

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Labour Hire Employment in Victoria

Melbourne — 23 August 2004

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Mr T. Piper, Director, Victoria; and
Mr D. Hargraves, Executive Officer, Labour Hire Sector, Australian Industry Group.

The CHAIR — From the Australian Industry Group we welcome Tim Piper, Director, and David Hargraves, Executive Officer in the labour hire sector — someone of tremendous relevance to us this afternoon. You are both aware that the Economic Development Committee is an all-party committee of the Parliament. We are conducting an inquiry into labour hire, and we have been given a reference to investigate and report back to the Parliament by the end of December. This is one of a series of public hearings where people come along and talk to us. Your presence today is greatly welcomed. Your comments are being recorded by Hansard and we will make a copy of the transcript available to you in a week or so. This is a public hearing. You are covered by parliamentary privilege in your presentation today, but that extends only as far as the door — once you go out, it no longer applies.

What we have been doing with groups making presentations is allowing them to speak to us for 10 minutes or so and then we go around and have questions and answers. We also indicate to people before they leave that we reserve the right to come back and follow up with you if other matters arise that we are not clear on or that we desire further information on. We hope that is okay if it applies in your case. I welcome you and give you a few minutes to speak to the paper you have made available to us.

Mr PIPER — Thank you, Chair. Thank you to the committee for your willingness to hear us. I am going to speak for only a very short time. David Hargraves is our resident expert on the labour hire industry in Australia, and he will go through the presentation with you. We were asked to give a brief overview of the Australian Industry Group and what our role is, and I thought I would briefly do that. I am the Victorian director of the Australian Industry Group. We have branches all around the country. We have more than 10,000 member companies, ranging from the very largest companies such as BlueScope Steel and Ford and Holden and manufacturing companies such as that down to very small ones. We also include in our membership a number of service providers such as Primus Telecom and IBM. We are very broad, and we spread out across a number of sectors with those we represent. We also represent, very importantly for these proceedings, many labour hire companies. In fact I daresay we represent all the major labour hire companies and many of the smaller ones. However, we also have somewhat of a different role, in that at the same time as we represent the labour hire companies we represent the companies that use most of the labour hire companies. In that sense the big manufacturers tend to be the people who are using the labour hire companies and their services. We will be trying to cover both of those roles today.

Given the time constraints we have, David has prepared a formal presentation to give to us, following which we would be delighted to answer any questions you might have.

Mr HARGRAVES — Good afternoon and thanks again for the opportunity of being with you this afternoon. As Tim said, I have prepared a short presentation which I will talk to. Just by way of introduction, my duties in AiG extend to having national responsibility for the labour hire sector. I do other things as well, but they incorporate that. When I say ‘representing the labour hire sector’, it includes such things as representing the industry in major matters before industrial tribunals — certainly in one matter you are probably aware of, and that is the secure employment test case in New South Wales. I had a major involvement in that. I was also a member of the New South Wales labour hire task force and inquiry.

Essentially in addressing your terms of reference I thought I would summarise our written submission in terms of the questions set out in the paper under the heading ‘Broad observations’. Those questions are: what is labour hire? Why do clients use labour hire? Do labour hire companies comply with industrial instruments? How well do labour companies perform when it comes to safety? Why do employees work for labour hire companies? Why is there a level of opposition from some areas of the trade union movement towards labour hire?

In addressing the first question about what is labour hire, it seems to me quite a degree of confusion exists generally about the term ‘labour hire’ and what it means. I think the term that I prefer is ‘on-hire’, but where work is performed by companies where they provide such things as the premises, the infrastructure, the tools and equipment as well as the direct supervision, in our view that is not labour hire, but some of that sort of work and some of those sorts of scenarios are performed by labour hire companies. The true meaning of labour hire should be confined to those situations where employees are on-hired to a client. I can illustrate that by an example. Skilled Engineering — and I understand it has been before the committee and given a presentation — as part of its business operates a call centre in Burnie, Tasmania. It contracts to Telstra and a range of other clients to perform a range of services. Skilled uses its own premises, technology and management to supervise the employees in the business. It would be regarded as part of the labour hire business, because it is not physically separated. Clearly that

is not a situation that is labour hire. If Skilled hypothetically were to sell that business to another company in the call centre business such as Teletech, would it be regarded as being a labour hire business? Of course not. That is the first point I wanted to make — there is confusion about what labour hire is and what falls under its umbrella.

