



# ***FINANCE AND ADMINISTRATION SUBCOMMITTEE***

## **Members present:**

Mr PS Russo MP (Chair)  
Mr RA Stevens MP  
Mr DA Pegg MP

## **Staff present:**

Ms A Honeyman (Research Director)

## **PUBLIC HEARING—INQUIRY INTO THE PRACTICES OF THE LABOUR HIRE INDUSTRY IN QUEENSLAND**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 8 JUNE 2016**

**Mackay**

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### Subcommittee met at 11.58 am

**CHAIR:** I want to acknowledge the traditional owners upon whose land we meet today and their elders past, present and emerging. Good morning, everybody. I declare this public hearing of the Finance and Administration Committee open. I am Peter Russo, the chair of the committee and member for Sunnybank. With me here today is the deputy chair, Mr Ray Stevens MP, the member for Mermaid Beach, and Mr Duncan Pegg MP, the member for Stretton. Other members of the committee are Mrs Jo-Ann Miller MP, member for Bundamba; Mr Lachlan Millar MP, member for Gregory; and Mr Pat Weir MP, member for Condamine.

The purpose of this hearing is to receive evidence from witnesses on the committee's inquiry into the practices of the labour hire industry in Queensland. The inquiry was referred to the committee by the Legislative Assembly on 2 December 2015. The terms of reference for the inquiry require the committee to consider the extent, nature and consequence of labour hire employment in industries and/or regions, including within industry supply chains and the responsibilities of entities involved; phoenixing, undercapitalisation and undercutting of conditions by labour hire companies and their impact on the labour market and business; the social and economic impacts, including on regional communities, of replacing permanent employees, apprentices and trainees with labour hire workers; allegations that labour hire and sham contracting are being used to avoid workplace laws and other statutory obligations such as underpayment of wages and entitlements, including superannuation, and avoidance of payroll tax and WorkCover premiums; the effectiveness of enforcing current industrial relations laws and instruments, occupational health and safety laws and workers compensation laws in the labour hire industry; allegations of exploitation, harassment and other mistreatment of workers employed by companies where the tendering and employment practices create an uneven playing field for competing businesses; and the regulation of labour hire in Australian jurisdictions and internationally and effective enforcement mechanisms including bonds, licensing, registration and other forms of compliance. The committee is to table its report on this inquiry by 30 June 2016.

The hearing today is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Hansard will record the proceedings and you will be provided with the proof transcript, which will also be published on the committee's website. Please turn your mobile phones off or switch them to silent and please note that no calls are to be taken inside this room while proceedings are taking place. For the media attending today, please ensure you are clear on the conditions for broadcast. Copies are available on the table at the back of the room.

### REARDON, Mr Tom, Chief Executive Officer, Mobilise, via teleconference

**CHAIR:** Mr Reardon, you may wish to make a brief opening statement and then members of the committee will have some questions for you.

**Mr Reardon:** Yes, not a problem at all. I have been in the game for 20 years now, 15 of which we have been a Queensland based business with a national footprint. Some of the major points I want to bring up is that state based licensing will not work. I do not believe it will stamp out the issue. We need to take a national perspective on this, and there are some huge differences. This is an \$18.3 billion industry—you are always going to get rogue operators in that space—and I think around 30 per cent of that \$18.3 billion is in Queensland.

There is a huge difference ethically between the good operators and the people that are not paying super, are not paying payroll tax and are not paying WorkCover premiums, and I believe that it is a minority. I definitely come up against them and I believe that probably three per cent to five per cent of those people are bending the rules, but there is a huge difference between that and the people who are playing by the book. It should not be just an investigation on labour hire contractors but the disruption to the market. There are people out there that are employing people on ABNs and there are sham-contracting models. They are the major things. We have worked in the hort space, the mining space and the meat space. It also takes away confidence in labour hire when these sham contractors are in there.

It also pushes down the line. Employers have clear choice and I know for a fact because my uncles are farmers in rural and regional areas like Cunnamulla, Goondiwindi, Moree and the like. For the farmers to say that they are not sophisticated enough to work it out and to push that blame back on the labour hire: there should not be shuffling of blame in the chain. It is very simple for people to know and to get a legal letter from a labour hire business to confirm that their agreements are in place continuously, or they can speak to the Fair Work Ombudsman in a two-minute discussion. We need to also acknowledge that there should not be blame going down the supply chain of shuffling that blame.

The confidence of the workers is also disrupted from a farming sector perspective. Once this kind of sham contracting comes out in the press, it does not give them confidence either. They are probably just a few points, and I am sure there are some questions around it.

**Mr STEVENS:** Thanks, Mr Reardon. You said that a licensing system in Queensland would not work. You said that it would need to be a national model, but can you tell the committee why a licensing system in Queensland would not work, please?

**Mr Reardon:** I just believe a national approach is the only way because there are people that move across borders and if there is licensing in one state and then not in the next that will not give both employees and employers confidence. If you have the likes of people working through, let us say, the farming sector where they are moving and are on a job trail through areas, they need to be able to present like for like.

**Mr STEVENS:** Thank you.

**Mr PEGG:** Following on from the question from the member for Mermaid Beach and your view that a national approach should be taken to this issue, I guess one of the problems is at the moment we have a federal government that has no enthusiasm for this issue at all—maybe that will change after the election—but you have to comply with state based WorkCover laws and you have to comply with state based workplace health and safety laws. We talk about licensing. Licensing for motor vehicles is state based. Why can we not have state based regulation in this area?

**Mr Reardon:** You make valid points from that side of things. It would just be good to see some uniformity from my perspective, because I am dealing in every single state and I know of three sham contractors that are dealing in every single state. If they are obviously compliant in one state it is a great thing, but I am probably looking at the bigger picture, I suppose.

