COMMONWEALTH OF AUSTRALIA

SENATE

ECONOMICS REFERENCES COMMITTEE

(Reference: Workplace Relations and Other Legislation Amendment Bill 1996)

CANBERRA

Wednesday, 31 July 1996

(OFFICIAL HANSARD REPORT)

CONDITION OF DISTRIBUTION

This is an uncorrected proof of evidence taken before the Committee and it is made available under the condition that it is recognised as such.

CANBERRA
SENATE
ECONOMICS REFERENCES COMMITTEE

Members:

Senator Jacinta Collins (Chair)
Senator Ferguson (Deputy Chair)

Senator Bishop Senator Mackay
Senator Chapman Senator Murray
Senator Childs Senator Panizza

Substitute Members

1. Senator Sherry to substitute for Senator Bishop except for:
   9-16 July when Senator Forshaw will substitute for Senator Bishop;
   17-25 July when Senator Murphy will substitute for Senator Bishop.

2. Senator Cooney to substitute for Senator Mackay for the period 29 and 30
   July.

3. Senator Crane to substitute for Senator Panizza.

Participating Members

Senator Abetz Senator MacGibbon
Senator Allison Senator Margetts
Senator Bourne Senator McGauran
Senator Brown Senator McKiernan
Senator Brownhill Senator Minchin
Senator Calvert Senator Murphy
Senator Campbell Senator Neal
Senator Carr Senator O’Chee
Senator Colston Senator Panizza
Senator Cook Senator Schacht
Senator Cooney Senator Sherry
Senator Ellison Senator Stott Despoja
Senator Chris Evans Senator Tambling
Senator Forshaw Senator Troeth
Senator Kemp Senator Watson
Senator Ian Macdonald Senator Woods
Senator Sandy Macdonald
Matters referred by the Senate for inquiry into and report on:

(1) The Workplace Relations and Other Legislation Amendment Bill 1996 stand referred to the Economics References Committee for inquiry and report by 22 August 1996, with particular reference to the following matters:

(a) whether the various State industrial jurisdictions can or will provide adequate protection for workers employed under state agreements;

(b) the implications for the Australian economy;

(c) whether the provisions of the bill will fulfil Australia’s international obligations and whether the provisions of the bill will affect Australia’s international relations;

(d) the effects of similar provisions in other countries;

(e) the extent to which the proposed legislation impacts on the national skills accreditation, traineeships, apprenticeship system and vocational education systems, and whether State legislation will be complementary to the Federal Act;

(f) whether any proposed powers exercised by the Australian Industrial Relations Commission would be better exercised by another federal government body, and whether further consequential amendments will be needed to other acts to achieve this;

(g) whether any proposed powers exercised by another Federal Government body would be better exercised by the Australian Industrial Relations Commission, and whether further consequential amendments will be needed to other acts to achieve this;

(h) the impact on small business of the proposed legislation and the extent to which the proposed institutional arrangements provide adequate support for small business in dealing with industrial matters;

(i) the extent to which proposed Budget cuts will reduce the capacity of the AIRC to perform its role;

(j) whether the bill as a whole or in part is constitutional;
(k) the extent to which state legislation on unfair dismissals complements or will complement the proposed federal act;

(l) whether the provisions of the bill provide a fair balance between the rights of employers and organisations of employers, and the rights of workers and unions;

(m) whether reporting mechanisms on the progress of enterprise bargaining are adequate and might need to be improved in light of the bill;

(n) the impact of the proposed legislation on the balance between work and family responsibilities;

(o) the impact of the proposed bill on youth employment and training.

CONDITIONS OF DISTRIBUTION

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WITNESSES

CAIRD, Ms Wendy, Joint National Secretary, Community and Public Sector Union—PSU Group, Level 5, 191 Thomas Street, Haymarket, New South Wales 2000 ........................................ 1954

CAMBRIDGE, Mr Ian, Joint National Secretary, Australian Workers Union, Suite 15, 245 Chalmers Street, Redfern, New South Wales ............ 1984

CHARLESWORTH Ms Sara, Private researcher, 98 Station St, Carlton, Victoria 3053 .................................................... 1996

EARLE, Ms Jennifer Louise, Member, National Women’s Justice Coalition, GPO Box 3148, Canberra, Australian Capital Territory 2601 ....... 2047

GREGORY, Mr David Bruce, Senior Policy Adviser and Chief Advocate, Victorian Employers Chamber of Commerce and Industry, 50 Burwood Road, Hawthorn, Victoria 3122 ...................... 2013

HAMILTON, Mr Reginald, Manager, Labour Relations, Australian Chamber of Commerce and Industry, 55 Exhibition Street, Melbourne, Victoria .. 1967

HERON, Ms Alex, Member, National Women’s Justice Coalition, GPO Box 3148, Canberra, Australian Capital Territory 2601 ................. 2047

JOHN, Mr Gregory David, Director, Strategy and Corporate Relationships, Victorian Employers Chamber of Commerce and Industry, 50 Burwood Road, Hawthorn, Victoria 3122 ...................... 2013

MONAGLE, Mr Paul, Acting Executive Director, Confederation of ACT Industry, PO Box 192, Deakin West, Australian Capital Territory 2605 . 1908

NADENBOUSCH, Mr Bruce Kenyon, Director Industrial Relations, Association of Professional Engineers, Scientists and Managers Australia, 163 Eastern Road, South Melbourne, Victoria. ...................... 1921

NOAKES, Mr Bryan Maxwell, Executive Director, Australian Chamber of Commerce and Industry, 55 Exhibition Street, Melbourne, Victoria .... 1967

PYNER, Mr Jeremy, Secretary, Australian Capital Territory Trades and Labour Council, 17 Woolley Street, Dickson, Australian Capital Territory ............................... 1894

QUIRK, Mr Mark, National Manager, Human Resources, Australian Chamber of Manufactures, 380 St Kilda Road, Melbourne, Victoria 3004 ... 2032

RAYNER, Mr Paul, Director—Industrial Relations and Executive Manage-
SCHOONWATER, Ms Sarah Jane, Industrial Officer, Construction, Forestry, Mining and Energy Union, PO Box 498, Dickson, Australian Capital Territory

STAPLETON, Mr John, National Industrial Officer, Community and Public Sector Union—PSU Group, Level 5, 191 Thomas Street, Haymarket, New South Wales 2000

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WASON, Mr George, National Assistant Secretary Construction Division, Construction, Forestry, Mining and Energy Union, PO Box 498, Dickson, Australian Capital Territory

WATCHORN, Mr Barry John, Director, Australian Chamber of Manufactures, 380 St Kilda Road, Melbourne, Victoria 3004

WEBB, Ms Linda May, Commissioner for Public Administration, ACT Government, PO Box 158, Canberra, Australian Capital Territory

WINLEY, Mr Vernon James, Assistant Director, Business Council of Australia, Suite 403, 65 York Street, Sydney, New South Wales 2000
SENATE
ECONOMICS REFERENCES COMMITTEE

Workplace Relations and Other Legislation Amendment Bill 1996

CANBERRA

Wednesday, 31 July 1996

Present

Committee members
Senator Jacinta Collins (Chair)
Senator Childs
Senator Crane
Senator Ferguson
Senator Mackay
Senator Murray

Participating members
Senator Forshaw
Senator Margetts

The committee met at 8.40 a.m.
Senator Jacinta Collins took the chair.
CHAIR—I call the committee to order and declare open this public hearing of the committee. Today the references committee continues the public phase of its inquiry into the Workplace Relations and Other Legislation Amendment Bill 1996. This matter was referred to the committee by the Senate on 23 May this year and the committee is due to report back to the Senate by 22 August.

As part of its terms of reference the committee has conducted public hearings in all capital cities. In addition, the committee has visited regional centres and held hearings in Launceston, Townsville, Cairns, Bendigo and Cessnock. The committee concludes the public phase of its inquiry with hearings today and tomorrow in Canberra.

So far the committee has received over 1,350 submissions. While a considerable number of these are from large organisations such as employer groups and unions, many are from individuals expressing their views about the way in which the legislation will change relations between employers and employees. The committee’s terms of reference are wide ranging and require a consideration of both the detail of the bill and the broader impact that the legislation will have on Australia. For the record, this is a public hearing and as such members of the public are welcome to attend. However, I should point out that only the witnesses at the table are able to speak to the committee during the formal part of the proceedings.

Before we commence taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Parliamentary privilege means special rights and immunities attached to the parliament or its members and others necessary for the discharge of the functions of the parliament without obstruction and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before the Senate or any committee of the Senate is treated as a breach of privilege.

The committee has before it a set of submissions to be heard today. If it is the wish of the committee, I propose that all submissions to be heard today be released now. There being no objection, it is so ordered.
[8.43 a.m.]

RAYNER, Mr Paul, Director—Industrial Relations and Executive Management, Chief Minister’s Department, ACT Government, PO Box 158, Canberra, Australian Capital Territory

WEBB, Ms Linda May, Commissioner for Public Administration, ACT Government, PO Box 158, Canberra, Australian Capital Territory

CHAIR—I welcome you to the hearing. I now invite you to give the committee an overview of your submission and then committee members will ask questions.

Ms Webb—Thank you, Senator. The submission today comes under your term of reference (1)—the provision that says whether the provisions of the bill provide a fair balance between the rights of employers and organisations of employers and the rights of workers and unions. It is particularly related to the provisions of section 170MW—that is the protected action part—and in particular 170MW(3), which relates to the conditions under which a protected bargaining period can be ended or suspended. Those provisions in the bill talk about endangering the life, personal safety or health or the welfare of the population or part of it, and part 2 of that part is to cause significant damage to the Australian economy or an important part of it.

The submission is based on the experience in the ACT during a recent industrial dispute over the negotiation and certification of new enterprise agreements. Most of those negotiations were conducted under the protected action clause, and that is the reason we are making the submission today. While the concept of protected action is fully supported there is no problem with that idea. We consider that special recognition is needed for the conditions under which negotiations occur when the government is the employer and when the community can be hurt by the dispute. That is the point we are here today to make. The effect this has on the employer, we believe, impedes the ability to negotiate on equal grounds with unions.

In our submission we have given some examples of the impact some of those bans had on sections of the community. That is on page 2 of the submission. It covers things like a ban on parking fines which caused significant loss of custom to small businesses in the territory, bans on elective surgery and the impact that had and bans on public transport and the impact that had on people who were totally reliant on public transport to travel around. We also gave a couple of other examples.

Our union colleagues may well argue whether, in fact, our interpretation of those examples is correct. There is no dispute about the bans themselves, but the point that we would like to make is that at the time there was no vehicle to have a debate about whether those bans were effectively between the employer and the employee or whether they were hurting the community as well. There was not any neutral ground where we could have
that discussion. The bans were fine—they were well within the definition of protected action and that was fine—but the situation that the government found itself in was that the affected members of the community were being hurt by those bans and there really was not a lot that the government could do about it.

The action was within the confines of protected action and really there were only three ways forward that the government had before it. The one the government chose was to continue negotiating and, at the end of the day, we did reach an agreement. But during that process there really were not any responses the government could take other than either agreeing with the union negotiating position or, alternatively, lockouts, which is the response available to the employer under the current act. Lockouts really were not a viable option to the government when the government was the employer, partially because the unions had made it clear that if the government were to move into lockouts all services would close down. That is fine, but the government does not want to be in a position to do that because, had the government locked out employees, what it in fact would have been doing was shutting down services itself. That really is not an option that is available to the employer when the employer is the government.

What we have done is to propose some amendments to section 170MW. It is a matter for the committee as to whether those amendments are appropriate suggestions, but what we were hoping to do was to focus your minds specifically on this issue and help you to focus on the problems the ACT government, as an employer, has in negotiating equally if union bans and limitations are, in effect, unrestricted and the options available to the government are really only to close down services that the community relies on. That is what we are trying to focus on today. We have suggested two areas of amendment. One is to basically require employees and employers and unions to be quite specific about the bans that they intend to impose, who they are imposing them on, when they are being imposed, and so on.

The purpose of that proposal is that during the dispute we experienced a lot of difficulty in knowing what form of industrial action was in hand and where it was taking effect, so it was a reasonably open-ended charter that the unions were able to impose. That made it very difficult for the employer to decide whether there was action that it should take or whether there was advice it should give the community and what have you. We are suggesting that that should be a lot more prescribed and specific so that the parties—particularly the employer, I guess—can take action or at least consider their options in a timely manner before the industrial action takes effect.

The second thing that we are suggesting is to restrict the areas where protected action can be taken—this is when the government is the employer—and we have made three suggestions. The first one is that there should be another clause in addition to the two currently in the bill, with that clause relating to something like ‘where there is an unreasonable level of disruption to the services the community relies on the government to provide’. We believe that tests of unreasonableness and reliance by the community are not
unreasonable expectations for areas where the ban should not take effect and that these are areas where it would certainly help the government, as employer, to negotiate on equal grounds. We have also suggested that the third clause, which is currently worded as ‘significant damage to the Australian economy or an important part of it’, be amended to reflect local economic effects. Clearly, in the previous dispute the employer could not claim that the impact of loss of parking revenue had a significant impact on an important part of the Australian economy, but it had an important impact on the ACT. We are suggesting that that local impact be taken into account.

The third thing we are suggesting is that in that clause there be a maximum time before applications are heard and that action be suspended whilst the application is being heard. We believe that this is a sensible way of making sure that negotiations do continue on an equal footing. That sums up our submission, thank you.

CHAIR—Thank you, Ms Webb. With respect to your submission about protected action or restricting access to protected action, could I ask for your comments in relation to the amendments with respect to paid rates awards? Do you have a view that in particular areas of employment there should be restrictions in relation to the taking of action because of the nature of the services provided and the effect of any potential action? Do you have a view about whether such employees, if they are going to be restricted in that sense, should have access to paid rates awards?

Ms Webb—If I can turn the question around, I think the issue is more that, unlike the states—as you would know—the ACT and the other territories are totally bound by Commonwealth legislation. This legislation has been drafted to reflect, quite properly, the sorts of negotiations that are undertaken at a federal level. The sorts of issues that we have been facing relate to the fact that we have had to apply federal legislation to very small and very localised disputes. The issue that the ACT government faced was that the bill really did not recognise those different sorts of relationships at that local level because of the way that the federal legislation works down to the territory. It is a general point about the application of a piece of federal legislation to an employer who is not a private sector employer. That is the point we are trying to talk through.

CHAIR—But the federal legislation applies to private sector employers both large and small and to public sector employers or business units both large and small, so I would say the problems that you are referring to in the ACT would not be particular to the ACT. But, once again, back to my original question. I was asking you, in relation to paid rates awards, whether, if you feel that it is appropriate to restrict employees’ abilities to take action—which, as you have said, at the moment would be quite legal or within the definition of protected action—you equally think that, with respect to those employees, they should have access to paid rates awards?

Ms Webb—I guess I am struggling a bit because that is not within the area where we have come to make submissions. I am not quite sure of the correlation of the two
questions.

CHAIR—The terms of reference, if I am correct from memory, relate to the balance of the rights of employers vis-a-vis employees. If you are saying that you want to restrict the rights of employees to take action on the one hand, one proposed counter to that restriction is for employees to be given access to paid rates awards. That is the relevance of the question.

Ms Webb—I am still struggling a bit. They have access to paid rates awards at the moment.

CHAIR—Yes, but the bill proposes to remove that access.

Ms Webb—That’s right. The problems we have had and the areas we want to restrict—not the capacity for negotiations but the capacity for protected action—are where the negotiations extend beyond the employer and employee being able to deal with each other on an equal footing. I still am not sure of the link between that and access or not to paid rates awards, but the government has not asked me to make a submission about paid rates awards. It has only asked me to make a submission and talk through the impact of bargaining in the context of enterprise bargaining, specifically about the conditions under which the parties can bargain.

CHAIR—But surely, with respect to the conditions under which employees can bargain, if employees are bargaining from a base of a paid rates award currently, which will not exist under the proposed bill in future bargaining, then that has a significant impact on their ability to bargain. As you have said, you are proposing amendments with respect to one side of the equation, in relation to the balance of power between employers and employees. I am asking you a question about the other side of that balance. I think that is quite relevant in terms of the nature of the submission you are giving, but if you cannot give an answer then you cannot give an answer.

Senator CRANE—Can I suggest that that question be taken back to the ACT government and get them to respond?

Ms Webb—That would be very helpful.

CHAIR—You can take that on notice.

Senator CRANE—I am struggling a bit to get this into context. Could I summarise what you are saying thus: what you are asking for is that there be public interest provisions put into the bargaining period in restricted actions?

Ms Webb—That is a succinct way of putting it, yes.
Senator CRANE—I will leave it at that. I will obviously have to look at this and relate it back to the various clauses and what have you, but I thought I had it right. Thank you.

Senator CHILDS—Why should the committee agree to your request when in fact, on your own admission, it took 12 months to negotiate the agreement? Why should we reward your procrastination as a government or as a bureaucracy?

Ms Webb—When we were rehearsing for these hearings we agreed that the most likely question we would get was why we were here at all given that we did end up with agreements. Depending on which side of the fence you sat on, the process went well. Certainly we have ended up with agreements and we have ended up with an amiable working relationship between the employer and the employee. So certainly the bargaining period went well.

The request relates to the consequence on members of the community where there was no vehicle or avenue to have those concerns heard or aired during the negotiating period. They weren’t a party to it and they weren’t affected by it in a direct sense, but they were certainly affected by the spin-off of the bans. That was not true of all the bans or all the actions, but there was a series of specific matters where the community was affected. One of the examples I gave was small business around Civic when there were bans on parking. The place was full of people parking illegally and a lot of small business lost a lot of revenue.

Senator CHILDS—Isn’t delaying settlement a traditional tactic of government departments, governments and government authorities on the basis that employees, once given an offer, over a time start to keep that as a nest egg and finally that becomes a psychological pressure on people to settle?

Ms Webb—I think what we are saying is that the process of protected bargaining, where employers and employees can have a very robust exchange of views and time frames and what have you, is fine. We don’t have a problem with that. The only problem we do have is when that spins off on to parties who really shouldn’t be drawn into the process.

Senator CHILDS—What I am putting to you is that often governments and government departments favour the delay because it ends up being a lower settlement than might otherwise occur. As a result of that, in modern negotiations there is a pressure on governments to settle earlier because in the modern day people won’t accept the traditional dragged-out, public service style negotiations.

Ms Webb—I am not sure I agree with the proposition that that is a normal bargaining technique, although I would have to say that the dispute we had was most unusual. What I am trying to say is that the normal process where, as you would be
aware, you make an offer, there is a counter offer, you negotiate, there is another counter offer and you negotiate—there is always give and take as people come closer and closer to an agreement—is the process that happened this time. Whether it took too long or not, I don’t know. Certainly, the 12 months would have suggested that the impact on the community did not bring the government to the table any sooner, but what it did do was have a spin-off at various times on various parts of the community that did it no good at all and didn’t actually help the negotiating process.

Had it made a difference to the negotiating process, I still think the argument is the same. There is not a lot of justification for people trying to negotiate on a level playing field being drawn in when people are not directly affected. A lot of the government services are single service providers. There are a lot of regulation and things like that. People can’t go elsewhere. They are directly affected if the dispute between the employer and the employee spills over into their daily lives. They are directly affected. They’ve got nowhere else to go. There is not a lot of room for them to have their case heard and taken into account relative to the issues between the employer and the employee.

In this dispute we would say that the reason the government did not reach an agreement with the unions earlier was that it had quite legitimate and reasonable points in its bargaining position that needed to be considered as much as the points in the union’s bargaining position. But it was difficult to get that consideration taken into account when some of the people who relied on the government to provide services were being directly affected by some bans. I am not sure that the time frame really is at the crux of what we are talking about. It could have been a short, sharp two-day dispute and the same issue may well have arisen.

Senator MURRAY—Ms Webb, you are advocating the essential services concept: that, where there is a majority or a sole supplier which matters to the community, there should be special consideration in the industrial relations legislation for that position. What you offer, therefore, can have quite wide ramifications throughout Australia. We need particularly to bear in mind the privatisation campaign and the outsourcing and all those sorts of things, because they mean that more and more services that were provided by the government will be provided by the private sector. Therefore, the principle you enunciate has quite wide application.

On the other side of the coin—although in the instances you indicate, both health and education, industrial action was taken—generally speaking, workers in the health industries and the education industries and, say, the defence forces or the police service do not take industrial action because of the nature of their service ethos. Would you balance the protection you are looking for on your side with the protection for particular industries—caring industries, if you like—which do not normally take industrial action or might choose to withdraw voluntarily from it?

Ms Webb—Yes. As you say, it is not usual for health or education industries to
take industrial action, although in our dispute they were very careful to maintain the essential component of those services whilst action was being taken. In the hospitals, for example, it was elective surgery that was targeted rather than any of the mainstream services. In the education area, where negotiations are still continuing, it is out-of-hours activities and voluntary activities that have been targeted. So they have tried to be very careful about these sorts of areas where they have been escalating their negotiations.

While you are right about essential services, and the concept is correct, I guess we are advocating a slightly wider definition of essential services than has historically been the case. As I understand it, that is normally restricted to power and water and transport and things like that. It is hard to come up with a nifty little phrase to cover it but, for example, the impact of parking bans led to a lot of disruption in Civic—all of it relatively minor.

Senator MURRAY—I understand your argument. Perhaps I can assist you in this manner: I will refer back to a question Senator Collins asked you. Essentially, the argument put before us in our travels around Australia by people in those sectors—and we have not had the police service in front of us, but we have certainly had health and education workers—is that, because they are voluntarily constrained in terms of the type of industrial action they can employ, any more competitive industrial relations environment disadvantages them. Therefore, they seek special protection and, in particular, they seek paid rates awards to be maintained.

I clearly understand your argument about your services and the sole supplier and the impact upon the community, but the counter to that in a negotiating sense has to be for those people who are affected in that way. Can you offer any changes or advances in the legislation which would pay attention to their needs as well? Because I suspect, from your answers, you have not considered that. It might be another question that you would like to take back to your government and perhaps answer the committee on.

Ms Webb—Yes, we would be very happy to do that.

Senator MURRAY—Thank you.

Senator FORSHAW—In your submission you talk about the difficulties encountered with the provision of services as a result of bans and limitations in the negotiation phase. This country certainly appears to be heading for a situation where a substantial number of federal government services will be either cut back or, in many cases, abolished. That includes CES offices, and the list goes on. Do you have any comment to make about action being taken by the public sector unions which may have a limited or an interim effect during, say, the one-day strike that occurred last week, where the action is designed to try to protect those services? Would you distinguish between action taken during a negotiation phase and that type of action, which we are certainly likely to see more of, where the unions are trying to ensure that those services still remain?
Ms Webb—I understand the issue. We were talking about unreasonable disruption to services that the community relies on. In that particular instance there was ample notice. Everyone had opportunities to make alternative arrangements. I do not think anyone could say that that would have been an unreasonable disruption. Of course, in the Canberra instance, that did not actually impact on Canberra services because it was targeted differently.

