

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 23 August 2004

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Mr L. Hubbard, Secretary;
Mr J. Moran, WorkCover Liaison Officer; and
Ms C. Butcher, Occupational Health and Safety Coordinator, Victorian Trades Hall Council.

The CHAIR — The committee welcomes Leigh Hubbard and Jarrod Moran from the Victorian Trades Hall Council. You have someone else with you?

Mr HUBBARD — Cathy Butcher is our health and safety coordinator. I thought she might be useful in terms of any questions about some of the interplay between the labour hire workers, host employers and labour hire companies.

The CHAIR — As you know, the Economic Development Committee is an all-party parliamentary committee. We have been asked to investigate and report back to the Parliament on the matter of labour hire. You would have seen our terms of reference; indeed, you made a submission to them earlier in the year, and we appreciate that. This is the third day of public hearings and we have some more scheduled. Our intention is to give everyone who wants to make a presentation to us the opportunity of doing so. I need to point out to you that because it is a formal hearing Hansard is preparing a transcript and anything you say in the course of the proceedings today is covered by parliamentary privilege. We have scheduled this to go to 3 o'clock, but if we need to go over a little, we will. Perhaps I can invite you first of all to give us an introductory statement or two in support of the written submission and then we will throw questions at you, if that is okay.

Mr HUBBARD — Thank you for the opportunity to address the committee today. I am aware that some unions are still gathering case studies and will put those in in the next little while. I know you have had a few already, including those of the National Union of Workers. As you indicated, with me today are Jarrod Moran, who is a WorkCover liaison officer at trades hall, and Cathy Butcher, our occupational health and safety coordinator. I will be fairly brief because I know most of this will be about questions and discussion. Our verbal submission is in the context of a written submission and a report that was prepared by Dr Elsa Underhill, then of Victoria University and now Deakin University. I think you may have spoken to her separately as well. She certainly had a look at the views of Victorian labour hire employees and their attitudes towards their employment.

We are generally concerned about the growth of vicarious employment in the labour force. With 27 per cent of the work force in casual or temporary employment Australia is the second highest in the Organisation for Economic Cooperation and Development, which to us is a cause of great concern. I think that partly answers the question Mr Delahunty raised before about what is the problem with casual employment and what have other people done to regulate it. In Europe, apart from I think Spain, very few of the OECD countries actually have more than 5 per cent of their work force designated as casual. By and large they are in those traditional areas like we would have such as fruit picking or areas where you would have seasonal peaks and troughs of employment. We are generally concerned that with Spain, Australia has leapt ahead of the industrialised world in terms of casual and temporary workers.

Vicarious employment is a particular concern to us because it means generally that these workers have worse conditions, lower job security and fewer prospects than full-time or permanent workers. The growth in vicarious employment is damaging to the workers and their families — for example, workers have no or little control over work and family balance. They are usually on low rates of pay and, as you mentioned before, the issue of getting a bank loan is difficult for people who have no ongoing and secure employment. I think it is also ultimately damaging to employment and to industry itself and to employers. It indicates that rather than competing on innovation, quality or non-labour efficiency, employers are increasingly competing on cuts to labour costs, particularly through casualisation, on-hire employment and contracting out of work.

We need to be a bit careful. I noted a number of the questions to the previous witnesses were around casual employment. Labour hire does not strictly mean just casual employment. It can mean dependent contractors, independent contractors, full time, part time — there is a range of legal arrangements for labour hire or agency workers. The fact that probably two-thirds — up to 90 per cent in some industries — are in fact casual shows that that is the significant legal arrangement, but there are other legal arrangements as the basis of that employment or engagement which should be taken into account.

I am referring to the damage to industry and employment because from our perspective it usually means that the work force is fragmented and potentially demoralised. It is often a work force where management is not particularly interested in the development of the work force — for example, training and skill formation. On the other hand employees have little loyalty or enthusiasm for a workplace where there is no loyalty shown to them as workers. That is a worst-case scenario. I am not saying it happens all the time, but it is a problem we see with the nature of this employment.

We have certainly made it a priority to improve the entitlements and rights of casual workers; for example, through a test case in the commission a number of award clauses say that after six months' casual employment you have to be offered the opportunity to be made permanent or ongoing — that flowed from a decision on the metal industry award and a number of awards now have that — right through to casual workers having a right to maternity leave, which they did not have until only a year or so ago.

Into that picture we need to place labour hire or agency work. At the outset I would say that unions are not totally against labour hire for supplementation of labour in times of high demand or to obtain specialist skills which that company or that workplace would not always require, just as we do not oppose casual or seasonal work where it is really necessary and needed as part of that business's needs. We do not seek to outlaw labour hire work. However, we are concerned that the labour hire industry has moved well away from fulfilling that supplementation role, that labour hire is now an alternative stream of employment, an alternative way of providing your whole labour force. We have seen that in a number of cases where everyone from the manager of the company right down to the person who gets the cup of tea ready is labour hire. Whole work forces are being turned into labour hire work forces. To us that is a problem. It is not fair to those workers and it has the potential to undermine direct employment standards and job security for in-house employees.