**CHAIR:** Mr Reardon, one of the other issues that has come up while we have been holding the hearings is that the problem is perhaps not exclusive to hire companies doing the wrong thing but the whole idea of labour hire actually impinging on normal working conditions and rates of pay. Whilst there are companies that are working in this space and complying, it is still applying downward pressure on wages and conditions of workers across all industries. Do you have a comment on that?

**Mr Reardon:** I think that still comes down to the specific labour hire business that they are going to be engaged with. It is similar in all the other sectors. It is the employer that engages them that will influence that. From our perspective, people are our greatest asset. If we do not look after them, they are not going to be out in the field working for us and that is how we make our money. If you cannot retain people—if there is no retention—it just makes it harder for our industry. It does not matter what you are doing—whether you are doing industrial work or you own a fish and chip shop—if you do not look after your people you are not going to retain them and it is actually going to cost you money in the long term.

With regard to downward pressure on costs, I do not see that because, realistically, all of the good operators that are operating have to mirror at a minimum the award. Generally if people are paid a site award, we have to mirror what the site award is in a lot of cases because otherwise you are not going to retain people. People will be at their first smoko in the shed and say, 'You're getting the award but I'm getting \$3 above it.' They would walk straightaway. That is from my experience. It may be different in different sectors, but that is the experience I have had.

**Mr STEVENS:** We have had submissions from some other labour hire groups that basically have told us that if there was policing of the current laws as they stand today that would be sufficient to clamp down on the rogue operators that are not paying the workers comp, superannuation et cetera and all those charges. Do you have any comment on the current laws that are applicable to these rogue operators and should we be enhancing the policing? Of the approximately \$6 billion that you say is part of the labour hire contractors in Queensland, what percentage would you say are there of these rogue operators operating against the good operators in Queensland?

**Mr Reardon:** At a rough guesstimate, I would probably have to say three per cent to five per cent. That is purely a guesstimate, I suppose. Certain sectors and certain employers have lent themselves to utilising that. On the other front, yes, I believe policing of it would definitely add value to the industry—100 per cent. I know that with any communications that we have had with Canberra in the past it has really been pushed back in that they have 100 other things that they are trying to look into and they are too busy to have a look at something else. I think heavier policing is definitely a worthwhile investment.

**Mr STEVENS:** Thank you.

**CHAIR:** One of the other issues that has come up, apart from the impact on wages and conditions, is the social impact on regions. For example, in the Bowen Basin there has been the casualisation of the workforce and in those areas that is causing some real issues socially in that where there was a sporting community or community groups they are no longer in existence because you have what are called camps. What areas is your company working in in Queensland in the regions?

**Mr Reardon:** Yes, we work in agriculture, mining, construction, civil—they are our major areas—and some facility maintenance. I think in some of those areas the driver behind that probably is not in the casualisation; I think a lot of that is driven by FIFO and by the rosters that are given. I know from working through some of those regions previously that the rosters affect that. Whether you are a full-timer or you are a casual, you are not going to be able to make it to football training on a Thursday night if your swing shift is that you are doing a four and four or a seven and seven. Every second week you are going to miss your football game or whatnot.

I am not sure if it is driven by the casualisation because I think with the casualisation there is still the same amount of people being engaged in those communities. I think it is really more driven around the rostering and how they are engaging people from a FIFO or drive-in drive-out perspective rather than being community based. From my perspective there is a huge opportunity and there was a huge opportunity—obviously there are some downward trends in the current economy in those places like the Bowen Basin—previously to be offering incentives for people to actually move to those areas versus the movement to FIFO and the rostering the way they have it, but at the moment it is probably a bit outside of what we are talking about.

**CHAIR:** In which areas in the regions do you operate?

**Mr Reardon:** We operate in construction, mining, agriculture and civil construction.

**CHAIR:** What regional areas in Queensland?

**Mr Reardon:** We operate everywhere from Cairns out to the west of Toowoomba and through all metropolitan areas like Townsville, Gladstone, Mount Isa, Emerald, Bundaberg, the Sunshine Coast, Brisbane and Toowoomba.

**Mr STEVENS:** Do you believe that if a licensing regime were brought in in Queensland that would eradicate the so-called phoenix labour hire companies or would they still continue to operate, a bit like those in the building and construction industry when they go bad in one company they rise in another? Would a Queensland licensing regime eradicate phoenix companies in this area?

**Mr Reardon:** It is more about how heavily it is governed, really. If you go down that path, if it is not governed well they will poke their heads up again. I have seen it previously with sham contractors. They set up one day and start up with another ABN the next day. It will come down to the employers. At the end of the day, if everyone is made to be licensed then happy days. If the employer who is engaging these people is not being governed to use a licensed operator, it all becomes pointless.

**Mr STEVENS:** It is a policing issue again is what you are saying?

**Mr Reardon:** Yes.

**Mr PEGG:** It seems as though your two main points are that there should be a national perspective and the existing laws are not being policed. Clearly there is no national approach to it. You have said yourself it is right down the list. You are saying the existing laws are not being policed. In the absence of that, is it not good to have some kind of state licensing scheme?

**Mr Reardon:** I think some of the industry bodies are down the track in terms of a national perspective. I think RCSA are actually pushing down that track at the moment. Realistically—

**Mr PEGG:** How far down the track are they?

**Mr Reardon:** You would have to speak to them directly regarding that. From my knowledge they are into the final briefing on it. If you speak to them directly they will be able give you an exact time frame. With regard to the state, anything is better than nothing, but I think it is probably worthwhile talking to the industry bodies and seeing where they are on a national footprint. If we can make it move there it will probably have a lot more power.

**CHAIR:** Thank you, Mr Reardon, for providing evidence to the committee today. The secretariat will be in touch to provide you with a copy of the transcript and maybe ask you for any other information the committee may request. Thank you for your time today and for giving evidence to the committee.