The second question that I pose is: why do clients use labour hire? In our written submission we addressed a number of factors from various pieces of research we have done. They included such things as corporate restructuring, increased flexibility to meet fluctuations, greater competitive pressures as a result of globalisation, outsourcing in the private and public sectors, extended hours of operation, fast changing technology, a need to concentrate on core business activities and new industries. In respect to that last point, if we look at where a lot of the traditional jobs lie — for example, we have lost over 150 000 jobs in the manufacturing sector in Australia in the last 10 years — there is certainly nothing to indicate that that trend is not going to continue, and that loss may even escalate. Fortunately a lot of those jobs are being replaced, but they are being replaced by jobs in new industries such as the call centre industry and the telecommunications and service sectors. Significantly manufacturing has traditionally used permanent weekly hire employees. That business is in decline. The new industries that are emerging are growth industries that do not have the same need for traditional-type jobs.

Another factor that is not included in our written submission is the cost and efficiency that labour hire offers clients. As the pressures of international and domestic competitiveness impact on business in Australia, companies look for more time-and-cost-effective solutions. There are a number of things that labour hire companies are able to offer in terms of solutions. Firstly, they can offer better response times because they have access to a larger range of people. Secondly, they have the technological support and infrastructure which facilitates easier identification of people who have the requisite skills and experience. Thirdly, they have specialist staff who have more highly developed interview skills and better and more developed selection procedures and practices. Fourthly, they have knowledge of the local market and where to look for people who have the requisite skills and what you need to pay in terms of market rates to be able to attract them. They bring a lot of intellectual property to the recruitment process. The costs of recruitment are high in terms of management resources. It is far more convenient, by way of example, for a company when it needs additional staff to engage a labour hire company which can do such things as evaluate an application, short-list the people, interview and competency test them, reference check them as well as induct them and issue them with protective safety equipment. All of those things take time, and labour hire companies are usually in a far better position to do that than a lot of client companies.

Manufacturing companies are significant users of labour hire. We know that manufacturing is in a precarious state, and as those companies come under more pressure to compete with overseas markets they look to increase their competitiveness and reduce costs by taking out such things as management time. To the contention by some areas of the trade union movement that business largely uses labour hire to reduce costs, which is a contention they have made in a fairly widespread way, we say it is not supported by the evidence. We maintain that, while cost is always a factor in business, it is not the primary consideration that comes into effect when companies are making a decision as to whether to use labour hire or not. That is supported by the fact that 50 per cent of labour hire companies pay the same rates of pay as their clients.

Mr ATKINSON — Sorry, what was that percentage?

Mr HARGRAVES — Fifty per cent.

Mr ATKINSON — And the other 50 per cent — higher or lower?

Mr HARGRAVES — It could be either.

Ms MORAND — Take a wild guess which one it is.

Mr HARGRAVES — There would be a lot of cases where they could pay higher, because they may have their own enterprise agreements in place, so there is no requirement to pay site rates, but a lot of the labour hire companies have enterprise agreements with various unions. Of course it is true that some labour hire companies pay award rates, and there is nothing wrong with that — they are the established safety net of conditions. There are a lot of other companies in all sectors which pay in accordance with the award. One of the other factors here for skilled employees is market rates, and quite often they determine that labour hire companies have to pay the going rates to attract suitably qualified and experienced labour.

The third question I pose is: do labour hire companies comply with industrial instruments? There is no evidence that there is significant non-compliance by labour hire companies. There will always be some examples of non-compliance within this sector, as in any industry. The appropriate consideration is whether the incidence of non-compliance in the labour hire industry is greater or less than across industry generally. I have not been able to find any concrete data, but anecdotally we maintain the incidence of non-compliance is much lower than across industry generally. That is not an excuse, because all companies should be meeting their obligations in terms of industrial regulation.