I do not know. We are not really trying, I guess, to focus on the purpose of the industrial action. We have certainly focused on enterprise bargaining, because that is where it sits most clearly when the employer and the employee cannot deal with each other equally. We had not focused on whether that principle would then extend to other forms of disruption to services through industrial action. I think our government would have a similar view though if action became extended or widespread, because they would again be coming back to this public interest and essential service concept.

Senator FORSHAW—I suppose what we are discussing here is principles. I am not sure that I accept your view that it is an unequal playing field, as you put it, because you still have the resources of the commission to utilise to try to resolve or enhance the negotiations to a point of resolution. Some of the aspects of this legislation would limit the role of the commission and thereby remove or limit that opportunity and, it could be argued, would enhance rather than limit the prospect of continued disruption.

The point I want to get some reaction on is that governments by legislation or by administrative action can have a far greater effect upon the provision of services that you are talking about. Yet if unions or their employees take industrial action that may be the only form they have to try to protect their employment or to protect the continued provision of those services. The commission cannot do it for them. It cannot order governments to keep open CES offices, Medicare offices or whatever, but governments can go to the commission to try to prevent continued industrial action. So where is the level playing field? That is the sort of area that we are now heading into as a result of what we all know are going to be massive cuts in the public sector.

Ms Webb—Under the protected action in the existing legislation there was no recourse to the Industrial Relations Commission for the government other than to seek conciliation.

Senator FORSHAW—That is what I meant. I am aware of what you said.

Ms Webb—There was no particular avenue.

Senator FORSHAW—The shoe is on the other foot. The government announces that a whole series of government public sector jobs are going to go and services are going to be diminished. The union cannot go to the Industrial Relations Commission to have that decision revoked.
Ms Webb—I guess the proposition you are putting to me sounds more to me like a political issue rather than an issue between an employer and an employee.

Senator FORSHAW—But the result is disruption, even the abolition of services to the community—which is what you are concerned about. At the end of the day the result is not dissimilar, probably far worse.

Ms Webb—It is not so much the results as the process we are talking about when you are dealing between an employer and an employee. When you move into political fields I would suggest that the responses and the issues are different. That is a little outside the province of what the ACT government, certainly, is interested in.

Senator FORSHAW—I beg to differ on that. We have already seen industrial action taken over the issue of cutbacks to the Public Service and, in particular, job employment levels which are industrial issues, not necessarily just political ones.

Ms Webb—I think we will have to differ on that one.

Senator CRANE—Can I follow up my previous question relating to the, in effect, public interest clauses you are asking to have put in there. I also ask you to address the question of essential services versus public interest. In the last dot point on this list you nominate the removal of wastes from hospitals as causing a public health risk. I would certainly classify that as being an essential service as against parking fines. I understand the nuisance of that. Certainly the government and the previous government accepted that it was fair in terms of bargaining that there be a restricted action period.

The other point that needs addressing is the following. I do not know whether you have the Hansard but certainly in Western Australia, for example, we were told by the nurses over there that once they announced there was going to be a hospital ban minds focused very quickly. They came to a decision, there was no ban and the problem was sorted out. So there are benefits on the other side of the equation. If you could address that aspect in your reply I would appreciate it.

Ms Webb—I would be very pleased to do that. It is a very difficult area—one where our unions have tried to act very responsibly.
PYNER, Mr Jeremy, Secretary, Australian Capital Territory Trades and Labour Council, 17 Woolley Street, Dickson, Australian Capital Territory

SCHOONWATER, Ms Sarah Jane, Industrial Officer, Construction, Forestry, Mining and Energy Union, PO Box 498, Dickson, Australian Capital Territory

WASON, Mr George, National Assistant Secretary Construction Division, Construction, Forestry, Mining and Energy Union, PO Box 498, Dickson, Australian Capital Territory

CHAIR—I welcome you to the hearing. I now invite you to give the committee an overview of your submissions and then committee members will ask questions leading from your submissions.

Mr Wason—The CFMEU tabled a submission to the committee, which I assume everyone has read. What we intend to do is talk to the submission which we put to this committee. The submission we presented to the committee lists some case examples of events which have actually taken place here in the ACT. I would like to say that these examples are only a selection of what are basically every day occurrences in the industry in the ACT. I would also like to say that, as far as the CFMEU is concerned, we will hold the Prime Minister to his undertaking to the electorate prior to the election that no Australian worker would be worse off under his administration.

It is our view that the proposed amendments, which have been through the House of Representatives and are now in the hands of the Senate, will in fact make workers worse off. For example, one of the key areas is the issue of the right of entry provisions. The union receives calls on a daily basis from workers who do not want to be identified for fear of discrimination, not only from their present employer but from future employers in our industry. On a daily basis they will call the union and advise the union about unsafe work practices and non-payment of statutory conditions and entitlements, but they will not leave their name for fear of discrimination.

The present legislation allows the union access to the workplace during normal working hours to speak to both members and potential members. In our view, this is an invaluable right to the unions and, more to the point, to the protection of workers’ rights. It protects workers from discrimination. It allows the union to check the workplace for safe work practices, and it also allows the union to check to ensure that proper award wages and other statutory benefits are being paid.

The union also has the right to request to check wage records to be further reassured that workers are receiving the proper benefits. Under this point, the union is not required to disclose the names of workers who have lodged complaints. Once that position
is eliminated, it will lead to, in our view, wholesale discrimination and victimisation.

For example, in 1995 alone, the CFMEU branch of the ACT recovered in round figures $800,000 in workers’ rights and entitlements. To put that into perspective, the workforce in the construction industry in the ACT currently has about 7,000 workers. Of that 7,000, probably about 4,000 are members of the CFMEU. So, if you did an actuarial study, you could argue that each worker who is a member of the CFMEU is underpaid by $200 a year at the present time. We would argue that, by putting these amendments forward, workers would be worse off. Of course some claims vary but, on average, it works out as $200 per member in the ACT.

So if we were to amend the current situation and restrict access, it would only encourage employers to underpay their workers, because the capacity of workers to be able to lodge complaints—which they are entitled to do—would mean that they were open to discrimination. This leads us to another issue—that is, the role of the Industrial Relations Commission.

We would argue that it is imperative to have an independent third party to be able to intervene in disputes between employers and employees. The commission must retain its ability to scrutinise agreements and apply a no disadvantage test. The awards must be maintained in their present format.

The commission plays an important role in resolving impasses where the employers have the upper hand and refuse to resolve the outstanding award matters. These problems mainly arise where workers are in weak bargaining positions and also when those employed are part-time or casual, from a non-English speaking background, female or working in Australia on working permits, such as backpackers. The commission must retain this existing power in order to provide a balance and protection to workers who are unable to defend themselves.

The only other area which is available to workers for recourse is a small claims tribunal. The small claims tribunals are restricted in the amount of money which they can award. The other problem with that is that, when we lodge claims in the small claims tribunals, companies will actually go into liquidation to avoid the matter being handled by the tribunal.

Another problem is in regard to workers using solicitors. Most workers in our industry—and in fact most industries—do not have the financial reserves to engage or employ solicitors. Also, in the small claims tribunal, you can have costs awarded against you. So if you were beaten on a technicality, the situation is that you would have costs awarded against you. That, in our view, is an impediment and a discouragement for workers to process a fair claim.

The right of entry is also important in regard to occupational health and safety. As
most people would know, the construction industry is a very dangerous industry. Accidents are, in the main, physical and horrific, and it is not too uncommon for them to result in death.

The industry is also a high pressure one—that is, the clients, the builders, demand that their projects come in under budget and in front of schedule, which means that the pressure is passed down to the work force. It is not too uncommon for workers to be encouraged to take short cuts or, in some cases, directed by their employers to take short cuts in the area of occupational health and safety. This is proven when one looks at the workers compensation premium rates for our industry. They are among the highest, if they are not the highest, premium rates in the industry. That directly translates into the number of industrial accidents which we experience in our industry.

Once again, if a worker complains, it is not too uncommon for that worker to be victimised, discriminated against, because they have put in a claim in regard to unsafe work practices. In Victoria, and especially in New South Wales where the state legislation was amended, we have seen workers having to fill in a complaint form and hand it to Work Cover. Work Cover gives a copy of the signed complaint form to the employer and an inspector goes out and inspects the complaint. What happened in New South Wales was that complaints dropped off, industrial accidents increased and deaths in New South Wales increased all because workers could not complain in a discreet manner.

The union received numerous phone calls on a daily basis to go out and inspect workplaces because of the unsafe work practices which were being promoted in our industry due to the pressure of cost cutting. Also, in regard to the economic cost to the Australian community, the current cost to the Australian economy in industrial accidents is running at about $8 billion a year. It is quite ironic that $8 billion is being bounced around elsewhere, too.

The other area which we would like to address is that of amenities. This is another example of bad work practices. I have with me a transcript from a talkback radio show from the Northern Territory. This branch is also responsible for activities in the Northern Territory. The CFMEU has been active in the Northern Territory since October last year. We had a situation where employers in the construction industry in the Northern Territory resisted the union’s campaign for toilets on building sites.

I will table a copy of a talkback radio transcript in which the host interviewed our official and then invited calls from the community. You will see quite clearly in the transcript it is a common feature in the Northern Territory that basic things such as toilets are not provided on working sites. Workers have to go to the nearest shopping centre, pub, service station or whatever to use a toilet. In 1996 that is totally unacceptable, but it gives you another indication of what happens if the union has not got a right to access the workplace to enforce an award right and an occupational health and safety hygiene issue for not only the work place but also the community in general.
You will also see in that transcript where the person makes reference to the statutory body in the Northern Territory, Work Health Authority. It is clear that Work Health Authority does not have the resources or ability to enforce the existing legislation. I would argue that every other state and territory is the same when it comes to the local authority trying to enforce the position. They do not have the time or the resources to cover the industry due to enormous cutbacks. It has only been through action by the union that we have been able to achieve toilets on building sites in the Northern Territory. That is why I would argue that if our access were restricted on that basis the situation would be allowed to go unchecked and therefore back to previous habits.

Whilst I am raising the issue of the Northern Territory, I would also like to table another transcript from a recent hearing in the Industrial Relations Commission. On page 17 you can see that the CFMEU was represented and so was the Northern Territory government. In fact the Country Liberal Party actually intervened on this matter. They used senior counsel Sweeney, a well-known barrister in Sydney. The union had reached an enterprise agreement with this employer and the government intervened and attempted to stop, and is still attempting to stop, the union from signing the agreement with the employer.

You will also see that page 135 of the transcript makes reference to the Giles royal commission and says that that is grounds enough to stop the CFMEU from operating in the Northern Territory. I would like to refresh senators’ memories of the royal commission. The CFMEU was totally vindicated of that matter. There were several charges laid against a few of our officials. All of these charges were later either dismissed or thrown out of the relevant courts. Unfortunately, I cannot say the same for employers. Numerous employers were convicted of criminal offences and employer organisations had to pay substantial money back to either the clients or the government.

The reason I raise this is that this gets down to the issue of choice. The point I am making is that this is what appears to be the Liberal Party’s interpretation of choice. What they are saying in these proceedings is that you can have a choice as long as you pick the one that we want you to pick.

They make it quite clear in that transcript that they will not tolerate the CFMEU being active in the territory. This is totally contrary to the present act where the CFMEU has constitutional coverage of workers in the Northern Territory. The CFMEU has members in the Northern Territory. The CFMEU is actually enrolling and signing up members every day, yet the government is saying to workers in the territory, ‘You cannot be represented by the CFMEU.’

So this issue of choice is a major concern of ours. In fact, we have another document which is a copy of section 15 of the current act which deals with the International Labour Organisation’s freedom of association. It is our argument and our view that the Northern Territory government is in breach of the ILO convention on freedom of
association. The issue of choice is a major concern of ours. If it is going to be choice, it has got to be totally uninhibited choice, not selective choice.

In summing up, it is the CFMEU’s view that it is important that the workers retain their existing protections through the award systems; their unions are allowed proper access to represent and protect not only union members but workers in general; that the role of the Industrial Relations Commission be retained; and that we throw out this furphy of choice which has been bandied around the community today. As we said in our opening remarks, we would ask this committee to ensure that the Prime Minister maintains his commitment to the Australian people, and that is that no worker shall be worse off.

CHAIR—Thank you.

Mr Pyner—I will just make a few comments apropos the previous submission that was made by Ms Webb on behalf of the ACT government. The Trades and Labour Council was intimately involved in that dispute. In fact, it was the main advocate in the Industrial Relations Commission—of which we turned up to no fewer than nine separate applications by the government—to suspend or terminate the industrial action in the ACT.

The government’s main submission, as put to you this morning, was that the protected action was harming the ACT economy. There were a number of times in which the government attempted—they employed counsel to make their representations—to have the public interest and hurt to the national economy, et cetera, argued in the commission. Each time they were found wanting.

What I have tabled before you—which you were handed earlier by your associate—was one page of decision which was made on 15 March. It was a crucial decision made by Commissioner Holmes. The document really goes to what we consider to be the shortcomings in the government’s argument—namely that the arguments which were being put to the commission were not the arguments, or did not reflect the position, that the government had been taking in terms of its private negotiations.

I draw your attention to the penultimate paragraph when the commissioner, in his decision, concluded:

I must say that it is difficult to understand the failure of the ACT Government to raise that issue as a threshold matter. It is with great restraint that I am drawn to conclude that, put at its mildest, such action can only be adjudged as a gross discourtesy to the other parties to these proceedings and to this Commission.

If you were to familiarise yourself with those proceedings, then the relevance of that particular quote from Commissioner Holmes would undermine the government’s arguments in the first place—that significant harm was being done to the ACT community.

Ms Webb also raised the issue of disputation in the health industry. I can refer you
to the commission hearing, which was C90118 of 1996, in which the ACT government argued vehemently that the industrial action being taken by the HSUA in this particular case was against the public interest. In an astounding hearing, the ACT government, in front of Deputy President Duncan, was unable to convince the commission that the public interest was being harmed and that the health industry was being harmed. In fact, the case being put by the government was founded upon the duplicity of their very own arguments. If Ms Webb is going to make statements to this hearing, it is important to be aware of the fact that, without the role of the third party, namely the commission, then those industrial disputes would probably still be dragging on today.

Just to go back to the submission that was made by the Trades and Labour Council. Just over 12 months ago I was invited to attend a conference in South Africa to meet up with various unions there. The purpose of that conference and the purpose of the meetings was that the South African government was in the process of the formation of their new industrial relations bill. After scouring the face of the earth for a model which they thought would be an appropriate system, they focused upon the Australian Industrial Relations Act as being a model of openness and fairness. On the basis of those deliberations in South Africa last year the South African parliament have now passed an industrial relations bill which, in many respects, reflects the Australian system.

The only reason that I am raising this is that, a few days ago, I was in the commission and bumped into several South Africans who were trainee industrial registrars, so to speak. We struck up a conversation and they were absolutely astounded to hear that in the space of 12 months Australia had gone from a position of global envy, in terms of our industrial relations system, to a position which the South Africans would certainly not apply.

The submission that the Trades and Labour Council have put to you is to try to suggest a number of criteria which might be applied to assess whether or not the industrial relations legislation which is being proposed is a good thing or a bad thing. The South African example would say that 12 months ago we were in an enviable situation. We have now moved to a situation which the South Africans would certainly not apply.

A number of those criteria, which we have submitted to you, go to the issue of openness. We say that the current industrial relations legislation is characterised by openness where, in the end, all employment arrangements are on the table for everyone to see. Under the proposed changes, in terms of the workplace agreements, there will be no transparency, there will be no openness and there will be no vetting of the employment conditions. So, in essence, the submission that we are putting to you is that in the space of 12 months we have moved from an open society in terms of the industrial relations system to essentially a closed society. We say that that is not the hallmark of a piece of legislation which has served this country very well for the last 92 years.

CHAIR—are you suggesting that South Africa has moved towards a more centralised system rather than towards decentralised industrial relations internationally—a
trend that some submissions have claimed exists.

Mr Pyner—Yes. The argument in South Africa did revolve exactly around that point you have just highlighted. It was the ability, on the one hand, for the South African government to be able to effectively impose benchmarks or standards in regard to occupational health and safety, for example, in their mining industry, which was absolutely essential, and, yet, on the other hand, their ability to accommodate an enterprise arrangement which would give some degree of flexibility to reflect the peculiar nature of the enterprise. It was that balancing between the two which, as you rightly indicated, was the crucial debate. In the end, they have resolved to have a centralised system with a degree of devolvement to the enterprise but with central assessment of that devolved system.

CHAIR—In relation to the matters you were describing with the ACT government, could you tell me, with respect to the several disputes that you have indicated occurred and that were heard by the commission—as you said, a necessary independent umpire—whether any of the disputes were around matters which would not be covered by the 18 allowable matters for awards?

Mr Pyner—Yes. There were a number of issues which went to matters which would be outside the 18 allowable award matters. Quite clearly, the ACT government is a very diverse employer. What was attempted to do was to pick up a number of issues to be expressed within those enterprise bargaining agreements which would attest to that diversity. Quite clearly, a number of those went outside the 18 award matters.

CHAIR—Could you give me just a couple of examples?

Mr Pyner—Matters such as the accumulation of overtime arrangements. To give you an example, during the lawn-mowing periods, which is part of the ACT government’s work, employees accumulate overtime so that in the winter months when there is not much work they already have banked time. Training was a central one, as was occupational health and safety. In other words, those issues which go to the practicalities of the enterprise are essentially outside the 18 award matters—and we consider those to be absolutely essential to be vetted by another party.

CHAIR—Or, I think, as you suggested earlier, for an independent umpire to be able to adjudicate on those sorts of issues. Whereas under the proposed bill, as you said earlier, if the independent umpire had not been there you would still have the disputes occurring now.

Mr Pyner—Most certainly, and I would say—and certainly the page of the decision which I gave to you said—that maybe it is not so much the structure that is inappropriate but the attitudes and motives that people do bring to the commission which might hamstring the resolution of an industrial dispute. To have, in this particular case, as
this decision page indicates, the ACT government walking out of a conciliation conference is an indication of those motives rather than a failing of the system.

Senator Crane—If I could just pick up a couple of points—and during our hearings we have been through a lot of this stuff many times, so if you had been first you probably would have got a lot more questions. The right of entry provisions were raised. I have already, in other hearings, pointed out that there are two arms to those various aspects. I do not think in your submission, although you may have done, that you mentioned both arms of what is available under the bill, which are on page 151 and page 201.

In your submission you said that the CFMEU is signatory to some 300 enterprise agreements. I think that would indicate to me that your union would have been one of the more successful negotiators in terms of putting enterprise agreements together. Why do you think you would be any less successful under the proposed bill than you would be under either the 1991 changes or the 1993 changes, which were the two other major shifts in terms of how matters were dealt with industrially in this country? You might want to go back to 1987, but the 1991 and 1993 changes were significant because enterprise bargaining was the focus. So could you tell us why you think you would be any less successful under this legislation than you have been in the past?

Mr Wason—Under the proposed right of entry, one must basically be invited by a worker. That invitation will last for a period of 28 days. You are basically given some prewarning that the union will be coming round. It allows people to readjust things, rearrange things. I could give you numerous examples where an employer is tipped off that the union is going to do a safety inspection on their project and the following day when the union arrives the job is spick and span. So we would see in some cases that it basically gives people an unfair advantage by being forewarned. In fact, the old analogy of forewarned is forearmed is probably quite true.

We did have a situation here in the ACT when the act was changed to allow EFAs. In fact, the ACT was the first place that an employer attempted to introduce an enterprise flexibility agreement into the workplace. Ironically enough, that same employer was also a sitting member of the Liberal Party in the ACT Assembly, Lou Westende, who runs a company called Instant Office Furniture. We got a call from one or two employees advising us that they were about to proceed down the track of an enterprise flexibility agreement.

When we went out there and analysed the agreement, we found that it was substandard. The workers had not had any real consultation. They had not had any representation, even though the company had used solicitors to draw up the agreement. When we got there it was almost a fait accompli. We were fortunate enough to be able to access that workplace—due to current rights of entry—and debate the issue and explain and itemise areas where the workers were actually going to be worse off.
We were fortunate, due to the assistance of the commission, that the commission went through the agreement and ruled that the proposed agreement, under the no disadvantage test, failed. Therefore, they had to meet the necessary amendments which the union, in consultation with the work force, had agreed to. So by introducing what we would call a ‘bureaucratic unrestrictive right of entry’ it would certainly restrict an organisation such as the CFMEU being active, as you rightfully pointed out on the enterprise agreements.

Senator CRANE—That deals with that issue. What about my other question? You have negotiated 300 enterprise agreements. Why do you think you would be any less successful under this bill than you have been under the previous two bills?

Mr Wason—It would take a longer time. Enterprise agreements are not negotiated overnight and have a 28-day limit of right of entry, then you have to renew it. In our view that would be an unnecessary piece of red tape. Also, having to have workers identify themselves and invite the union in does lead to discrimination. The nature of our industry is not that you work for one employer for most of your life; you could work for five or six employers in the course of the year. Employers in our industry see people who complain about award rights or occupational health and safety as troublemakers.

Senator CRANE—I will certainly look at the bill, but I do not see anywhere in the bill where there is a 28-day restriction if the people in the workplace wish you to represent them to negotiate an agreement.

Mr Wason—The invitation is for 28 days. It stands for 28 days; it is our understanding that it has got to be renewed.

Senator CRANE—I will check that, but I do not think that is correct. My next question relates to restrictive action. You heard the previous submission that was put to us. In terms of the restrictive action period, during the bargaining period, what is your view on having some proposition to cover what I would call essential services?

Mr Pyner—I might deal with that. It needs to be put into context that protected industrial action is not solely the preserve of Australia. France, Denmark, Canada and Germany—to name but four countries—all have periods of protected action. It is our view, and it is reflected in those countries as well, that the current Industrial Relations Act does allow an employer to constrain the industrial action of unions if it is able to bring arguments of veracity to the commission.

My experience—and the case example which you were referring to was in the ACT—was that the government was not able to bring arguments of veracity to enable it to exploit existing provisions of the act. Indeed, it might be argued—in fact, at times, I was tempted to argue the case for them—that, if they had only looked at the act in a slightly different way, there were sufficient provisions within the act to ease their concerns. But it is not my business to highlight the deficiencies of arguments of industrial opponents.
should they be unable to utilise already existing provisions.