PROOF

**YATES, Mr Greg, Senior National Organiser, Australian Institute of Marine & Power Engineers**

**CHAIR:** Welcome, Mr Yates. Thank you for appearing before the committee. A copy of the instructions for witnesses is on the table. Please take a minute to read them if you need to. The purpose of this hearing is to receive evidence from witnesses on the committee's inquiry into the practices of the labour hire industry in Queensland. The inquiry was referred to the committee by the Legislative Assembly on 2 December 2015. A copy of the committee's terms of reference for this inquiry are also there for your information. You may make a brief opening statement and then members of the committee will have some questions for you.

**Mr Yates:** The institute thanks the committee for the opportunity to address you. Our submission, as you probably identified, is quite different to a lot of the concerns that may be highlighted by companies like Mobilise or some of the other unions. Our submission has different themes to those in other submissions. Generally our concerns emanate from—please excuse me, I do not want to cheapen it by using this term—the use of the partnership model as labour hire on steroids. The institute's submission tends to focus on a mode of engagement which is, in our view, primarily labour hire only but using the Partnership Act to defer or remove any liability for the actual principal in the contract.

The submission outlines the industries that the institute operates in. Generally, you could probably say that the area of great concern to not only our organisation but also other maritime unions and certainly employees in the industry—engineers, skippers and deckhands—at the moment is the growing use of partnerships in ports for harbour towage. There is only one port in Australia, to my knowledge, where the government actually engages the tugboats directly and that is in Tasmania. The ports in the rest of country are: open-licence ports, where anybody can come in and set up a tugboat and off they go, subject to the port's requirements, of course; licensed ports, where you tender for a licence; or closed licensed ports, like Gladstone, where there is a strict running of those ports subject to ACCC scrutiny to the nth degree to do with port charges and so on.

The areas of concern really have a fair bit of history in Australia. It probably emanated from Robe River, where a company called Westug started up. They started up as a partnership operation. At that time there were disputes going on. To get around it Rio Tinto—or Hamersley Iron might have been the employer at the time—basically went to the partnership model to stop all the disputes.

Later on we saw a North Queensland operator by the name of Sea Swift. Sea Swift came from the fishing industry. I will be seeking leave to table some documents. Basically the unions attempted to rope Sea Swift into an award in Far North Queensland—

**CHAIR:** Do you seek leave to table those documents?

**Mr Yates:** I seek leave to table these documents.

**CHAIR:** Leave is granted.

**Mr Yates:** This is a decision by Commissioner Fogarty in 1990. Towards the end of the decision he basically says, 'Whilst I might make the award, the difficulty that I find is that it is going to apply to nobody because I cannot find any employees.' What the company was doing was engaging crew and saying, 'Here is a bag full of money. You must set up a partnership. You take on the liability for your workers compensation, your superannuation, your insurance, payroll tax and so on.' The company had nothing to do with that. Basically that operation set up an operation where there were no employees.

Later on a company on the Brisbane River by the name of Riverside Coal Transport—it is now called Riverside Marine—got wind of these style of partnerships and they started to set them up on the sand barges that go across to the islands and back. The partnerships in Sea Swift have fallen apart because of liability issues. There was a fatality in the operation up there. From that point in time certain other dynamics happened within the company and they dismantled the partnership. Riverside Marine is probably the main instigator of those models.

There were about 220-odd crew members employed in Port Hedland. BHP decided to tender out and they gave it to a company called Rivtow Marine, which is a subsidiary of Riverside Marine. Rivtow set up a complex arrangement of trustees and basically said, 'If you want to come and work on these tugs you have to set up a partnership and you are going to need a fair amount of investment in terms of setting up your liability insurance and that type of thing.' Some 220-odd jobs disappeared.

That was followed by the Gorgan Field partnerships and Wheatstone. As recently as two weeks ago BMA announced that they had awarded the tender to Rivtow. That is for Hay Point coal terminal just south of Mackay.

I will seek leave to table a statement used in the Fair Work Commission by one of our officers—Mr Andrew Williamson of our Western Australian branch. He used it in proceedings.

**CHAIR:** Leave is granted for the tabling.

**Mr Yates:** It was used in proceedings in relation to seeking right of entry into Port Hedland. Consequently, I seek leave to tender another document. There was a decision issued by Senior Deputy President O'Callaghan which basically indicated that there were no employees at the operation.

**CHAIR:** Leave is granted for the tabling.

**Mr Yates:** Here we have a situation where the union representatives cannot even enter the workplace to seek to discuss safety issues with the crews involved.

This is now evolving into what happens in Queensland. Previously Riverside did have these little nests of operators on partnerships, but now it is starting to expand further into what are very serious and very hazardous occupations in harbour towage. Harbour towage is a contact sport, if I may use a quip. You are constantly coming into contact. The industry is very dangerous. Fatigue and a lack of training are the two causes of incidents in the area. The pressures that are applied through these partnerships remove any influence that professional organisations, like the institute, can have with the companies.

I know that I have raised matters outside the Queensland jurisdiction, but these are national companies that we are dealing with. There are contracts and licences, as I have highlighted in the submission, that are coming up for tender—not only Hay Point but also Abbot Point coal terminal, the North Queensland Bulk Ports Corporation tenders for Cairns, Mourilyan, Lucinda and Townsville and the major port of Gladstone.

All those operators are saying to the institute, 'We are going to have to reduce our terms and conditions of employment because we are going to have to compete against these partnerships. We cannot compete against these partnership with the standard employment model.' We will have to examine this matter ourselves. That is exactly what happened in Gorgan Field and Wheatstone. Wheatstone is an LNG field in Western Australia. I seek leave to tender another document.

