seasonal conditions that obviously impact on abattoirs particularly and so on. There are a couple of questions I would like to ask. What other types of industries do you supply labour for? The other question is: when you talk about putting all that money into the bank account, do you give to each employee a statement at the end of the year of their entitlements of what you have paid for them in relation to holiday pay, long service leave, sick pay and all that type of thing? Do they get a statement of all of that?

Mr WHEELER — They get it on their weekly payslip every week. It is totally open and transparent. The other thing that we do is that at the monthly consultative committee meetings we actually provide the consultative committee with copies of bank statements so that there is no doubt about it.

The other industries are power generation, manufacturing, box making, can making, the garden nursery industry, pet food, and aged care. The other one that we are running at the moment is work into the livestock industry at a completely separate site. We have diversified it. What makes it look a little bit difficult is that we have to recognise that we are also operating across the Murray River. Some of our clients are in New South Wales. The statistics get a bit difficult at times.

You also asked a question in relation to seasonality. Because we supply the labour one of the things that we are able to do is that we are able to provide some interesting moderation to our client. If I take the meat industry in particular, it is the highest seasonality that we face — it is traditionally feast or famine. If there is livestock they will go hell for leather and process the lot and then it is, 'Oh shucks. We have got nothing for tomorrow'. This also comes into the occupational health and safety considerations. We actually limit the hours that any person can do in the day. We say to our client, 'End of story; 10 hours maximum'. So you cannot even work overtime or anything else that will take us beyond 10 hours. There is a minimum of 10 hours between shifts. There are minimum notice periods in relation to change from shift to shift. What that does is that it actually forces our client to manage his service kill operations so that we get a smoothing effect. So instead of having four really big days and one dead day, we actually get work for five days.

The other thing that we do not do as much as I would like, but it is a growing situation, is that where we have significant seasonality — drought or rain that stops things — we are actually looking also for other sites that we can deploy workers to. So we may lose somebody from the abattoir into a box-making operation. Also we are encouraging all of our clients to spend more commitment on training, so we may well have Friday as a lay day. We may use Friday as a paid time day for training. We actually hope that by the end of this year we will have every single person in the meatworks up to certificate II in meat processing — that is, every employee. That would be unheard of in this country. That is part of the process. Every new start is given the opportunity to take on a

traineeship. These are ways that we can build up some of the slack across seasonality. Does that answer your question?

Mr DELAHUNTY — Yes.

Mr WHEELER — Good.

The CHAIR — Are there other meatworks in the state that have been transformed similarly from an old family-owned company to one that operates anything like that?

Mr WHEELER — I am not aware of any others that have done it quite the way it has been done on this site. A couple of others are using labour hire, but they are using a labour hire model which is probably more towards the lowest common denominator. They are looking for the cheapest solution that they can.

We have been approached by several other abattoirs to provide our model onto their site. This will sound arrogant, but I do not mean this to sound arrogant: we have declined the opportunity mainly because they were not prepared to work to the sorts of rules that we believe are necessary to deliver a sustainable solution.

They were asking, 'How can we cut the corners?'. An example I would give you would be about occupational health and safety at the site at Wodonga when it closed down which was running at a workers compensation rate of something like 25 per cent. At the meat industry occupational health and safety conference last week, which was a national conference, commonly people were talking about real cost of OHS workers compensation in the meat industry being 15 to 20 per cent. We are currently running at a real cost of 4.8 per cent.

The CHAIR — That would be the best in the state?

Mr WHEELER — The best in Australia. Last year we had three total time-loss injuries full stop for the site out of 600 group certificates that we issued for the year. We had six standard claims — that is, claims which had gone beyond two weeks of supplementary pay or \$450 in expenses. That was all. This only comes from a number of factors: we are responsible to monitor the site in terms of occupational health and safety for our employees; the site is not our responsibility but we have an agreement with all of our clients that says 'We will inspect your site, we will inspect your work practices, we will look at your work procedures and work instructions, and if we are not satisfied that our employees are reasonably being protected, we reserve the right to withdraw labour'. Now that has been a fairly big stick, and we have done it twice to the meat industry where we have walked up and said to our client, 'Unless this is fixed, you will have no labour tomorrow'. It gives a huge capacity to actually support WorkCover in getting changes made on the site.