Again we say at the outset that many of the large labour hire companies operate on a legitimate basis with high standards and investment in their work forces. They too should be rightly concerned. I do not know what their submissions say, but they should be as concerned as we are about the undercutting through lower wages and poorer conditions by many of what we would call the fly-by-night companies that pop up in this area. They are the ones that are not providing proper safety plans, proper hazard identification or coordination and induction of workers on sites. They are not providing for rehabilitation and return to work; they are not investing in training, let alone providing the same wages and conditions that the in-house work force, with whom they are often working directly, is receiving. There is a whole range of issues. We hope these will be taken up by the committee even to the extent of what rate of premium these labour hire employers are paying for their WorkCover. That is the example in the meat industry where companies have brought in labour hire because they know the labour hire company is paying a much lower WorkCover premium than they would if they directly hired employees. These are all issues which need to be taken into account. We think this inquiry provides a unique opportunity in Victoria to put in place a system which enables on the one hand a continued ability for employers to use labour hire efficiently and productively, but in circumstances that are fair for the workers involved and that ensure the broader public policy goals with respect to safety, workers compensation and vocational education are acknowledged and advanced.

Just on specifics, you have our submission, but in general terms we are conscious of and agree with the kinds of initiatives that are included in the European Union proposed directive on temporary agency work, especially that agency workers should be paid the same as direct employees on any site, that it should be unlawful to use temporary agency workers to replace striking workers, and the exclusion of temporary agency workers from hazardous industries. A number of countries have outlawed the use of temporary agency workers in particular industries such as construction, the chemical industry and a range of other industries. To bring workers in without training and without coordination is dangerous and therefore they should not be used.

We also acknowledge the recommendations of the New South Wales Labour Hire Task Force which reported in 2001 and in particular some of the recommendations around broadening industrial law to include better definitions of 'employer' and 'employee' and to include 'labour hire' in that; to establish a licensing regime for labour hire companies; to amend occupational health and safety laws to clarify the duties of labour hire companies and host employers to ensure they are jointly responsible and to give labour hire employees the right to representation on health and safety issues; and make sure that labour hire workers have an enforceable right to rehabilitation and proper return to work which is now pretty much non-existent.

We think labour hire is now an established industry. In the union movement maybe 15 or 20 years ago our chief role was to get rid of labour hire, but I think our view has changed. It has grown so much; I think the figure was something like 84 000 labour hire workers three years ago and today there are over 300 000. It has grown enormously. In our view what that smacks of is the need for regulation rather than abolition. It has certainly got beyond us. There are special circumstances for this industry in our view which mean that there ought to be a range of regulatory mechanisms to ensure, for example, portability of entitlements including long service leave and sick leave similarly to the kinds of arrangements you find in the building industry in Victoria and most other states, if not all other states.

We are also concerned — and I have not got much detail on this — that there appears to be very little in the way of legislation to regulate employment agencies including labour hire or placement agencies on issues such as privacy of information and deduction of fees from employees' wages; for example, until a very recent industrial agreement in Victoria between the department and the AEU the fee to the labour hire company was deducted from the wages of the relief teacher who appeared for the day in a school. So rather than getting the standard rate a relief teacher would get that less the percentage that the labour hire company deducted. We think that should be unlawful. Either the school or the Education Department should have been providing and paying that placement fee, not the worker who had been placed for the day. There are a range of other issues like that which we think generally should be the subject of some kind of legislation, regardless of whether there is a specific licensing regime for the labour hire industry.

We also note that in terms of industrial relations frameworks there have been a range of recommendations made in Victoria backed by the industrial relations task force headed by Professor Ron McCallum. Chapter 9 of that task force report, which I am sure you are all probably familiar with, deals with contractors, labour hire and contract review. Part of the problem with labour hire is the multiplicity of legal relationships. Are they employees? Are they dependent contractors? Are they independent contractors? If they are employees, are they casuals, are they part time, are they full time — what is their status? In other state jurisdictions, notably Queensland and New South Wales, steps have been taken to widen the definition of 'employee' to make sure the relevant tribunals in those states have an ability to deem dependent contractors to be employees and also to undertake contract-determination inquiries to set proper standards for contractors. Workers have some means of being treated fairly and employers and those who use labour cannot just simply get around the standards by calling workers a particular employment category or assigning them to a particular employment category. We continue to support those kinds of measures and recommendations.

They were encapsulated in the Fair Employment Bill which failed to pass the state Parliament in 2001 and they were not included in the federal award uniform system legislation in 2002. With the introduction of communal awards through the federal system we do not have a state tribunal here in Victoria nor the infrastructure necessarily that exists in those other states. In our opinion we can still act; we do not see any reason, although I have not got the detail here, why the state government could not pass legislation to provide for these kinds of workers and specific legislation to regulate this workers, just as the state government has regulated outworkers and provided some protections for outworkers in Victoria.