**CHAIR:** Greg, do you mind tabling them all at once, or does that cause you problems because you do not know then what you are referring to? How about we give you blanket leave to table documents as you refer to them.

**Mr Yates:** There is one there, which is a commentary by Matthew Stevens of the *Australian Financial Review* of 25 May 2016, which refers to the Hay Point situation and also gives you gravity on the views of Chevron and BHP and Rio Tinto.

The last point on that is the pressure that is being applied to the harbour towage companies. A company called Svitzer bought a longstanding Australian company called Adsteam, which was previously Howard Smith, or an amalgamation of Howard Smith and Adsteam. We reached agreement in principle in January this year on the terms of a greenfields agreement. We have been waiting for the draft and I have been pressing the company, 'Where is the draft?' Chevron turned around and basically indicated that—and I will read this to you—'This letter follows on from my discussion with you today regarding Chevron's requirement for commercial and operational reasons that Svitzer adopt a consistent manning arrangement to that already in place for Gorgon's operations.' This is dated 30 May 2016. That means that Gorgon Field is a partnership operation—no employees—and now they are pushing that standard again on Wheatstone, which was already agreed in terms of a greenfields agreement with continuity of operations for at least four years. If I may, I will leave it at that and just leave it open for questions.

**CHAIR:** Just before you go on, all the documents that you refer to, are they all there?

**Mr Yates:** They are there and I will email them to the—

**CHAIR:** Yes, that would be helpful if you could email them. I will open it up to questions.

**Mr STEVENS:** Thank you, Mr Yates. On reading the industrial commissioner's ruling in relation to these matters, he basically says that most of the maritime industry is regulated under the federal award. I am trying to understand how you are drawing the partnership firms into the labour hire industry in terms of a direct industry that we could control, for instance, by licensing. That is what I need to understand.

**Mr Yates:** We were not really directing our submissions at the aspect of licensing but looking at the overall regulation of the Partnership Act 1891.

**Mr STEVENS:** Which is a federal act.

**Mr Yates:** No, because partnerships are not constitutional corporations. They cannot be regulated by federal law. Each state has its own act and in Queensland it is the Partnership Act 1891, which outlines what is registrable—

**Mr STEVENS:** A general business partnership.

**Mr Yates:** Yes, what is a registrable partnership. There are some complications and further detail into that. I am not a partnership law expert; I focus on industrial law. What we are saying in our submission is that we need to address the Partnership Act, because if we want to address these labour hire situations on steroids we have to stop the registrations.

**CHAIR:** Following on from the question by the deputy chair, you are saying that the Partnership Act needs to be amended to prevent this type of operation from occurring. Are you able to be more specific to say what part of the Partnership Act, or is it in the regulations?

**Mr Yates:** It would be in the Partnership Act itself. I do not—

**CHAIR:** That is okay.

**Mr Yates:** It would be around—

**CHAIR:** It may be an unfair question. I am just trying to drill down into—

**Mr STEVENS:** What we are trying to do is see how it fits into our inquiry into labour hire arrangements. What we have to draw, for your benefit, if you like, to change the Partnership Act, is to see how it is associated with the labour hire companies.

**Mr Yates:** From what I heard from Mr Reardon, labour hire companies were just avoiding the industrial instruments and industrial obligations altogether. That is what the partnerships do in this situation. They are crews that are not free to venture in that they cannot pick up their tugboats and go and do work for another port, for example. Also, they do not own the plant. They are labour hire only. I know of no partnerships in Australia under the type of arrangements that I am talking about—under port licences—where they own the tugs. That might be Esperance. There is a family owned company down there, but they engage employees.

**Mr STEVENS:** You talk about the Partnership Act and those sorts of matters. That is ultra vires the inquiry's area to investigate. We are not doing the Partnership Act.

**Mr Yates:** Yes, I understand that.

**Mr STEVENS:** What we need for you to do for us is to somehow tie it back into the labour hire inquiry.

**Mr Yates:** What we are saying is that the partnerships are a sham labour hire arrangement. It is not totally within the committee's purview, but it is a vehicle—

**CHAIR:** I think it might be.

**Mr Yates:**— within which the avoidance measures are the same. They are avoiding payroll tax, they are avoiding insurance, they are avoiding superannuation, they are avoiding the industrial instruments and they are avoiding workers compensation liability as well as occupational health and safety.

**Mr STEVENS:** But you are not saying that these partnerships are illegal?

**Mr Yates:** Quite frankly, at the moment the Partnership Act allows them to be set up.

**Mr STEVENS:** So they are legal?

**Mr Yates:** But what we are saying is that they are a sham arrangement. They are designed only to get around the employment relationship directly. Whether you position a labour hire company directly with its principal, it is the principal, being a company like BMA or BHP, that engages the subcontractor, which might be Rivtow and then they set up this sham arrangement so that Rivtow has no liability and BMA has no liability. All the liability rests here. With Sea Swift—the *Arjuna Colossus* incident in the late 2000s up in Cairns—there was an engineer decapitated on that vessel. The partners on that vessel were equally liable, whether they were on the vessel at the time or whether they were holidaying in the Bahamas. I cannot find one ounce of investigation or inquiry into this, mainly because the engineer himself was a Filipino. I cannot find one bit of case law about it. I did a search the other night on the internet and all I can find is reference to media from overseas about the particular fatality and that is all—no workplace health and safety laws or anything.



**Mr PEGG:** Firstly, thank you very much for your detailed submission. Obviously your organisation put a lot of time into it. You obviously were here for Mr Reardon's contribution. It has come through in the public hearings that the two main arguments against labour hire regulation in Queensland are that it should be done nationally—and you have addressed that—and the other argument that has come through consistently is that the existing laws are not enforced. I am just wondering what your response would be to that.