The fourth question is: how well do labour hire companies perform when it comes to safety? That is a difficult question to answer comprehensively, but from my experience in working with labour hire companies I can say a couple of things. Firstly, labour hire companies definitely are aware of their responsibilities in relation to safety. I do not think that has necessarily always been the case, but in recent years the case law has made very clear the obligations of labour hire companies in respect of safety. Secondly, as the committee would be aware, the industry is dominated by the larger players, such as Skilled, Manpower, Adecco and those sorts of companies. I can say from first-hand experience in working with those companies that their OHS policies are at a very high and very sophisticated level and would certainly be ahead of industry average.

Nearly all those companies have dedicated OHS teams, and generally speaking their management teams are pretty well trained in OHS awareness. The focus on safety is so high that in at least one case that I am aware of a labour hire company uses its safety record as a marketing tool. As a consequence its good safety provides it with a commercial advantage. Even as late as Friday I was talking to that particular company, which has 2100 employees in a high-risk area. It has gone through 150 days without any incident, which is much better than the industry standard. So it is actually focusing on safety as a mechanism to give it an edge in the industry. There are a lot of examples of that — too many to go through today. The one area in OHS that does need examination is rehabilitation and return to work. It would be true to say that that is a problem, and we recognise that. It is a complex problem, and the solution to it is not immediately clear to us. It is certainly an area on which we would like to have some further work.

The CHAIR — I want to give you about another 5 minutes.

Mr HARGRAVES — That will be fine, thank you. Why do employees work for labour hire companies? As a community we need to recognise that changes are occurring. It is difficult to categorise people, but generation X people generally look for job security, and generation Y people look for flexibility. Many of the people who work for labour hire companies do so because it gives them the flexibility they are looking for in their working lives. That might be to balance such things as family commitments, study commitments or travel. Some would prefer to have the greater security of a permanent job, but I am not sure that any of us really believes that these days there is such a thing as a permanent job. All the labour hire companies have numerous stories about the offers of permanent employment that are frequently declined by their employees. As the labour market goes through its next period of change, with factors such as the ageing work force combined with skill shortages, employees will be in a position to demand greater flexibility in their employment.

The last question I pose is: why are unions opposed to labour hire? In the slide I have referred to a number of factors: firstly, a belief that labour hire takes away full-time employment; secondly, a belief that labour hire is precarious employment; thirdly, low benefits and no protection - increased health and safety risks and lack of training. We do not agree with all those contentions, obviously. We say that an underlying issue is a desire of the trade union movement to increase its membership in the labour hire sector. There is, of course, nothing wrong with that. The question is really: should there be greater regulation of labour hire because of this factor or should unions, in order to attract more members, have to demonstrate their relevance to their labour hire employees?

In conclusion, our recommendations are that, firstly, on-hire labour should be regulated by a system of accreditation which relies on the observance of a code of practice. There is merit in that. Secondly, education campaigns should be conducted for companies that provide on-hire services and for the users of those services. That should be in respect of their obligations in not only industrial compliance but also safety. WorkCover in New South Wales has conducted those sorts of education campaigns, and my understanding is that they have been very successful. Thirdly, rehabilitation and return to work should be re-examined so as to provide increased opportunities for injured workers to be able to return to the work force quickly. We also recommend that the use of hold harmless contractual arrangements within industry be examined, and we think that there is scope to look at the extent of non-genuine independent contractor arrangements and that there is merit in doing that.

The CHAIR — Thanks very much, David. That is a very good presentation, and the fact that you put some recommendations gives us something to work with. To start, I want to throw back to you a question on occupational health and safety. In your presentation you state that ‘labour hire companies have strong OHS awareness’. I notice it does not state ‘strong OHS awareness and performance’. This is a point of some contention for us. We have heard from Elsa Underhill and the RCSA as well. We understand that the two of them do not see eye to eye, and that is fine. Certainly the wealth of work she has done — I think she has presented us with seven different reports and some of the international stuff we have touched upon — suggests that at least it is very persuasive that the sector’s performance is substandard. For whatever reason, there is a higher incidence of injury, and it seems to me that that has to be improved.

I notice that in the Skilled presentation it referred to an Australian standard that it employs — not an occupational health and safety system but nonetheless a standard. When we talked to the RCSA my recollection is that it was said that it does not have an association standard that all its members sign up to. The anecdotal material we got from it was that the typical induction procedure will vary from one company to another. The RCSA already operates to a code of practice, and you are suggesting accreditation. Would accreditation, if it involves just a code of practice, not lead to the same problem — that you would have some members saying, ‘Well, this is the standard that I see I need to meet’ and someone else saying, ‘No. For me it’s actually a lot lower’? How do we ensure that we get a common standard for OHS with all labour hire firms?