The CHAIR — But does that actually happen in effect, because the RCSA commented on this very thing: the statistic they gave was that in 49 per cent of cases their members had at one stage or another in the last year refused to sign a deal with a respective client on the basis of inadequate observation of occupational health and safety, and we said 'Well that is terrific provided that the net result is that the OHS procedures do get upgraded at the client. In fact if the client just turns around to find the lowest common denominator and finds some firm that will provide the services without worrying about the OHS then we have not really come any closer to dealing with what the problem is here. We are actually tolerating things that we should not tolerate. So you say to us, in effect, that your refusal helps drive change in those workplaces; they do modify their behaviour as clients?'

Mr WHEELER — They do, and inspections by WorkCover's own people are confirming that. Recently we came under a special project audit from the WorkCover authority. It congratulated us as having the best set of systems it had seen for any labour hire operation on a similar sort of site, and it has requested copies of our procedures and details, because it wants to take them to other sites. This will only work, however, if the labour hire operation has a set of standards and is able to give and to guarantee a result. If you are trading at the bottom end of the market, cheap with cheap, and you say 'No, I will not provide staff', they will go around the corner for a cheaper one. But if you are able to deliver a total solution and go in on a partnering basis — and that is what we do — —

The CHAIR — Before you answer that, how many clients are interested in a total solution? It seems to me there are clients and clients, and if you have a company that might have, for example, outsourced something it was once doing, and then two years later that contract is up and the company is under pressure to try and lower costs, it might well say, 'Well, we will just fish around until we find someone who is prepared to do that outsourced

operation 10 per cent cheaper. To what extent are clients — let us use that expression at the moment — driven by OHS good practice and to what extent are they driven by lower costs? Surely that is the question that determines their behaviour in the end.

Mr WHEELER — To a very large degree I would have to agree with you. There are rogues in the labour hire industry — there are plenty of them, unfortunately. A large percentage of clients are driven by the bottom line and whilst there are el cheapos out there in the market place — —

The CHAIR — A marriage made in heaven.

Mr WHEELER — A marriage is made in heaven — the rogue with the used car salesman. It is bad news. The only way in which we manage that is by giving to our clients a level of services and a partnering arrangement where they say, 'Hey, this is thoroughly worthwhile and we do not want to lose it'. Our experience is that that works. How do you get that across the board? I think that there is a golden opportunity for Victoria to actually get that across the board by providing a framework within which you virtually force those cut-price operators out of the market. I see that there are levels of employment, like permanent employment and casual employment, which is an hourly rate — hour by hour — and it is quite ad hoc. There is labour hire and our labour hire people are employed either on a daily contract or a weekly contract not an hourly rate; I think that is an important differentiation, and there are a few special cases, like the fruit industry and the wine industry, which are good examples of a seasonal casual. Apart from that, I do not think that there should be other forms of employment. I think that there are far too many false subcontractual arrangements. People are called subcontractors on paper but they do not meet the subcontracting requirements. If we actually had a framework that required labour hire operators to meet some appropriate standards, I think you would clean the market up remarkably quickly. Yes, there would be a hell of a scream, but I think you would be surprised how quickly you could clean up the market and how effectively because of seasonality and changing economic circumstances.

The CHAIR — The RCSA did acknowledge at a couple of points in their presentation that there are effectively very low barriers to entry into that industry. I think that they made the point that there was no regulation governing them at state level at all; anyone could set up an agency tomorrow if they wanted to.

Mr WHEELER — I would love to see something that was not overprescriptive but something that really put some key performance indicators down for the industry and had quite severe penalties for non-compliance, because I genuinely believe that it is a worthwhile form of employment if it is managed correctly.

The CHAIR — Can I take it from your earlier comments that you would see a preferable minimum condition that on hired employees as the association loves to call them, be at least offered a separate annual leave account in their employment with the labour hire firm? You say that you actually do it for people in a mandated fashion — —

Mr WHEELER — In a mandated fashion as part of the contract of employment or the certified agreement, yes.

