

# CORRECTED VERSION

## ECONOMIC DEVELOPMENT COMMITTEE

### Inquiry into Labour Hire Employment in Victoria

Melbourne — 7 March 2005

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Mr R. H. Bowden

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#### Witness

Ms K. Windsor, Director/Principal Consultant, Windsor and Associates.

**The CHAIR** — The committee welcomes Kim Windsor to our hearing today on labour hire employment in Victoria. Kim, you would have seen the earlier report of the committee?

**Ms WINDSOR** — Yes.

**The CHAIR** — So you understand we have been tackling this for some time. We issued that in December and have been asked to finalise the inquiry through a second report by the end of May. In effect the hearings we are conducting today are in order to get some response to the interim report and to discuss other areas which we have indicated in the interim report we want more information on. Today is a formal public hearing. As such the proceedings are being recorded by Hansard. A transcript will be available, and we will give you a copy of that for the purpose of correction. That will come out to you in about 10 days, and upon its correction it will be evidence that the committee can make publicly available on the web site. We need you to be aware of that. As a rule, proceedings at public hearings are covered by parliamentary privilege, so the things you say in here will be covered by privilege, but that will not apply once you go outside the room. But we do not anticipate that anything you say today will necessarily require that protection. We have been given a brief summary of your background as director and principal consultant of Windsor and Associates. Would you like to spend a few minutes telling us about the work you do? Then we might ask questions.

**Ms WINDSOR** — Sure. My main area is in the field of training, and I work at a national level on competency standards, particularly covering about 16 or 17 sectors of the food and pharmaceutical industry. Within companies I provide advice on issues like job design and related skill arrangements and pay systems. So it is a dual thing. Most of my work experience — while I have worked in some other industries, like steel — is in food processing. So I am in a position to give you a bit of a picture of how labour hire affects training and skill development issues in that particular industry.

**The CHAIR** — I note from the background we were given, particularly a 2002 report, that the manufacturing industry has responded to increased competition by increasing the levels of non-standard employment. Up to 30 per cent of it is non-standard — that is, involving high levels of casual labour hire. Why is it that manufacturing in particular has gone down that path?

**Ms WINDSOR** — I think the food industry has particular features that are specific to it. It is by nature a pretty seasonal industry and has always had a reasonable need for fluctuations. In the food industry they — not all companies but a lot — distinguish between permanent hire, casual hire, which they directly hire, and labour hire, which they do not directly hire. So there are different categories. In preparation for today I rang about six of the larger companies to find out what their current position is. Of the six I spoke to — which are obviously not remotely representative but give a bit of an insight into current practice — one was aiming to increase its proportion of labour hire, one relied on labour hire but had no intention to increase or decrease it, and the other four had used labour hire but were moving back to controlling their own casual pool. That is not to say that they will not employ casuals. They all tend to employ casuals as the entrance into the industry.

**The CHAIR** — So from that snapshot there are mixed responses. It would seem some have tried labour hire, but it has turned out that it has not addressed their needs as they perhaps thought it would have a couple of years back.

**Ms WINDSOR** — Yes. Of those that said they were moving away from it, a big issue for them was corporate identification and company commitment. That was a key feature some of them recognised. A big reason that they used either labour hire or casuals has to do with their accounting practice. If they do not have permanents, it does not go against their permanent budget cost; it is accounted for in a different way. So to some extent the practice of companies keeping casuals on ad infinitum for long periods of time may well be driven by a desire to keep their budgets looking more healthy than they otherwise would. One company talked about how it had invested significantly in a high-cost technology, and because of that it was trying as much as possible to even out fluctuations and therefore less reliance on a fluctuating work force. If you are going to invest in high technology, you need people with high skills, and it would be unwise to assume that you can get these supplied by an external labour hire or casual labour market. So what they are looking to do is increased attachment to the company. That is important to them if they have a high-tech strategy.

There are a couple of other points that companies made. They initially thought labour hire was a good deal because they could outsource their induction training. In food that means outsourcing health and safety and food safety

training. A number of them were questioning whether they actually got any value out of that in practice. It would be very difficult for a company outside of the workplace environment to adequately prepare someone to understand the risks they are going to face in that particular workplace. The other thing they all felt disillusioned about, however obvious, is that they are the only ones who can actually provide training in the plant. Under the formal training system if anyone were to get money for training, it would be the employer — in that instance, the labour hire company. But if the labour hire company is outside of the plant, it is not in a position to do the training. So you have this catch-22.

**The CHAIR** — After listening to your comments I wonder how hard it is, given your experience, to go in and advise a company, let us say, in the food manufacturing sector, on what constitutes good induction procedure or good management of workplace risk when there is a labour hire presence. There are no national standards that apply, as far as we understand, where you can simply say, ‘This is the accepted standard for managing an industrial or manufacturing process when labour hire workers are involved’.