**Mr Yates:** In terms of labour hire?

**Mr PEGG:** Yes.

**Mr Yates:** Our exposure to labour hire companies—

**Mr PEGG:** I guess what I am asking is: if the existing laws were enforced, would that fix the problem that you are talking about?

**Mr Yates:** Probably not. You would need to address it two ways. One is the Partnership Act. Even if they are partners, when you read the Industrial Relations Act Queensland it says who is an employee. It can be one of each member of a partnership or four or more. Conversely, with who is an employer, it refers to the same thing. There is nothing out there to enforce, because when the states ceded all the industrial powers to the federal government in 2009 the award system was declared obsolete, but the award system in Queensland should still apply to partnerships because they are not constitutional corporations.

**CHAIR:** That brings to an end this part of the session, Mr Yates. Thank you very much for your written submissions. Thank you for the information that you have provided to the committee. It has been very helpful in relation to the sham contract aspect of what the committee is looking at. The secretariat will be in touch with you in relation to the transcript. The secretariat may also contact you about some further information, if needed. Thank you for attending and thank you for the information that you have provided.

**Mr Yates:** Thank you again.

**HUGHES, Mr Mitch, District Executive Vice President, CFMEU Queensland Division**

**CHAIR:** Thank you for appearing before the committee. A copy of the instructions for witnesses is on your table. Please take a minute to read it if you need to. The purpose of the hearing is to receive evidence from witnesses on the committee's inquiry into the practices of the labour hire industry in Queensland. The inquiry was referred to the committee by the Legislative Assembly on 2 December 2015. A copy of the committee's terms of reference for this inquiry is also on the table.

Hansard will be recording the proceedings and you will be provided with a proof of that transcript before it is published on the committee's website. To assist Hansard staff, could you please speak clearly into the microphones and state your name when you first address the committee. Thank you. You may wish to open with a brief statement and then the committee will ask some questions.

**Mr Hughes:** Thank you, Chair. I have been fortunate enough to hear what has been said so far this afternoon, so I might start there. In regard to the licensing model, the CFMEU made a submission. We made nine recommendations in that submission. One of them was for a licensing model to be implemented. We believe that an open and transparent process, where labour hire firms have to apply for a licence to operate in Queensland, should be a deterrent for those who want to skirt the law. In our view, it should be a deterrent for those labour hire operators who want to utilise substandard employment arrangements. To go with that, I have heard also the issues of policing. It is our view—and it is in our submission—that there should be a compliance unit established to enforce those issues. That compliance unit would also be responsible for the issuing of licences, the revoking of licences and enforcing any penalties that may be dealt with.

I have also heard this morning about the social demographic issues in the regions. It is my view that those issues are not isolated to how many camps are in a town or whether someone is FIFO or DIDO to the workplace. The issue in regard to labour hire employees is that they are not given any security of employment. They are reluctant to move to a town where they are not guaranteed a shift. If you are not guaranteed employment next week then you are not going to pick up your family and move it to one regional area, just to be shifted to another.

To go further on that issue, at a recent public hearing before the Fair Work Commission, a former SSE—a site senior executive—from a BHP owned coalmine referred to labour hire workers as vulnerable. When he was asked what that meant, he replied that they can be turned off at any time, they do not get sick leave, they do not get annual leave and they can be told not to show up the next day with no explanation from the company. He also said that their terms and conditions are different, because they have no job security. They cannot get a mortgage. The SSE made it very clear that that was his position on how vulnerable labour hire employees are. That is not an isolated situation. A Rio Tinto manager at a Rio Tinto operated coalmine during agreement negotiations for a replacement workplace agreement referred to the new business model for Rio as not being—

**CHAIR:** Just excuse me a moment. Do you have any issue with Channel 7 recording you?

**Mr Hughes:** No. As I was saying, during agreement talks for a Rio Tinto operated coalmine the manager referred to the new business model for Rio Tinto which does not involve permanent work. Their new business model will be to replace permanent workers with labour hire workers, and in mining the majority of labour hire employees are employed in a casual contract role where they can be turned off at any time, as referred to by the SSE, out of a BHP coalmine. That insecurity goes further than that and it drives a dangerous culture at a workplace, because if people are not feeling secure in their employment they are reluctant to stand up on safety matters. They are reluctant to interfere with production by standing a faulty machine down, because the minute they do they are told at the end of the shift—and without explanation—that they are no longer required.

I have also heard points raised about federal based issues and on those points—and it is in our submission—the CFMEU would respectfully request that with regard to any federal matters to be dealt with the committee make recommendations to the federal government for their consideration. It is not just a state issue; it is a federal issue. I think both state and federal governments need to work together to resolve it.

**Mr STEVENS:** Could you explain to the inquiry how a licensing regime in Queensland alone—not a federal answer to the problem—would eradicate so-called phoenix labour hire companies?

**Mr Hughes:** In our submission we have outlined what we would propose as a start for a licensing regime. Through that process, when a labour hire operator makes an application for the licence they would be required to be open and transparent, open their books and show that their financial capabilities are there to back them up. Whether they pay that through a bond or a fee, that money sits there as protection for the workers. Showing that they are financially capable of performing

the role should be used as a deterrent for other labour hire operators to not make that application. If we are looking at their books and they are open and transparent about it, it should avoid getting into a situation where liquidation may be an issue.

**Mr PEGG:** Mitch, in your submission you talked about injury statistics for the construction industry compared to the labour hire industry. Can you expand on that? I was wondering about some of the costs to the community in relation to the high incidence of injuries in the workplace related to labour hire.

**Mr Hughes:** I am not sure about the cost issue, but it goes back to the point I raised before where labour hire employees employed under insecure employment arrangements are reluctant to stand up and raise safety issues because they are seen to be interfering with production. Once they do that, like I have already said, they are told not to come back, with no explanation.