Mr HARGRAVES — Firstly, the voluntary code of practice that has been adopted by the industry at this stage is quite comprehensive. The code of practice provides the minimum — a safety net — in terms of OHS compliance. A system of accreditation means that companies have to satisfy a test. At the moment there is no real test for a labour hire company to go into the industry. I could go out and start my labour hire company business tomorrow.

The CHAIR — What sort of test would you propose?

Mr HARGRAVES — Essentially we are relying on the code of practice that the RCSA was referring to. We are familiar with that, and that code of practice has been subjected to some scrutiny and generally is seen as being a reasonable standard to achieve.

The CHAIR — Except that from an OHS point of view the argument that has been presented to the committee by Underhill is that, even with its code of practice, at the moment the injury rate in the labour hire sector is, I think she said, twice as high as elsewhere. Now we may have a divergence of opinion with the committee as to whether that is accurate or not, but at the very least it suggests that there is a problem with a code, but a code alone is not going to drive that down to what the broader community might think is acceptable.

Mr HARGRAVES — I think the problem with that — and I think it is arguable, but I have not looked at that report for quite some time — but I think it is that the statistics that are referred to are, firstly, debatable and, secondly, where are those accidents occurring? Are they occurring in the larger companies that have well-developed policies and practices? Having worked with most of the larger companies, I can sit here before you today and say that they are genuinely at a higher level than most other sectors, including our own membership. They are at a high level, they do practice what they preach — I honestly believe that — and they have quite sophisticated and developed resources within those organisations. On the other hand I think it is true that other companies that might be doing labour hire on the side — they might run an engineering business or some sort of construction contracting business but on-hire labour when they have got spare capacity — perhaps it is more questionable about how serious they are about OHS. So I do think it is definitely the case that you have the people at the top who are really good corporate citizens and who are doing the right thing, and I think there are the companies at the bottom about which there would be a high degree of doubt about whether they are always doing the right thing.

The CHAIR — I will run past you one before we open up for questions. The RCSA — and I am speaking from memory here, but in its presentation to us it included an RMIT survey that it had done of its membership, and I think it quoted on the subject of OHS that 49 per cent of its members in reflecting the fact that they did have an awareness of OHS responsibilities had refused at some stage or other to undertake work for a client because they were not satisfied about the requisite degree of OHS awareness on that site, which is terrific in itself, but it begs the question of what those clients did when they got knocked back. My bet would be that a fair few of them did not just turn around and say, ‘We have got to improve our performance’. They shopped around until they found someone

who did not ask the question. Now that seems to me to be the problem, and you suggest that accreditation should be based upon a code. I am not convinced of that as an individual here on this committee. I am not convinced because I think we have seen from the RCSA that it has got a code of practice and that still begs a lot of questions. Maybe the code needs to be tougher, but I would say to you that on what has been presented to us today the code in itself is not dealing adequately with the injury rates in that whole sector.

Mr HARGRAVES — Can I say in relation to that is that that code is a voluntary code. A lot of companies will comply with that code, a lot of others will not. If you have a system of accreditation, the code becomes a compulsory code, and it makes it far easier — as Tim said before not just on behalf of the labour hire sector but also the users of labour hire, it becomes very easy then for us to go back to the rest of our membership and say that when you are using labour hire companies you should only be using accredited labour hire companies.

The CHAIR — Or what?

Mr HARGRAVES — Well, that would be our advice.

The CHAIR — You can have a mandatory code, if the governments can regulate and legislate and set up registries in all sorts of ways, shapes and forms, and say, ‘You must perform to that code’, but then you only find out down the track that they have not in fact been doing that and that is the reason behind some injuries or a higher than acceptable injury rate. What is the comeback?

Mr HARGRAVES — Well, if the comeback is at the end of the day that they lose their accreditation, they basically go out of business because they — —

The CHAIR — And who determines whether they have breached that or not? Is that an industry issue?