The CHAIR — But elsewhere it is not even offered as an option.

Mr WHEELER — No.

The CHAIR — So offering it as an option might be a reasonable step to say that, 'There are certain elements of your employment with us that we need to have these protections at least available to you if you so choose'.

Mr WHEELER — In the supplementary paper I allude to a number of those sorts of minimum conditions that I think should be there. Yes, there should be protection for long service leave, protection for annual leave, banking for annual leave and proper due process, so that you cannot just say to a casual or a labour hire person, 'You are finished and you do not have recourse to the industrial relations commission because you are casual'. That is not on. That person is entitled to the same due process as anybody else. They are entitled to counselling if their performance is off. That is a matter, so far as I am concerned, of human decency. Those are all things that I believe, that the labour hire industry must address and if it does address that, it will clean it up a lot. It will take the cheapos out of the market and it will give a level of flexibility that I think manufacturing industry would totally support.

The CHAIR — Maxine, do you have any questions at this stage?

Ms MORAND — I think that we have covered it.

Mr BOWDEN — I have been contemplating this question and it is not easy so please bear with me, but if I recall going back to say 1996, 1995 and 1997, there was substantial industrial unrest in the processing industries in several states, and I am not looking for a particular comment about the site in Wodonga, I am not after that, but I would value your comments on labour hire versus site employment and so forth given the industrial relations thing. It seems to have gone away. Was it solved by labour hire? I just do not know how best to phrase it. How is this so calm now?

Mr WHEELER — I think there have been a whole range of issues that were involved. If you go back to the 1994, 1995, 1996 and 1997 period, labour hire was abused by many as a means of enforcing industrial change. Whole work forces were terminated and replaced by labour hire. Chris Corrigan, waterfront, and the Farmers Federation are examples of that in a fairly brutal manner. Industrial change should not be brought about by those sorts of processes; industrial change can and is brought about by fair and reasonable negotiation. Many of the industries that were facing big problems achieved the industrial change by the process of dismissing the lot and bringing in labour hire. Since that time the threat of that has been used in a number of other situations, and I think that has quietened it down a little bit. Also there has been a reasonable level of unemployment. In labour hire — many of the cheap labour hire organisations have preyed on that situation — and we have all seen this issue of churning of workers: they are brought in and they do not fit the pattern or they are troublemakers they spit them out. So you get huge turnover rates in some labour hire organisations as they have gone again through this process of bringing change into various workplaces.

We are now in my opinion very close to full employment — the sorts of unemployment levels that we have now are for a sophisticated society close to full employment, and that will change the situation again. I think you will find that unrest is probably not that far away. We are seeing little bits of it. We are seeing a little bit of militancy starting to creep in. We did see a number of unions try forms of pattern bargaining and so forth, again through that period. That has dropped off, but I think that we are probably getting near the end of a period of long-term harmony, and in my view we will see a little bit more industrial action 2005–06. I do not know whether I have fully covered your question.

Mr BOWDEN — I guess the last question is: do you see sophisticated labour hire as one way of reducing disruption?

Mr WHEELER — Yes, I do, and the reason I say that is that our own model, the meat industry, is notorious for industrial unrest. It happens everywhere. Since 1997 we have not lost one man day due to industrial unrest on the site. That is a pretty compelling record. We have got the occupational health and safety performance on the site. That is a pretty compelling record. We have absenteeism down to the order of one and a half of a per cent. That is a pretty dramatic record, particularly when you look at the sorts of people that normally are attracted to industries like the meat industry. That is all because our labour hire model has demanded that the labour hire worker actually has a voice. You go to the normal site and the labour hire people are over there in a little separate group. They do not have a voice. Our labour hire people have a consultative committee. They have representation on the safety committee, and if there are issues, they are encouraged to raise them. We actually put our own personnel officers on the site where we have a reasonable number of people, and if we do not have a reasonable number of people on that site, we actually ensure that we have somebody visit that site regularly so that the workers have the opportunity of raising an issue. No-one is in trouble for raising an issue. It can be positive, it can be negative.