So, in brief, in answer to your question, I consider the descriptions under the act and the limitations are sufficient to curtail industrial action. That has been demonstrated elsewhere throughout Australia.

Senator CRANE—Thank you, Chair.

Senator CHILDS—You have responded to the submission by the ACT government. It seems to me that you are saying that there has really been a political cover-up to the electors because of the lack of competence or resolve by the ACT government. What do you say to the fact that it took 12 months to resolve the issue?

Mr Pyner—My background is out of the private sector. One of the questions that someone put to the ACT government related to highlighting the difference in time span between the private and the public sector. The reason why the dispute was protracted was not due to any deficiencies in the act, but simply, as I stated before, to the attitudes and behaviour which the parties brought to the dispute. It has always been my view that you will never get an agreement unless both parties want to reach an agreement.

I am very strongly of the view that the ACT government was using an industrial dispute to put into place a political agenda. As long as you have a political agenda contaminating an industrial dispute, the dispute is bound to be protracted or can cause considerable attrition of the community’s support for either one party or the other. In this particular dispute I would say that the unions are on the receiving end from the community, but in terms of the membership, we had their support.

Ms Schoonwater—I wish to supplement Mr Pyner’s answer. It was clear to many of the unions that the government had no intention from the beginning of the dispute of it being a short dispute, but clearly wanted it to be a long-running, protracted campaign. Additionally for the unions and its members, the dispute was not merely a wages dispute; it was about job protection and protection of services that we saw as essential to the community. It was far more than merely a wages dispute.

Senator CHILDS—Do you want to address the specific amendments that the ACT government put before the committee? If you have not seen them, I suggest that you might respond subsequently to those specific proposals.

Mr Pyner—I can do that, not having seen the written document. I did ask the minister at a tripartite meeting the other day whether I could have access to the government’s submission prior to this hearing. They have not been delivered to me. I would have thought there would have been some courtesy there. We will be able to provide a written response to that. My understanding is that they will seek greater clarification and definition of emergency procedures. In short, at the moment they are
picked up within the act. We would only be too pleased to provide you with a written response.

**Senator CHILDS**—It might have been technically improper for the ACT government to supply it to you before today, but as it is now a public document, if you could respond to that, that would assist the committee.

**Senator MURRAY**—I would like to focus on the CFMEU and health and occupational safety. I have assumed that if you had to prioritise workers’ needs, take-home pay would perhaps rank number one. Your occupation can be particularly hazardous. In terms of workers’ needs, where in your view does occupational health and safety rank? Would it be number two or number three? In other words, how highly does it rank?

**Mr Wason**—We rank it along with job security. We see tenure for employment and occupational health and safety as one. We actually engage a full-time occupational health and safety officer in this branch, like most other branches. That person’s sole purpose and responsibility is to go around workplaces checking on work practices.

**Senator MURRAY**—I understand how you operate; I just want to know where you rank it.

**Mr Wason**—We give it as high a priority as tenure for employment, which is wages.

**Senator MURRAY**—If it ranks so highly—and you relate to employers continually because that is the nature of your occupation—do you believe it also ranks exceptionally highly with employers?

**Mr Wason**—Unfortunately, no. In our experience, the employers’ first priority is to get the job finished as cheaply as possible. If that means you could take a short cut in supply and scaffold or other safety equipment and so on, so be it.

**Senator MURRAY**—I had better address the question to you, Mr Pyner, because I thought I saw you nod when I asked the question. Your colleague said no and your head seemed to indicate yes. Do you have a different view?

**Mr Pyner**—My view is that the employers are divided in their opinions on occupational health and safety. To give you an example, the ACT government used to fund an occupational health and safety officer out of the Trades and Labour Council. Partly due to this industrial dispute, the funding was removed and we no longer have it.

It has been put to me and it has also been expressed to the government that the employer organisations view with regret the passing of the occupational health and safety officer out of the Trades and Labour Council because their organisations do have views
about occupational health and safety but do not have the credibility in the workplace to effectively discharge those concerns. The answer is that it depends upon which employer organisation you might be talking about.

**Senator MURRAY**—It would be your view then that occupational health and safety should be one of the allowable award matters?

**Mr Pyner**—The Trades and Labour Council in the ACT runs an occupational health and safety training unit; we are an accredited provider on training and occupational health and safety. Our surveys have shown time and again that occupational health and safety is the number one priority of employees. As such, any diminution of the ability of employee organisations to effect proper occupational health and safety requirements in the workplace will be actively opposed.

**Senator MURRAY**—I am struggling to get a yes or no answer out of you. What I want to know is: do you believe that occupational health and safety should be one of the allowable award matters?

**Mr Wason**—Yes, I do. I will clarify my statement about employers. I may have been unfair on some employers, but they are in the minority. We do have some employers who are safety conscious, but the majority of employers are not safety conscious.

**Senator MURRAY**—You would recognise with the general community that it is impossible to have armies of inspectors and what the union does at the present is to complement an existing occupational health and safety role which is carried out by various governments. If that is so, I would guess that it is your belief that self-regulation, which is what is required if it is taken out of awards, will deteriorate occupational health and safety standards.

**Mr Wason**—There is no doubt about that. You could probably take any industry and look at where there has been self-regulation or non-activity of the unions. You will find that the occupational health and safety practices are pretty sad to say the least.

**Senator MURRAY**—I see that you have an international understanding and interaction. Are you able—and you would not be able to now—to produce figures which would indicate that the occupational health and safety records of industrialised countries, which are not as unionised as Australia or do not have as advanced an IR system, are worse? That would be a good practical empirical example of your case.

**Mr Pyner**—We could provide international comparisons on OH&S in unionised and non-unionised areas. I would say that one does not have to go overseas to find similar parallels. Australia would be able to produce numerous examples of those situations. The three of us would probably be able to provide anecdotal evidence of that. We would be able to provide you with empirical evidence to that effect.
Senator MURRAY—I would be grateful if you could do that. My last question is not all that serious. As a straightforward bargaining chip, if I can get you occupational health and safety as an allowable award matter will you stop knocking down old-growth forests?

CHAIR—I think that is called cross-trading.

Mr Pyner—The issue of occupational health and safety is obviously critical. The reason it is hard to give a straight answer is that occupational health and safety requirements vary from state to state depending on the legislation. For example, in the ACT the legislation baulks, in terms of some of the requirements, at those employers who have fewer than 10 employees. We have argued numerous times that 90 per cent of ACT employees in the private sector are in establishments with fewer than 10 employees. Therefore, the legislation does not apply.

Senator MACKAY—I am very pleased that Senator Murray started talking about the issue of occupational health and safety. That is precisely what I am going to talk about. I think that is one area that this committee has not concentrated on sufficiently to date.

I want to ask Mr Wason some questions in relation to the building industry. I guess you only have to read some of the history of the building industry and the waterfront to see what occupational health and safety systems were in place decades ago. We are led to believe that we are now in a new enlightened age whereby employers will ensure that occupational health and safety regimes are sufficiently rigorous. From what you are saying, particularly in relation to the Northern Territory, that is clearly not the case.

I wanted to ask you two things. Do you agree with Senator Murray’s suggestion that occupational safety and health should be an allowable matter or do you believe that that is a role for the AIRC? There are a series of issues we could put in the allowable matters in terms of the award. What would happen to workers compensation premiums in relation to employers if we had a deregulated occupational health and safety regime, which is what we are headed for? I think you said they are $8 billion at the moment.

Mr Wason—The cost to the Australian community of industrial accidents is $8 billion.

Senator MACKAY—In a deregulated system, I would imagine that the workers compensation premiums would be a lot higher and the cost to the economy would be a lot higher. This is an area of real concern. I agree with Senator Murray absolutely. I do not think we have concentrated on this sufficiently as a committee. Did you want to comment on either of those points?

Mr Wason—I agree that occupational health and safety should be an allowable matter.
matter and should be dealt with. In regard to deregulation, it is my experience—and I have travelled fairly extensively; this year I spent four weeks in the States looking at things there—that it is quite clear with union and non-union workplaces where the most industrial accidents take place. If you go to Thailand or Hong Kong and have a look at the construction industries in those places you find that the safety standards are non-existent. To use the term ‘life is cheap’ is not being flippant when one looks at their work practices.

We would argue that deregulation would further increase industrial accidents. Unfortunately, in our industry, if there is no regulation, then the lowest common denominator exists. In other words, one of the first places you will cut costs is occupational health and safety. The Northern Territory is a case in point where the CFMEU only became active as of October last year. Still today, occupational health and safety in the Northern Territory is substandard in comparison with any other state or territory in the Commonwealth.

With regard to workers compensation, the costs would go up. For example, in 1995 the union solicitors recovered $5 million for workers who had been injured in workplaces in the building and construction industry. I would say that that is a serious indictment on the work practices which exist here in the ACT. One would argue that if we looked at the other states they would probably fall into the same practice. As I said, the cost to the Australian economy each year in industrial accidents is $8 billion. To finish, we would also say that restricting the unions’ right of entry would only enhance the deterioration of occupational health and safety in the workplace.

Senator MACKAY—There is also a public aspect in relation to that as well, is there not? It is not simply in relation to the workers on site.

Mr Wason—You also have the public to take into consideration. We have seen some horrific accidents in Sydney where scaffolds have collapsed. As late as two weeks ago, a concrete pump burst in the main street in Darwin and concrete fell on two cars—went through the back window of one car. It was fortunate that the lady who possessed the car had just dropped her kid off at day care because the child would have been in the back seat. What they tried to do was just brush it off. They told them to take the car around to a local panel beater and they would have it fixed up, no worries, no need to report the accident, et cetera.

CHAIR—Thank you very much, Mr Wason, Mr Pyner and Ms Schoonwater.
MONAGLE, Mr Paul, Acting Executive Director, Confederation of ACT Industry, PO Box 192, Deakin West, Australian Capital Territory 2605

CHAIR—I would like to welcome you to the hearing.

Mr Monagle—Thank you. I have a short statement to read. The Confederation of ACT Industry is a registered organisation under the Industrial Relations Act 1988. We have represented employer interests for over 60 years in the ACT. The confederation is the largest employer organisation in the ACT, comprising some thousand member companies, which are mostly small businesses.

The confederation is an unequivocal supporter of the workplace relations bill. We believe that the bill will be beneficial for Australian workplaces, and in particular those small businesses. The bill will improve Australia’s evolving industrial relations arrangements because for the first time the majority of workplaces which are non-unionised will have arrangements that are suited to their needs.

We wish to comment on two aspects of the bill: the provisions for enterprise bargaining and the award simplification process. We believe that the two forms of enterprise agreements currently available to businesses—certified agreements, which are agreements made between employers and unions, and enterprise flexibility agreements, which are made between employers and the staff—are inappropriate to the needs of small business and effectively exclude small business from forming enterprise agreements.

Generally, small businesses have very few employees, if any, that are members of unions. Small businesses need to be able to develop agreements with their staff and file them by mail. Many businesses do not wish to deal with organisations and do not want to spend a day or more in the Industrial Relations Commission. This is a very practical problem that we believe will be overcome if the bill is passed in its present form. Such a change will contribute to improving productivity and job creation.

The introduction of enterprise flexibility agreements were supposed to provide businesses with the flexibility to create agreements directly with staff without union involvement. However, it is acknowledged by employers and observers that EFAs do not provide employers with sufficient flexibility and that the process is inherently unpredictable because of the complexity involved in achieving ratification. The contingencies and expense involved in forming these agreements act as a disincentive to employers utilising them and make them an untenable option for most small businesses. Thus, under the current system there is no scope for small business to improve their workplace relations through enterprise agreements because the system is insensitive to the predicament of small businesses.
From the confederation’s point of view, the most important feature of the new legislation is the provision of the workplace agreements. The bill’s provisions for AWAs empower small businesses to form enterprise agreements with their staff without the undue influence of third parties and without the need to adhere to a complex process of ratification. We believe that the necessity to adhere to statutory minima and the procedure for vetting AWAs will ensure a fair and equitable outcome whilst providing employers and employees with greater flexibility to shape their workplace relations.

The significant difference between the proposed system of enterprise agreements and the current system is that it provides small business with an opportunity to utilise enterprise agreements because it affords a ratification process that is truly decentralised, inexpensive and efficient. Even with the enactment of the bill, we acknowledge that some businesses may not immediately be inclined to formulate enterprise agreements. For this reason, we believe that the provision for award simplification within the new bill is an essential development in making awards more relevant to individual workplaces.

At present, many awards are overtly prescriptive because of their industry wide coverage. Consequently, many clauses have no relevance to small business. This has the effect of making awards unduly long as well as unnecessarily confusing for employers and employees. The practical effects of this situation are that employers and employees neglect to use awards adequately and are subsequently liable for breaches. We believe that the proposed award simplification process will make awards more relevant to workplaces and enhance their utility.

In conclusion, we adopt the comprehensive submission lodged by the Australian Chamber of Commerce and Industry. On behalf of the confederation and, more broadly, the Canberra business community, we support the bill.

**Senator MACKAY**—Mr Monagle, you talked about productivity in relation to the productive relations section of your submission. The third sentence in the last paragraph states:

Decisions made at the enterprise level are based on improving the productivity and efficiency of a business.

How do you measure productivity?

**Mr Monagle**—That is a perennial question that has been asked since the advent of enterprise bargaining. It is different for each organisation. It can be measured in productivity and profit levels but it can also be measured in business development and employee satisfaction. There is a whole range of methods for improving it. Some have tended to concentrate on a very arithmetical approach, but measuring productivity needs to be judged more broadly in my view.
Senator MACKAY—But as a fairly general statement to make—

Mr Monagle—Yes.

Senator MACKAY—Without defining what you actually mean by productivity: in this committee we have heard it spoken of ranging from ABS statistics in terms of gross state product through to the number of haircuts somebody can cut in a given hour. So you would appreciate that it is one of these words that is bandied around—quite dangerously in my view, certainly. What is your view about productivity?

Mr Monagle—I guess my definition would be that improving productivity is improving the business climate that improves productivity profit levels, job security, wages and employee satisfaction. They would be my measures for judging—

Senator MACKAY—They are outcomes rather than criteria, though, aren’t they?

Mr Monagle—I think I am more interested in outcomes.

Senator MACKAY—I am more interested in outcomes as well, but you have got to have the criteria in order to achieve the outcome. It is just interesting that we have not been able to establish precisely what the employers mean by the term productivity. It seems to be a bit of a movable feast.

Mr Monagle—I think you are not on your own. When enterprise bargaining came in early in 1991, the Civil Aviation Authority was trying to justify enterprise bargaining and precisely measure it. They had a great deal of difficulty. I think after that, in my experience, many backed away from a very balanced or detailed approach to trying to measure it. I think the commission itself backed away from that sort of approach.

Senator MACKAY—Ultimately, I guess, in relation to the AWAs the determination of the criteria for productivity will be pretty much at the employer’s discretion in terms of his or her enterprise. That seems to be the evidence we have had before this committee thus far.

Mr Monagle—I think it is pretty much in the employer’s hands, but it needs to be a balanced approach on behalf of the employer because it will not be productive unless you have a contented work force; a work force that is prepared to put into the business. Job satisfaction is an increasingly important measure.

Senator MACKAY—Why is it that your evidence contends that this new proposed bill is critical for small business and that we have had evidence from several employer organisations that represent small business that disagree with you on several fundamental aspects of that, particularly in relation to the red tape in terms of negotiating individual AWAs? Secondly, in relation to freedom of association, they are concerned about the
growth of a plethora of unions within the small business sector. You have indicated that you had the support of small business in relation to your submission. There seems to be a fairly wide division within the small business sector in relation to this bill. Do you have any comment as to why there is this division?

Mr Monagle—I am not totally aware of the issues you are referring to, but my principal submission is a very practical one. In some way this bill seeks to change the way we do industrial relations in this country from the adversarial environment we have had for 96 years or so to a cooperative one. I think that is extremely important. In terms of small business, the bill is attempting to recognise that many small businesses invariably must have cooperation between the staff and management. Owners of businesses have to seek the permission of the employee to actually take a withdrawal out of the till because the employees are so instrumental in the running of the business that that is interfering with their functions. I had better come back to your question, I think.

The practical position I take is that companies need to be able to process an agreement simply. At the present time there is an award in the Northern Territory that covers the hospitality industry. It is a very thick award. It was written at the time when the Northern Territory was very much a public sector place. That award applies to the tourism and hotel industry in the Northern Territory. The award is totally inappropriate for that sector. It is written almost for and by the Public Service Board, going back many years. It is quite inappropriate and therefore, in some areas, that award is being ignored because people cannot understand the language, cannot understand the provisions and have very great difficulty in complying with it. If those businesses can adequately develop a small agreement with their staff and file it, meeting the minimum and complying with the other protections of no duress, making honest sworn statements and so forth, we think that agreement by mail ought to be acceptable and ought to be available to us.

Senator MACKAY—With regard to your statement in relation to ‘we believe that the employers must ensure that there is no reduction in the pay of employees’, can you guarantee that that will be the case in relation to the people you represent?

Mr Monagle—It is not in the interest of employers to develop an approach in that way. I made the remark that we are moving from a system we have had since Federation to a new system, and any movement like that will create some tensions and some problems. It will take some people some time to develop the levels of maturity. Having said that, business—particularly small business—cannot afford to create unnecessary disputes. People have to understand that enterprise bargaining is not to be a method of cutting wages.

Senator MACKAY—So you can essentially guarantee that there will be no reduction in wages in terms of the people you represent?

Mr Monagle—Any that seek our advice, yes.
Senator MACKAY—What about the ones that do not seek your advice?

Mr Monagle—I think there are protections in the legislation that people are asked to comply with. If there are breaches, they can be dealt with by the employment advocate.

Senator MACKAY—We have received case study after case study in state after state, particularly in Western Australia and Victoria, where there has been a diminution in wages and conditions in relation to individual contracts to the extent that many of them are not even registered with the fairly paltry provisions that relate to that.

There has been a reduction in wages, quite often through ignorance on the part of the small business person in relation to knowledge of the system rather than through anything more sinister than that. That is why a number of organisations have actually said that they are concerned about the impact of this bill on small business. A number of small business representatives have said, ‘At least we know where we are going with the award. At least we know what the provisions are with the award.’

Mr Monagle—Those two states are under different legislation. This bill will allow small business to legitimise practices that they have with their employees. It can work in a beneficial way, as well. If the award is totally incomprehensible to them now, they will have the opportunity under the new legislation to develop agreements they can understand and comply with without getting a Rhodes scholar to try to interpret an award clause for them.

Senator MACKAY—There is obviously not a unanimity, which I can understand in relation to the small business sector. In terms of the two states that are referred to, you have said in your submission that a more competitive labour market would result in greater investment in the Australian economy. Why have the industrial relations systems introduced in Victoria and Western Australia particularly not resulted in an increase in productivity in those states? What makes you think that if this bill were introduced at a national level it would result in greater productivity and investment?

Mr Monagle—I am not equipped to comment on state legislation. I have only ever operated under federal legislation.

Senator MACKAY—What empirical evidence do you have to back that statement up? You said that a more competitive labour market would result in greater investment in the Australian economy.

Mr Monagle—We are saying that the bill would assist the development of small business, which I think employed something like 80 per cent of the work force in Australia.
Senator MACKAY—How is that going to lead to greater investment in the Australian economy?

Mr Monagle—Because business will be able to develop in a freer way than it has at the present time. The industrial system, with labour costs being the largest element in business, particularly small business, acts as a restraint on development in business.

Senator MACKAY—So that the greater investment would have to be coupled with a decrease in the pay of the employees?

Mr Monagle—Not at all.

Senator MACKAY—Where is the extra money going to come from for this greater investment, then?

Mr Monagle—It will come from the development of business.

Senator MACKAY—But you just said that labour costs are a significant proportion of that.

Mr Monagle—They are, but I am talking about exponential growth, not reductions.

Senator MACKAY—But you are not talking about increases.

Mr Monagle—I am talking about a growing work force and growing wages. I am talking about benefits all round.

Senator MACKAY—Do you accept that there might be a bit of an inconsistency in your argument?

Mr Monagle—I am sorry. I am losing track of your questions.

Senator MACKAY—If there is going to be greater investment in the economy and there is going to be not only no diminution in wages and conditions but also an increase in wages and conditions, then where is the money going to come from for this greater investment, given that you have said that labour costs are a significant proportion and are actually holding back growth in relation to small business?

Mr Monagle—I think the answer is that we will see greater development.

Senator CRANE—A number of things that were raised by Senator Mackay I think need clarification. The first is the statement about the lack of progress in productivity in Western Australia and Victoria. I think the balance sheet shows quite clearly the economic
recovery and growth in both those states since both state Labor governments were defeated. That is a matter of public record. I think it is unfortunate that you get posed a question on a false premise.

I want to deal with the matter of employer organisations. Contrary to what Senator Mackay has said, there has been a remarkable degree of consistency in terms of support from the employer organisations to the fundamental principles in this bill of having the three streams—the award system, certified agreements cum flexibility agreements and the AWAs for the non-unionised workplace, which you highlighted in your submission as impacting on the jurisdiction under which your organisation operates. Could you tell us how many members you have, relative to the number of businesses in the ACT? How many of those would be non-unionised?

Mr Monagle—I cannot give you any specific figures. I am not aware of reliable figures for the number of businesses. There is the number of business registrations and so forth, but they are not very reliable figures.

Senator CRANE—How many members do you have in the ACT?

Mr Monagle—We have about a thousand members. The other registered organisation is the Master Builders Association. They are the local bodies. Other employer bodies that operate in the ACT are national bodies and would maintain a small Canberra presence. The MBA and us represent the main employers in the ACT.

Senator CRANE—What about the HIA?

Mr Monagle—They have a presence, but not to the extent that we do.

Senator CRANE—Would you represent 10 per cent of the businesses or half? What percentage of employees do you represent?

Mr Monagle—Probably about a third.

Senator CRANE—A matter that was raised with the previous witness caused some concern to me. I think you heard Mr George Wason say that the vast majority of employers—first of all he said ‘all employers’ then he said ‘the vast majority’—did not care about occupational health and safety. That certainly has not been my experience in Western Australia. In WA, OH&S is under very strict state legislation. Can you tell us what the situation is in the territory? What do you find in your experience is the general attitude to it?

Mr Monagle—The occupational health and safety needs of each business vary depending on the business. It is very common now to find occ health and safety provisions in enterprise agreements. In my experience over 25 years it is rare to find those sorts of
provisions in an award. If we have a safety net basis of awards and the needs of businesses vary, the best place for specific occ health and safety provisions that apply to any business is in that organisation’s specific agreement. So we say it is not appropriate that they form a safety net, an approved item, there. I note the practice that it is spreading through enterprise agreements, and I have put those sorts of provisions into enterprise agreements that I have done.