Mr HARGRAVES — No, I do not think it would be, I do not think that would really work. I think there has to be some form of government regulation in terms of the issuing of the accreditation and, whether that is done by a committee or whether it is done through some other statutory office, I do not think it could be regulated by the industry itself. It would have to be regulated by government.

The CHAIR — I have hogged enough of your time.

Ms MORAND — Your first recommendation about the question of accreditation, what would you see as conditions of registration? And my second question is, in your presentation on why do employees work for labour hire companies, a couple of your dottedies referred to higher wages and enhancements of skills, and I am wondering if you can provide evidence to support those claims.

Mr HARGRAVES — In relation to your first question on the accreditation, probably picked up in the answer that I just gave a moment ago is that the test for getting your accreditation would be that you would have to indicate that you are complying with the code of practice, and if you breached the code of practice — —

Ms MORAND — What is in the code of practice, though? What sort of conditions are required?

Mr HARGRAVES — The code of practice has got a whole range of obligations in respect of compliance with industrial instruments, compliance with OHS regulation, compliance with privacy, compliance by having in place all the necessary insurances including proper workers compensation insurance — it is reasonably comprehensive. So compliance with that code would be the test for accreditation, and I do not think that labour hire companies that are involved in the on-hire business would be able to continue to exist without accreditation, because generally speaking the users of labour hire would not want to take the risk of using non-accredited companies because they would have to ask the question, ‘Why is this company not accredited?’.

In relation to your second question, I cannot give you real, hard examples of what I am saying, I can give you some anecdotal examples whereby employees will stay within the labour hire sector and get experience in different jobs even within different industry sectors to broaden their range of skills. So rather than be working on one particular site for a company and working operating certain machinery or exercising certain skills, by working in a number of different workplaces for a number of different companies they actually enhance their skills.

Ms MORAND — I guess you could do that without working for a labour hire company. So you cannot substantiate the statement of higher wages which you put to the committee today?

Mr HARGRAVES — I have not got any statistical data that will support that, no.

Ms MORAND — So it is just anecdotal?

Mr HARGRAVES — Yes.

Mr DELAHUNTY — Nurses would be in that category, would they not?

Mr HARGRAVES — I am not sure.

Mr PULLEN — Recommendation no. 3 in your comments is that rehabilitation and return to work be examined. I do not know whether you have changed your views from the New South Wales labour hire firm inquiry, but recommendation no. 6, for which there was unanimous support, was that the minister amend the relevant legislation and mandate joint responsibility on the labour hire company and host organisation for rehabilitation and return to work of injured workers. Is that still your position, or —

Mr HARGRAVES — Yes, it is.

Mr PULLEN — It would be. That is fair enough. The second thing is — and I ask most people who come before the committee this one, or most organisations — what concerns me about casual workers is their inability to obtain home loans. We had one labour hire firm tell us that that is not a problem because they went around all the banks in the town and they said they would give them a loan. My mind boggled on that one. We also had another organisation say it was not a problem. Well, it is a problem. Has it been fed back to you in any way whatsoever that casual workers, labour hire workers, have difficulty in obtaining home loans because of their lack of ongoing permanent employment?

Mr HARGRAVES — You are right, obviously, in terms of that being an issue that has been raised on numerous occasions. You would be aware that in New South Wales there is a major case before the New South Wales Industrial Relations Commission — the secure employment test case. That is one of the issues that has been claimed by the New South Wales Labour Council in respect of that case. The commission obviously has not made a decision and those hearings are still under way, but certainly what we say is that there is some very strong evidence that suggests that is not the case.

We certainly have evidence from people within the finance sector to the effect that the financial institutions, when determining the criteria for any person to get a home loan, will look at a whole range of factors. The nature of their employment and whether it is casual will be one of those factors, but they are rated on a point system — I think it is out of 100 points, from memory — and they go into things like their capacity to repay the loan, their financial history, their security and all of those sorts of things which you would normally expect a financial institution to examine, but there is certainly no evidence to suggest that a person will be refused a home loan because of their status as a casual employee.

Mr PULLEN — I would dispute that, so if you can provide us with that evidence, that would be greatly appreciated.

Mr HARGRAVES — I am happy to provide you with the evidence that we provided in terms of that case, yes.

Mr ATKINSON — Can you tell me what is the distinction between accreditation and licensing?