**Ms WINDSOR** — Yes, that is sorely needed. In terms of competency standards, if you were to go to them and ask what are the basic health and safety and food safety competency standards, you would find that some of it is generic — understanding what is a risk or hazard is generic. But other bits of it — applying it to the environment they are in and being able to locate the specific risks — has to be company based. That is really what you need with any training for this industry. It applies similarly to processes. Understanding the process of how an evaporator works is generic, but understanding how to operate this evaporator is quite specific. So you need this approach regardless of the kind of information. It is an interesting point. I am currently involved with a WorkSafe project, which is working with eight companies in the Goulburn Valley area to look at the health and safety induction that they give to contractors. That is doing what you are talking about instead of saying, ‘Okay, you are all frustrated, but you have all got contractors coming onto the site often and you are all supposed to do induction training’, because it basically duplicates every time any company does it, which is silly. It is an ineffective way to do it. That project is designed to establish the kind of model you are talking about.

**The CHAIR** — I imagine it must be frustrating for a labour hire worker to be put into a situation where they are given a rudimentary induction and then left to their own devices. Sure, they can ask other people, but they have had no relationship with the other permanent workers around them.

**Ms WINDSOR** — Yes. It is interesting, because that came through in the comments when I asked companies if they were conscious of any divide in the work force between labour hires or casuals and permanents. A couple of people said, ‘Not really, because people feel sorry for the labour hire people and help them’. They see them as new starts who are pretty disoriented and need help. That is another way of saying they may not have been trained properly and need assistance.

**The CHAIR** — That imbalance and their seeking out others or others seeking them out because of sympathy goes back to the issue you mentioned about having pride in the corporation you work for. I think I understood you correctly when you said that that is something companies want to do better. They want their workers to feel a greater sense of attachment to the company and what they are striving to achieve, and that is more easily achieved through permanent employees rather than labour hire employees. Is that what you were referring to?

**Ms WINDSOR** — That is right; that is the sense that companies have. If they want to instil that level of loyalty and commitment, they are better off with permanents than with ‘arms and legs’.

**The CHAIR** — I will pass it around for other questions after this last one. Would you like to give a forecast as to where labour hire will go in the food manufacturing sector. Do you think it has peaked and will settle down a little, generally speaking?

**Ms WINDSOR** — I think it is really hard to comment on that in the context of the industrial relations environment, and being unclear about how that will get sorted out. The two go hand in hand to some extent. There is no doubt that some companies see labour hire as a way of getting an un-unionised work force. I think that is part of how they view it; it is difficult to know.

The other factor that needs to be considered in working out whether you go for casual, labour hire or permanent is how you see your work process. A lot of HR people may well see production workers as a fairly undifferentiated group who can be moved around, and as people who really do not have very much skill and do whatever they are

instructed. When you talk to production managers about what they value and what they want from people, apart from the loyalty and commitment side, they say, 'What we really need is someone who can anticipate problems before they happen, who can raise issues before we have a recall or rework situation'. They are really looking for people who do not just know which button to hit, but who understand what the consequences and costs et cetera are if you do not hit it at a particular time. If that is what they are looking for it will be very difficult to find it by either a casual or labour hire route, if labour hire is seen as short term. Of course some labour hire arrangements are long term. Here I am talking more about the short-term contractor arrangements. I think that is going to be difficult for them.

**Mr ATKINSON** — One of the things implicit in what you talked about in your introduction was that a lot of those companies see the use of labour hire as advantageous or as entry positions to their industry and particularly to their own workplace. Can you tease that out a little more? In other words, is that because they are fearful of engaging an employee and then facing all of the issues of unfair dismissal or other forms of compensation or difficulties in retrenchment process and so forth if the worker is unsuitable? Is that the fear that is driving — —

**Ms WINDSOR** — That is certainly how some managers see it. They want to see what a person is really like and whether they are suited to the business. That is part of the attraction. A number of managers have mentioned that there is also enormous frustration with this strategy — for example, an HR Manager in one company that recognises it has high-skilled operators in a particular role are totally frustrated. They would be prepared to pay the person a much higher rate, but the only way they can attract them in is if they will come in as a casual on a much lower rate. So there is this nonsense where you have a policy that is driven by one set of issues, but when you come to look at who you want to recruit and who are the best people in the market, you are bringing them in at a low, casual rate when in fact if what you want is a permanent at a high end you could attract a much broader range of people if you could go to the market with that, but most companies do not.

**Mr ATKINSON** — Are any of those companies pursuing a strategy of trying to cut costs in that area. In other words, is it a cost-cutting strategy or is it really more the issue of how you address the perceived problems of recruitment and perhaps the skill development issue? Is it cost driven?