**Mr PEGG:** You are saying people are getting hurt but not reporting it for fear of being—

**Mr Hughes:** For fear of reprisal, yes.

**CHAIR:** Mitch, one of the obvious areas of inconsistency between people who are permanently employed and the casual workforce is that it would appear from some of the evidence that people who are employed by labour hire companies do not get the same pay rate and they do not have the same conditions. The obvious ones are they do not get sick leave or annual leave. The reason for that is, they say, because they earn a higher rate of pay because they are casuals. Can you comment on that statement for me, please?

**Mr Hughes:** Casualisation is definitely a big issue. As you have outlined, casual employees are meant to be getting a 25 per cent casual loading to compensate them for no access to annual leave or sick leave et cetera, but in mining the people being employed under those arrangements do not fall under the definition of a true casual employee because these employees are being employed in those arrangements for a number of years. They are doing the same job, the same role, the same location on the same roster for years at a time. That is not the definition of a casual employee.

**CHAIR:** One of the things I am trying to understand is what is the disparity? There are the obvious ones where you do not get sick leave and annual leave, but what about the pay rates? Are they getting the 25 per cent loading? Technically they should be earning 25 per cent more than the guy that is working behind them who is a permanent employee.

**Mr Hughes:** That is correct. They should be, but they are not because labour hire operators are, as I have said before, skirting the law. In some cases we found some labour hire firms are only just paying the award. We actually have cases going at the moment where the CFMEU are of the view that the labour hire operator are not paying the award; they are paying below it.

**Mr PEGG:** How widespread is this? This is an issue we have had consistently. You have someone who is a direct employee being paid one amount, and someone standing beside them doing the exact same job is being paid a totally different rate. We have even heard evidence about even taking into account the casual loadings, they are still being paid less than the direct—

**Mr Hughes:** That is right.

**Mr PEGG:** How widespread is that in your industry?

**Mr Hughes:** Very widespread. It is all across Queensland. In some cases, in some labour hire firms it is a national issue. Over the last three years 1,500 permanent jobs have been turned into casual based roles in the Bowen Basin alone, so it is a very widespread issue.

**CHAIR:** One of the other things that has come up is in relation to people being afraid to report safety issues because they might be on the next bus out of there. The other issue seems to be that people are reluctant to take time off, whether it be for compassionate leave to look after your wife if your wife is unwell and someone has to look after the kids, all of that social demographic stuff that goes on that we all have to do. There has been pressure brought to bear on people who are on these agreements that they cannot do that type of thing. Has there been much evidence, that you are aware of, of that occurring?

**Mr Hughes:** Yes, unfortunately. Again it comes back to the fear that they are not going to get the shifts next week. They are reluctant to take time off to care for their family because they might not get the callout for the shift next week.

**CHAIR:** One of the other social impacts that we have heard evidence of is you may be earning a decent wage and you have been working for a number of years, but then you are restricted in being able to get a loan, for example, even for a simple thing like a car or household goods, because lending institutions regard you as being a casual employee.

**Mr Hughes:** Yes. Again it comes back to the casual employment arrangements that most labour hire firms wish to engage their employees on. If you are a casual and then you turned off, like the former SSE at a BHP mine has stated, at any moment without reason, then you are not going to get \$400,000 to go and buy a house.

**Mr STEVENS:** Mr Hughes, we have been advised on several occasions that there are significant penalties and legislation in place now to address all of these issues that have been avoided by these labour hire companies. I notice that you have recommended a compliance unit to be set up. Can you tell me why these strong penalties and laws have not been enforced?

**Mr Hughes:** To be honest, I cannot tell you why that has not occurred. We have been chasing matters up on behalf of workers, and why the penalties are not being enforced I do not know.

**Mr STEVENS:** Is it a government matter, do you think? They are the ones that have the capacity.

**Mr Hughes:** Yes, that is right. I would say it is a government issue.

**CHAIR:** When you say you are chasing things up with government departments, which departments are you mainly dealing with?

**Mr Hughes:** Mainly dealing with industrial relations. We do that either through the department itself if we can gain access to have discussions with them, who we see make changes in this area, or whether we do it by fighting different cases at different jurisdictions like the Fair Work Commission or in the federal courts.

**Mr PEGG:** I have a question about transparency. Obviously you have a labour hire company that has a contractual relationship both with a host employer and also their employee. I am wondering what kind of transparency there is in those contractual relationships. For instance, do your members or employees get the opportunity to see the contract with the host employer, for instance? Is there any mechanism—

**Mr Hughes:** Between the labour hire firm and the mine operator?

**Mr PEGG:** Yes, that is right.

**Mr Hughes:** No.

**Mr PEGG:** What about the other way: the agreement between the labour hire company and the employee. What kind of transparency—

**Mr Hughes:** Most of that should be Fair Work approved, so it would be public knowledge.

**Mr PEGG:** Do you think greater transparency in relation to that would assist with some of these issues?

**Mr Hughes:** I think so. I think the employment relationship between the employment and the employer is pretty transparent already, but when you go from the labour hire operator to the mine operator it is a closed book.

**Mr PEGG:** What you are saying is, for example, if someone is being paid by a labour hire company \$27 an hour—I am plucking a figure out of the air—obviously the labour hire company is charging the host employer a lot more than that, but you are saying the employee has no idea of what they are being charged out at all.

**Mr Hughes:** No.

**Mr PEGG:** Not a single—

**Mr Hughes:** No. I am sure that they have heard on the rumour mill or been told by a friend who might be in a position to see that information, but as for the CFMEU gaining access to that information, no, we cannot.