So I would argue that our labour hire model actually helps secure industrial harmony because the operator of the site is taken away from that issue of human resources, and therefore his conflict is minimised. If you are operating a business here and business is tight you tend to get a bit cranky with your own staff. Things are a little bit tight and you may need to bleed some money out of employees' entitlements or to another area. It happens regularly. Super payments are late; payment to the tax office for group tax is late because the money has been diverted. It happens regularly. Put the labour hire operation into place and that cannot happen. You create a very important break and allow a better form of industrial relations to take place on the site. That is our experience, and we believe that it is very appropriate.

Mr DELAHUNTY — As a person who was heavily involved in the meat industry 15 or 20 years, I think that some of the things you have said are right, but there is also another side of the story. I saw meat companies get run out of business because there were concerns from the other side where they could not negotiate and were used as small players in the game and run out of business trying to prove a point. So there were two sides to that story. I again ask you the question — two questions probably. Where you ask here for a legislative amendment to provide a safety net specifically for labour hire employees, how would you see that working and how would it be funded? The next one will be, and I do not think you will take long to answer the first one: if I had the meat works up in Wodonga with 350 employees — and you were saying you were the higher end of the market — given that it is so hunky-dory, if I wanted to lower my costs I could employ them personally, directly, so why would I not do that? Why is it such an advantage to me to use labour hire? Is it because I can say tomorrow to you, ‘Seasonal conditions are such that I do not need 150 people’? Is that the reason that you are able to keep attendance records up and all those types of things and run an efficient business?

Mr WHEELER — If that were the reason you would find that we would have a lot more than an average of about one week of non-work in the year. No, the reason is quite simple: it creates a very effective workplace. If I look at quality in the workplace; if I look at compliance in the workplace, I see that our client Norvic Foods has the best record according to AQIS of anybody into the US market. It has gone since 1998 without a single rejection. If you talk to John Hayes, who is the managing director of Norvic Foods, he will tell you that that is a direct result of the people.

Mr DELAHUNTY — Why does he not employ them directly?

Mr WHEELER — He used to. He will tell you to your face if you ask him that the way in which the people are now being managed is something that he could never achieve. Last week at our national conference he openly spoke of the fact that what has happened at Wodonga can happen anywhere, because it has changed the whole culture of the workplace. If John was running the place himself I can promise you that when the opportunity was there the chain speed would go up. We have actually got limitations on John on how far he can move the chain speed up. We have introduced systems of tally that are unique to the industry, because the old meat industry tally was, ‘How many beasts can you put through in the day, and if we can get up to our quota, we will knock off at lunch time and we have made good money’. In 1997 we threw that out. We said, ‘No we will not provide labour hire on that basis, but we will have a tally system based on the number of beasts that go through, occupational health and safety compliance, environmental compliance, yield of skins and vells and all the other bits and pieces and compliance with meat safety’. All of that is measured on a daily basis. That determines the tally. So it is effective, net and useful production that pays the tally.

John had never implemented that. These are the sorts of innovations that we have been able to introduce, and that is why I say it is a partnering arrangement. We sit in on the sign-off of all accident incident events. We demand that when a new piece of equipment goes in that we become involved in the process and look at the new work instructions and everything else to assess whether it is fair and reasonable. It is a total partnering arrangement.

Mr DELAHUNTY — Could you answer the second question on the safety net?

Mr WHEELER — Yes, quite easy. It is a public document in terms of the certified agreement. We review our charges on a regular basis. We have already notified our client that there will be a further adjustment coming forward in August of this year, and that will restore any out of balance. We have already done the numbers with him, but there is a slight out of balance at the moment. Wages crept up at a slightly higher rate than we had expected, and that will be adjusted in August to restore the relativity. If John has to adjust his kill fees then he has to adjust his kill fees.

Mr DELAHUNTY — A safety net to me, and I think my colleagues would feel the same, is that if a person loses their job, and there is a safety net, do you keep employing them, or what — what are you talking about regarding the safety net?

Mr WHEELER — The safety net in reference to wages is to cover any situation where our certified agreement falls below the comparable equivalent of, say, the federal meat processing award. It is a wages safety net.