**Ms WINDSOR** — It is not clear to me. One company said that the only reason you would do it is for the bottom line, and they were moving away from it. They were saying that they had thought that they would save money, but a big area for them was that there was a blurriness about responsibility for discipline and poor performance which ended up in them having a higher proportion of disputed situations, unfair dismissal claims or whatever, than if they had been managing it themselves. So in fact what they were saying was that they are reviewing whether it saves them costs. A lot of companies went into labour hire with assumptions.

Another company explained that it used to manage its own casual labour pool, but it had moved to labour hire because it was finding that it needed a whole person dedicated to filling vacancies on its lines — it was quite a large company — and so rather than having that whole body sitting there making phone calls around a pool of casuals, it has outsourced it. It sees that as saving money. So there are really mixed responses on the money issue. It would be interesting to understand more clearly how companies are seeing it.

**Mr BOWDEN** — If there is a mixed feeling about the driver of cost reduction — and it is not clear whether it is or is not; some people say cost reduction is a driver, others are not so sure — have you seen any observable trend of companies looking at their labour hire employees when they are in this plant and then targeting those people to offer them permanent positions, so it is a transition?

**Ms WINDSOR** — Absolutely.

**Mr BOWDEN** — Is that a trend?

**Ms WINDSOR** — I cannot comment on whether those people are labour hire or casuals, but that is absolutely the practice when they offer permanent positions. They are looking at who they have got there and offering them the permanent jobs. So for some people it is definitely a route into permanent employment.

**Mr BOWDEN** — So perhaps it is one way of accessing employment for people who may not normally get employment? They have a transition step?

**Ms WINDSOR** — Yes, but I do not think it is the labour hire feature in itself. It is the casual contract, whether it is managed directly by the company or by the labour hire firm. In thinking through the impact on skill and training, the only real difference is who is the employer, the processor or the labour hire company. If it is the labour hire company training funds only go to the labour hire company. I checked and no labour hire companies are registered to deliver any formal training in the food industry. Extrapolating from that it would mean that there is no commitment to formal training in the food industry by the existing providers of labour hire services.

**Mr BOWDEN** — But as a trend companies tend to select the better employees and then they tend to migrate across to permanent employment?

**Ms WINDSOR** — What typically happens whether it is labour hire or not labour hire is that it is casuals. Companies will select from that casual pool into a permanent position.

**The CHAIR** — Can I ask you about the implications for training and skills development? A number of parties have said to us that there is a chronic problem with skills development and we do not have any difficulty in accepting that. But in terms of allocating who is responsible we came to the conclusion in our interim report that it is everyone's responsibility — government, employers, unions, the whole community. If we are not prepared to pay or to support adequate training at whatever point along the employment and production line, we all end up paying more because skills that we need are in shorter supply. Can you speak to us about your experience of those companies that have tended to adopt labour hire arrangements, and the skills and training issues within those companies and how that is all worked?

**Ms WINDSOR** — It is totally anecdotal. What that strategy does, both labour hire and casual dependence, and I should point out the tricky thing here is that the general assumption is what you mean by operators who have fairly limited skill sets. In some cases that is not actually the case, particularly in regional areas where you have a captive work force. They will tend to keep coming back, so you can actually employ them on a casual contract but still have quite highly skilled operators coming back. That is less likely to be the case in the metropolitan environment because you have people far more disparately focused in terms of their employment. If we look at companies that are adopting those strategies — and they are fairly low and undifferentiated operators — a typical instance is one that will crew the line with one good operator and most other operators are just functionally following instruction. It surprises me that that approach is adopted because what that typically reflects is fairly high rework and quality problems. So what you are saving in some areas you are forfeiting in terms of a high performance strategy. Where you are going for an undifferentiated labour force with just a few skilled operators at the top, that vision of having troubleshooting, highly responsive, highly responsible workers is pretty hard to marry with a strategy that says you are going to crew with labour hire and all casuals.

**The CHAIR** — Is it not a presumption of that choice by a company that they will always be able to go back to the well when they need to and secure the necessary number of skilled casuals for the work they have? If they have said that the supply side of skills will take care of itself and they can go to the well when they need it, is it not a danger that at a time like now in the economy when we have these capacity constraints that they will go to the well and the skills are not there; someone has offered them more money? You cannot rely upon that model as you perhaps could several years ago.

**Ms WINDSOR** — I am not sure. I think at the same time the work processes in this industry have also been changing so that certainly there are some pretty low-end manual packing jobs which are perfect for labour hire, but if you are looking at a lot of the operational jobs, a bit like the company I mentioned that had invested in high technology and had deliberately said, 'Okay, we just cannot afford to operate this with people who have minimal attachment to the company', it is the combination that there are going to be less skilled people available, but also the technology requires a different approach, so that perhaps in some instances it is my impression that some of the HR strategies do not marry all that well with some of the production requirements.