Finally, in relation to vocational education and training I would refer the committee to the report of Dr John Buchanan and others from ACIRRT, which was called *Renewing the Capacity for Skills Formation — the Challenge for Victorian Manufacturers*. It was a report into the skill needs of Victorian manufacturing and was done for the Victorian Learning and Employment Skills Commission and the Manufacturing Industry Consultative Council. That report identified a range of problems about why we face skill shortages in Victoria, in particular in manufacturing. That included the nature of competition and international competition and the flow-on effect and inability of companies to release people for training. It also talked about the privatisation of public utilities which have been key providers of trained people, particularly tradespeople and technicians, to the private sector. It also identified the problems of non-standard forms of employment, particularly labour hire as undermining the skill-formation capacity of Victorian industry. I have brought a copy of the executive summary of that report, if you have not got it already, which may be of use to the committee. On page 10 of that report they recommend either a skill formation levy for labour hire because many of the labour hire companies are not pulling their weight in terms of skill formation, and secondly, they support the idea of a licensing regime to ensure that part of the criteria would be the capacity of these companies to actually train people, not just induction training and health and safety, but the broader vocational education and skill formation needs of that industry.

In relation to health and safety, Cathy will answer questions, but the Maxwell report seems to us to make some headway to what might happen to the health and safety act to improve the capacity or to clarify the roles of labour hire companies and host employers and give more rights to labour hire workers within a work force. Hopefully they will see the light of day in legislation later this year or early next year. I will leave my comments there. I think it is an important inquiry and I know you have a few months to go yet, but we certainly look forward to not just the nitty-gritty of what happens to labour hire workers but some broader regulatory and standard-setting framework for these workers.

The CHAIR — Thanks, Leigh. I want to fire off a question to Cathy and perhaps to Jarrod. We have Chris Maxwell coming to talk to us informally next week. We have had a look at his report. I think there is a

chapter there, it might be chapter 11, where he talks about labour hire firms in particular. My recollection is that he acknowledges, as we have acknowledged when we had Skilled coming along, that they are the only labour hire provider that has signed up to a standard, an AS something or other, but he makes the observation in that report that a standard is not the same thing as an OHS system. It is a standard which may or may not be achieved. It seems to me that that is one of the issues here: we do not have in this sector where people are going with their employees into workplaces and elsewhere an accepted standard as to how that induction procedure will take place and how they will manage the person who is very much out of sight. I guess the question is: to what extent do you think the WorkCover authority is doing an adequate job with regard to the labour hire sector where that is the phenomenon — people being placed into workplace sites with which they are not familiar.

Ms BUTCHER — There is a WorkSafe committee on labour hire that has existed probably for about three years. It is a very difficult committee in the sense that it struggles to actually deal with the problem. That is the same in other jurisdictions. There is also at the national level and through the National Occupational Health and Safety Commission a subcommittee that deals with labour hire and contractors. South Australia is the lead agency in that respect. The concentration in the first part in both those committees has been dealing with trying to clarify the duties of the host employer and the labour hire employer. There is a dual crossing over of responsibility. Part of the particular issue is that labour hire agencies have an employer association, the RCSA, and also host employers have employer associations. So all those people have actually been involved in the committee in WorkSafe. Part of the difficulty is that it has been under-resourced and it has been dealt with as isolated in terms of the WorkSafe side — that is, the health and safety side, when labour hire is actually a problem that cuts across the three parts of the WorkCover organisation.

So it is an issue for workers comp, for return to work, and for prevention. Added to that, some documents have actually been produced in South Australia which deal with return-to-work obligations for labour hire and the placement of workers in labour hire responsibilities, and WorkSafe through that committee at the moment is going through those documents to say they do exist, they could easily be picked up in Victoria, they are dealing with the same principles. But the closer we got to that last year, the Maxwell review stopped that activity for a while when we considered what might come up with Maxwell. There is a lot of activity happening on labour hire. I guess our concern would be that from the WorkCover Authority it is not dealt with at a high enough level across all the parts where labour hire would have an impact and possibly there is a need for a particular committee that would deal with three issues.

The CHAIR — I was not aware that there was a WorkSafe committee on labour hire, so we will follow that up — that is interesting. We have spoken informally to the WorkCover Authority which did comment on the return-to-work performance of the sector being something to which it was paying a lot of attention and say it was not satisfied that it is up to scratch, so I appreciate that. You also said that host employers have their own association?

Ms BUTCHER — Host employers would be VECCI and those range of employer associations as well as the RCSA.

The CHAIR — You mentioned that South Australia had done more work with developing back-to-work programs?