The business community’s reaction to occ health and safety is developing. At the beginning of last year we had new legislation in the ACT and, as with any new legislation, it takes time to educate businesses to it.

**Senator CRANE**—When you say ‘new legislation’, was that replacing old legislation or was it the first?

**Mr Monagle**—I think there were significant amendments about rehabilitation that came in at the start of last year that put other additional requirements on employers. So we are involved in an education program. We run courses every other month for business on occ health and safety. We sit on the ACT government’s Occupational Health and Safety Council. We take it seriously and we attempt to educate our members to take it more seriously, and that is occurring.

The legislation does not apply to businesses which employ fewer than ten employees and, as the union indicated, that is the rule in the ACT. Most businesses have fewer than 10. Nevertheless, we have to draw to their attention their obligations and, as I am sure you would be aware, with small business there is a plethora of federal and local law that applies to them.

We attempt to educate them in relation to all those bits of legislation that apply and give them the obligations they must comply with. The number of people coming in and out of small business makes it difficult to ensure that you have everybody who understands all their obligations and implements them all the time. That is one of the difficulties of dealing with any sort of legislation in the small business area, where business turnover can be fairly high and business failure can be reasonably high.

**Senator CRANE**—With the non-unionised sector, which you mentioned in your verbal submission to us in answer to a question, are most of them operating with private agreements now? How do they operate?

**Mr Monagle**—In the ACT, most employees are covered by common rule awards, and there are few agreements in the ACT. I think the thinking goes that it is too complex and too costly for a business to get up to speed and develop an agreement, particularly when they run the risk of involving a union that they have not had to deal with previously. So the spread of agreements has been very slow in the ACT, but I think it is slowly
picking up.

Senator CRANE—So you would see the simplification that is provided in this bill being of help to businesses in the ACT?

Mr Monagle—From a very practical point of view, I think both the award simplification and what I call the agreement by mail are essential elements. I think they are essential for small business to develop arrangements that are suitable to them so that they are not bound by common rule awards that apply across the whole industry with provisions that are often impractical for any business.

Senator CRANE—Thank you.

Senator MURRAY—Mr Monagle, do you agree with the concept of equal pay for work of equal value?

Mr Monagle—I support the ACCI submission on that point, yes.

Senator MURRAY—Do you believe that a young cashier in a supermarket should be paid a different rate to an older cashier in a supermarket doing the same work?

Mr Monagle—I believe that business should be able to employ young people in training positions at appropriate rates and should not be faced with the removal of junior rates.

Senator MURRAY—Therefore, you do not believe in equal pay for work of equal value. You either do or you don’t.

Mr Monagle—It is a question of whether it is equal value work, Senator, isn’t it?

Senator MURRAY—I have just given the example so that you are very clear. If a young cashier is doing exactly the same work as an older cashier in a supermarket, do you believe that the young cashier should be paid less simply because they are young?

Mr Monagle—You should be able to pay young people junior rates of pay.

Senator MURRAY—So you would qualify your support for the principle. We have had the same argument from a number of people around the country. One particularly competent employer organisation representative from Victoria argued the case. I asked him if, in arguing the case, he had actually asked the employees concerned what they thought of the advocacy of junior rates. He had not, of course. They took an entirely employer orientated perspective, which is perfectly rational. The point is that yesterday we heard from a youth organisation, which may be the only youth organisation we have heard from, and they advocated an $8 an hour minimum wage for all young people. How do you
Mr Monagle—I am not sure how that rate would equate with what is paid now.

Senator MURRAY—Do you react well to the principle of a minimum rate?

Mr Monagle—I think that, in a sense, is encapsulated in the government’s plans for the MATS rates that have been announced.

Senator MURRAY—Annualised, that came to $15,800—I think was the figure; I am working from memory—which does not seem to me an extraordinarily large sum for a full year of work. It seemed quite a reasonable proposal from the young people concerned. Would you consider $15,800 reasonable for a full year’s work?

Mr Monagle—I do not know the answer to that.

Senator MURRAY—I really think what when you are making recommendations in the submission which will affect hundreds of thousands of young people you really should give consideration as a representative employer organisation to what suits and meets the needs of those young people as well as what suits and meets the needs of the employers. If I can move from that to the training situation, do you support the government’s intention that people under training should not be paid?

Mr Monagle—I do not see that that differs much from what already occurs.

Senator MURRAY—We heard a particularly graphic example up in Townsville from a young man who had essentially to maintain two homes when he was up working in Townsville or when he was down in Brisbane at TAFE. His payment for when he was in TAFE doing his industry related training was absolutely critical to him. He felt that this act would result in that being cut away from him. Would you agree that there are circumstances where it would be to the benefit of training if employees under training were able to get a living wage, were able to maintain standards which were acceptable?

Mr Monagle—It is always difficult to come up with provisions that achieve the aims of ensuring that the training and employment of young people is attractive. There will always be cases that fall between the chairs, as it were. But from the business point of view our main concern is not to remove the incentive for employers employing young people. I think there is great concern amongst a lot of young people that a removal of junior rates would result in the loss of employment levels for them.

Senator MURRAY—I would assume it is a legitimate summary of business views that they are very keen that training and the ability of young people to provide the needs of industry and commerce continue to be maximised in Australian society. That would be your position.
Mr Monagle—Yes, sure.

Senator MURRAY—You very properly and correctly indicated the unacceptability of very large and complex award systems—for both employers and employees, I would suggest. That same point was made to us over in Western Australia. Yesterday we spoke with an academic in this area who also happens to manage an award application. When I made that point to her she held up eight or nine pages, I guess it was—it might have been less—and said: ‘This is our award. It is much less complex.’ That would be the kind of thing that business generally would prefer.

I made the point to her: is it necessary to have a very large and complex act to address what is essentially the fundamental small business and business complaint that awards are too complex? Would it not be possible for the government simply to instruct the AIRC and all persons dealing with awards to ensure that they are simple and manageable and easy to implement and understand?

I said: was that a practical and feasible way to resolve businesses’ very legitimate needs? Her view was that it was. If your legitimate need as an industry representative could be met with much less complex, much more manageable awards, would you still want to drive all the ramifications of the bill? Would that not meet your major needs as an industry representative?

Mr Monagle—I have seen industrial legislation evolve over the years and it will continue to do so. In regard to the point you make about simplicity, the commission through the section 158 process has sought to do that, but in doing that it has not been successful. It has resulted in awards growing in size and complexity rather than reducing. So the stipulation that the commission should do it is not going to work. It has not worked.

Senator CHILDS—Mr Monagle, you have said that your members were slow to have agreements. Could that be because with your common rule award the employers know that they are competing within a particular sector on the quality of service or product rather than on the salary of their employees? Is not that minimum award something that allows them to compete equally just on the quality of their product?

Mr Monagle—I think the common rule award allows them to compete on labour costs. I do not know about quality of the product, though. I do not know that that is encapsulated in it.

Senator CHILDS—The danger is that they will compete on cutting wages. We have heard evidence in states that have the ability to have the federal AWA type agreements in the state sphere—Western Australia, Tasmania and Victoria in particular. We have had plenty of examples—in supermarkets and fast food stores, in that area of employment—of wages being cut very dramatically for, say, juniors and women in that...
Mr Monagle—I do not accept that. With the advent of enterprise bargaining I will admit that there was a perception that enterprise bargaining was a way of reducing wages. Most businesses have been dissuaded from that idea. They understand that that will not work, will get them into trouble and is not what they should be heading for.

I think business has generally been slow at picking up agreements because of the complexity of it, the cost of it and the need to deal with a union which has no relationship with that workplace at all.

Senator CHILDS—What about your employer who is a very good employer but is undercut by two or three other employers with AWAs below the award rate effectively? What will that employer do?

Mr Monagle—Will they be able to have an AWA below the award rate?

Senator CHILDS—Not so much below the award rate per se. But we have certainly seen unconscionable agreements struck that effectively disadvantage the employee when the total package is considered.

Mr Monagle—Not in my experience.

Senator CHILDS—I am reminded of an authority who was quoted to us in another state, Sir Winston Churchill, who said, ‘The good employer is undercut by the bad and the bad by the worse.’

Mr Monagle—It goes to compliance, I suppose. It goes to the employment advocate and the business understanding what they need to do to be successful.

Senator CHILDS—You are saying that you have a better cut of employer in the ACT; we will see.

Mr Monagle—We have highly regulated employers in the ACT.

Senator FORSHAW—Awards contain a range of provisions, some of which are beneficial to employees and some of which could be regarded as beneficial to employers. These are things such as bans clauses, stand-down provisions and the right to terminate employees with notice or summarily due to misconduct. How do you think your members would react if, overnight, the provisions that I have just mentioned were removed from awards by legislation?

Mr Monagle—Many provisions are not relevant to my members. Other provisions are obvious things that they would need to do any way—such as a uniform. So either they are not relevant, they are commonsense things they would do anyway or, in many cases,
other legislation applies, such as superannuation.

Senator FORSHAW—Would you actually answer my question, instead of giving me your answer to a different question? I gave you three specific clauses that exist in most, if not all, awards—bans clauses, stand-down clauses and termination clauses. I am asking you what would be the reaction of your members if legislation were enacted which just removed those provisions from awards.

Mr Monagle—Most of my members would have no reaction because bans clauses and stand-down clauses are reasonably rare in the awards that I deal with in the ACT. I think termination was the other one you mentioned.

Senator FORSHAW—Let us say the ability to terminate an employee for misconduct was taken out of an award.

Mr Monagle—I think they have a common law right in that regard any way.

Senator CRANE—I just want to make a point of clarification with regard to the question Senator Childs asked you about agreements under awards. I draw your attention to page 25 of the bill which talks about the right of the commission to set rates of pay, et cetera. Clause 170LG on page 75 relates to the minimum conditions of a certified agreement and that refers to part VIE on page 155. I will read that particular aspect of it. It says:

Employees under an agreement are entitled to:

\[ \text{wages over a period no less than the wages that would have been earned over the period under the award} \]

Then it goes on and deals with casuals, part-time workers, pieceworkers, et cetera. You will find there is a subclause in each of those clauses which specifies exactly the same thing.

ACTING CHAIR (Senator Ferguson)—Thank you, Mr Monagle, for appearing before the inquiry today.
NADENBOUSCH, Mr Bruce Kenyon, Director Industrial Relations, Association of Professional Engineers, Scientists and Managers Australia, 163 Eastern Road, South Melbourne, Victoria

ACTING CHAIR—We have your submission and I now invite you to speak to your submission for a period of time. We have allocated 45 minutes. If you could confine your comments to perhaps 15 or 20 minutes so we can ask questions afterwards.

Mr Nadenbousch—Yes. That is more than ample time for what we require. What I propose to do is to concentrate on several of the issues that we raised in our written submission to the committee. By way of commencement, what I intend is to give you a brief background on APESMA as an organisation. Secondly, I will move on to putting the employment of professionals into context for the assistance of the committee. Thirdly, I will move on to discuss some of the particular aspects of the submission which we have raised. As I said, I will concentrate on several of those, not on all of them.

The points I want to concentrate on are: firstly, the bargaining arrangements that are intended under the legislation; secondly, an issue which we touched on in our submission itself, namely, good faith bargaining, which is something that has been afoot under the current legislation over the last few years; thirdly, allowable matters which are part of the new legislation; and, finally, unfair dismissals. So I will touch on three or four issues that relate to the current proposed legislation.

Firstly, I might go back to the organisation itself. For your assistance I have distributed a gold folder. This is the commercial part of the exercise from our point of view. That gold folder has some of our brochures and other material. It also has a one-page fact sheet inside it which gives you some background information on the organisation.

You can see from that fact sheet that we are a moderately sized organisation of about 20,000 members nationally. Most of our members, about 60 per cent, or, say, 12,000 of them, are employed in the public sector in either one of the three tiers of government—federal, state and local government and also in the various government business enterprises. The remaining 40 per cent, or 8,000, are found in private sector employment.

We are registered nationally under the federal Industrial Relations Act, but we are also registered in each of the state industrial systems. We have something like 209 federal awards, 25 state awards, over 400 federal enterprise agreements and some 30-odd state agreements. We are affiliated with the ACTU. We hold a seat on the ACTU executive and the ACTU council in our own right. That, very quickly, is a bit of contextual material from the point of view of the organisation I am representing here today.
The employment context was the next point that I wanted to cover before dealing specifically with the issues that I want to raise with the committee concerning the legislation itself. There are a number of points that I want to make here. Firstly, in our experience, we have found that the academic training and employment of professionals as professionals in their employment arrangements is often quite different from those arrangements which apply to other groups in the work force. That is by dint of their status as professionals and the particular occupations in which they find themselves in the work force where they, in many cases, occupy senior positions in the companies, enterprises and government agencies in which they are employed.

Often we find their industrial interests are quite different from the interests of other employees, many of whom they are in fact required to supervise and manage. As I said, they occupy key positions in the work force. They have a strong commitment to a code of ethics which puts their own interests in the background and the interests of society and community in the forefront.

Another feature that is relevant in this short discussion is that, compared with other employment groups, the number of professionals in the work force is very small. In any given workplace, with rare exceptions, one would find that professionals are heavily outnumbered by other types of employees, both white collar and blue collar, if I can use the old terminology. The distribution pattern of professionals throughout the work force is, again, vast in all industries, both in private and public sector employment. I would suggest that it would be rare to find professionals as the majority in any workplace. There are the odd few, and it would be a very odd situation where our professional members would constitute a majority in any given workplace—rare indeed.

It is also not the case that all professionals are covered by industrial awards. The unionisation of professionals is very recent—it has come about only in the last 50 years. In fact, this year marks our own 50th anniversary. Indeed, there are many professional groups that are not unionised and do not yet have industrial awards. I will cite a couple of those: one is veterinarians; and another, which has just recently achieved an award, is architects. We have a number of members in each of those different employment categories and we are proceeding to try to achieve awards for them.

Industrial awards are more prevalent for professionals in the public sector where they are called ‘paid rates awards’—and you obviously know all about that—whereas in private sector employment, our members are found under what are called ‘minimum rate awards’. I would estimate that about 80 per cent of our members in private industry would work under an award—that is 80 per cent of the 8,000—the remainder would not. I would again, on the best estimations that we could make, say to the committee that less than 50 per cent of professionals in the work force would be under an industrial award.

**Senator MURRAY**—As a matter of clarification, is that eight per cent of 40 per cent or eight per cent of 100?
Mr Nadenbousch—Eighty per cent of our members in private sector employment, which is 80 per cent of 8,000, would be under industrial awards.

ACTING CHAIR—Eighty?

Mr Nadenbousch—Eighty per cent, yes.

ACTING CHAIR—That is what I thought you said.

Mr Nadenbousch—Just to conclude with the final point I would like to make, we would also estimate that less than 50 per cent of professionals in private sector employment would be under an industrial award. These points are significant when it comes to the first point that I want to make with regard to the proposed legislation. The first point that we want to take up with—

Senator CRANE—Can I just get another point clarified? You said that less than 50 per cent would be under awards. Are the others under staff agreements?

Mr Nadenbousch—They would have their own employment arrangements, principally employment contracts. But, certainly, no state or federal regulation would apply. I am talking about private sector employment not public sector employment.

This brings me to the first point I wanted to make, and it relates to the bargaining arrangements that are proposed under the new legislation. Because of the factors that I have mentioned with regard to professional employment in the work force, we are fearful that the legislation will leave professionals vulnerable. The arbitral role of the industrial commission is to be wound back, awards are to be reduced to the core of 18 minimum entitlements and workplace bargaining is to be the name of the game from this point on. But the legislative framework for workplace bargaining, which is to be found in part VIB, in particular in sections 170LE, LJ and LK, will mean that professional employees will be exposed in the workplace.

The concept of a valid majority, which is raised in part VIB, in particular, in section 170LE, is the point which concerns us because, as I have just finished saying, it would be rare to find professionals in the majority in the workplace. More commonly, they are a minority—and a significant minority.

We feel that the concept of a valid majority, when it comes to finalising workplace agreements, or enterprise agreements as they will be called under the legislation, will leave professionals swamped by the greater number of other employees in the workplace. Under the current legislation—if I can just contrast the position for a moment—professionals are at least afforded protection by having the right to be heard when it comes to the certification of an enterprise agreement. Indeed, the conveniently belong rule, with which, no doubt, you are familiar, affords some protection to organisations like this to go in and
represent the view of professional employees. Of course, that too, under the legislation, will go.

Whilst you might look at some of the figures that I have produced for you on the fact sheet and see that we have over 400 enterprise agreements and say to me that we seem to have done reasonably well under the current legislation in terms of its emphasis on workplace bargaining, what I have to say about that is that it has not been without considerable difficulty from our point of view. There would be a small number of those 400 agreements that would be written in our name only. Most of them are agreements where we are co-respondent with other unions.

The difficulties we have encountered are: firstly, that in a number of areas we have actually been frozen out of negotiations, we cannot get on to bargaining units. That relates specifically to the size of the professional work force. For example, very close to your own backyard, the big pay agreements which have been negotiated over the last several years in the Australian Public Service have been negotiated without our direct participation because we are unable to get onto the bargaining units that do the face-to-face negotiation with the government negotiators.

Where we can get on to bargaining units—and I must say, I have to concede the point that it is in a majority of cases—the struggle for us there is to make our point, to get our issues onto the bargaining agenda. As a minority group, we find that the interests of the larger unions are the interests which carry the day. They are the things that go to the top of the bargaining agenda. Our issues tend to end up at the bottom of the agenda.

We have been able to take the lead in bargaining units in some cases. For example, again, close to your own environment, the recent bargaining for pay agreements in the Australian Capital Territory government and the ACT Electricity and Water Authority was led by APESMA. Where we have that position, we have been able to bring an innovative approach to the outcomes. Just to illustrate what I mean, things such as performance incentive pay in agreements and things such as remuneration packaging in agreements are the sorts of issues that professionals tend to be more switched on about and more prepared to take a punt on when it comes to the making of certified agreements.

Our proposition here, if I might sum up, is that the legislation should be amended to permit separate bargaining arrangements for professionals, where professionals as a majority opt for that. Not all of them will.

**Senator FERGUSON**—What do you mean ‘separate bargaining arrangements’? Do you mean on an individual basis?

**Mr Nadenbousch**—No, on a collective basis. The legislation, as you would know, provides for the individual approach; we do not argue with that. I should have made that point earlier.

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ECONOMICS
Senator CRANE—Say you have eight or 12 non-professionals in a workplace. Are you saying that if five of those eight or 12 vote between themselves to bargain as a unit, they should be allowed to?

Mr Nadenbousch—Yes.

Senator FERGUSON—Or if they want to do it individually, they should be allowed to as well?

Mr Nadenbousch—Yes; we do not stand in the way of that either. I do not come here today to challenge the policies on which this legislation is based. We want to try to inject some of the practical slants on the legislation—if I can put it that way—from our organisation’s point of view.

Senator CRANE—that has cleared that up for me.

Mr Nadenbousch—This concept is not something new. You may know that it is a feature of the United States legislation. The US National Labour Relations Act makes provision, as you are probably aware, for recognition of unions in a workplace. But it also has a second question on the ballot paper; namely, where there are professionals involved, do those professionals want collective representation? So there are bargaining arrangements in the US context that allow professionals to opt for separate bargaining units to be established for the professionals.

I think I have distributed to you a summary of the particular feature of the US National Labour Relations Act that defines ‘professional employee’. This is an obvious difficulty with which the committee would have to contend if it were at all attracted by what we are saying here. How do you define ‘professional’? How far does this go? Will other groups be involved as well? We concede that that is a difficulty but, in our view, it is not a difficulty that is without solution. We would like to have the opportunity of putting something to the committee within the next week or so which would give you a draft amendment to the legislation which would basically reflect what we would like to see in the proposed bill. I apologise for not having been able to do that before now; the notice we got for today’s presentation was pretty short. We would be keen to do that if we could have the opportunity to do so.

The second point that we want to raise relates to good faith bargaining. In our experience the current system of compulsory arbitration, by its nature, has provided some pressure on employers and unions to negotiate in good faith. In other words, if you do not negotiate you end up before the industrial commission. Whilst, in many situations, the outcome from both parties’ point of view is a good one, in a lot of situations you end up with a result that nobody really likes to wear. So there is pressure there to come to your own agreements.
The emphasis in this legislation will be on enterprise and workplace bargaining. We do not shrink from that. We are prepared to play our role in it; but we point out that the removal of compulsory arbitration will release the pressure to bargain in good faith. Indeed, under the arbitral powers of the industrial commission—curiously for an organisation that has displayed over the years a capacity to work within the industrial system and not resort to militancy in its industrial relations approach—it will require a threat to public health and safety or the national economic wellbeing before the industrial commission can intervene to arbitrate compulsorily.

Again, we say here that the US legislation can provide some clue. In our view, what is required by way of change to this legislation is a requirement not only to negotiate in good faith, not only to bargain, but to do so in a style that could be categorised as good faith—not just to sit down around the table and make a pretence or a mockery of bargaining. We could say that the requirement to bargain in good faith should apply for a designated period—we would be prepared to put a time on that—beyond which resort could be had by either party to the industrial commission for the purpose of arbitration on issues that remain outstanding. So we say the requirement to bargain should be supported by a requirement to bargain in good faith, and then backed up by resort to the industrial commission where there are issues that remain unresolved. In our view, that is the solution in this area. Again on that point, we would like the opportunity to put a short paper to the committee over the next few days to show you how the act could be amended to accommodate this change.

There are two final issues that I want to deal with. Firstly, allowable matters, which are found in proposed section 89A of the bill. What we say is this: the 18 allowable items do not say anything about the emphasis which has applied over the last six to seven years, ever since awards were restructured at the beginning of this decade—the so-called structural efficiency round of award changes which you have probably heard about. Ever since that occurred, awards have been structured around a growing emphasis on training and skill acquisition, so that career paths in awards are backed by this requirement to accumulate training virtually now throughout a working life.

We find that there is no acknowledgment of this requirement in the 18 allowable matters which we say, on any view of it, are the core issues in any employment situation. We accept that they are the basic core. You could not go anywhere below that number. In our view, there needs to be an acknowledgment and an addition made to the allowable matters to ensure that this emphasis on training and development is not lost. This has particular relevance for professionals as well; I do not want to say any more so for professionals than other groups in the work force, because that might be a bit vain on our part. But it is a factor in professional development and employment that has been there since day one.

