

**AGED CARE INDUSTRY, CONTRACTORS**

*Grievance*

**MR A.P. O'GORMAN (Joondalup)** [10.02 am]: Before I commence my grievance, I acknowledge the presence in the public gallery of some of the aged care workers who work for the Hall and Prior Aged Care Organisation, a company that operates in this state, to which I will refer this morning.

I thank the minister for accepting my grievance on aged care and, in particular, the use of independent contractors in the aged care industry in Western Australia and the pending federal industrial relations reforms that will see this insidious practice take over the for-profit sector of aged care. The use of independent contractors is a disturbing development in aged care, and is used to increase the profit margins of these companies at the expense of workers, aged people in care and their families, the state and commonwealth governments and, ultimately, taxpayers. Many profit-making companies are moving into aged care, and particularly the profitable high-care end of the market. One of the for-profit aged care providers in Western Australia is currently expanding into the northern suburbs and New South Wales. This company is increasingly using independent contractors in its facilities.

I understand that at least 120 independent contractors are engaged by a particular organisation to provide care services in Ascot, Concorde, Leighton and Belmont nursing homes.

**Mr P.B. Watson** interjected.

**MR A.P. O'GORMAN:** Hall and Prior is the company that owns those four aged care facilities. Independent contracting makes vulnerable and insecure workers and their families more vulnerable and less secure. In reality, there is no choice for workers when an employer decides to cut costs by engaging so-called independent contractors. Of course, not only are these workers forced into less secure jobs by means of so-called independent contracting, but also they are not genuine contractors. They are employees whose day-to-day experiences in the workplace are no different from those of the employees they work beside. These workers are employed in every way as employees, not independent contractors. They are directly supervised, they work to regular rosters determined by supervisors, and they are employed to do ongoing caring work, not for a fixed period or purpose. This situation provides a huge free kick for these companies. What makes this situation worse is that employees of profit-making aged care providers are among the lowest paid people in the country. An experienced care worker will receive only about \$13.50 an hour.

**Mr P.B. Watson** interjected.

**MR A.P. O'GORMAN:** I believe that is the case at Hall and Prior as well. The independent contract workers, of course, have no public holidays, sick leave, annual leave and long service leave, and they are responsible for paying their own income protection and public liability insurance. They are also not entitled to employer superannuation contributions and are required to administer their own tax and superannuation arrangements. Independent contractors at for-profit aged care facilities to whom I have spoken receive between \$18 and \$19 an hour. Because of this low rate of pay, many do not have sufficient insurance. Many independent contractors are also forced to work long hours to compensate for the low rate of pay and may also be required to pay their own workers' compensation premiums. This is particularly worrying in a sector with high rates of workers' compensation claims; for example, one of these organisations has had 148 workers' compensation claims in the past three years. Excessive hours of work of up to 13 hours over a 24-hour period put the care of the frail and aged at risk. The choice of an independent contract for employment is an illusion for workers. If workers want the job and they want to work the hours, it is take it or leave it. The only one who has a choice is the employer. Of course, independent contractors take working hours from low-paid permanent carers who need the work. At this particular for-profit operator's premises, independent contractors regularly work double shifts at the expense of experienced carers who in many cases have developed close caring relationships with their residents. I will read a statement from a woman who is one of these independent contractors at a for-profit facility. She does not want to be named for fear of retribution. According to my notes, her statement reads -

I am a carer at the Belmont Nursing home, owned by Hall and Prior and wish to remain anonymous

I have been an Aged care carer for 4½ years

I have a certificate 3

That is in aged care -

I have worked at Belmont for 4 years.

I was initially employed on wages but in December 2002 I asked to become an independent contractor because the wages looked better

I would get \$17 an hour as a contractor as opposed to \$13 on wages

At the time I knew that as an independent contractor I would not be entitled to sick leave, annual leave and long service leave but I didn't know how hard it would be.

I find it very difficult to manage without paid leave. After only one weeks leave I found it very hard to keep up with my mortgage payments.

I have no savings. I can't afford to run a car. I haven't been able to afford a holiday since I started out as a contractor

I pay my own superannuation because I know that the employer is not paying anything into a super fund for me.

I pay public liability insurance, but don't know why

I am treated like everybody else at work. I provide on-going care to the residents like every other carer. I am supervised by the same people who supervise the wage workers. I work on the same roster system as the wage workers. My only place of work is the Belmont nursing home.

I have also been made responsible for instructing and supervising trainee carers. If they do something wrong, I have been told that I'm responsible for it.

I have been warned that I can be dismissed at anytime. I don't know why they would say this to me, except as a way of keeping me quiet.

Due to the double shifts and staffing reductions that have occurred recently care standards have dropped dramatically

Residents have more bruises, skin tears and bed sores because they are not turned properly or often enough or showered and cleaned properly.

Because staffing has been reduced from 10 to 8 people have been forced to cut corners.