Ms BUTCHER — On developing advice, the National Occupational Health and Safety Commission has had a committee on labour hire for a number of years, and it also has a jurisdiction which becomes the lead agency for a particular task. South Australia is the lead agency for labour hire and it has developed return to work and some sort of guidance that we are going through at the moment.

The CHAIR — We might follow that up.

Mr DELAHUNTY — My question comes back to Leigh's comments about the agricultural sector and the fluctuations compared to overseas countries, whether it be grape picking when some years you have a whopper harvest and some years you do not. People are looking for flexibility and that does create its problems with employers, particularly in the grape-growing industry. I think the perception out there is that the labour hire industry is in blue collar workers. Do you have a view on that or do you believe, as we are getting evidence, that it is also fairly heavily into the white collar or the clerical area? Have you got an estimation of figures?

Mr HUBBARD — I have not got the figures in front of me, but I think your suspicion is right. Someone mentioned teachers before and there is a whole range of formal arrangements between the schools and, for example, skilled workers, where teachers are placed in schools and engineers. There is a whole range of professionals who are now being placed. In fact in the services sector generally, in business services and so on, there is a great growth in labour hire. I cannot put a figure on it, but we do know that the work done by ACIRRT back during the IR task force days showed that 22 per cent of employers in industries using labour hire were in agriculture. But then again some 30 per cent of employers in manufacturing were using it. In education, health and community services 30 per cent of employers were using labour hire. Now to what extent they were using it and what the total figures are, I do have not anything that says that right here, but I think it is pretty widespread and increasingly across all sectors, including white collar and professional areas.

Mr DELAHUNTY — I was interested in your comments that labour hire plays a role and Bruce might be pretty keen on the regulations or the licensing, but I will not go down that track. I was just interested to know in the Victorian Trades Hall what number of employees you have and how many of them are part time? Have you got that on record?

Mr HUBBARD — We in fact have — I am not sure of the exact figure — probably about 20 employees; all of them are ongoing employees and there would be the occasional one through grants or whatever that are fixed term, but they get rights to annual leave, sick leave and everything else under our collective agreements. There are occasionally people we take on for specific short-term projects for a couple of months where there is a toss-up as to whether we pay them as a casual and pay them a loading rather than put them on as a fixed-term person who gets all the other entitlements. By and large we have an agreement with our staff, and we do it out of conscience that as far as possible people should be made ongoing, either full time or part time and have all the rights that entails rather than be in this limbo land of not knowing what their future might be. Clearly as a peak council we get projects where we have to engage people on a short-term basis, but we try to make sure that if there is a possibility they are ongoing. Indeed in some funded projects we have a rule that after three years if that funded project is still going we provide for funding for redundancy payments and other things in case that project does not continue.

I suppose in terms of looking at labour hire, for us or for anybody it is not just about how you can improve some of the conditions for labour hire workers or how can you make WorkCover operate a bit better. The problem is that if it is a way of employment, and I think most of us would say that, if you look at everything — injury rates, wages, conditions, job security, the level of skill formation — you have to say that direct employment is a much preferable and better way to go. And two things ought to be done: one is that we should be discouraging a move generally to whole work forces being labour hire, and secondly, if there is a need for labour hire after that how do we make it conform to decent standards?

At the moment I would agree with the NUW, the previous presenters, who said there is very little at this stage. When you look at many European countries they have legislation — and that is before you even get to the European directive for temporary agency workers which has been debated for the last few years. But on the back of our submission we have a table which gives you an idea of some of the things that are in Germany, Italy and other places. We would certainly say that we ought to have some regulation and that is why we support the recommendations of the New South Wales task force.

Mr DELAHUNTY — I think a lot of industries — and I believe your union and agricultural industries do this — use what they call consultants, which to me are really dressed up in other ways because you have the contacts and you ring up and say you want a consultant to do some work. It could be to answer the telephone, for instance. Have you seen a growth in the consultancy industry?

Mr HUBBARD — There is no doubt that for a whole range of reasons, because organisations have less capacity to do that in-house, they have contracted out many of those tasks and functions.

Mr DELAHUNTY — I agree. Do you see any link between labour hire and consultants?

Mr HUBBARD — In the sense that they are labour, they have got skills that are brought in from outside to perform a function, either on a short-term basis or on an ongoing basis for a particular host employer. The consultancy issue is a little different because it is usually around an issue and they are brought in to look at a particular problem or issue and then report that to the company and that is the end of the engagement, whereas usually the labour hire that we are talking about is more deeply engaged in the business of the host employer.

Mr BOWDEN — In recent months there has been some community discussion on a subject described as ‘ageism’ — the difficulty of older members of the work force in getting ongoing employment. Do you have some thoughts or suggestions in relation to work hire and labour hire in addressing the opportunities and/or difficulties associated with the working needs of the older aged category in our community? Is labour hire better, or no change, no difference — does the Trades Hall have any views on that?