Mr HARGRAVES — I guess it can be that one is a more formal system, if you like.

Mr ATKINSON — Which one is that?

Mr HARGRAVES — Licensing. There was certainly an issue, again going back to the New South Wales task force, where licensing was discussed between the task force members as being an option. Philosophically we do not have that much difference of view of whether it should be licensing or accreditation. The preference for accreditation was one driven out of not wanting to be in breach of any ACCC considerations, and at the time there was certainly a possibility that a licensing regime might actually do that, so a system of accreditation did not run that risk.

Mr ATKINSON — I guess one of the really interesting points to me is that in 9 out of 10 phone calls when I talked to Tim Piper, he would tell me about the problem of red tape, and yet quite a number of organisations and companies have come to this committee and suggested it should have a licensing regime to smash the red tape. In fact in many ways I struggle to see how the licensing system will introduce new laws or new obligations on employers that do not already exist if they are good employers. I wonder if I can have the benefit of your organisation's view on that?

Mr HARGRAVES — I think we would not want to see a bureaucratic red-tape system, nor would we want to see a system that would require huge fees to get a licence or accreditation, so I put that point up front. But I think the real benefit of it, and the reason that the industry supports it, is that the labour hire industry does not want to see the people at the bottom end of the scale who may not be complying with their obligations, cutting corners and therefore getting out of it a bit cheaper getting jobs that the rest of the industry is not able to because their cost structure is lower. Eliminating those companies which are not doing the right thing can only be beneficial to the rest of the industry. There is little doubt in my mind, as I said before, that if you had a system of accreditation and you were not accredited, you probably would not be able to remain in business. So I think that is the real benefit, and those companies are going to have to be constantly monitoring themselves to make sure that they are complying with the code in order to retain their accreditation. Of course the reason the larger companies will support a system of accreditation is that they know they are already meeting that standard.

Mr PIPER — Hopefully, Mr Atkinson, that would mean that the red tape is not introduced for those who are already complying with the law, because they are already complying with the law, so under those circumstances the only extra red tape if you took those steps would be the actual accreditation itself. There would not be any further complications for most of those companies who are already complying.

Mr ATKINSON — Accreditation is actually worse than a licence in the sense that it requires almost an endorsement of the company's practices. A licence is less onerous for government. Accreditation suggests that those people have actually been through a process and have been accepted as meeting the accreditation. It is not 'buyer beware' if the onus is not on the company, I would suggest, in an accreditation system.

I have another concern. We were given three examples today which were fairly alarming, at least two in particular. Two of them were to do with companies that I would have thought would have run a mile when a labour hire contractor came to them to offer services. One of the companies is George Weston Foods — and you are protected here, remember — and we will ask George Weston Foods to respond. The other company is Baiada, which is quite a large chicken-processing company, and both of those have entered into labour hire arrangements. On the surface, as presented to us today, and subject to their actually contradicting or providing alternative advice, it would seem that both of those contracts were certainly deficient and represented short-cutting of a range of obligations that a normal employer would have, irrespective of what sort of company they were running. Is this submission informed by the labour hire companies in your membership or is it informed by companies in your membership that also use labour hire businesses to provide services? To what extent would those companies rely on evidence that a labour hire company was doing the right thing and was not short-cutting on its statutory obligations?

Mr HARGRAVES — Firstly, in respect of those companies, I obviously cannot comment. I do not know any of the details, but in relation to whether we are here today representing the labour hire sector and the users of labour hire, then the answer to that is yes, very much both, and obviously it is the larger proportion of our membership that are the users of labour hire and a smaller percentage which is actually the labour hire sector itself. I think, in terms of your question, it is really more directed to the sense of, 'Would a system of accreditation change that?' — is that what you are driving at?

Mr ATKINSON — What I am really interested in, I suppose, is whether the impetus for your recommendation about a system of accreditation or licensing or whatever it is, is that because the people in your organisation or who you represent who use labour hire companies, are saying, 'We really need some sort of system we can rely on that the people who are presenting to us are fair dinkum and good employers and so forth, so that we are not exposed', or is that particular recommendation more reliant on the view of your labour hire members? Apart from anything else, one of my concerns about licensing systems and so forth is barriers to entry to a market, and companies saying, 'We should have this licensing system because it will help us to make sure we do not have new competitors into the market'. That was the ACCC issue that you touched on, and I am also concerned about that in some of these instances. So that is part of the background of the question, but the key thing is whether your labour hire users, companies in your membership that use labour hire firms, are saying, 'We would like to have a licensing

position or accreditation situation so we know that we are picking the right people' or is it the labour hire people you represent saying, 'We think a licence system will be better for our clients and better for us'?