**The CHAIR** — Anecdotally what is your experience of companies and their training programs? Is there now a decreasing emphasis on what they do internally and about whom they recruit? Is there a decreasing attachment to apprenticeships?

**Ms WINDSOR** — Production workers have never been targeted with formal training, and it is still the case that larger companies will have done some formal training, but the tragedy is that most operators do not get formal training. By formal training I am alluding to that generic bit that allows you to be a problem solver. So it is

not just that you can operate the plant; it is that you have some understanding that would allow you to then go to a different company and operate a plant that looks quite different but has similar principles. Oddly enough, if anyone needed it, it is the labour hire and casual labour market because they are doing that all the time. A lot of companies say, 'We do not really need that breadth of training because our workers do not move'. That is great, except for that big group of people who move a lot. They are the ones who get the very least, so it is totally dysfunctional.

**The CHAIR** — Can I ask you a question on an issue which has perplexed us a little? We have had complaints from a number of contributors to the inquiry about the difficult position that casual labour hire employers find themselves in. In some situations when they want to make a complaint about an unsafe workplace the complaint is that they find they do not have any more work. Essentially they are victimised for blowing the whistle or drawing attention to an unsafe workplace or an unsafe practice in a workplace. I think we have had one suggestion as to how this might be tackled, but it is a difficult area and I do not know that there are any perfect answers, but nevertheless it concerns us. Have you seen any evidence of that sort of behaviour where people who do blow the whistle end up not being called in or offered any work, or are you aware of any companies that might have systems — —

**Ms WINDSOR** — There is no question that that happens, and it is not limited to reporting of health and safety incidents. It would extend to things like joining a union and lots of basic entitlements that if a person raised those it would not go well for them in terms of their future.

**The CHAIR** — Any suggestions on how that can be tackled?

**Ms WINDSOR** — Not in 5 seconds, no; I think it is fairly complex. On the training side there needs to be a fairly significant thinking through of what would work. There was the training levy model, which did not work very effectively but has some good aspects. There are the group training arrangements, which target apprenticeships, which is quite different from production operator needs. But certainly some of the features of that are helpful, not least their commitment to training, which is very different from what you see in most other labour hire situations. There are some fledgling examples of how you might address the skill and training aspect in terms of protecting basic rights. One model springs to mind. Years ago I was involved in setting up Job Watch, which is an organisation that protects people, or it was when we set it up. I am not sure what its charter is these days, but it was an organisation designed to protect people who did not have traditional union coverage or were not likely to join unions. Possibly that kind of model would be appropriate to provide. It is very difficult for individuals, whether they are permanents or not, to stand up to a company without any support. That is very hard.

**The CHAIR** — I will finish with this question if I might, Kim, and from the brief chat we had as we came in I think I know the answer. One of the sticking points in discussions about labour hire is where responsibility ought fall in a labour hire arrangement where the labour hire employer is often at some distance from the workplace. In our interim report we have recommended that, failing a better system, the notion of joint responsibility ought continue. There have been some suggestions made, most noticeably by Chris Maxwell in his OHS report last year, that what needs to be introduced into the legislation to give the legislative overview a greater currency is the notion of control — that is, the responsibility ought be more associated or more allied with that party that had control of the worker rather than the existing model. Do you have any thoughts on that? Do you think the way in which our OHS laws impact on workers and employers in food processing, which is a good example, where we have labour hire arrangements, are in need of some update?

**Ms WINDSOR** — I am not particularly familiar with that report, but it seems logical that if you do not have the capacity to control the situation, then holding you responsible does not make a lot of sense. In a workplace if I am supervising someone else and I ask them to do something unsafe it is not just my manager who cops it, it is me because I am supervising them and I am asking them to do the wrong thing. It is the same with food safety; the same kind of expectation would apply — that is, the supervisor who is controlling someone should be responsible. So I would think it is absolutely true. The intent of labour hire is not to allow companies to avoid their legal responsibilities for their employees. I am assuming that is the case, and if it is the case it is important that the legislation does not have any loopholes that give people the impression that is not the case. I think some companies have been attracted to labour hire thinking it is not the case. One company said to me, 'We ended up paying out redundancy payments to people on labour hire contracts', so it is not the case that you can sidestep your legal responsibilities, but the impression is in some management areas that it is the case. I think it is important to be very clear that labour hire is a legitimate vehicle for getting some flexibility, but it is not a way of just abdicating your legal responsibility for people, and I think that is absolutely fundamental.

**The CHAIR** — I think we have exhausted our questions. Thank you very much for coming in.

**Ms WINDSOR** — It is a pleasure. Thank you for the opportunity.

**The CHAIR** — We will make sure that a copy of the transcript comes to you in about two weeks, and you will be free to correct any small errors that have been made and send it back to us. We will make sure you get a copy of our completed report, and we will acknowledge your attendance and your assistance with the inquiry.

**Witness withdrew.**