Mr HUBBARD — Clearly with an ageing work force we need to encourage people to stay in the work force longer and retrain and do certain things. There is a real problem about that because we are not even coping with the 18 to 24-year-olds in terms of skill formation, let alone existing workers or older workers, so that is an issue. Whether you are asking me whether doing something about labour hire discourages that movement, if that is the context — — .

Mr BOWDEN — A more specific question, perhaps: could you comment on the suggestion that labour hire enhances the opportunities for employment of people in the older-age category?

Mr HUBBARD — I do not think that is the case. I notice that in a couple of things from Europe that in fact the proponents of that kind of argument, there are countries where they have put quite strong clamps in place on labour hire and temporary agency workers where there has in fact been employment growth and particularly amongst young people and older workers.

Our view is there is no doubt that where you have a temporary situation you can use casual or on-hire workers, but by and large employers ought to be planning their work force and know what their needs are outside the seasonal work areas like agriculture. They ought to be planning that. Workers ought to have rights in relation to that. Permanent part-time work ought to be available to older workers. That is a much preferable way to employ people because they then get ongoing rights; they have rights that apply to the work force generally. Part of our concern is that casual workers and on-hire workers in particular who are one step removed — they are not direct employees of the host company — are effectively treated as second-class citizens within the workplace by management and often indeed by co-workers. There is a status issue, a cultural issue within the workplace, let alone the broader issue of, ‘Are they getting the same standards, are they getting the same training, are they being looked after in terms of health and safety in the same way?’. There is a cultural issue. So from our perspective it is much better to have these people as part of the mainstream work force, the direct hire work force.

Mr ATKINSON — What is the Trades Hall Council’s current philosophical or policy position on industrial relations legislation in Victoria? In other words, Victoria handed over all of its industrial relations mechanisms to the federal government for incorporation into the Workplace Relations Act. There have been the issues there to do with common law rights and so forth. Where does the Trades Hall Council stand on that legislative position now?

Mr HUBBARD — Well, we accept as reality that certain powers were handed to the Commonwealth in late 1996 and this year the power to make common rule awards was transferred to the Commonwealth — sorry, that was last year — and then we got federal legislation that enabled the federal commission to set common rule awards. The State did not transfer all of its powers, and certainly in that legislation late last year in the Commonwealth Parliament it preserved the right of Victoria to make legislation on industrial relations matters. It is not beyond the jurisdiction of Victoria to continue to make legislation whether it is for outworkers or owner-drivers or a whole range of people who need the protection of industrial relations or standards-setting legislation. While the average employee, someone who is in a quite clear employer-employee relationship, will be covered by common rule awards there is a range of other people to whom that does not apply. The federal legislation is notoriously weak on these other forms of engagement.

It is still within the power of the state, for example, to set up legislation around labour hire, to set up legislation about contract determination, for example, owner-drivers and other people — it is still within the state’s capacity. We in fact think it ought to do that. It is one of the reasons we think it was a pity we did not have a tribunal ultimately to do these things. But we accept reality. We accept that having a unitary system for employees has its advantages as well as some disadvantages. But on those other things, there is no reason why the state cannot act to protect, for example, setting up a licensing regime for labour hire. It would be quite within the powers of the state, in our view, to do that just as you could set up a contract-determination mechanism for owner-drivers or other contractors similar to the New South Wales or Queensland industrial relations provisions.

Mr ATKINSON — In both cases, though, owner-drivers and labour hire firms are likely to work beyond the state borders. Is it not becoming really cumbersome if every state has its own legislative approach to this? Would it not be preferable to actually push for some sort of federal overarching situation to deal with these issues? Indeed many of the issues that were raised in the previous one are about bad employment. Frankly ASIC should have stepped in on a couple of those companies long ago. If there are phoenix companies right now, ASIC should be on their door today as well. The apparatus already exists to deal with some of those things.

Mr HUBBARD — To deal with?

Mr ATKINSON — A range of the issues that have been presented to us without a whole new licensing regime.

Mr HUBBARD — That may be true. It is like saying that just because an award or a collective agreement applies to a particular workplace, that an employer will not try to undermine it or whatever, and individual employees or through their union have to enforce their rights. The problem with labour hire workers is that at the moment, just to give you an example in Europe, in many countries now there is an actual legislative requirement that says you cannot bring in a labour hire worker and pay them less than people in the same position inside the company would be paid. There is no such law in this country. As you heard before, while some collective agreements might actually have a clause because workers say to the company, ‘You can bring in labour hire or casual workers but they must be paid the same as workers within the company’, that is not necessarily the case everywhere. Our view is that should be standard. It protects those workers who are coming in, and it also protects the existing workers from being undermined from outside.