Mr HARGRAVES — It is both. We have had extensive consultation on this issue with the labour hire companies over a long time. Certainly it is their very firm view that that would be beneficial to them and also to industry generally. We have had less consultation with the users of labour hire, but from the consultation that we have had we know that it is their view as well, because they would like to have at least some comfort that the organisations with which they are dealing have met some test to be able to operate within that industry. Those companies will obviously make their own decisions, but, as I said before, once you establish a regime whereby the users of labour hire will use only accredited companies, that is a big step forward.

Mr ATKINSON — You just used the phrase 'have met some test'. What is the test? Is it simply accreditation because you have put in your own form saying, 'Well, yeah, we do all these things' or is there some analysis of the information that is put that supports the accreditation?

Mr HARGRAVES — There would have to be that form of analysis. Whilst we have not got to the detail of that, I would envisage a system whereby a company would have to make a formal application for accreditation and in making that application would need to demonstrate that it is complying with the code of practice, and where there are breaches of that code of practice the company can be putting its accreditation at risk. It would be open to employees or unions or government to bring forward cases where there is non-compliance and a company would need to show cause as to why it should not lose its accreditation. We have not gone into that sort of detail, but they are the sorts of steps that I would see in that sort of process.

Mr ATKINSON — I would be keen to have any further information or advice that you have on that, because in the context of no evidence of significant non-compliance or that the labour hire service has a high incidence of non-compliance this is an interesting precedent, to say to one particular industry group, 'Okay, you're now going to have some sort of an evaluation of your business practices'. It is a very interesting precedent for other industry groups.

Mr BOWDEN — I would like to ask a couple of questions about item 4 in the recommendations, on the hold harmless arrangements. If as I believe the hold harmless recommendations might be followed — please help me on this — would it be that the host company would be held harmless if something went terribly wrong on an OHS matter and say, 'It's the responsibility of the labour provider', or the inverse, that the labour provider is held harmless and it the OHS responsibility is with the host provider? I do not know; I would welcome further information on this issue.

Mr HARGRAVES — That is a good point. We are finding that in some places clients are saying to the labour hire companies, 'In order to get this contract you will need to hold harmless' — in other words, indemnify the client from any prosecution for an OHS breach. We think it is very dubious that that could be sustainable at law in any event, but we are certainly aware that some clients are imposing that, either unwittingly or consciously. It is difficult for me to say how widespread it is, but I certainly have had that complaint from a number of labour hire companies, that that practice is being followed. That clearly is not within the spirit of the legislation and probably would not hold up in any event. We certainly do not condone that practice. At this stage we really have not applied our minds to how you prevent that practice from continuing.

Mr BOWDEN — When you say that the use of the hold harmless arrangements needs to be examined, do you mean be examined by us with the possibility of our recommending some legislative change? It is a very complex thing. You either dump the responsibility onto one company or another one or both or whatever. When you say it needs to be examined are you asking us to consider it or just highlighting it?

Mr HARGRAVES — I do not think I was really meaning that this committee should look at that. If you are able to, well and good, but that is not particularly what I had in mind. I am not particularly fussed which way it is — part of this committee or something that arises out of this committee. We think it is an issue that does warrant further examination.

Mr BOWDEN — Is it contentious in the marketplace? Is it a major cause of concern in the marketplace?

Mr HARGRAVES — I had an inquiry from one of our members last week who rang and said they had just been told that that was what they had to do. I have advised them not to enter into any such arrangement, but

they have sort of said, 'Look, if we do not indemnify them we will not get the contract'. I do not know what decision they made; I certainly know how I advised them. It is an issue that has been there for a couple of years. Whether it is on the decline, whether it is equal or whether it is increasing, I really do not know. However, it would be true to say that quite a number of our labour hire companies have raised it with us.