You would probably be aware that admission to grades of membership in the various learned institutes is dependent upon ongoing professional development and
training. Many of the professionals employed in research and development are required to participate in ongoing learning and the publication of papers and research theses. You would be aware that those in academia—professionals in the universities, lecturing and tutoring—depend for their career advancement on the capacity to take an approach of lifelong learning to their career. The fear that we have here is that unless the allowable matters that are contained in awards do comprehend this requirement and emphasis on lifelong learning now, it will be lost and the emphasis won’t be there any more. In our view it is not an issue which is bargainable. It is not an issue which can be traded off. It is fundamental to where we are going as a nation and should be there as one of the core entitlements.

Finally, I wish to say something about unfair dismissals. Curiously, you might say that professionals in the work force would be the group least affected potentially by dismissal. We pulled out some figures for the purpose of this hearing. Since the current legislation was amended in March 1994 to allow access firstly to the industrial court for the purpose of appealing against an unfair dismissal, we have taken 114 cases of unfair dismissal for professionals around Australia. That does not include cases that never see the court—those cases for which an application is not lodged and that are settled within the time period and everybody walks away happy.

So there have been 114 cases lodged. Not all of those have had to go to hearing. Most of them have been settled. There are some that have gone to hearing. Of those, interestingly—this is really the point I want to come to—there have been awards made by the court that have penetrated the cap that is imposed by this legislation of $30,000. Section 170CH of the legislation imposes a cap of $30,000 on the compensation that might be awarded. That is subsection (9) of that section. Our argument is with that cap. We want to see that increased. In our view it should be $60,000, but certainly higher than where it is now, because it does not do much to assist those in the work force who are covered by awards and whose salaries—the professional groups are the key groups in this regard—are much greater than the cap of $30,000 to start with. Our plea to the committee is that it should consider doing something in this area.

They are the points that we wish to make. As I said before, we would like the opportunity to put a little more material before you on those two points I mentioned earlier.

**ACTING CHAIR**—We would be very happy for you to do that, provided it is done in the next two or three days, as the report will be starting to be written.

Mr Nadenbousch, your organisation is an affiliate of the ACTU, isn’t it?

**Mr Nadenbousch**—It is.

**ACTING CHAIR**—Firstly, I wish to congratulate you on your presentation and
your submission. After 17 or 18 days, yours is the most independent and thought-provoking submission that we have received from an affiliate, which contains comment on the issues of the bill rather than the rhetoric of whether it is right or wrong. I congratulate you on that because you have raised a lot of issues which are sensitive. Although I do not agree with all of your submission, I congratulate you on the way you have presented it.

Why do so many of your professional colleagues in private enterprise, where you say less than 50 per cent are members of unions, believe that they are capable of negotiating their own workplace agreements?

Mr Nadenbousch—Just to disentangle the figures, the point I made was that in our estimation there would probably be less than 50 per cent of professionals in private sector employment under awards.

ACTING CHAIR—Yes, under awards; I am sorry.

Mr Nadenbousch—The union density ratio is something else again. It is very difficult to determine that, not because we don’t know how many engineers there are out there, but when you come to the scientists, there are literally thousands of scientists and it is difficult to determine what the union density ratio is. Our estimation is that of professional engineers we would have somewhere around 70 to 75 per cent union density. Of professional scientists, it would be significantly less than that.

To come to your point, the answer to your question is that in the first place many professionals don’t see union membership as a feature of their employment. They are discouraged from joining a union. That is something that is constantly brought to our attention by people who do join us. With people who do not join us and come for help afterwards, after they have had a problem in the workplace, we find that the fact of their non-membership is due to discouragement by their employer.

ACTING CHAIR—Membership of a union would not necessarily discourage them from entering into an agreement with their employer anyway. I can’t see why an employer would discourage a person who is going on a one-to-one agreement from belonging to a union.

Mr Nadenbousch—That is what happens in the workplace. That does not mean that those individuals are any less capable of looking after themselves. That is another issue. Where they go for help and assistance, I don’t know. They could source a number of people for that purpose. Our experience is that there is, in the workplace, that sort of approach and attitude when it comes to staff—the professionals. As I said earlier, a lot of companies treat their professionals differently to the rest of the work force. That is one of the things that marked the professional treatment from anything else. They say, ‘You don’t belong to a union; a condition of your employment is you don’t belong to a union.’ That is something that we come across quite regularly.
ACTING CHAIR—You make a comment on page 7 about cost free jurisdiction. I think that is a bit of a misnomer because if you could ever suggest that the Industrial Relations Commission is cost free, particularly to Australia, I think that some clarification is needed that it is cost free to the applicants.

Mr Nadenbousch—I think you are falling into the trap that I tried to avoid—getting involved in the rhetoric of the legislation. We are talking about the practical implication here. It is not the case at the moment—only in rare instances—under the current legislation where awards have been made against parties for costs of matters brought before the Australian Industrial Relations Commission. This has only happened in rare cases in our experience. This legislation proposes that, in cases of unfair dismissal, that prospect will open up. Quite frankly, we see that as being a positive discouragement to those who might be wavering on the decision of whether to take a matter before the commission or not.

ACTING CHAIR—In your submission you talk about your wish to retain the collective bargaining aspect of your union in employment, but is it not a fact that this bill does provide for you to bargain either collectively or as an individual?

Mr Nadenbousch—It does. We accept that. We are an organisation that is not frightened of individual employment contracts, because that has been the nature of employment arrangements that our members have had to face for many years, particularly in the private sector. So we are not frightened of that. We have geared our services—and you will see that in these documents later—to provide that sort of assistance to our members who are employed in private industry. So we do not have any difficulty with that at all.

ACTING CHAIR—Thank you.

Senator CHILDS—I think you have said that $60,000 is the figure you would prefer. I wonder if you could explain how you arrive at that figure, having in mind the type of person who is a member of your association and their salary range?

Mr Nadenbousch—Under the current legislation there is a cap of $60,000, from memory, and that applies in cases of non-award employees making access for review of an unfair dismissal. That is not a limit on the compensation that can be awarded; it is a limit on the employees who may bring an unfair dismissal application—they have to be beneath the $60,000 cap.

In our view, the $30,000 cap in this current legislation would be barely six months salary for a professional engineer in a management level position. Many of our people in the private sector are on salary packages of well over $100,000.

Senator CHILDS—On that changed emphasis of legal costs: from your
association’s point of view, do you see that it will be very costly for you to sustain cases for your members? Do you see it as a real threat to the association’s resources?

Mr Nadenbousch—Yes. We have an apprehension that the organisation will be exposed to the award of costs here where we have never been in the past. The danger is, I guess, that people will never ever get their day in court, because they will be discouraged from running a case for unfair dismissal.

Unions like ours will have to make some arrangements with their members where cases are taken in the event that costs might be awarded. Clearly, the union would not be able to sustain the prospect of the award of costs in the 114 cases that I talked about before. We could not do that. So there would have to be some pact between the member and the union to take care of that contingency.

Senator CHILDS—If you are not successful in having paid rates retained and the allowable matters extended, won’t that mean that your association members will be at a considerable disadvantage because that is a qualitative change in the structure of employment, both in the public sector and, I suppose, in the private sector?

Mr Nadenbousch—You are talking about the abolition of paid rates awards?

Senator CHILDS—Yes.

Mr Nadenbousch—It does hold that difficulty for us. The legislation really contemplates that all paid rate awards will be converted to minimum rate awards. The question in our mind is: how on earth are we going to make sure that the entitlements people have, and have traditionally had under paid rate awards, are not lost? The solution to that will be to roll them into a certified agreement, but there is no compulsion on the employer to do that—under this legislation, at least, anyway. So that is a very real danger from our point of view.

For professionals, paid rate awards, as I said earlier, are mainly to be found in public sector employment, but there are some key areas of private industry where paid rate awards have traditionally operated as well. For instance, in the vehicle industry and the aerospace industry paid rates awards have prevailed forever.

Senator CHILDS—Does the paid rates award have the effect of laying down an industry standard—and I presume it would be a professional standard rather than an industry standard in your case?

Mr Nadenbousch—Yes, it does. Usually paid rates awards are structured around the pattern in the market within the industry and are really cultivated or custom-made to fit the circumstances of those industries. Indeed, the paid rates awards that do operate in the vehicle and aerospace industries—the examples I cited—are innovative in the approach
that they have taken, particularly in the professional areas where the salary structures and
the advancement through salary structures have been built around qualifications and access
to additional learning—skill acquisition—and are incentive based as well. So meeting
company targets is a feature of the agreements as well.

Senator CHILDS—Thank you.

Senator MURRAY—Mr Nadenbousch, I think we could describe your organisation as comprised of pretty smart people.

Mr Nadenbousch—I would like to think that.

Senator MURRAY—We had a submission over in the west from an academic lawyer who was a representative of their union organisation and he made the point that, regardless of how smart people are, if they are not psychologically attuned to or experienced in bargaining, they are still going to come off second best. Generally speaking, regardless of the fact that people may be very clever and competent in their own fields and have a highly trained and a very rational approach to issues, if it is not their field, they can be disadvantaged.

Would you agree that that is the right view? If you agree it is the right view, do you think that, generally speaking, your members would be in an unequal bargaining situation vis-a-vis their employers as individuals?

Mr Nadenbousch—Firstly, I think that the worst advocate for any professional engineer, professional scientist or architect is that professional engineer, professional scientist or architect himself or herself. I think they would be the first to acknowledge that.

To the second part of your question, yes. Our apprehension has always been that, where minimum rate awards operate, particularly in the private sector, unless there is a safety net of minimum standards in place, professionals will be in the same situation as other groups—open to exploitation.

I will just cite an example. Twelve months ago we embarked on a program of securing a minimum rate award for architects. We discovered when we surveyed some of our members, and they were young graduates, that they were earning less than $20,000. This was 12 months ago. I think that demonstrates that professionals are not immune from exploitation in the workplace. We have therefore been very anxious in our approach to industrial relations on behalf of our members to set in place a network of awards that provides at least a starting point from which negotiations in the workplace can flow.

We are not averse to our members negotiating their own employment contracts with employers. We are not averse to that, providing there is the underpinning safety net
standard that exists there below which bargaining cannot fall. We have in fact geared ourselves to provide that service so as to ensure, if you like, that our members are not disadvantaged or in an unequal position. We provide a lot of information and assistance to them on an individual basis for the purpose of making, if you like, a level playing field out of the industrial relations scene there.

We do remuneration surveys. We have legal services. We provide a contract employment advisory service to our members where we will actually look at a contract and provide them with advice on what we think the shortcomings are and what they should be looking for. So we try to balance things in two ways: firstly, by having the safety net of awards and, secondly, by providing the services to our members which enable them to go and bargain and come to their own employment arrangement with their employer on an equal footing.

Senator MURRAY—I understand that. My second line of questioning relates to the capping provision. I think it is true to say that under the present legislation there is no limit on compensation and the cap is a new concept. I do not know how that $30,000 was fixed but any cap is an artificial constraint anyway. I would suggest to you that your case would be reinforced if you were able to provide evidence to the committee as to how many cases out of the total number of cases put before the various authorities fall between the $30,000 and $60,000 cap that you recommend. My instinct would be that there would be relatively few as a proportion.

If you were able to show the coalition that they would not have to fear a cascade of claims, it would take account of many employees who fall between $30,000 and $60,000. My memory tells me that the average wage in Australia is around $30,000. I do not believe a cap should be at the average. Perhaps we could get some sympathy from the other side if you were able to produce those kinds of statistics.

Mr Nadenbousch—Yes, we can have a look at that and undertake to provide some material to the committee within the next few days as nominated by your chair. That is the best I can offer at this point because we have not really properly researched that.

Senator MURRAY—You would appreciate the time constraints we are under.

Mr Nadenbousch—I do, yes.

Senator MURRAY—It would be helpful on that point if you could come back to us.

Senator CRANE—I want to follow up on a couple of points, particularly with reference to your proposal relating to certified agreements—and Senator Ferguson has indicated that we would be prepared to look at an amendment. We are certainly of the understanding, but we will have it checked out, that in fact this legislation allows for two
separate certified agreements to be established.

Mr Nadenbousch—Yes.

Senator CRANE—For example, we believe that would and could be established in a workplace where you had a transport division and a manufacturing division. We tie that to the words ‘is entitled to represent the industrial interests of the member in relation to the work that will be subject to the agreement’. Obviously the working relationship of an agreement that was offered to one group of people doing one job would not be suitable in terms of the work being done by a group of professionals. Nonetheless, we are quite prepared to have a look at that amendment and get that aspect checked out because it is certainly the intent that that is the case.

Mr Nadenbousch—we did not appreciate that from reading the legislation, perhaps because of this concept of the valid majority which seems to be overriding everything here. That applies to both streams of agreements that you are talking about. I agree: there are two streams of certified agreements. One is the collective stream through the union and the other is the non-union certified agreement stream, if I can call it that. The concept of the valid majority applies in both of those streams. That is where we saw the difficulty.

Senator CRANE—we will certainly follow that one through with the right people just to make sure that is correct. I have been trying to get some advice in between. You said in your submission that in fact the last people you would want negotiating their own agreements—and let me get the words right—would be engineers or scientists. Yet I believe in your earlier evidence you said that in your field, outside of your organisation itself, or your union, 80 per cent of your members are covered by awards; but then you went on to say that in the general field there would be more than 50 per cent who would have their own agreements and what have you. Would that not suggest that people in your field have been successful in negotiating their own agreements?

Mr Nadenbousch—I think it would be a long bow to draw to say that for those employees the standard of agreement measures up to what might exist, if I can put it that way, in those areas where we do have the capacity to exert an influence because we will never know the nature of those agreements. Presumably the individuals who have struck them are happy with them otherwise they would not be working any longer. They would have walked away from that arrangement and gone somewhere else, presumably.

I think the point that Senator Murray raised with me was more at the level of the individual in Western Australia who said that as a professional they might be smart thinkers but when it comes to putting themselves in an industrial position vis-a-vis on an employer and individual basis they may have or feel some incapacities.

I think I responded to that in a light-hearted way by saying that an engineer or a
scientist is never their own best advocate. That was a bit of a flippant remark, I must say, and I do not categorise them all that way. There is no doubt they do have the capacity to negotiate, but our members, in our experience, need a helping hand. They need the certainty of an award safety net. They are the two things that—

Senator CRANE—Those who wish to appoint an agent can do so.

Mr Nadenbousch—Yes, and we would prefer that they appoint us rather than someone else because we know what they need.

ACTING CHAIR—Once again, thank you very much for your excellent presentation before this inquiry. I think you have raised lots of issues that have not been raised before and we look forward to the comments that you send on to the committee by way of recommendation.

Mr Nadenbousch—Thanks for the opportunity.

ACTING CHAIR—I will hand back to the Chair.
WINLEY, Mr Vernon James, Assistant Director, Business Council of Australia, Suite 403, 65 York Street, Sydney, New South Wales 2000

CHAIR—Welcome to the hearing.

Mr Winley—Thank you. I have in support some members of our Employer Relations Committee. They are here in case I need to refer to more detail in relation to any question which might be asked.

CHAIR—They are welcome to come to the table. I will leave it up to them whether they feel they want to do so or whether they want to come forward if any issues arise.

Mr Winley—I think we will leave it as it is unless something happens, thank you.

CHAIR—We have allowed an hour to hear submissions from the Business Council. May I suggest that you have an opportunity to make an overview of your submission in around half an hour. That will leave us with half an hour to ask you questions.

Mr Winley—Thank you. The Business Council did put in a written submission to the committee and I assume senators either have that or have access to that—

CHAIR—Yes, we have.

Mr Winley—So I do not propose to read it as such but, perhaps, speak to it and to some of the issues that have been raised in comment on the bill since that written submission was made. I suppose our fundamental starting point is that improved living standards and lower unemployment in Australia can only come by raising the speed limits on Australia’s economic growth. In our view, the key to achieving that goal is improving the productivity and hence the international competitiveness of Australian businesses.

The Business Council is seeking reform of the industrial relations system to promote and facilitate the sorts of employer relations that are the best way of improving competitiveness. What we are talking about is the high productivity, high wage route of harnessing the competencies, the ideas and the commitment of all the people in an enterprise to pursue customer needs in the best way possible. This requires an industrial relations framework which is decentralised and flexible but subject to a basic safety net and hence conducive to enterprises and their employees working out effective and cooperative arrangements that balance the needs of both the business and the people that work in it. We are coming to a position of supporting the workplace relations bill because we see it as a mechanism for achieving the sort of reform that we want. It is not an ideological attachment to the issues but a practical one of its being, in our view, an effective way of improving Australia’s living standards and, in particular, the level of
unemployment which, at 8½ per cent or so is, in our view, quite unacceptable.

I need to stress that we are not saying that it is an argument about the industrial relations system having been inadequate or inappropriate, necessarily, in the past but the whole of the world economy and the situation in which Australia finds itself is significantly different since, say, the late seventies and the eighties. The pressures and the opening of the economy mean that Australia’s economic system and Australia’s political economy—if you like to call it that—is fundamentally different from what it was in the earlier part of this century. We need an industrial relations system which is equipped to prosper in that current and emerging world political economy. The present system, in our view, does not do that. It is too centralised, it is too inflexible and it deals in monopoly powers and monopoly rights in a way which is inappropriate for coming to grips with changed world circumstances. In that context what we are saying is that we think the workplace relations bill is an effective way of producing that reform.

I have to say that reform of the industrial relations system by itself is not going to be sufficient with a clap of thunder and a puff of blue smoke to change and to fix Australia’s competitiveness, but it is a necessary condition. The rest of it is, then, to what degree the people involved in business—the proprietors, the managers and the employees—seize the opportunities for this new legislation and work together to make the businesses more productive and more competitive.

It is, in effect, enabling type legislation rather than the prescriptive type legislation that we tend to have had to date. So it is going to open many doors, but those doors will have to be seized by the people involved—as I said, managers proprietors and employees—to make things happen, to make most effective use of the reforms to the system.

I would have to say that the reforms proposed by the bill are not in fact deregulating the labour market or the industrial relations system in Australia. They are decentralising it and making it more flexible, but an act which, if all the proposals in the bill are placed into the present act, will have something like 500 sections could hardly be said to be deregulation of the industrial relations system. It will still be a significantly regulated field, but much less so, and much less prescriptively so, than the present situation.

I think the most significant change introduced by the bill is to the objects of the act. A lot of people tend not to take much notice of the objects of an act—of this bill or any other—because they are something at the front and they are not about the nitty-gritty detail. Anyone who has read the key decisions of full benches of the Industrial Relations Commission, particularly over the last few years, will have seen how the objects of the act frame, give guidance and direct the way the commission has been dealing with the act—interpreting it, implementing it and coming to key decisions on matters of principle.

We think the changes proposed in this bill to the objects of the act are particularly significant. The form of the objects is unchanged. There is an overriding preamble and
then a series of specific object items. The preamble is almost exactly the same, except for the middle bit. The bill proposes changing the object from being focused on the adversarial issues of bargaining, which is what the present act is about, to being the more productive, cooperative change of achieving effective enterprise agreements or agreements at the enterprise level.

When you start to look at the items under that preamble in the objects, you see that there is another key change. Several of them are written about being focused on outcomes and about the results that are sought from the act as distinct from process type things, particularly much less concern about unions and employer associations as agents of the act but more focus on the outcomes.

The third significant change, I think, is that balancing work and family responsibilities is one of the items. This seems to us to be putting something in the act which will mean all the players—the employers, employees, their organisations and the commission—will take particular notice of this when they are looking at things, not just in making awards and not just in certifying agreements but in the day-to-day, nitty-gritty conciliation, which is the bread and butter of the commission’s work today and which will continue unabated by this new bill. In summary, we believe the changes to the objects to the act and the way the act is written to be more enabling and more facilitative rather than prescriptive, are the keys to all the other things that happen in the act.

There has been some criticism from a number of quarters that the reform proposals will reduce the role of the Australian Industrial Relations Commission under the act as the independent umpire. It seems to us that the concept of independent umpire implies that the umpire has equal control over the action of both teams in the game, but we would have to say that this is a role the commission really has not had for some decades given that the ACTU has reserved to the union movement the right—they certainly would have called it that—to reject tribunal decisions they do not like and pursue its goals by force. If you are going to talk about an independent umpire, then it has to be one that has equal control over both teams in the game. That is not something that seems to be very productive.

We think the commission’s role, by this bill, will be clarified. It will have a significantly greater role in things like directions and suggestions for dealing with compliance issues, which were proposed as amendments to the bill as long ago, I think, as 1987 but fell by the wayside then. That sort of change to the act seems to us to give the commission a much more clearly defined and important role. Of course, its role in conciliation is unchanged.

The other thing that could be said about that is that over the last few years the commission has in fact reached conclusions of its own about its role that are consistent with this approach. If you look at the commission’s wage fixing principles, which it established in August 1994 and has amended slightly a couple of times since then, you see that they have made it clear that the commission will not arbitrate above the safety net.
level except in exceptional circumstances. The bill effectively writes this principle into the act and confirms the approach that has been developed by the commission itself over the last few years. We do not believe the bill will make such a dramatic change in the way the commission actually operates, as has been suggested in a number of cases.

The more enterprise based industrial relations system that is proposed by the bill will lead to a greater diversity of wage rates and working arrangements than the centralised system that we tend to have at the moment. This implication has been attacked from time to time as reducing equity in the community. Yet the criticism, when you examine them more closely, seems to rest on a concept of equity, which makes comparisons only between people who have jobs, and ignores the greater inequity that exists between the employed and the unemployed.

It seems to us that, the more competitive Australian businesses become, the more jobs will be created. The increase in employment resulting from that outweighs and overrides any suggestion that a greater dispersion of actual wage rates will make in terms of overall community equity. So, in our view, criticisms of the bill that it will, in fact, reduce community equity are based on too narrow a concept of equity—a concept that perhaps is a travesty of an overall view of what equity means—and focused too narrowly on those people who already have jobs.

Much, too, has been made in comments and media reports of the bill’s proposal to remove the power of the Australian Industrial Relations Commission to set maximum or minimum hours of work for regular part-time employees. It has been said that this amendment will act particularly to the disadvantage of women by allowing employers to alter their hours and patterns of work at will.

Of course, close reading of the actual amendment indicates that it will do nothing of the kind. The amendment says only that the commission will not be able to make awards that set maximum and minimum hours for regular part-time employees. It does not say anything about the processes for changing people’s hours of work. That is something that, presumably, awards will still be able to cover if that is appropriate in a particular industry.

More importantly, it is something that agreements can deal with. It is certainly something that individual contracts of employment deal with now. If someone works on a regular part-time basis and there is a process involved for changing the part-time hours or else there is a prohibition in changing part-time hours, that will remain regardless of this amendment to the act, because all this amendment does is talk about maximum and minimum hours.