**Mr PEGG:** You could have the case, for instance, that someone is being paid \$27 an hour but they could be charged out at—

**Mr Hughes:** Double that or triple that for all we know.

**Mr PEGG:** Who gets that money?

**Mr Hughes:** That goes between the labour hire operator and the host.

**Mr PEGG:** There is no transparency at all in relation to that?

**Mr Hughes:** No.

**Mr STEVENS:** Mr Hughes, on behalf of your members have you made official complaints about matters to the government industrial department?

**Mr Hughes:** Yes, but we have had no response yet.

**Mr STEVENS:** And they have not been acted upon?

**Mr Hughes:** No.

**Mr STEVENS:** That is very disappointing.

**CHAIR:** Mitch, do you have anything else to add? That brings to a conclusion this part of the hearing this morning.

**Mr Hughes:** No. Between what we have discussed now and our submission, I think we have covered some of it.

**CHAIR:** Thank you for appearing today. We understand that the secretariat will be in touch with you in relation to the transcript and then it will be published on our website.

**HOWLAND, Mr Stephen, Private capacity**

**CHAIR:** Thank you for appearing today before the committee. A copy of the instructions for witnesses is on the table. Please take a minute to read it if you need to. The purpose of this hearing is to receive evidence from witnesses on the committee's inquiry into the practices of the labour hire industry in Queensland. The inquiry was referred to the committee by the Legislative Assembly on 2 December 2015. A copy of the terms of reference for this inquiry is also on the table for your information. Hansard will record the proceedings and you will be provided with a proof of the transcript which will also be published on the committee's website. To assist Hansard staff, I ask you to speak clearly into the microphones and state your name when you first address the committee. Are you happy to be recorded by the TV station?

**Mr Howland:** Roger that. Yes.

**CHAIR:** You are welcome to make a brief opening statement if you wish, and then we will turn it over to the committee to ask you some questions.

**Mr Howland:** My name is Stephen Kenneth Howland. I have been working in civil construction in mining my whole life. I have seen some ups and downs in labour hire and permanent work. I have seen both sides. Is this the time when I can say pretty much anything?

**CHAIR:** Yes.

**Mr Howland:** Like I said, I have seen both sides of permanent and labour hire. It has taken a pretty serious change lately, in the past four or five years. It almost feels to me like they are using it as a weapon against the workers. I have no idea if I will ever be able to purchase a house or anything in my future, because labour hire, as you know, is not a permanent job, even though I am classed as a permanent casual worker and have been for the past four years. Sorry, I am a bit nervous.

**CHAIR:** There is no need to be nervous. Just take your time. It is important that we hear from people like yourself, Stephen.

**Mr STEVENS:** Just chat away, like you are telling a story.

**CHAIR:** I know it is not as friendly as down the pub, but pretend you are giving someone an ear bashing down at the pub about how bad your lot in life is. Just let it flow. It will happen.

**Mr Howland:** Like I said, I doubt very much I will ever be able to be a home owner again as long as the labour hire workforce is around, because there is no stability in my job. I also have not had sick days for the last four years or any holidays for that matter, except for some long service leave that I took that I had accrued over time.

**CHAIR:** Stephen, what part of the industry do you fall under? Are you a builder?

**Mr Howland:** I am a plant operator, a heavy machinery operator.

**CHAIR:** Where has your work been based?

**Mr Howland:** Up in Mackay lately, but I have also done some work in New South Wales, in the coalmines.

**CHAIR:** Have you worked in the Bowen Basin in the mines?

**Mr Howland:** I have been up here for about the past 11 or 12 years and worked in about eight different mines. Part of that is due to labour hire, too. They bring you in and the contracts are short.

**CHAIR:** What is the shortest contract you have done?

**Mr Howland:** Probably three months I stayed at one mine; six months at another mine. It just varies. There have never been reasons for why they tell you your contract is over. Just recently they started telling you why you have finished up.

**CHAIR:** What is the longest period you have been at a mine?

**Mr Howland:** That would be my current position. I have been working for just over four years now, labour hire.

**Mr STEVENS:** Stephen, were you ever permanent in the construction industry?

**Mr Howland:** In the mining industry I have been. I got permanent at Rio, but I left there. It was probably a bad decision, but it was things that were going on in my personal life at the time.

**Mr STEVENS:** So you left. It was not a labour hire firm that took you over?

**Mr Howland:** No, that was not.

**Mr STEVENS:** It was just your personal decision?

**Mr Howland:** Yes. That was about seven years ago.

**Mr PEGG:** Stephen, you mentioned that you think you will never be a home owner again. What has been happening to house prices in the local area?

**Mr Howland:** They dived off during the start of the downturn. They have sort of plateaued out. They are just starting to creep back up now, slightly.

**Mr PEGG:** Do you think the lack of secure employment is a factor in that decline in house prices, because people like yourself do not feel as though you could ever own a home again?

**Mr Howland:** I would say it would have to have something to do with it, yes. I feel like I will not be able to, as long as I have not got a stable position. Why would you commit to something without a permanent job or a stable position where you know you will be employed and will be able to pay off the loan?

**CHAIR:** Obviously, Stephen, one of the things that the committee is looking for is solutions in a fairly complex area. Do you have any idea on what you think would make your lot in life a lot easier?

**Mr Howland:** I cannot see labour hire being a very good thing. Permanent positions would be obviously my choice. I understand with labour hire you could get people in and test them out for up to 12 months, as some people are doing, which should be a sufficient amount of time to know if they are a good operator and if you want to keep them—not four years labour hire. I know people who are six years labour hire in the same place still, if not longer.

**Mr STEVENS:** Stephen, in your current employment in a labour hire firm, are they paying you the appropriate funds and all those matters in terms of superannuation, workers comp and those sorts of things? Is the firm that you are working for under labour hire currently meeting its financial requirements to you, even though there is no permanency? I understand those things. Are they short-changing you?