It is not just the workers who pay for increasing profits through less secure work or the residents who pay through threats to the standard of care; governments and taxpayers also pay. These workers - generally low-paid middle-aged workers - would normally rely on the safety net adjustment that the federal government wants to abolish. Under the new industrial relations reforms, there will be even less incentive for employers such as Hall and Prior to enter into fair enterprise agreements. Under existing federal law, one particular for-profit operator is avoiding negotiating an agreement with its employees and their union, the Liquor, Hospitality and Miscellaneous Workers' Union, which would simply give employees guaranteed minimum hours of work and a wage increase already agreed to by most of the Western Australian aged care industry. This particular for-profit operator is already exploiting current federal law to avoid negotiating a fair deal. Under proposed new federal industrial relations laws, companies such as this will be only further encouraged to rip profits out of the industry and out of consolidated revenue at the expense of workers' wages and wellbeing. For the 120 contractors that I know of, I estimate that \$150 000 is lost annually in unpaid payroll tax to the state. The commonwealth also loses around \$300 000 in personal income tax receipts by turning employees into independent contractors.

**MR J.C. KOBELKE (Balcatta - Minister for Consumer and Employment Protection)** [10.10 am]: I thank the member for bringing this very important matter to the attention of the Parliament. I do not have any specific knowledge of the company concerned or the aged care industry, but I have come across this approach of turning employees into independent contractors to reduce their wages and leaving them without secure employment. The aged care industry is a very important industry. If people who run aged care facilities believe that they can provide any sort of reasonable care for the residents on the basis of paying their staff so poorly, I say that it simply does not add up. The whole issue to do with standards and accreditation rests with the commonwealth and other agencies. There is a clear mismatch between providing decent care for aged residents and providing no care or respect for the employees who will provide that care for those aged residents. The facts that the member has outlined indicate that these valuable workers are providing a very caring and important service but are not themselves being treated with respect.

I now refer to the issue about whether a person is an employee or an independent contractor. The member referred to a set of definitions for these people that will be judged by the courts. If a person is directly supervised, if he works regular rostered hours in a way determined by a supervisor and if he is doing ongoing work, not just work for a fixed project, then his normal legal definition is an employee. He is therefore entitled to all the benefits of an employee, which the member has outlined, such as superannuation, workers' compensation, holiday leave pay etc. Some employers try to create an artificial arrangement by designating workers as independent contractors so that they can take the profits and leave the workers on lower wages and in a position of insecurity. That is something that the Gallop government has totally rejected. The government got

rid of workplace agreements because they were a form of exploitation, but some employers are now trying to use this device. I hope the member can get some of these people he described to lodge a complaint with the Department of Consumer and Employment Protection so that we can look into the matter to see whether there is a legal basis for addressing this issue. That may not be the case, because there has been a court case or two in which some employers have been able to get away with this form of independent contracting, which is clearly outside the intent of the law. However, if the case stacks up when a complaint is made, the department is willing to pursue that matter to try to uphold the rights of the employees who are not receiving what is due to them.

I did inquire about the aged care awards. Both the state and federal awards have the same minimum wage, which is currently \$14.67 an hour, or approximately \$29 000 a year, if a person is on full-time employment. As the member has indicated, some of these people are being paid approximately \$13.50 an hour, considerably below the award minimum. Workplace agreements are one way of undercutting those awards, but this form of independent contracting is another way of reducing the wages of people who deserve every penny for the work they do. They are already not well paid and to reduce their pay further is totally abysmal. The Gallop government has moved to support workers in those circumstances in a number of areas. Last year we passed a bill amending the occupational safety and health legislation so that an employer who is contracting out cannot shed responsibility for maintaining a safe and proper workplace for the safety and care of workers. That legislation has already gone through, so employers cannot wash their hands of their legal responsibilities for maintaining safe workplaces.

Legislation has passed through the Legislative Council this week dealing with workers' compensation. The member indicated that these particular workers have to pay their own workers' compensation premiums. From 14 November that will no longer be the case, because this law will be gazetted prior to 14 November and it will take effect from then. The new legislation will mean that if people work on a regular basis and meet the definition of an employee, according to the workers' compensation laws, employers will have to pay their workers' compensation premiums. We have stitched that one up to make sure that employers cannot wriggle out of their responsibilities for paying workers' compensation premiums for their employees.

The wider issue about making sure that we have decent minimum conditions of employment is something that the Gallop government continues to fight for. We are being attacked on a range of fronts by the Howard government, which is putting in place legislation for independent contractors. If someone is designated an independent contractor, he will not be able to go the Industrial Relations Commission to take up his case. The Howard government is trying to make it even worse by giving less protection to workers and pushing more of them into this independent contracting arrangement. I cannot see how the commonwealth can be so short-sighted as to try to push down wages, reduce conditions and create greater job insecurity, when the economy is going well, when we have a demand for skilled labour, and when we have an ageing population and an increasing demand for skilled and caring people to provide services for our aged people. That will undermine this vital industry. People will not continue to work when they are not appreciated, when there is no security for their employment and when their wages are being driven down and they have to accept additional responsibilities.

**Mr R.C. Kucera:** That is also the case in the disability sector; it is exactly the same.

**Mr J.C. KOBELKE:** I accept that. There are people in the disability services sector who play a crucial role assisting people who cannot care for themselves in a range of ways. They need that support.

I thank the member for raising this grievance. I hope he can get some of these people to make a complaint to the Department of Consumer and Employment Protection so that we can pursue this matter further in the hope that justice will be done for these important workers.