Mr ATKINSON — Some of the remarks you made about workplace environments I also have some concerns about in the context of all these things taking a fair bit of goodwill on both sides otherwise it is not

achieved. Perhaps, more importantly, I pose the question: could you deliver your model, your success rate, in a mixed workplace of direct employed people and contract labour at the same site?

Mr WHEELER — Yes, I believe it would work quite effectively. We actually have that on two sites that I can immediately think of any significance; one is a Visy site where we have our people mixing with their own direct employees.

Mr ATKINSON — That is the packaging people?

Mr WHEELER — Yes. Secondly, at Upper Murray Aged Care we have our labour hire people working with their own permanent employees in an aged care institution. They are two extremes, from sort of quasi-professional to manufacturing.

Mr ATKINSON — In those cases are the people performing similar vocational work?

Mr WHEELER — Yes.

Mr ATKINSON — Or are you managing a particular component of the workplace?

Mr WHEELER — In the Visy situation we are managing a component of the operation plus relief staff into the general floor, and in the aged care situation they are just side by side with their own people. In the aged care situation we have used the labour hire model to assist that particular client because the client was having difficulty getting people into their organisation, and at the end of a 12-month period we cycle people from labour hire straight on to their payroll, so we are putting people through the training and going through the whole assessment process and then feeding them straight into that client as their own permanent employees. That is a slight variation to it. I totally agree with what you said earlier in relation to goodwill. There has to be goodwill, and how you measure people of good intent I am not sure. Regrettably voluntary codes of practice do not work. You must look at the concept of legislating for certain minimum standards. I am not a person who proposes legislation very lightly.

Mr ATKINSON — You are basically saying that we should have specific legislation for labour hire. Surely minimum standards are now taken up in common-law awards such as the Workplace Relations Act?

Mr WHEELER — Minimum standards of pay, yes, but not minimum standards of behaviour in terms of due process and all those sorts of things. There is a need for people who are not permanent employees, and in many instances industries cannot look at a permanent employment situation. There is a need for labour hire as something between casual and permanent to have many of the same characteristics as permanents. It will foster employment.

Mr ATKINSON — We do not have that in legislation for any other work arrangement.

Mr WHEELER — Many of the other states have legislation in relation to, for example, employment agencies in the employment of casual workers as distinct from labour hire. They have casuals who are defined in many of the awards interstate on an hourly basis.

Mr ATKINSON — But award conditions are different from what you are talking about there.

Mr WHEELER — Yes, they are.

Mr ATKINSON — I accept there is legislation covering award conditions, but you are you are suggesting it goes further than that, are you not?

Mr WHEELER — I am.

Mr ATKINSON — And we do not go further than that with other workplace arrangements, do we?

Mr WHEELER — No, but I think the way in which it could be done would be to go through a process of licensing organisations that wish to be labour hire. There are precedents for that in other states, such as New South Wales, Queensland and Western Australia. If you were to go through a process not to legislate for certain specific conditions of employment but to legislate for the provision of labour hire services and drag in the minima at that point, then I think you would deliver a very sound result.

Mr ATKINSON — And the minima would be? Are we only talking about the requirements on them that they make the provision in a similar way to what you have with long service leave and other entitlements? Are we talking about that sort of behaviour or are we talking about some sort of prescriptive legislation that tells them how they ought to communicate with their employers, or what?

Mr WHEELER — I do not think it should be overprescriptive. I have made some dot points in terms of issues of licensing and employee protection. I believe if labour hire is to continue, and I frankly believe it has a very valuable role, then it is necessary to underpin labour hire with some standards in terms of employee protection, due process, provisions of things like family leave, bereavement leave and jury service leave. There is a whole raft of these sorts of things that a permanent employee normally expects. A casual employee is not entitled to them. If you look at most of the awards in this country casual employees are specifically barred from those things. There is a need in the middle for labour hire to exist and to have to provide these sorts of facilities to its labour hire people.

Mr ATKINSON — Are you saying that we have to do that by legislation because it is that not part of the award process?

Mr WHEELER — No, the award process does not give you that because there is no award in relation to labour hire.