Mr PIPER — If I can just add something there for a moment, Chair. My view is you cannot contract out negligence, anyway, so under most circumstances, irrespective of what the contract says, if you have acted negligently, then you are still going to be liable. However, it is becoming more of an issue in Victoria, particularly when WorkCover decides to take an action against either the employer or the labour hire company. The determination as to who is more responsible then becomes an issue, and who is liable in terms of repaying any debt. Quite a number of our members from both sides of the fence want to discuss it to try to resolve it. I think resolution and certainty are important in this area.

The CHAIR — We will move on to Mr Delahunty, but I would have thought, just on that subject, that where a hold harmless clause is an obvious attempt to circumvent or negate what is held to be the statutory obligation of joint responsibility, then there is an imperative of public policy that it be declared null and void. I would have thought that that was self-evident almost. You have expressed some hesitation about where we should go with it, but I do not see how any government could be insisting on the one hand that this is the state of play with occupational health and safety and sending clear signals to both parties and then having the two of them colluding in a sense to say that it does not matter where the obligation falls, one will indemnify the other for the purpose of gaining a contract. To me, insofar as it relates to occupational health and safety, that is clearly contrary to what the Parliament intended in the first instance.

Mr HARGRAVES — The difficulty is that to my knowledge those clauses have not been tested.

The CHAIR — I understand that, but it would seem to me that the intention of entering into one of those arrangements, whether it is under duress to get the commercial deal signed or whatever, is simply to circumvent the statute to say, 'This is where the obligations will fall'. We will talk about that further.

Mr DELAHUNTY — Just a quick question, because we are running out of time. I am interested to know how many of your labour hire members are based in regional Victoria percentage-wise.

Mr PIPER — I cannot tell you with any certainty. However, having said that, there are a number of quite large labour hire companies based in regional Victoria. One I saw recently in Albury-Wodonga employs many people in the meat area. That is a difficult area, and they were extolling their virtues and how well they have been doing from a WorkCover perspective and, obviously, in their occupational health and safety. They have been reducing their costs and their view was that they were doing so well that they were able to keep their costs down and therefore provide very reasonable cost employees to the abattoirs.

Mr DELAHUNTY — I think we might have even met with them, Tim.

Mr PIPER — More than likely.

The CHAIR — It might have been Mr Wheeler.

Mr PIPER — Could well have been.

Mr DELAHUNTY — Can I go on? We talk about the meat industry, are there any other industries most of these people can work in? What industries are mainly using the labour hire sector, both on supplying labour and also employing the labour? In what areas are they concentrating?

Mr PIPER — My understanding is it is right across the board. If you took manufacturing as being a sector, then many of our manufacturers use labour hire companies. If you talk about confectionery being a sector of manufacturing, then I know in that area you have quite a few people, it is being used by many of our members — construction, I understand, as well. It depends — even I am not sure whether we consider call centres to be part of that but people move in and out of call centres as well so really it can be right across the board.

Mr DELAHUNTY — A last quick question: I notice in your submission you talk about the growth of casual labour and you put it down to a few things like globalisation and a few other things, but do you see any correlation between the growth of labour hire industries and casualisation or is it because of other factors?

Mr PIPER — It is a difficult one. Casualisation has spread across particularly in the retail industry where you have got significant casualisation and that is in many cases in the interests of the employees. It is what they are seeking and the type of employment that they want. As we said earlier, in many circumstances the type of employment that people want in the labour hire area gives them the flexibility and if you call this casual, then it enables them to be flexible. Many of them are working 48 to 52 weeks of the year, so it is hardly casual in the sense that many of us understand casual to be.

Mr DELAHUNTY — Permanent part time.

The CHAIR — Thank you for your time today, Tim and David. It has been very good and I have appreciated the effort you have gone to in putting your submission together. We may not agree with everything that is in it but we have at least got some discourse going here and we will come back to you if we need to clarify any content.

Mr PIPER — By all means.

The CHAIR — We will make the transcripts available in the space of the next week to 10 days and you will have the chance of amending anything there that needs correcting, and we will make sure that you are both acknowledged in the final report.

Mr ATKINSON — They might not want to be.

The CHAIR — They are in for it now! We will make copies available to you. Thank you again for your time. That ends our public hearing.

Committee adjourned.