So suggestions that that amendment proposed in the bill will suddenly lead to mayhem in changes of the individual hours of regular part-time employees seems to me to be based on a misreading of what the amendment says and a failure to understand that the
question of changing hours and the processes for changing hours are, in fact, not affected by that amendment.

Also, there has been comment about the proposed changes in the bill in relation to equal remuneration. It would remove the power of the Australian Industrial Relations Commission from dealing with equal pay in terms of over-award payments. I think it is important to say that the Business Council is absolutely committed to the principle of equal pay, by which I do not differentiate between equal pay and equal remuneration. As far as we are concerned, we are talking about the totality of what people receive. We are certainly committed to doing that.

However, our view is that the area of over-award payments is not regulated now. The area of over-award payments is not proposed to be regulated by this bill. As a matter of principle, the area of over-award payments should stay in that unregulated way but the principle of equal remuneration should be addressed by other mechanisms and other acts of the parliament—in particular, the Sex Discrimination Act and the other arrangements associated with the Human Rights and Equal Opportunity Commission.

If those directly concerned in administering those acts say that the Sex Discrimination Act is not strong enough to achieve that, then, in our view, it would be better to amend the Sex Discrimination Act to make it more effective rather than try to use the industrial relations framework to deal with something which is much wider than an industrial issue; that is, of equal remuneration and equal opportunity and elimination of all forms of discrimination. Let me emphasise that that is not in any way to suggest that we condone or support discrimination. In fact, we have gone to some lengths to try to make sure that that is countered in any area where we have any influence.

In terms of issues that have been raised about the bill, I want to comment that, by focussing on agreements as a chief avenue for increases in pay and conditions, it will lead to disadvantaging some groups. Women, in particular, have been raised as one of those, because they are more likely to be in a weaker bargaining position and, hence, traditionally are more reliant on award movements for increases if they are in a disproportionately weaker bargaining position. To a large extent, this problem reflects the high degree of gender segregation of the Australian work force. That is not something that this bill or any other bill will be able to change at the snap of someone’s fingers.

Changing the existing pattern, even though we have made some progress over the last few decades, will take time and it will take a lot more effort in changing broad social and parental and educational attitudes. That is not to say that employers do not have a role and, in some cases, they may well have some catching up to do. But there has to be, in our view, some focus on getting that long-term process more effectively under way. In the meantime, of course, you cannot ignore the need for effective avenues of redress for anyone who is exploited or coerced or misled or otherwise done down because they occupy a vulnerable position in the industrial relations system.
But under the present regime, apart from matters of unfair dismissal, redress under the federal jurisdiction is predominantly predicated upon union representation for aggrieved employees. This bill introduces the Office of the Employment Advocate. That official’s role, apart from giving impartial, authoritative advice to both employers and employees, is to achieve redress for employees with complaints promptly and without charge to the employees. In our view that new arrangement is likely to prove more effective in redress and probably more attractive than the existing arrangements, particularly to the approximately 73 per cent of the private sector employees who are not union members.

I have made a few comments that take some of the issues that were raised in our written submission and expanded upon those and some other comments that have been given quite a bit of publicity over the last few weeks. Our position is one of supporting the bill. There may be areas where there could be some finetuning or some improvement. Like any other change in legislation, it will need monitoring. It will need to be observed and, if necessary, subsequent amendments made. But we see the bill as an overall package that is going to be progressive in terms of the sort of industrial relations reform we are talking about.

I want to emphasise in conclusion my earlier comment that the legislation being proposed is much more of the enabling type than the present overtly prescriptive act. That means that the emerging industrial relations system will depend significantly on what the people in enterprises—the proprietors, the managers, the employees and their representative organisations—make of it. It will present great challenges to us all—particularly to managers, I suspect—but also great opportunities for the general growth of good, productive and cooperative employer relations.

CHAIR—Taking on board your comment that the legislation is an overall package and your in general support for it, we are, however, interested in what sort of recommendations we should make with respect to that package. You have indicated that, whilst there might be some areas where you might find some concerns, it will need monitoring and perhaps future amendments. Are there any issues we should address now in terms of that package?

Mr Winley—No, senator. Our view is that the package as a whole is a good balance. Most concern perhaps has been raised—not concern saying ‘Let’s change it now’, but ‘Let’s monitor it closely’—in areas such as the removal of the ‘conveniently belong’ section and the changes to section 118A, to give the commission some powers to implement freedom of choice in union membership in a way that minimises disruption generally. Concerns have been expressed as to whether they are going to be effective. That is the sort of thing about which we said: ‘Yes, it looks to be an overall balanced package. But that is the sort of area that will need to be monitored carefully.’ We are not suggesting, however, that there should be a change at this stage.
CHAIR—The purpose essentially of this inquiry is to identify the areas where we think change should occur at this stage. Some employer organisations have raised submissions with respect to ‘conveniently belong’, the thrust of which have been that it is something that this inquiry should look at in making recommendations in relation to changing the bill. But you have clarified your position, I think, which is that, whilst you have concerns, you are prepared to monitor those concerns within the current framework. Is that correct?

Mr Winley—That is correct.

CHAIR—I would like to take you to one area which you have not commented upon but which was reported in your written submission. That is with respect to a survey of major business units. On page 3 of your written submission, in the third bottom paragraph, you make the statement that some protagonists in the debate about the bill have suggested that employers are not seeking the reforms contained in the bill’s proposals and would not in general make use of them if they were enacted:

In particular, the union movement has demanded commitments from many major employers that they will not take up any of the changes proposed in the bill and will maintain all of the existing approaches to industrial relations.

The committee is aware of the claims that several unions have made, particularly of major employers. Senator Chapman yesterday tabled a copy of one such letter. What I was not aware of was the connection that those claims related to a claim that employers were not interested in the bill. That is a new connection to me and, I think, a new connection to this inquiry.

Mr Winley—As the submission explains, we did a survey of members. It was not entirely related to this bill. We did a survey because this rash of claims was being made and there was quite a bit of publicity for it.

CHAIR—I will deal with the survey. I am dealing with the threshold issue at the moment. I am unaware of any connection between that survey and a claim that employers are not interested in this bill.

Mr Winley—The feedback we got from a number of our members was that it was being linked in conversations with union officials. The issue was that if commitments of this sort were made it would indicate that those employers were not interested in reform of the industrial relations system; they were quite happy with the existing system. That was, as I said, something that came up in discussions as distinct from the written letters themselves by and large, although it may have been in some letters—I do not know; I have not seen all of the letters myself. I would have to go back to our members to check that in more detail.
CHAIR—I am interested in that point because more to the point in terms of this inquiry has been the limited number of businesses and to some extent employer organisations that have been prepared to make submissions or oral submissions. As we have gone around Australia, and in particular in some locations where we have sat, we have struggled to get employers to be prepared to come before the committee. So I am interested that apparently this additional point is being made from that. I think more to the point is the overall number of submissions we have had from businesses. It has been extremely limited.

Mr Winley—May I comment on that?

CHAIR—Yes.

Mr Winley—Employer bodies tend to be much more peak in their structure than perhaps some other parts of the community. Most businesses—small, medium or large—will belong to one or perhaps more employer associations, and those employer associations tend to feed up either into the Australian Chamber of Commerce and Industry, the Australian Chamber of Manufactures, the National Farmers Federation or the Metal Trades Industry Association. The Business Council itself stands a little bit to one side from that.

I think most employers, certainly those that are our members that belong to other organisations, say, ‘Well, yes; there has been an association to which we belong, either directly or by affiliation, that has made a submission, and that says it all.’ In our view it is not a question of the number of submissions but the weight of the submissions and the number of people or businesses or parts of the community that those submissions represent or are drawn from. So, given that all those major employer associations have made submissions, I would think most of the smaller employer bodies that belong to one or other of them as an affiliate would feel that their voice has been raised and their point of view put to the committee.

CHAIR—We have actually heard from some smaller employer organisations, and some representing smaller businesses such as—I cannot recall the full name—the retailers council in Western Australia, and a few others which I cannot bring to mind just at the moment who have indicated some areas of concern, some preference for staying within the awards system rather than a move or a concentration towards individual bargaining, but those areas or elements of concern do not seem to be being expressed by the larger employer organisations. In fact, to one extent I think we heard in Victoria from the VACC regarding their concerns about ‘conveniently belong’. When we asked the VACC why those concerns were not reflected in the ACCI submissions, it became clear that whilst the VACC was a large organisation their views had not been represented.

Mr Winley—I cannot really comment about the ACCI and its affiliates—(a) I don’t know, and (b), it would be impolitic for me to try to do so. But I would say, in
relation to the concerns that have been expressed by particularly some smaller organisations, that they would be happy or would prefer to stay in the award system. The act, after the bill’s provisions are brought in, would be enabling legislation. There would be nothing to prevent them staying with the award system. The awards will continue, so they have the capacity to either stick with the award, to make over-award payments, to make a certified agreement, to make an Australian workplace agreement or whatever. It is not going for ‘one size fits all’. If a particular employer or group of employers and their employees are happy with the existing system because it suits their needs, so be it. In our view they are lucky, and they are also a minority of people under the present system.

CHAIR—The concern, though, beyond that from some of the smaller businesses has been that they operate within a competitive framework and, if some businesses are in a position where they can introduce competitive wage cost reductions, then despite what their alternative choice might be they will feel compelled to have to compete. Beyond that, I am more keen to go into a little more detail about the actual survey that you conducted. What was the sample size?

Mr Winley—The Business Council, I think, has 93 members. They comprise, by and large, the largest companies in Australia with a few exceptions. The media companies, for instance, do not belong.

CHAIR—So it was to all of your business units?

Mr Winley—We sent it out to all of them, and 59 of the 93 companies responded. A number of the companies are very diversified so, rather than try to aggregate unlike with unlike, a number of them sent in responses from their separate major business units—BHP Steel and BHP Coal, for instance—because it was a bit pointless trying to wrap them into one. So I think we had 91 individual major business units respond, and that was—

CHAIR—Covering most of your businesses?

Mr Winley—Yes, covering two-thirds, approximately.

CHAIR—I am interested in what I think is a very strange conclusion in the second paragraph on page 4:

Thus, even if all the possible replies were to eventuate, less than 30% of members’ business units will have written back to the unions in reply to their demands.

The reason I say that is fairly strange is because 40 per cent of the business units had not even received the letter, let alone been able to reply to it.

Mr Winley—My point was simply that there was not a widespread accession or
making of commitments to unions about those—

CHAIR—It is very difficult to accede if you have not received a demand.

Mr Winley—Yes, I suppose that is true.

CHAIR—The other element of the figuring there is that, in the written part of the survey, you do not refer to the oral responses. In the table in your breakdown, even though some 16 per cent of responses were oral, there is no delineation of what sort of oral responses they may have been.

The only final point I would like to make about the survey is this: I am not sure whether you are trying to reach a conclusion there. You say:

In no way can these responses indicate a lack of interest in the Bill’s proposals—

And that is perhaps reasonable. Does that also indicate then that there is a lack of interest in areas such as gender equity or consultation with employees because there was only a limited response on those issues as well in the responses?

Mr Winley—we simply asked our members what they had replied, and they either sent us a copy of their reply or they said the gist was, ‘We made the following four points’, or whatever. It was open-ended in that sense, and we simply analysed the responses we got. I do not think it really indicates a lack of issue on gender equity. It was the Business Council companies predominantly that had been involved in equal opportunity and affirmative action since the 28 companies in the pilot program back in the mid-1980s which led to the Affirmative Action Agency. I think our companies are committed to that. I just don’t think it was an issue for them in a sense when they were making the reply.

CHAIR—from the survey itself I am not really sure precisely what it does indicate. Equally it does not indicate, ‘We strongly support making the most of new arrangements under the bill and we reject your claims outright.’

Mr Winley—No. We did not ask that question because we were responding in the end to the comment, ‘Make these commitments because it will indicate that you are not interested in the bill.’ We saw then that people did not make the commitment sought as indicating the opposite. I guess anyone can interpret those results in the way they want. We believed what it indicated and the feedback we got from our members.

CHAIR—Turning to two other points in your submission that I am interested in, you make the comment on page 8 that, nevertheless, in developing countries there appears to be a strong inverse correlation between labour market flexibility and unemployment. Do you have any data to corroborate that statement?
Mr Winley—There are some OECD figures which looked at unemployment levels and what they classified as labour market flexibility. I am not sure of the methodology they used to assess labour market flexibility but they certainly said that the most effective means were either very significant flexibility or in a few cases very significant centralisation. This was done a couple of years ago. Australia significantly fell between two stools.

It was neither very flexible nor at that stage completely centralised and its effectiveness as an industrial relations system in increasing employment was mediocre at best. Countries like the United States and, to a preliminary extent, the United Kingdom had a more flexible system and much lower unemployment rates than those countries which had a much less flexible system, like France or Germany, which had much higher levels of unemployment.

CHAIR—But Australia in recent times has scored one of the highest growth rates in the OECD.

Mr Winley—It has had a high growth rate in the last few years and its unemployment level has fallen but it is still at around eight per cent, or whatever it is. It is still significantly above that of United States, New Zealand and United Kingdom and it is still, in our view, unacceptably high. There needs to be changes in order to get it down. Some people talk about five per cent as being the target level. Even I can remember when it was significantly lower than that and the common view was that if it got above two per cent for more than a couple of months the government would fall, and in 1961 it very nearly did. We would like to see it back down to that sort of level again, but that is not going to happen without some structural changes to our institutions.

CHAIR—I appreciate your comments. I was just interested in what sort of data you are referring to. As I am sure you would probably appreciate, we have had all sorts of evidence before us on that question and some of it quite conflicting. It may interest you, if I recall correctly from the evidence we had in South Australia, that Professor Judith Sloan thought that six per cent was close to full employment.

Mr Winley—She is a professional economist.

Senator FERGUSON—She did not say that.

CHAIR—Certainly one of the written submissions did.

Senator FERGUSON—But she did not say that.

CHAIR—In her written submission. Oh no, she did not have one. I apologise. It must have been one of the other written submissions.

Senator FERGUSON—I am sure Professor Sloan does not think six per cent is
full employment.

CHAIR—When I was reading the submission I looked at our terms of reference (n) and your comment that introducing the balance for work and family responsibilities into the objects of the act was significant. In your oral submission you have referred to how it should then become incorporated into the general workings of the commission. The question in my mind when I read that was: how? I think it would be a reasonable representation of some of the evidence that we have had before us. The question is: you have put that into your objects but how is it actually reflected in the bill?

I would like to put to you one example, and this is an example that has occurred in relation to part-time work and the setting of minimum and maximum hours. When Toys ‘R’ Us commenced its operations in Australia it sought to introduce individual contracts into its Victorian operations. One component of those individual contracts was a one-hour start. Technically, employees could be called into work for a one-hour period and then sent home.

Mr Winley—Were they casual employees or regular part-time employees?

CHAIR—Either is my recollection. The matter was pursued by the union and ultimately ended up being determined by the federal commission. The federal commission felt that in terms of having a reasonable balance between flexibility for the employer and conditions for the employees a more appropriate minimum start would be that reflected by the standard within the hospitality industry as a whole, which is two hours. Under this bill, presumably, employers such as Toys ‘R’ Us would be able to offer employees work on the basis that they be prepared to work on just one-hour starts.

I will take you a further step, which is related to the second part of my question, because you have raised the issue of whether they were part-timers or casuals. The bill itself has no definition about what regular part-time work is. If you go to the memorandum of the bill it does actually refer to regular part-time work, but the reference only has a loose ‘may’ in the sense that it may provide pro rata conditions and it may provide regularity in terms of permanent hours. Do you think that is sufficient protection for workers with respect to their work and family conditions?

Mr Winley—I have not particularly appreciated the point that the bill did not define regular part-time work. I would certainly have thought that there was a general understanding in the community of what that meant. Certainly, in my view, regular part-time work carries with it the connotation that there would be pro rata benefits as there are with full-time work.

CHAIR—What is your view about a regular roster?

Mr Winley—Yes, there would be some sort of regular roster. There may well be
some process or mechanism for changing that roster from time to time. I would not want to suggest that one set of conditions or one set of circumstances would last for all time. But, yes, to me it implies some regularity of work pattern. It also implies some mechanism for altering that work pattern by agreement, consultation, notice or whatever.

Senator, you asked earlier if there were any specific recommendations or areas where we thought the bill could be amended. If that is not in the bill, then perhaps there is a good case to be made for putting some sort of definition for regular part-time work in the bill, although I would have thought that generally there was a fairly clear understanding in the community of what it meant. But if there is doubt, then by all means put it in the bill.

CHAIR—The doubt goes back to my Toys ‘R’ Us example. Some employers would seek to use the bill, as it is currently framed, to offer employment to people who might be, with our unemployment rate, quite keen to accept any sort of employment they can get on the basis that they turn up for just one hour minimum starts. Perhaps they might be offered a regular five hours per week. That would be regarded as regular part-time work, the way it is currently framed.

Mr Winley—in a lot of areas, casual employees are not regulated in any way about minimum numbers. Some awards do have minimum starts for casual employees, but a lot of casual employees do not have any regulation about minimum starts. Otherwise, I think that is something that has to come in the agreement that people make about what governs their own working arrangements.

If you are going to have regular part-time work, then I think there has to be scope for an award, agreement, individual contract or otherwise of employment to set some mechanisms about changing the hours. That is what I would expect to happen. I would see that as a feature of regular part-time employment.

Senator FERGUSON—Madam Chair, as a matter of procedure, we have been working to a very strict timetable today. We are due to finish at quarter to one.

CHAIR—I have concluded, Senator Ferguson. I was about to go to Senator Murray.

Senator FERGUSON—we had 35 minutes of questioning. You have gone on for 22 minutes. That is not going to give us a fair proportion by quarter to one, which is when we are due to finish this session. We have been working to a very strict timetable.

Senator MACKAY—On a point of order: you are probably correct, and may well be in this instance. I agree that perhaps we ought to extend the question time by another 10 minutes.

ECONOMICS
Senator FERGUSON—We cannot because we have other things on at quarter to one. We have set this timetable, and we have been on time all day. We will need to finish it at quarter to one because we have to go and then we will not have a quorum. But I just wanted to highlight that Senator Murray, Senator Crane and I have really only got 12 minutes for questions, which is not really the right proportion.

Senator MURRAY—Mr Winley, I was interested by your remarks about the AIRC. I have heard three criticisms of the AIRC: firstly, that it is too wide reaching in its decisions; and, secondly, that it has failed to enforce its findings on both sides—both employers and employees. I have heard both of those complaints before the committee. I have not heard witnesses propound the third, but I have heard it privately—that is, that the original appointments to the commission were flavoured somewhat by the government of the day.

If those three areas were to be addressed—in other words, if the AIRC were to be tightened up in terms of its wide reaching approach; if it were able to enforce, and vigorously enforce, its findings; and if the appointments were genuinely independent and not flavoured by the government of the day, in other words that they were balanced to the views of employers, employees and the community—would you still take the view that an independent third party would not be helpful to the industrial relations scene, particularly if they are required by legislation to bring down findings to arbitrate compulsorily and conciliate in a very rapid and facilitating manner?

Mr Winley—The Business Council of Australia has not been a major critic of the Industrial Relations Commission in terms of its findings and its membership as distinct from the framework in which the current act allows it to operate. Yes, I am sure everyone would comment about some particular appointments or some particular decisions of some particular appointees. But, by and large, I believe the commission works very hard to be impartial and effective so it always succeeds. But, by and large, it works very hard to do it. So, in our view, we are not denigrating the commission and its integrity overall.

We see that the commission has a very important role. It is still going to be there about maintaining the safety net, including the award system, and it is still going to be there about scrutinising and certifying certified agreements. That is important because certified agreements, as distinct from AWAs, apply—when a majority agrees to them—to all employees in that area. So there is an argument in favour of the commission’s scrutinising certified agreements as distinct from AWAs, which only apply to those people who actually put their signatures to the agreement. We see those as important roles, and it will have a role in the unfair dismissal regime.

More importantly than any of those in our view is that it is still going to be there to provide the conciliation function. To practitioners in the industrial relations field, that conciliation function is tremendously important. It is when they help the parties, who may
have difficulty reaching agreement, to come together to think about things. Having been part of conciliation in action, the good members, particularly—but all members, to a certain extent—of the commission say to the parties, ‘Well, have you thought about this.’ They go and talk to them separately. They bang a few heads together. They remind them of certain issues. They say, ‘The object of an act includes this.’ They do not forget that. You just cannot ignore that. That conciliation role is fundamental and a very important part of the commission’s role.

So we are not denigrating the commission, as such, but we do not see it as necessary to have a role in scrutinising Australian workplace agreements. We think the bill is no longer based on the assumption that all employers are bastards and all employees are incapable of making their own judgement. That is to put it in a short way. Perhaps I should say it in a longer way. Not all employees are able to understand the benefits of good employer relations, but—

**Senator CRANE**—We understand what you said.

**Senator MURRAY**—Mr Winley, I would like to interrupt and remind you, please don’t use the word ‘bastards’; we have the trademark on that.

**Mr Winley**—My apologies, senator, I was not trying to steal something.

**Senator MURRAY**—I would like to explore that more with you, but I do not have the time to do so.

You made a remark which I think is unproven. I understand the arguments for competition and the benefits of competition, and I understand the broader theory of it. You made the remark, though, that the more competitive Australian business becomes the more jobs are created. I think you would recognise that there is dispute and that it is the automatic result of competition, because, to give you an example, multiple enterprises are often regarded as less efficient than concentrated enterprises but they tend to employ more.

Competition does lead to the destruction of competitors, and the casualty is often jobs. I use the example of Coles Myer. If they do not take market share from Franklins or Woolworths to advance growth they take it from small and medium enterprises. Small and medium enterprises employ more employees per square meter than do Coles Myer because they are in a very efficient and competitive outfit. So whilst I think you should support this bill for many good reasons, which you have outlined, you should have caution over some aspects of this bill for other reasons, which we will explore later. I do not think you can link competition to jobs in that precise manner.

**Mr Winley**—I guess our focus in talking about competitiveness in that context was on international competitiveness. That is about increasing world trade and increasing the
overall economic health of the globe. That raises living standards, which does create more jobs—and the emphasis is particularly on the international side.

**Senator Murray**—Businesses of your kind are very profound thinkers about the future and, therefore, indulge in long-term planning on a scenario and other basis. The business council would, therefore, be likely to have a view of the ultimate industrial relations system that it would wish to see, in a broad sense. Persons such as Premier Kennett have indicated that they believe that there should be an Australian system. He will give up his role in industrial relations and let there be one Australian system. One view is that there should merely be a framework provided by the federal government and that thereafter the exercise should be without regard to states; it should simply be at the enterprise level, be it across state boundaries or within state boundaries. Does your business council see a next stage after this industrial relations at which you are aiming? I ask this question particularly because Professor Judith Sloan has said that this legislation is very modest and gradual and does not go far enough. She tends to chin wag with a lot of people in your business council area.