In answer to your question, we are captured by history. There are six state and territory systems and a federal system. While you may think most of our workers are covered by the federal system, in New South Wales and Queensland less than 30 per cent of workers are actually covered by the federal system. We are going to live for a long, long time with state and federal legislative responsibility for these things. The fact is, if I can put it this way, common rule awards — the only reason the federal government agreed to introduce legislation at the end of last year was because the Bracks government here won control of both houses of Parliament, including the upper house. Until then Tony Abbott, who was the previous minister, was refusing point blank to introduce common-law awards for Victorian workers. So if you are asking me why do we not do this at a national level, my view is that conservatives at the national level would never allow what we need, which is a broadening of the definition of ‘employee’ and the ability to treat all workers fairly irrespective of their legal status. That is what we really need. Whether you are an independent or dependent contractor, casual, whatever you are defined as, you need to be able to say, ‘I am being treated fairly and there is some mechanism by which I can have standards set’. The federal act only applies to employees, and that is a situation that I do not think will be changing for a long time.

Mr ATKINSON — I am interested in the fact that you are quoting Europe because they are just starting to give back wage increases and increase the number of hours. Can I ask in terms of labour hire, what is the level of union membership in labour hire companies?

Mr HUBBARD — It is quite high. It depends on what sector you are talking about. I cannot give you figures.

Mr ATKINSON — Ballpark?

Mr HUBBARD — It is very high in traditional trades, maintenance and those sort of areas. I suspect in some of the service areas it is quite low, such as clerical and other areas. In the nursing area it would probably be quite high because many of them are ANF members who have probably left the traditional public hospital system and are coming back through agency work because it paid very well, until hospitals started not to use agency workers as much. It just depends on the sector. The services sector is less unionised; the traditional trades and skilled occupations it is higher.

Mr ATKINSON — Would anybody have those statistics?

Mr HUBBARD — They would be very hard because you would have to drill down in individual unions, go out and do a survey of the workers in a particular sector. We can certainly provide general union membership statistics, and that may give you some inkling of what that would be like.

Mr PULLEN — Earlier in the presentation you mentioned that labour hire workers lack loyalty to the workplace they are working in. That threw my mind back 20 years when in one of my other lives I was the manager of a branch of the Commonwealth Bank. Labour hire had just started and they started bringing people in to work at the inquiry counters and so on. They were lovely people but they certainly did not have any loyalty to what was then a good bank — I would not agree with it being a good bank now. The thing I felt was they would do their work and as soon as the knock-off whistle blew they would be out the door leaving the work behind because they did not have that loyalty to the organisation. You mentioned a bit later on that a lot of these workers today are treated as second-class citizens. Do you think that is one of the reasons there could be a lack of loyalty to a particular company that they may be employed in? Do you have statistics on that?

Mr HUBBARD — I think that latter issue — feeling like second-class citizens — came through in the work that Elsa Underhill did. The focus groups and the survey work showed that people felt they were not communicated with as well as the direct employees — they just felt that they were not included in the way that direct employees were. That is a general assertion, I do not mean to say it is true in every circumstance. I just get the sense that as many people these days working casually have two or three jobs and their loyalty is no longer to a particular employer and they no longer see their employment as being long term.

It is a two-way street: if employers are not loyal to workers, workers are not going to be loyal to those employers. It is a breeding ground. You can put this globally. That is why I say to you this is not just a union saying we want better standards for these workers and so on — this is about where we are as an economy. Part of the problem is that as we have been subjected to increased competition at a global level many companies have, not surprisingly, adopted an option of cheaper labour, more fragmented labour and doing whatever they can to cut labour costs without really thinking of the flow-on implications. The reverse of that is if you are going to export or compete with products coming into the country, you have to compete on the basis of quality and innovation and so on, and you cannot do that without a skilled and committed work force. The very things they are doing to cut costs on the one hand undermine their capacity to actually meet that challenge whether it is internal competition or global competition. That would be my view and that is why I think this committee should see it in broader terms than just the problems for workers. It is a problem for all of us.

Ms MORAND — A number of submissions have suggested a registration or licensing scheme and your submission outlines a series of conditions for registration. Is that based on any particular model or existing scheme? Can you point to a model that exists somewhere in Australia or overseas?

Mr HUBBARD — No, I cannot. I think some of those things were suggested by the New South Wales task force. Some were suggested by Elsa Underhill having looked at what some of the problems were that faced workers in labour hire coming through that survey process. Some of them are just what we see as the major problem, trying to link together the major problems in health and safety, workers compensation, vocational education as well as industrial relations. Proving that somebody wants to be a labour hire employer does not mean that things will not go wrong but proving that they can actually manage a work force that they are placing in a range of different work environments, that they have systems in place, that they have the financial capacity to do that might. We do not want to cut competition if they can prove that they can do it effectively and fairly for those workers. I could come back to you on what exists in Europe right now.

Ms MORAND — Can you point to an existing model that we could have a look at and see how long it has been in operation and how effective it is?