**Mr Howland:** That depends. If you want to compare the permanent labour force and us, the labour hire, in the same mine and see the difference—

**Mr STEVENS:** So you are getting paid less than the permanents?

**Mr Howland:** Yes, substantially.

**Mr STEVENS:** That is what I wanted to find out.

**Mr PEGG:** Do you know how much you are getting paid per hour from your labour hire employer? Do you know how much the host employer pays to have your services? Is there transparency on that side of the equation?

**Mr Howland:** I was in one of the meetings out there when they told us how much labour hire cost them and how much their permanent workforce cost them. Is that the number you are after?

**Mr PEGG:** I was after something more specific. You were told in general terms?

**Mr Howland:** No. It was a meeting in front of the whole crew. They were talking about moneys and what cost what, because obviously now everything is budgeting. Yes, they told us all what labour hire is costing them and what the permanent workforce costs them.

**Mr PEGG:** In your experience being employed by labour hire, is it common to have that level of transparency?

**Mr Howland:** Yes, because people talk. The permanent and labour hire people do talk, so they do know there is a difference, but not normally from the managing perspective. I have never been told that before, clear black and white, where they are telling you in front of the whole crew, so it has to be right.

**Mr PEGG:** I guess there are two different things. If you are working alongside someone doing the same job all day and you are getting paid less than them, it is easy, I guess, to have that conversation about who is getting paid what. If there are industrial instruments that are properly registered, I guess you can look it up online. The issue of how much you are being charged to the host employer by the labour hire company is a different thing, because often there is no requirement for that agreement to be registered or publicly available. How long were you employed by your labour hire company before you found out that information, about how much you were charged out at?

**Mr Howland:** Probably two years, two or three years. I cannot say exactly. It might have been two years ago they told me and I have been there four years.

**Mr PEGG:** It took two years for you to find out how much you were being charged out at, effectively? I am sorry to put it so crudely.

**Mr Howland:** Yes, officially. When you are told by an official, yes. But word of mouth, by guys working with you, you know pretty quickly how much permanents are getting compared to labour hire.

**CHAIR:** Earlier in your evidence you said that you have never had sick leave. Do I take it from that you have gone to work sick?

**Mr Howland:** Yes, of course. When you have the flu, you cannot really—I have commitments.

**CHAIR:** Have you seen any incidents where there have been unsafe practices that have not been reported because of fear of retribution?

**Mr Howland:** I do not know if it is intentional. The company does not push that. Of course it is going to happen, because people do fear for their jobs, so in the labour hire situation you tread lightly. You have to.

**CHAIR:** How has not having had a holiday, other than accessing your long service leave, impacted on you personally and your family?

**Mr Howland:** It is not real good, because I have to go see two of my children who live at Noosa, from my previous relationship. Getting down to see them makes it a lot harder. I usually only see them for my gap. Only two per cent of the labour hire workforce are allowed away on leave at a time. We are meant to give notice when we are having leave as well.

**Mr STEVENS:** Mr Howland, in the firm that you work for, what percentage would be labour hire as opposed to permanent, just approximately? Is it 50-50? Is it 80-20? What percentage of the firm that you work for, right across the board, is labour hire as opposed to permanent?

**Mr Howland:** I am not 100 per cent sure, but I believe it is about 75 per cent labour hire.

**Mr STEVENS:** And 25 per cent permanent.

**Mr Howland:** Approximately.

**Mr PEGG:** Stephen, you already said that you are getting paid less for effectively doing the same job as people who are directly employed by the company that you work for and people know that. What does that do for morale, when you are working beside someone who is doing virtually the same job but you are getting paid less? What does that do for morale within a workplace?

**Mr Howland:** It is not very good. There are a lot of unhappy people out there. Over time, you learn to accept it. There is not much we can do about it. You just hope and pray that the government will help us out, step in, because, yes, morale is not good.

**CHAIR:** In relation to your superannuation, are you able to comment on the difference between when you were permanent and now you are in this casual situation? Do you know the numbers?

**Mr Howland:** Not exact numbers, no.

**CHAIR:** Do you keep an eye on the employer contribution percentage?

**Mr Howland:** No, I have not really been keeping an eye on it, unfortunately. I know it was good when I was permanent and it was growing pretty quickly then. It is not growing real quick now, I know that much.

**CHAIR:** Do you get statements from—

**Mr Howland:** The superannuation people, yes, I do.

**CHAIR:** Stephen, do you have anything else that you would like to tell the committee about?

**Mr Howland:** Just that it is quite a challenging industry when you have to live away from your family half of your life. I believe that the wages should be fairer out there. Trying to force the wages down with labour hire is not very good for the whole industry, I believe.

**CHAIR:** When people are looking for employment in this industry, my understanding is that there are no advertisements for permanent positions anymore. They are all from labour hire companies. If you picked up the classifieds today and had a look to see if there were any permanent jobs going in the region, you would be hard pressed to find any people advertising for permanents?

**Mr Howland:** You just do not see it. They are non-existent. I watch Seek, which is pretty well known. There are never any permanent jobs. I think there was one recently for a super in Tennant. Up at that level you might get a job, but anything below operators—supervisors even.

**CHAIR:** Do the labour hire companies utilise Seek to find people to work for them?

**Mr Howland:** Yes. That is their main one. You see them all on there. More so than newspapers these days, they use the internet.



**CHAIR:** Thanks, Stephen. Is there anything else you would like to add? I am about to close this part of the session, so this is your opportunity.

**Mr Howland:** No. I just hope that you can make a change for us, to make labour hire fairer. I do not believe it should be your life, being casual. I want to be able to plan and get a home.

**CHAIR:** Thank you very much for appearing today. This concludes the public part of the hearing. On behalf of the committee I thank everybody who has attended and provided evidence today.

**Subcommittee adjourned at 1.14 pm**

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