**Mr Winley**—I think we would see this as a reforming piece of legislation, but not the end of the path by any means. I am not sure that, despite obvious conversations between Professor Sloan and various council members, there would necessarily be unanimity between council members and her position. There is a lot of variety in the views of business council members themselves.

I think our view is that this is, at this stage of the development and society view, probably the appropriate degree of reform that is sensible but that perhaps in a few years, when people have had experience with it, when they have honed it down, and when they have removed any rough edges or made any amendments that need to be made, further reform could be contemplated. I think we would want to see the procedures for developing and certifying or registering agreements made more streamlined and with less—no, it will still be an act with some 500 sections, so it is still pretty prescriptive and pretty complex and nonuser-friendly, if I may say so. It talks about writing awards in plain English and it is not in plain English itself.

That is something where I think there has to be community movement and community comfort with movement. We are not advocating, ‘Yes, we want immediate further reform.’ But the research work we did and the book, *Working Relations: a fresh start for Australian enterprises*, we published in 1993 certainly sees some further decentralisation and flexibility with perhaps a narrower safeguard system than now. But that is something that can be looked at after this has been tried and proven.

**Senator Ferguson**—Much has been made of the fact that there have been fewer submissions from small businesses and employers than there have been from unions and others. In your experience, would you have a view whether, in support of any proposed legislation that is coming before the parliament, people are far less likely to
make submissions than when there is opposition to proposed legislation, particularly if that opposition is subject to an orchestrated campaign?

Mr Winley—I think it is true that objectors to any change are usually more vocal than supporters. I think that is a manifest part of psychology generally.

Senator FERGUSON—On your survey the question was raised about people receiving union demands. Over the past 16 or 17 days that we have been on the road, time and time again we have heard union representatives suggest that employees may be the subject of threats and coercion, particularly in relation to AWAs. What was contained in the union demands? Would the contents of the demands constitute coercion on the part of employers?

Mr Winley—The demands were usually on the basis of, ‘The union committed itself in writing’, which was why in relation to the point that Senator Collins raised I focused on the written replies. Most of the demands were for a reply in writing that the company would commit itself forever and a day not to change any of the existing arrangements and not to make use of any provisions in the new bill.

In a number of cases—and in the case of Email from which my colleague, Mr Picket comes—strike action was taken to say, ‘If you don’t sign up and send us a letter then we’ll shut your factory down.’ And there was strike action for some period in a number of Email’s factories and in a number of the workplaces of other member companies. They were not long-term strikes but the comments were made, ‘We’ll give you a bit more time and we’ll come back to pursue the matter’, and in a couple of companies things are still lined up.

In two companies where certified enterprise agreements had been made, the unions concerned refused to take them to the commission for ratification, although all the points had been agreed, unless a letter was forthcoming. Some action was taken to force employers to—

Senator FERGUSON—Thank you for clarifying that situation.

Senator CRANE—Your opening comments were very important in referring to the objects of the act. I have been consistently quoting them all around the country—that there was a significant change in direction. You have commented on previous commission decisions referring to the objects of the act in coming to a position. Could you expand on that comment and give us your thoughts on the importance of that?

Mr Winley—The decisions of the commission range from some that we were pleased to see and some we were not pleased to see, from the point of view of our member companies, but which included things on the positive side in the family and carers leave test cases which talked about the objects of the act—the requirement to
eliminate all forms of discrimination.

But the other cases where our member companies thought it less helpful was where decisions referred to the objects in the present act for encouraging and promoting organisations of employers or employees—in the instances concerned they were unions—where, for instance, a decision was made to bring some employees into the federal jurisdiction because it was said that the state jurisdiction under which they had existed since time immemorial, I think in the case of Western Australia, did not give as good encouragement to unions as the federal jurisdiction, so that it followed from the objects of the act that the commission should bring them into the federal jurisdiction. That was another instance of where the objects of the act were taken very seriously in guiding the commission’s decision.

Senator CRANE—So the point is they are very important in the final decisions?

Mr Winley—That has been our experience in studying the commission’s decisions.

Senator CRANE—On regular part-time work, on which Senator Collins asked you a number of questions, would you look at what it says on page 26, not necessarily now but respond to the committee in the next day or two. Looking at the restrictive practices that have limited people in regular part-time work through awards and what have you, I have a document about this thick which goes through the various awards where you are limited to only two in 10 or three in 10 and what have you. Could you have an in-depth look at it? I have the strong view that the restrictions in the existing act have kept a number of people out of work. In addressing that, could you also look at how regular part-time or casual work can be handled in agreements and the emphasis in the objects on determining these things by agreement.

Mr Winley—Given the time, if the committee would accept us faxing a written response to those questions of Senator Crane, I can undertake to do that within the next 24 hours.

CHAIR—Thank you very much, Mr Winley.

Luncheon adjournment
CHAIR—I would like to raise one point of clarification with respect to the previous submission before lunch, during which I made the point that I thought Professor Sloan in her evidence had referred to an unemployment level of six per cent being fairly close to full employment. Just to clarify that matter, it was actually a statement of Professor Sloan’s but not in evidence before this committee; rather, it was in an article in the Australian Financial Review of 24 November 1994.

Senator CRANE—Are you happy to table that?

CHAIR—Certainly.
CAIRD, Ms Wendy, Joint National Secretary, Community and Public Sector Union—PSU Group, Level 5, 191 Thomas Street, Haymarket, New South Wales 2000

STAPLETON, Mr John, National Industrial Officer, Community and Public Sector Union—PSU Group, Level 5, 191 Thomas Street, Haymarket, New South Wales 2000

CHAIR—I welcome the representatives from the CPSU. For your submissions, we have allowed a period of 45 minutes. Could I ask that you keep your submissions to about 20 minutes to allow time for questioning.

Ms Caird—We appreciate the opportunity to make personal representation. You also have our written submission. I want to make a couple of brief comments about the union and the process of coming to the conclusions that we have come to. We are a very large union in Australian terms. We have about 65 per cent membership of those eligible to be in the union, and that is with no history of ever having preference or compulsory unionism in the public sector.

Our method of arriving at our views has been as a result of extensive consultation with our members, including briefings of delegates once the draft legislation became available and a regular reporting system internally in the union so that all of our operatives and delegates were very well informed.

With regard to the matters that we want to raise today, I will pull out some points from our written submission. We want to talk about the role and powers of the Industrial Relations Commission, the operation of paid rates awards, the proposals in the legislation for minimum rates awards, the matters that might be included in those and the role they play in underpinning bargaining. We also want to make some comment about the role of unions and their ability to continue to represent their members.

Our comments about the future industrial relations system being proposed come from some experience of a couple of different ways of operating, in that the public sector was excluded from the mainstream of the industrial relations system for many years and actually only had access to arbitration from 1984. Prior to that, we had no arbitration opportunities and parliament could override any decisions that were made in our area. So we can say that, having experienced a lesser system, the current system has been very suitable for public sector matters. We found the role of the Industrial Relations Commission of benefit not just in reaching agreements about wages and award matters but also in resolving disputes on a quite regular basis.

I want to make some comments on equity issues as well, because I think the public sector is quite an important player in the delivery of equity in the workplace. In fact, there is a quite proud record in the public sector in the industrial arena that goes to equity matters. We have no pay discrimination in our award system and we believe that is very
much related to the fact that we have paid rates awards, that we have currently an open approach to awards and agreements, that it is a collective approach which ensures that outcomes apply right across the board, not just for small groups of people.

There has been a significant reform process of work practices in the Public Service based on a cooperative and inclusive role for the union. We have been through significant reform of work practices through the wages system, the second tier agreement in particular, which has helped women to have better career prospects, better jobs and achieve high rates of pay over a period of time.

The union has been a partner with the previous government in very significant areas that go to equity questions. For example, we have a permanent part-time work award in place at this time and a world first—in fact, the world’s only—award for home based work, or teleworking as it is called. We know that teleworking is sweeping the world and growing enormously, and in most places it is proving to be an area of new exploitation for workers at home just as clothing trades workers would have experienced in the past.

The system that has been in place has allowed some very significant equity matters to be introduced through the award system. The role of the union in negotiating those has been very positive. We also have a number of other things which address equity issues, including, in the public sector through the flexibility of the enterprise bargaining process underpinned by an award system, paid carers leave in many places. The changed legislation would see all of those matters that I have just listed go. They would not be in place at all.

To assist in making it a bit clearer when describing the issues we want to raise, we have actually prepared a document which is a case study of a worker under the current system and in the brave new world of 1997. We will hand the document up and take you through it.

CHAIR—that can be tabled.

Ms Caird—This document refers to a worker known as Ms Paula No-one who works in the Department of Human Happiness. I will describe her current circumstances. Under the current system she has a range of guaranteed conditions in her workplace. She has award rates of pay, including an incremental structure, defined hours of work, flexitime, paid maternity leave and the right to seek and have access to permanent part-time or home based work.

As a worker in that environment she can be involved through her union in agreeing flexible arrangements that more suit that workplace. So Ms No-one is able to be part of arrangements which particularly suit the workplace she is in, whether it be about flexible hours of work to suit the local client base that they serve, such as office opening hours, or something different. That flexibility is possible with the award that is in place and the enterprise bargaining system.
She can look forward to further pay rises. She knows what they will be. She knows that she is being paid the same as other workers in her area and people doing similar work across the public sector. Her whole process is open to scrutiny. The community can be very comfortable that they know what public sector workers are paid.

When 1997 dawns the new legislation will be in place. Ms No-one is facing a very different set of circumstances. There will be no service-wide wage agreements negotiated. The audit commission has already recommended against those and the legislation provides for that. She could be looking at wage agreements being struck at a workplace or individual level. Her employer has decided to be a trendsetter in the public sector. He is very concerned about his promotional prospects and he wants to set the standard. He has advised the workers that he intends to withdraw from the enterprise bargaining agreement and has given notice to that effect. Ms No-one is now aware that her wages will be those that are in her new paid rates award, having been dismantled through the new legislation. She actually faces a drop in salary.

More significantly to Ms No-one, who has family responsibilities, she has lost from her award her flexitime, her right to permanent part-time work and her incremental structure. So when she goes into her wage negotiations—and that may well be on her own—she has to start to try to get those things back. She wants help. She wants her union there. She has now been told, as the legislation provides, that the union can only come in if she is prepared to sign a letter and put herself forward as the person who invited the union in. Frankly, she is a bit frightened about doing that.

She knows that her matter cannot go to the Industrial Relations Commission because it has very restricted powers and is only looking at minimum standards and awards and has no further jurisdiction. Her employer, who is a high-flier in the Public Service, gives her a contract and says, ‘This is what everybody else is getting—sign.’ She sees that it contains only minimum standards in the award. It has a couple of things that perhaps she used to have, but they are certainly not all there and a very small pay increase is being proposed. She is frightened.

Her employer has included in that draft agreement a secrecy provision which, once she signs her agreement, binds her to not being allowed to tell anyone else in the workplace what her agreement gives her. She now makes inquiries of others and finds that some of them have signed such agreements and cannot talk about them. She is conscious that some people who are better connected than her have got a better outcome.

In that environment, Ms No-one signs. It is the CPSU’s position that this is the only way that you can interpret John Howard’s statement prior to the election—that is, that, under the new legislation, no-one is worse off. Mr Stapleton will now provide some more information about the particular matters which we wish to address.

Mr Stapleton—Given the time limitations, I will confine myself to addressing the
We wish to emphasise that the use of paid rates awards is of course voluntary between industrial parties. No-one compels employers or unions to have paid rates awards. They are a form of regulation that industrial parties choose. Our question is: why should this option be removed? If it is a voluntary measure that people accept and not have pressed upon them, why should it be removed as an option under the legislation? As Ms Caird said in her opening statement, there is a widespread preference for paid rates awards in the public sector. Our members like them for the openness and consistency of pay and conditions arrangements which they deliver.

We have also continued that approach in the era of enterprise bargaining with certified agreements. They are still ones that look in many ways like paid rates awards where they have the full outcome, the actual rates of pay and conditions that people are enjoying, and it is a completely open process. We believe that the reductions in the levels of entitlements from actual to minimum clearly contemplated in the legislation is a clear case of detriment to members in terms of award protection of those conditions.

We have read the part of the legislation that deals with the conversion of awards to minimum rates. It is quite clear from the terms of the legislation, supplemented by correspondence which we have had from Mr Reith, as the minister, as to what the government intention is in respect of awards in the public sector, where the government is not only the legislator but also the employer. All existing awards would be converted to the minimum rates model. There may be some discretion allowed as to the timing of that for the Industrial Relations Commission, but the clear objective of the government is to bring about a single stream of minimum rates awards on some indeterminate timetable.

So the point that we emphasised in our submission and I would like to reiterate here is the critical issue of the relationship between award protection and the bargaining process. We think this is fundamental to the argument about the preservation of the award system as it is now and the relationship to the no disadvantage test.

Award prescription of matters does not of course in itself preclude those matters being considered in the bargaining process. But, if one party in the bargaining process does not want to deal with those issues, does not want any change in relation to them, and workers have the protection of those conditions in awards, they are not subject to the whims of agreement periodically through the bargaining process for their continuation. If the employer wanted a change to that person’s conditions and they are in the award, the employer has to go to the Industrial Relations Commission and run an argument. That is the critical issue about the importance of award protection.

By way of illustration of this in the Australian Public Service environment, I would
like to put a further exhibit. This exhibit is a good illustration of what the impact of the proposed legislation would be in terms of striking out matters currently in the award base that are beyond the list of allowable matters and bringing into question or threatening standards of matters which are currently prescribed at a paid rates level in the Public Service.

The exhibit before you is the index showing the content of an award known as the Australian Public Service general employment conditions award, which prescribes fairly comprehensively the conditions that apply to some 140,000 employees in a wide range of occupations over 80 separate agencies that they are employed in at a very wide range of locations and work environments across Australia. Of this award, if you look at what the impact would be on a reasonable interpretation of the list of allowable matters, some 27 clauses or subclauses of this award would be struck down—would lapse automatically at the end of the prescribed period in the legislation. The provisions of a further seven clauses would be in doubt or threatened through conversion to minimum rates standards.

I note at this point that that latter point also applies to pay rates classification structures and weekly hours that are prescribed in seven occupational awards that govern particular groups in the Public Service that operate in conjunction with this award. So we think that is a good illustration of the extent of the impact of the provisions relating to reduction in the scope of the award system and the powers of the Industrial Relations Commission. I will leave the opening remarks at that.

CHAIR—Thank you, Mr Stapleton. I just have one question following on from your focus on paid rates awards. In previous submissions this question has arisen too, so you might be able to help the committee with an explanation. With paid rates awards currently being other than minimum rates awards, how has the process of enterprise bargaining worked with paid rates awards in terms of, perhaps, applying to a particular class of employment?

Mr Stapleton—This issue has been the subject of consideration by the Industrial Relations Commission in various national wage cases since the advent of enterprise bargaining. It is the clear view of the commission—contained, I think, in one of the 1993 national wage decisions—that paid rates awards and certified agreements can operate in tandem without prejudicing the status of a paid rates award, given that the additional conditions or pay arrangements that are enacted by the certified agreement have been endorsed by the commission. That is the first point: that, as far as the commission is concerned, there is no problem with the operation of certified agreements and paid rates awards. That view has not been changed with the enactment of the 1993 legislation.

As far as maintaining the relevance of paid rates awards and their adjustments in an environment where there is enterprise bargaining—I think we refer to this in our written submission—the CPSU has successfully pursued an arrangement through the commission where paid rates awards can be updated to reflect the history of bargaining
outcomes. We have applications currently before the Industrial Relations Commission for
the variation of all APS salary awards to reflect pay outcomes that have occurred up until
the conclusion of the previous certified agreement in the Public Service. Those applica-
tions are to be dealt with on a consent basis. We believe that that is the appropriate
approach for maintaining the relevance of paid rates awards in a bargaining environment.

Senator FERGUSON—Ms Caird, are you aware of the award simplification
document that went through the federal jurisdiction where they talk about award simplifi-
cation? I think you are aware of the document I am referring to. Is this award of yours
made under that award simplification?

Mr Stapleton—Perhaps if I could answer that. The process that led to the making
of this award was a series of conferences chaired by a deputy president of the Industrial
Relations Commission. It was quite clear in that process that the requirements of existing
section 150A were being applied and adhered to in the making of that award. That award
was made post section 150A coming into the act and all the tests and requirements of
section 150A were considered to be met by the commission in their making of that award.

Senator FERGUSON—There is a question I need to ask: if it takes 148 pages to
write a simplified award, how many pages would you need if it were not simplified?

Mr Stapleton—Could I just refer you to my earlier comments about the range of
occupational groupings, agencies and work environments that that award covered? It also
drew together, I think, about seven or eight previous separate awards that dealt with a
variety of general conditions issues. The parties were consciously making what you could
characterise as an umbrella award for all general conditions for 140,000 federal public
sector employees throughout the Commonwealth.

Ms Caird—To add to that, we believe that that is an entirely appropriate document
for taxpayers to have access to so that they know whether their money is being spent
properly and so that they are aware of exactly what public servants are paid for what, and
under what conditions.

Senator FERGUSON—How many of your union members do you think would
have read every page of this award?

Ms Caird—Probably people who are interested in it. Most of our delegates would
have read the award, yes.

Senator FERGUSON—Most of your delegates—

Ms Caird—Certainly. We have about 10,000 of those.

Senator FERGUSON—As apart from just ordinary union members?
Ms Caird—People refer to the parts of the award that are of interest and of concern to them. It is available to all of them.

Senator FERGUSON—Do you think if it was simpler more people would read it?

Ms Caird—I think it would probably have no greater readership than it has now. People look to the award when they have got a problem or an interest and they can read the parts they are interested in.

Senator FERGUSON—My final question deals with the Industrial Relations Commission which you seek to preserve as an independent umpire in disputes. In your submission you say that there are inevitably, however, disputes where the differences between the parties and the extent of industrial conflict lead to the IRC arbitrating to settle the issue to put an end to any associated industrial action. It is a fact that, although you talk about the independent umpire arbitrating in decisions, in fact you also still reserve your right to reject the decision of a tribunal. That still leads to industrial action, doesn’t it?

Ms Caird—Can I respond to that by saying that the government took a matter of some consequence to the Industrial Relations Commission last week—the dole diaries issue—and decided to reject the recommendations itself. So there are instances where the parties make choices about acceptability.

Senator FERGUSON—I understand that, but you are the ones who are actually saying that you want to preserve the role of this independent umpire. So it is a fact that you do reserve the right to reject the decisions of the independent tribunal, isn’t it?

Ms Caird—On the vast majority of occasions the union would accept the decision, and certainly those processes always lead to outcomes which are accepted by the parties. Certainly there are points through that process where there are differences, but outcomes are what we are talking about and outcomes, I am sure, are what employers are looking for in disputes.

Senator CHILDS—A number of employers organisations have sought to say that the award structure is still there, yet in your document you have exemplified those areas that might not be available if the legislation were to go through as it is proposed. To take a heading like ‘increments’: what would be the effect on public servants if increments were up for negotiation? I would imagine that is a way of experience and loyalty and good service being recorded to the advantage of the public servant.

Mr Stapleton—As we understand the government’s intention, if they move to a minimum rates environment the situation would be that to some degree the existing classification structure within the awards would still be preserved, although it is not clear to what extent. But certainly for each classification level that was prescribed there would
only be a minimum salary point; that is the nature of minimum rates awards. Beyond that it would be open as to what salary regime applied beyond that minimum point. That only sets a legal minimum that employers have to observe. The government, as the employer, could then have any bargaining or negotiation regime at any level, including the individual level, about any salary movements over a period that an agreement would be made and, within that, what recognition there might be for accrued experience or skill. That would all be up for bargaining.

As we indicate in our example of Ms No-one, as we see it, the government’s preference is going to be to do that in an environment of Australian workplace agreements, where the individual would be endeavouring to negotiate and recover those entitlements that are there by way of award right at the moment.

**Senator CHILDS**—What do you think the effect would be on the morale of the Public Service? I imagine that it would be a very frustrating situation for Ms No-one to be in.

**Ms Caird**—We would have great concern about an environment where people doing the same work across a range of agencies could have all sorts of significant differences in their pay rates. We think there would be some agencies where nobody would want to work and the standard of service would drop. There would be other agencies where there was patronage and favouritism. I think the honesty and integrity of the Australian Public Service is something we have been really notable for and we would be deeply concerned that a process that had less scrutiny and fewer control mechanisms in place could lead to the very corruption that we have been able to avoid.

The other point about setting minimums only and allowing for outcomes above those goes to another pay equity matter. You find that men’s and women’s wages are very similar. If you look at award rates of pay, you see that women earn 93 per cent of men’s award rates. But when you come to the flexible part, that bit above the minimum, women earn only 54 per cent of what men do. One of the reasons we have pay equity in the Australian Public Service is that we do not have that variable part which relies on who you are friends with sometimes or on a whole lot of wrong reasons.

**Senator CRANE**—You said in your submission that you had letters from Minister Reith with regard to certain matters you had raised with him. Would it be possible for you to make available to the committee your letters to Mr Reith and his replies so the committee could have a look at the subject matter you were addressing?

**Mr Stapleton**—Yes.

**Senator CRANE**—How many agreements have you actually negotiated since the changed arrangements came in for the Public Service?
Mr Stapleton—Could you identify more accurately the time frame you are talking about?

Senator CRANE—I am talking about the enterprise agreements you have negotiated on top of your paid rates awards.

Mr Stapleton—Since the start of enterprise bargaining on any widespread basis, in 1992, we have had three general agreements in respect of the Australian Public Service. In respect of other areas of the federal public sector—they are different bargaining centres, of course—there have been two or three successions of agreements over that period of time. In addition to that, in the Australian Public Service we have also had a round of agency level bargaining that occurred over the period 1993 to 1995 that focused on the specific change processes and conditions applying in particular agencies.

Senator CRANE—that is what came out after the Brereton legislation?

Mr Stapleton—that was already in train and came under the framework that was set up by the first agreement in 1992.

Senator CRANE—Do those agreements that you have negotiated come out of that framework from the 1991 legislation or have you had agreements come out of what is commonly known as the Brereton legislation of late 1993 or early 1994?