Mr HUBBARD — I know there are a number of European countries that do have registration systems but we have not got down to the level of detail of what those systems use as their criteria. One of the outcomes of the New South Wales task force was a labour hire kind of council that brought together the stakeholders and looked at a range of the issues. I suggest we would support that if that was a recommendation that came out of this committee. As Cathy said, even within WorkCover the issues around labour hire are not dealt with on a holistic basis and then when you tack on all the other issues apart from prevention, rehabilitation, return to work and compensation issues there is a real need for an overarching consultative council about labour hire and the problems it has. I think the New South Wales task force recommended that a working group be established to work out the details of how such a registration or licensing system might work including the employers in the industry.

Ms MORAND — The New South Wales outcome suggested that there be a minimum term of employment — I think you mentioned it earlier — of six months and then the person must be transferred to a permanent position.

Mr HUBBARD — That is one of the things that flows out of the casuals test case I mentioned before — the metal industry case. I know in New South Wales they were looking at that to also apply to labour hire employees who are placed for more than six months with a particular host employer. That is certainly something we believe should be looked at. However, that would not necessarily be through a licensing system, that would be through your industrial relations system or some other complementary legislation that exists. In New South Wales they were looking to do that through the Industrial Relations Commission of New South Wales.

Ms MORAND — You would not see that as a condition of licensing, that once you had had one of your employees placed at the same location doing the same job for six months that they should be offered permanent employment?

Mr HUBBARD — I think that should be an obligation on the host employer who has that worker placed with them for that amount of time. That should come through the award or the legislation that governs industrial relations. I know it is the case that that is probably included in a number of collective agreements. I can give you examples of collective agreements that include that but of course that is ad hoc, it is like a patchwork quilt and it does not give a floor of protection for labour hire workers.

The CHAIR — I will throw over to Mr Delahunty in a minute, but I have one question for you before that. I want to get your views on what is a real conundrum and that is the meat industry. We have heard from a labour hire firm which provides all the labour to the Wodonga meat works, WV Management Ltd. The chap there has very strong opinions about the way in which some business operators go about labour hire work and the way some employers go about their relationship with labour hire firms — he is quite enlightened in some respects. Most of his employees are casuals, and he has a system in which a deduction is made from their weekly salary for the purposes of annual leave. He says the sort of people they employ find themselves with one or two weeks a year off because they try to manage the work that way but they have nothing to spend, they blow it all. It is a paternal attitude of sorts, I suppose. He says that is what they do and it works sensationally well.

Then we had the Australasian Meat Industry Employees Union come along and say that is a problem, that with the seasonal nature of the work in other abattoirs they could be off work for six weeks and have nothing to support them. Where do we draw the line and say what is an individual's responsibility and what should be done for them? I do not suppose there is an absolute answer to that but it seems to me that those two examples are part of what we have to deal with there. To what extent should individuals who are employed on terms that they might willingly embrace be permitted to bear the full consequences of that employment and to what extent should they be protected from it? The two examples I have quoted, and I have given them to you without notice, are a fascinating insight into the way views diverge in one industry.

Mr HUBBARD — I think industries like the meat industry and traditionally the stevedoring industry or the construction and building industry have had their own peculiar and particular kinds of engagement, which makes it even more difficult to make sense of.

My own view generally would be, particularly where a company is engaged to provide a whole work force, that those workers should not be treated differently to how you would treat them if they were directly hired. That labour hire company ought to be subjected to an award, a collective agreement that provides no lesser conditions than those people would normally receive as directly hired employees. What those conditions are subject to the history of the award and what collective agreements are in place, so what is acceptable in one industry will differ. I sometimes shudder at what I see in the agricultural industry, but nevertheless there is a history there of how things are provided and how people are employed et cetera, whereas it would not be acceptable in another industry.

It is hard for me to comment on that, except to say that, as a kind of example, what we really have a concern about is that labour hire employees generally who are brought in from outside are often at a disadvantage compared with those who are in-house employees. Certainly there ought to be rules that they should not receive less, just as in awards there are rules about piece-rate workers. They are paid piece rates, but when you tally up the amount of money they are getting, they get less than what the award would have paid them had they been employed for 38 hours a week. Ultimately, what the employees and the employer agree to under a collective agreement or

through an award, that is for them. That is the nature of our system, but they should not be disadvantaged compared with other workers in the industry, or other workers they are working alongside in the same company.

Mr DELAHUNTY — Particularly in the rural industry in Victoria we have a real crisis in skilled labour, whether they be diesel mechanics or whatever it may be. It is part of our terms of reference to look at the impact of industry skill levels as part of this inquiry. Do you see any correlation between the labour force and employees and the shortage we have in skill levels? Can you put any finger on it?

Mr HUBBARD — Labour hire?

Mr DELAHUNTY — Labour hire, I am sorry. Is there any correlation between labour hire and a shortage of skills in country areas particularly?