Mr ATKINSON — The award process has been pursued by the union movement in regard to casual workers and a whole range of things. I do not quite understand why we wrap up this particular area in legislation and not other workplace arrangements. Are we saying that the propensity of labour hire people to be bad employers is much greater than the propensity of somebody acting in their own right as an employer in the industry already? There are already employers in the meat industry who are not delivering anywhere near as good a model as some of your competitors, let alone your model, which is probably the pre-eminent one.

Mr WHEELER — I agree.

Mr ATKINSON — What we are going to do is get the guys in the middle and wrap them up in legislation, but the guy who was out on his own doing his own thing is not covered by that.

Mr WHEELER — The guy who is out on his own, and if you take the meat industry, is required to work under a relevant award. He has no option. He has to employ his people under the federal meat processing industry award, or one of the smallgoods awards. That guy is going to find life increasingly difficult because if he is not prepared to stick by the minima provided by the award, if he is not prepared to underwrite employee entitlements, if he is not prepared to provide due process, life will become intolerable for that person. He will have increasing levels of industrial disputation on his site. He will have the union crawling all over him, rightly so, and his operation will fall over.

The operator working to the rules, who has due process, becomes a less attractive site for the union to pursue and his operation continues. He does not have that level of problems. My concern is that labour hire currently falls into an area of vacuum. There is no protection. A person can open up a labour hire organisation in this state with immunity. They can treat their employees, in my opinion, quite shockingly because they classify them as casuals, they turn them over, and they get virtually no protection under the Workplace Relations Act. We have heaps of evidence from the Victorian WorkCover Authority that they are prepared to close their operation the moment their claims history becomes bad, and a month or two later they come back as a phoenix rising from the ashes of that operation, and because they are a new industry they pick up the new employer rates.

The Victorian WorkCover Authority will give you chapter and verse of this sort of thing happening. I believe there is an opportunity to do something which is completely different — to provide some minimum standards for labour hire. It would help this state. I do not think that the mindsets that are around the idea of casual workers can be extended simply into labour hire because the casual worker by definition should be something of a completely ad hoc basis. That is where it came from originally — a person engaged by the hour. There is a form of secure employment that is somewhere between the two, and that is where I believe labour hire has a valuable role to play. It does not have to be precarious employment.

Mr ATKINSON — It is a longer debate. Apart from anything else, from your experience I can understand that because you are in a particular industry, but there are other industries. The reason why people use labour hire are diverse and there are different skill sets. Some people use labour hire because they are

extraordinarily skilled people and they are paying substantial premiums to employ those people. I have some concerns.

Mr DELAHUNTY — Some people want to be employed that way.

Mr ATKINSON — Yes. I have concerns about legislation that simply tries to wrap them all up. I am also interested in who are some of these phoenix operators. Obviously we would be concerned about that, but it is easy to talk about phoenix operators. We need some evidence of that.

Mr WHEELER — The source of information on that would be to talk to the Victorian WorkCover Authority.

Mr ATKINSON — They have not raised that with us.

The CHAIR — We will be talking to them again.

Mr WHEELER — The director of premiums, Brian Cook, would probably be the ideal person to talk to on that, otherwise Greg Tweedly will also talk on it at great length.

The CHAIR — We will be talking to them again. I want to recap on a couple of things. Firstly, with regard to the occupational health and safety you are aware that Chris Maxwell is undertaking a review and working on that at the moment. We do not want that to be confused with our inquiry regarding the connection between the two in a time sense. I take it from your submission that you feel very strongly that the current joint responsibility that falls upon the client host employer and the labour hire firm could continue for occupational health and safety purposes?

Mr WHEELER — I believe it would be a step in the wrong direction to make the host employer solely responsible, and the labour hire organisation cannot control the physical assets on a site that is not theirs. The present situation provides some very good teeth to provide a result.

The CHAIR — That is what I understood you to be saying in your submission. I also want to pose a scenario to you and get your first-hand experience of how this might be dealt with, and for all intents and purposes this is a hypothetical situation, where a client firm using your employees has signed them up for a contract period, a year or something, and halfway through that period the client company decides it wants to add another shift or something. In an older model of employment the company would have to negotiate with its employees directly, and there would be some argy-bargy about that and the union might get involved or whatever. How does that work in the tripartite employment arrangement where the labour hire employee working at the client site does not have a direct relationship with that client but obviously any changes made in the shift will impact upon that worker's wellbeing whether the worker wants it or not. How do you manage to negotiate in those circumstances?