Mr HUBBARD — I am not sure about country areas. My general assertion would be that there are differences in labour hire companies. Some of the bigger ones provide quite a lot of money, they take on apprentices and so on, so it may well be that some of them like Skilled or Adecco do invest in training. I do not know to what extent and the unions like the AMWU might have a view about that. But at the medium and smaller end they not only compete on the price of the actual labour and what they pay the workers, but also on whatever other things they are doing. They will not necessarily employ a health and safety officer for the labour hire company that will be going around assessing the risks in that workplace and doing all those things, having a plan in place for when those workers are there, just as they will not with skills. They are not going to invest in apprentices, and so on. They just do not do that. In our view they are not only cutting costs in terms of wages, they are cutting costs. They say, 'What is it we do not have to do? What are we not required to do by law?'. By and large it would be cutting out a lot of those things, so our view is that just as with a lot of the privatised utilities in regional areas, like the electricity companies, it has been woeful in our view in providing training opportunities for the young people. We think that is a massive problem that ought to be taken into account.

Certainly it has been identified in the manufacturing industry, and that is not necessarily, but it can be, in regional Victoria. There is a lot of manufacturing in regional centres. But again that has been identified. Labour hire companies come in and go out. They do not feel a responsibility to the industry; they only feel a responsibility to take their percentage off the placement fee that they get. That is why we are saying that we would certainly welcome part of any licensing system being connected to vocational training, whether it is connected to an actual skill levy that they pay or some system of levy for the labour hire industry — for example, the big ones say, 'We already invest this amount and that counts towards their levy'. Smaller ones pay and can then draw it out when they are actually training people — that is the way other countries do it — for our specific sector. If you are going to be registered as an on-hire employer, a labour hire employer, you have to contribute to a skill levy. You then get that money back when you are actually training people. You have a training plan and you are doing those things, and that way, whether they are in regional or metropolitan areas, we know they are investing in training.

Mr DELAHUNTY — Have you got 10 words to say about group training companies and their role in the area?

Mr HUBBARD — It is of concern. Group training companies often operate as labour hire companies and less as training companies. We are concerned about that. A number of unions at the Trades Hall have an agreement with about 13 of the group training companies to ensure that whenever a young worker, a trainee or apprentice, goes into a workplace, they are paid the same as the site rate. That is certainly something we could not get with the others. That is of concern to us. We are concerned that a lot of the group training companies are under stress financially and effectively have to operate as labour hire companies. That often means that those young workers are not paid for down time or the same rates as people who are in the workplaces they go into. Group training companies should not be excluded from this. They are operating effectively as on-hire companies. They place people and the better ones do it very well. There is a lot of mentoring and a lot of assessment of the places they are going into, and monitoring of them. Some, however, do not do that well at all, so there is a mix among the 30-odd training companies. There is a mixture of how it occurs.

The CHAIR — Thank you for your time. I might just leave you with one question and follow this up with you at some stage in the future. You are putting the view that labour hire firms ought to be almost philosophically obliged to provide some training support for this registration system and that would be the means by which their registration could be translated into training. Philosophically would that argument not apply just as much to the

company, the clients of the labour hire firms, the ones who in the first instance are saying they have been doing the training in the past, but for whatever reason, the bottom line, whatever, they have now decided to get someone else to do it, so they are not only outsourcing that role, they are outsourcing that obligation which has existed in a de facto sense forever, or for as long as they were doing it? You would think they would be philosophically as obliged as anyone else to be doing something in lieu of that training.

Mr HUBBARD — I agree, but I suppose they would pay because there would be a higher price for the labour hire they were bringing in. Presumably that is — —

The CHAIR — It may or may not be.

Mr HUBBARD — It may or may not be, but I must say that it has become very clear that even in big companies with over 100 employees the rate of apprentices taken on by those larger companies has halved in the last decade. That is a real concern. Clearly that is because they have outsourced a lot of their trade-based requirements and more skilled work, and labour hire comes in to do that. The labour hire companies survive on attracting and poaching labour for other companies or from direct employees, and the host company — you are right — saves money because it is no longer investing in training people and having the apprentices and doing all that sort of thing. So you are right, there is a responsibility on both sides. How a levy system or a licensing system would apportion that responsibility I am not sure. We partly assume that a licensing system would make it more expensive for labour hire companies. That cost would be partly borne by the host employer who would pay more for the labour, though that may not necessarily be the case, and there is an argument that the host employer ought to pay something towards that. Can I just leave you with a copy of that report? I have enough copies, I think, to pass around.

The CHAIR — Thanks for your time and presentation, we have appreciated it. We will have a transcript sent to you in a week to 10 days, and you are welcome to correct it and send it back to us before we put together our report, which will be made public at some point in the not-too-distant future.

Mr HUBBARD — I do not know whether you have other information about European registration systems?

The CHAIR — We would welcome that.

Mr HUBBARD — We will try and get some more information of that kind.

The CHAIR — Kirsten, our researcher, will be in touch with you about following up on some of that stuff.

Mr HUBBARD — Thanks a lot.

Witnesses withdrew.