Mr WHEELER — That is easy because we use our consultative committee process and allow the changes to take place. For example, a shift could be introduced provided that shift were introduced in the same way in which we reached our certified agreement — that is, the client will specify what they want, it will come through the consultative committee process and will be developed, accepted or rejected. If we cannot do it, end of story, we will not do it.

The CHAIR — Does that sort of scenario play out often in your experience?

Mr WHEELER — Yes. In the period from 1997, when we first started the labour hire operation into the meat works, we have moved firstly to an afternoon shift. We then changed the hours of operation of the abattoir. We then introduced the processing of goats. We then introduced the processing of deer. We then completely changed the boning operations. Massive changes have taken place on that site. Also we changed incentive rates. In every case where that has come through as a request from the client that that is what he wanted to do then we have gone through the consultative committee and the consultative committee members have gone back to the various parts of the workplace, it has been discussed, put to a vote and accepted. It does work.

The CHAIR — The committee is meeting with the meat workers union tomorrow. I think you mentioned to Maxine and I at Milawa that very few of your employees belong to the union at this stage.

Mr WHEELER — I do not know how many of our members are or are not. Union membership is a matter of free choice. We do not inquire as to union membership. I could not tell you how many people are or are not members.

The CHAIR — What is your relationship with the union and your employees? Is it a cordial one, or do they have a view?

Mr WHEELER — Between the union and the workers?

The CHAIR — Yes.

Mr WHEELER — I do not know. The workers back in 1998, after the union had been there every couple of weeks, asked the union not bother coming again. From that point onwards I genuinely have no knowledge as to whether the workers have a close relationship with the union or how many are in the union. I do not know. We have had no approaches from the union movement.

The CHAIR — I only raise that because tomorrow we have members of the Australian Meat Industry Employees Union along, and we will no doubt mention to them your experience.

Mr WHEELER — I would suspect that there is a degree of concern as to what we are doing because it is ‘That place in Wodonga’. There is still some baggage in relation to McPhee, who went broke. That is still there no matter what. He has no connection with it.

The CHAIR — I do not think the union’s written submission spends any time commenting on the WV Management situation in Wodonga.

Mr WHEELER — There is one point which I believe strongly about, and it is in the notes I have provided, and that is that I do not believe it is appropriate for a labour hire organisation to provide services to a client when the labour hire organisation and the client share some common ownership, are directors or that sort of thing. That so clouds the water that the labour hire operation can no longer be independent. I frankly believe that any labour hire operation must be utterly independent of the host employer.

The CHAIR — Has anyone else got a final question?

Mr DELAHUNTY — I would like to expand on that a bit further. On what grounds would you say that? Why?

Mr WHEELER — The labour hire operation has to be able to make a stance. It has to be able to say, ‘No we are not comfortable with the site; no we are not comfortable with the particular problem; those work instructions are not adequate; we have a problem with a particular supervisor’, or whatever. That becomes much more difficult when there is a sharing of mentalities between the labour hire and host employer.

Mr DELAHUNTY — We do not have that problem where we have got companies that now can take people from one site to another site, they can be in joint partnership. A lot of companies these days are interconnected.

Mr WHEELER — Yes, I know.

Mr DELAHUNTY — So why do we do it for labour hire as compared to —.

Mr WHEELER — I do not think we are. I am saying quite simply that if you look at Coles Myer and some of the problems that occurred there with what was not far from insider trading where people used their position improperly in terms of the supply of goods and services. I just think there should be a complete break. I am probably being extreme, but I might as well speak up for what I believe in.

The CHAIR — Thanks very much, Graeme. It has been illuminating. It is certainly provoking thoughts on this, and we appreciate it. If at some point we are passing through Wodonga we will give you a call.

Mr WHEELER — You would be most welcome.

Witness withdrew.