Mr Stapleton—The answer to that is both. There was the legislation that set up the old division 3A of the act, the one that Senator Cook enacted in 1992, and the first framework agreement. A number of agency agreements were made under that. Then the Brereton legislation took effect in March 1994 and there was a large number of agency agreements. Then subsequent framework agreements for the whole Public Service were made after that date.

Senator CRANE—Currently, is the whole of the Public Service covered by an agreement of one form or another?

Mr Stapleton—At the moment there is a single framework agreement operating until December 1996 for the Public Service. I think all of the agency agreements have reached formal expiry date but continue to have legal effect under the legislation.

Senator CRANE—In terms of that bargaining process and what you have done in the changed environment that occurred during the 1990s, would you say that you have been successful in handling that process? When I say successful, I am not talking about whether you have won eight out of eight or nine out of nine. Generally, is there satisfaction with the results that have come out of the additional flexibility and the responsibilities that have come into the agreements? I am talking more about that angle rather than eight out of eight, if you like.
Ms Caird—In terms of success, we would look at pay outcomes as one and we have kept up with community pay movements. As far as flexibility is concerned, we would say that we have been successful in that we introduced a number of important things such as paid carers leave, but all of this on the basis of having a guaranteed starting point of an award. We believe that our success is built on that.

Senator CRANE—So it is fair to say that you have been relatively successful in the bargaining process?

Ms Caird—Yes.

Senator CRANE—No doubt you are aware of the provisions that are contained in this bill with regard to carers leave?

Ms Caird—Yes. If I can anticipate the direction that you are taking your questions, we have been successful on the basis of a number of things being in place; one being the award system, which is our starting point, and another being the union’s role and our access to our members. We have played a very significant role in ensuring that there is a collective position and collective discipline in achieving outcomes and having an overview. If any of those things were lessened, we certainly would not be confident that we would have successes in our outcomes.

Senator CRANE—Can you tell me whether there is anything in this bill which would restrict your ability to represent your members if they wish that to be done?

Ms Caird—There are a number of restrictions. Perhaps if I make a couple of general comments John might want to add to them. The most significant restriction is on access to our members. The legislation is proposing that we would have to be given a written invitation which would be presented to the employer for scrutiny before we would be allowed in the workplace. When we came into the workplace we could only speak to the signatories of the letter. That would seem to me to be a very major constraint on our ability to advise our members in advance of them knowing what was going on and initiate things and participate as equal players in the way we have.

The other thing we would be deeply concerned about is the proposal to move overtime to a minimum rates award, where the starting point of our bargaining would be significantly lower than where it currently is. So we could see ourselves bargaining simply to get back up to the position that we had previously held.

Senator CRANE—Are you aware of 170LK(5) in the bill? It says:

If an organisation is so requested to represent such a person, the employer must give the organisation a reasonable opportunity to meet and confer with the employer about the agreement before it is made.
Mr Stapleton—Yes, we are aware of that provision, Senator. The concern we have—and we refer to this in our written submission—is that there is a very clear policy direction emerging from the government: they will be attempting to fragment bargaining arrangements as much as possible and will have a policy preference for making individual contracts.

That is reinforced by the clear recommendation in the National Commission of Audit report, which said that the government should do away with Public Service-wide arrangements and move to, at least, agency level. They also recommended the widespread adoption of individual contracts—which we would interpret as being Australian workplace agreements under this legislative framework—not just for senior public servants but for public servants generally.

Senator CRANE—But that is not in the bill.

Mr Stapleton—I am saying that that is what our reading is of the policy direction of the government. We think that is a reasonable interpretation on what is available.

Senator CRANE—We are actually dealing with the bill before us, not an audit report. I think I will leave it at that. Thank you.

Senator MACKAY—Ms Caird, is it clear from your reading of the bill that Australian workplace agreements clearly have primacy in relation to all other industrial relations arrangements?

Ms Caird—Yes, it is.

Senator MACKAY—With regard to the National Commission of Audit report, is it clear from that that it is the wish of the government to proceed towards AWAs as a fist preference?

Ms Caird—Yes, that is correct, Senator.

Senator MACKAY—Are you aware of provision 83BC, ‘Minister’s directions to Employment Advocate’? It states:

(1) The Minister may, by notice published in the Gazette, give directions specifying the manner in which the Employment Advocate must exercise or perform the powers or functions of Employment Advocate.

(2) The Employment Advocate must comply with the directions.

As a union whose members are effectively the government and the minister, I would imagine that would be of great concern to you, given the current independence of the AIRC. Could you comment on how that section in the bill may affect you in your capacity
to operate, as well as your members?

Mr Stapleton—I am sorry, Senator, but I am not familiar with that particular provision.

Senator MACKAY—What it means, Mr Stapleton, is that the Employment Advocate is under direct ministerial control.

Mr Stapleton—Given the functions that the Employment Advocate is to have—particularly in relation to advising parties of their industrial rights, being the receptacle for Australian workplace agreements and also having a role in the enforcement of those agreements—the existence of direct ministerial direction would be of concern to us.

I understand also that the act provides for the employees of the Employment Advocate to be employed under the Public Service Act so, again, there would be the issue of direct ministerial control there. I think that concern would be heightened, given the political capital that the government would have invested in the successful or smooth operation of the Employment Advocate and the AWA system.

Senator MACKAY—I guess what I am getting at is that the Employment Advocate has been eulogised by some quarters in front of this committee as being a body that can actually go out and adequately police things like AWAs without fear or favour. The point I am making is that, particularly in your sector, that is going to be very difficult, given that the Employment Advocate is virtually under direct ministerial control.

Ms Caird—Senator, it would seem to me that the place we would be going with concerns about the actions of the government would be to an agency under direction of the government. I think that is a terrible conflict and leaves our members with no recourse.

Senator MACKAY—Effectively I think that would be correct. Another question I have is in relation to Ms Caird’s comments on AWAs and the pressures on Ms Pauline No-one from the Department of Happiness—which is probably abolished by now; I do not know. We are certainly not allowed to laugh at these committees, so I do not know if we are allowed to be happy. I just wanted to ask you whether you thought that the incidence of sexual harassment in the public sector may play a role in terms of negotiations between employers and employees on the content of an AWA. It is something that we have not talked about in front of this committee, and I go to the issue of coercion and duress.

Ms Caird—Yes, it would certainly seem very likely to be an environment where a worker in a weakened position could certainly be put under pressure in a range of unsavoury ways. There could be favouritism and patronage—we have used this term, and I would use that very broadly—in exchange for favours or understandings or agreements about what might or might not happen in the future. I believe you would be running the
risk that those sorts of matters would enter into—just holding onto your job and getting a pay rise. I believe the environment, which would be more intimidating to individuals, would be one where we would see a return of some of the worst sexual harassment problems we have had.

Senator MACKAY—Thank you.

CHAIR—We have time for one question from Senator Margetts, who is on an audio line from Perth. Senator Margetts, do you have a question?

Senator MARGETTS—Not of this witness, no. Thank you.

CHAIR—I thank Ms Caird and Mr Stapleton.
Mr Noakes—we have prepared a supplementary submission, which we will now tender, which responds to the questions we were asked in our first submission and which also deals with one or two other issues which arose during the discussion of our original submission.

If I could take the committee to page 1 of the supplementary submission. We dealt with the question of Australia’s international obligations, which has been the subject of some comment in various submissions presented to the committee. We pointed out that the most important of those obligations concern ILO conventions Nos 87 and 98. We referred to the key provisions of those conventions in our earlier submission.

We say in the supplementary submission that the bill complies with the key requirement to encourage and promote collective agreements for a number of reasons which are set out on pages 1 and 2: that the collectively based award system continues; that trade unions continue to have rights regarding the making and variation of those awards—and that occurs principally as a result of collective bargaining; that there is a continuing option in the workplace relations bill of certified agreements which are collectively negotiated; that Australian workplace agreements, which is a new option, may be negotiated collectively.

Finally, we have referred to the primacy which is given to certified agreements—the collective agreements—over Australian workplace agreements. I might say that the answer given by Ms Caird to Senator Mackay’s question was not correct. Individual Australian workplace agreements cannot reduce monetary or other entitlements under an existing collective certified agreement, provided—and we set out the provisos and this is the most important one—that the certified agreement is in operation at the time the Australian workplace agreement comes into operation. Clearly, the collective certified agreement has primacy over the Australian workplace agreement.

We have pointed out on page 2 that there is no limitation placed on individual agreements in any ILO convention and that they are a wholly legitimate means for incorporating understandings reached between employers and employees. We have dealt with the question of certain submissions which sought to use ILO conclusions about the Employment Contracts Act in New Zealand to argue that the workplace relations bill
breaches those two ILO conventions. We have suggested that that is an invalid exercise. Finally, we maintain that it would be an adventurous exercise for the committee to conclude that the bill does not comply with ILO conventions.

We have then addressed the question of independent contractors which we were asked to do. We have said, basically, that it is not appropriate to regulate commercial contracts through labour legislation. We provided a response to Senator Forshaw’s question about the ILO conventions which were supported by Australian employers at the International Labour Conference. We have taken the last 20 years—which I think was the period Senator Forshaw had in mind—and have listed 22 conventions in that category during that period.

We have referred to the question of a minimum wage for junior employees. We have pointed out that the ILO conducted a very comprehensive survey of minimum wage provisions throughout the world in 1992—this is the survey by the ILO’s committee of experts—and the survey does indicate that there is nothing in ILO conventions which prevents the fixation of a different minimum wage for juniors on the basis of age. This is a very common occurrence in many countries and we have quoted some of the countries which fall into that category.

We have addressed the question of differences in over-award payments between men and women. At attachment 1, you will see a paper by Neville and Tran-Nam that we referred to in our earlier submission. We quoted from the paper, and the conclusion of the paper is that there is very little scope for concluding that there is any discrimination on the basis of sex in over-award payments.

We have also attached, in attachment 2, the survey questionnaire which we conducted before the last election entitled, ‘Business priorities for the next government of Australia’. That sets out the full form of the questionnaire and the nature of the questions which were asked. We have then addressed our organisation’s coverage of employers in Australia. We pointed out, again, that we cover over 350,000 businesses. These are small, medium and large businesses but, as I said earlier, 90 per cent or more of our members fall into the category of small businesses. We have given some examples of the affiliation of organisations with our major state based bodies. You will see on pages 6, 7 and 8 a typical example of the various industry associations which are affiliated with our state based organisations, in this case the Employers Federation of New South Wales. On page 9 we have given some examples of affiliations by district or local chambers of commerce with the major state based bodies.

We have attempted to provide a response to Senator Murray’s question, or comment, about the number of small and medium sized businesses. We have included an extract from an ABS publication entitled Small Business in Australia. It is a 1995 publication. You will see on the last page of attachment 3 a chart that is headed ‘An overview of small business in Australia’. It breaks all businesses down into public sector
and private sector. In the case of the private sector, it breaks them down into agriculture, forestry and fishing in the first case and then into non-agriculture. It then breaks those up into small businesses and further breaks them up into small businesses which are employers and small businesses which are not employers. So it is a rather complex exercise.

Senator FERGUSON—Are these 1995 figures you are talking about?

Mr Noakes—Yes, they are, Senator. The indications are, I think it is fair to say, that there are 358,000-odd small businesses in the private sector in the non-agricultural area which employ persons. To get the total number of employers, we would have to add the agricultural, forestry and fishing area and add the larger businesses. That is a little problematic. We do not have those figures.

In attachment 4 we have included the survey which was carried out by a member organisation, the Victorian Automobile Chamber of Commerce, which also appeared before the committee.

Senator FERGUSON—By way of clarification of this table, can you explain to me what you mean by ‘own account workers’? Are they people in registered partnerships? In relation to non-employing businesses it says we have got 427,600 businesses and 640,500 ‘own account workers’. I am just not familiar with that term.

Mr Noakes—I think it is the people who are self-employed.

Senator FERGUSON—So own account workers are what you call self-employed people. So, although there are 427,600 businesses, a number of those could be registered partnerships, husband and wife situations, but they are businesses that account for that many salaries or individuals’ earnings but do not employ anybody else?

Mr Noakes—I presume so, Senator. We do have the full publication and we can make it available to you, if you wish. No doubt that would explain the terminology that has been used.

In attachment 4 we have included the survey which was carried out by the Victorian Automobile Chamber of Commerce, a member which also appeared before this committee.

CHAIR—I should indicate, Mr Noakes, that the chamber has sent their survey to us independently.

Mr Noakes—You have a copy already?

CHAIR—Yes, thank you.
Mr Noakes—The results of that survey are on the first page. I wish to say a few words, if I could, about our attitude towards the bill. It seems to us that community debate about the bill has been characterised by a certain degree of hysteria and certainly of exaggeration and misrepresentation in some cases. Many examples have been given about the alleged dire consequences of the bill which are based, in our view, on speculation and hypothesis. There were some examples in the last submission presented to the committee which I would characterise in that way. That was the submission presented by Ms Caird.

I think the exaggerations in this debate have tended to obscure the fact that the bill does not seek to bring any significant deregulation of the labour market. It certainly will not lead to the end of the world as we know it so far as labour relations in this country are concerned. It will not lead to lower wages and conditions; it will not lead to the exploitation of employees.

Many of the criticisms made of the bill rest on suggestions that it will introduce a system similar to that of New Zealand and the United States. That has appeared in many of the submissions that have been made to the committee. I think if we leave aside for the moment the not insignificant point about the superior economic performances of those two countries, particularly in employment creation, a moment’s reflection will indicate there is no basis for saying that this bill will bring about a system similar to that of New Zealand or the United States.

The bill does not abolish the award system, for example. The bill retains a much more comprehensive set of minimum rates and conditions than applies either in New Zealand or the United States. The bill retains the Industrial Relations Commission, which has no counterpart in New Zealand or the United States. The bill leaves unions in a far better position than they are in in either New Zealand or the United States.

The bill does not bring about any significant restriction in the matters which can be included in awards. Indeed, it leaves awards virtually untouched. It certainly leaves them totally untouched for at least 18 months after it comes into operation. It does propose the formal recognition of individual agreements but, in our view, that is a recognition that is long overdue. There are still extensive guarantees for persons who enter into individual agreements. The most important of those guarantees is that remuneration cannot be less than the remuneration which would have been earned under the award—a very important and significant protection.

In our view the bill represents a sensible and moderate attempt to continue the transition towards a system which is based more on agreements than awards and more on bargaining than arbitration. It is an attempt to reflect and to encourage the changes which are in fact occurring in the practice of labour relations and to provide an appropriate legislative framework. That is what we think the bill does. It will encourage the parties to engage in more constructive and cooperative relationships.
As I indicated before, we give our total support to the bill. The submissions that have been made to the committee indicate the overwhelming support by employers for the enactment of this bill. Before we conclude, Mr Hamilton will address one or two specific issues.

Mr Hamilton—Firstly, I wish to address the very important issue of state enterprise agreements and section 152. Those amendments have to be seen in the proper context. The context is that from 1904 until 1992 the balance between federal and state systems was regulated by a section which looked exactly the same. Section 41(1)(d) and section 111(1)(g) provisions, which provide a balance between federal and state systems, were totally unchanged from 1904 until 1992. Even with those provisions there was a gradual drift from state to federal systems given the fact that a federal tribunal was deciding the extent of its own, in effect, coverage. The inevitable result was a drift from state to federal.

In 1992, for the first time since 1904, that balance between federal and state systems was changed by the federal government as a response to requests from trade unions. The change was directed at the Victorian industrial relations system as an attempt to override and nullify amendments made to the Victorian industrial relations system—a direct challenge to that system. Those 1992 amendments brought about a period of intense conflict between federal and state systems.

This bill here starts to restore a process of a cooperative relationship between federal and state systems which is absolutely essential if we are to bring about a harmonised process of joint federal-state legislation and one national system based on joint federal-state legislation. Without that sort of cooperative environment, that result would be impossible. An important element of the bill is the way in which federal and state governments will cooperate in their legislation and tailor legislation.

The other thing that it has done is that the important principle of promoting agreements is given full recognition so that if we are to promote agreements we have to accept that agreements should be given primacy over awards, whether federal or state. So the two key elements of this bill are, firstly, a very positive attempt to restore cooperative relationships. A reversal of the period of intense conflict brought about 1992 legislation which was a direct response to requests from trade unions—legislation which was unprecedented given that the relevant provision had been in place since 1904 at the very inception of a federal arbitration system. It was quite astonishing legislation.

The second issue is that of junior rates. We have already referred to the VACC survey, and that survey is more important evidence, we say, for the need to preserve age based junior rates. The results show that some 75 per cent of employers believe that the existence of these junior rates is a very important element of their decision to employ. In response to Senator Murray’s request, it also contains a brief survey of junior attitudes, which shows some 75 per cent of juniors of those surveyed believed their wages were fair.
and the age based lower rate was part of a transition from school to work of a temporary nature assisting them to enter the work force.

**CHAIR**—Further to your comments with respect to section 152, I am interested in your response to a matter we dealt with with Professor Sloan—I think it was yesterday. She suggested, and then perhaps said that she might regret suggesting, that one way to deal with some of the concerns raised about section 152 would be to apply the federal tests to any move back to the state system agreements. Would the ACCI have a view on that matter?

**Mr Noakes**—Senator, we answered that in our earlier submission. We said that the state parliaments are entitled to enact their own industrial legislation. They had done that and they were answerable to their electorates. We referred to the particular case of Victoria which has, indeed, faced another election since it enacted the provisions about agreements in Victoria. We would not wish to see the rights of the states interfered with in that respect.

**Mr Hamilton**—I would just add to that by saying it is now a matter of common knowledge in media reports that the Victorian government will, it appears, shortly transfer their system to the federal system. So the issues raised in relation to the Victorian system seem no longer of relevance to this committee.

**CHAIR**—We would equally like to be convinced of that, Mr Hamilton. But, unfortunately, the Victorian government chose not to respond to our request for a submission or for an appearance before the committee. So we are not in a position to comment on that information at all.

The only other issue I would like to go to from your submission is further to your response to Senator Forshaw’s question in relation to conventions by the International Labour Conference. I was also interested in that point because your original submission mentioned, on several occasions, reference to international best practice. Would you regard ILO conventions as one measure of international best practice?

**Mr Noakes**—That is a difficult question to answer, Senator. There are certain ILO conventions which are referred to as the fundamental conventions which have received a very high degree of ratification and support. Those are conventions 87 and 98, to which I referred; convention 111 on discrimination in employment; conventions 29 and 105 on forced labour; convention 100 on equal pay; and convention 138 on minimum age for employment. Of course, there are many others which have received very low rates of ratification, some of which you would be very intimately aware of. For example, the part-time work convention has, so far, only received one ratification.

**CHAIR**—But it is reasonably new in terms of the ratification process.
Mr Noakes—Yes, indeed. But there are others of much longer standing which have low rates of ratification. It is difficult to say that every ILO convention is an example of international best practice. I think we can probably say that about the fundamental conventions that I referred to.

CHAIR—In relation to ILO conventions overall, I have had a look at the list of the ones that the ACCI, representing Australian workers, supported at ILO conferences. This is on page 4 of your submission. Would that be an accurate depiction? Since convention 173, how many more conventions have there been?

Mr Noakes—I think we are up to about 190.

CHAIR—Okay. Originally I was looking at that and looking at a tally of, maybe, 50-50, but it is obviously much higher than 50-50 in terms of the level that have not been supported if it has gone up to 190. I am sorry, I am at a disadvantage, too, Mr Noakes. I cannot recall the number of the part-time work convention to try and get a feel for how many there are in total.

Mr Noakes—Senator, I did make some remarks about the relevance of this when Senator Forshaw asked the question. I really do not think it is relevant whether or not Australian employers support the adoption of the convention at the conference.

CHAIR—That, Mr Noakes, was in relation to my question about international best practice. As I indicated to you in your earlier submission, you had referred to Australia’s need to pick up international best practice. You have just indicated that, at least in some instances, you would regard some fundamental conventions of the commission as either in tune with or as representing international best practice.

There is one in particular, though, that I would like to focus on, and that is the family convention, which was previously specifically referred to in the act. I note from your list that it was not supported when it was moved through the ILO. Do you have any particular comments in the current framework with respect to the family convention in terms of the objects now in the act and that the bill is meant to take account of those objects?

Mr Noakes—Senator, we did not support ratification of that convention. I do not recall the reason, but it may be as simple as there was one provision which we saw as causing difficulties. To go back to my earlier remark, it may be that 90 per cent of a convention is seen as causing no problems for Australia, but 10 per cent or one provision is, and therefore we do not agree with it.

So far as your direct question is concerned, I think that the bill is consistent with the aim of the convention. I do not see any problem in terms of the provisions for the bill so far as that convention is concerned.
CHAIR—In your earlier comments about AWAs being underpinned by awards, you made reference to remuneration. I think the actual wording is wages. You probably would recall from our debate on the part-time work convention that, at least in terms of international standards, there is considered to be a fundamental difference between the terminology.

Mr Noakes—It may be, but I think the phraseology in the bill, if I remember correctly, is wages generally. I think that is a fairly wide term. For example, there is some doubt as to whether the concerns expressed to you in the last submission about increments not being encompassed in wages generally is a correct assumption.

CHAIR—Shift premiums is another one.

Mr Noakes—Shift premiums are included, yes.

CHAIR—In your view they are clearly included.

Mr Noakes—They are included, yes.

Senator CRANE—I will come to that very point because I wanted to address your question on that. On page 25 of the bill, under ‘Scope of industrial disputes’, it says:

For the purposes of subsection (1) the matters are as follows:

\(\text{(c) rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors,}\)

and I will not read the whole thing out. My question deals with this particular aspect of wages—and you did partially address this. Looking at this particular aspect, we then go to section 170LG, which is about minimum conditions dealing with certified agreements. This section refers directly to part VIE on page 155 where it says:

\textit{wages} over a period no less than the wages that would have been earned over the period under the award—

and it refers to sections 170XF, 170XG, et cetera, which deal with casuals, pieceworkers, et cetera—and, once again, I will not read them all out. Would you agree that each one of these clauses, as you work through it, relates back to the applicable rates of pay generally, to get the right term? So everything is underpinned by that decision by the commission with regards to pay generally.

Mr Noakes—Yes, that is absolutely correct, senator. We made the point in our earlier submission about the significant protection that was provided in that respect. Since you have referred to the allowable matters—back to the Chair’s question—when I used the word ‘remuneration’, I had in mind that what is in the allowable matters, of course, goes a
lot further than wages or rates of pay generally. It goes to piece rates, it goes to leave loading, it goes to allowances and it goes to loadings for overtime, casual or shift work penalty rates, and it goes to redundancy pay and so on. That is why I used the word 'remuneration’. It is not simply the award rate of pay that we are speaking about here.

CHAIR—Sorry, Mr Noakes, I thought you were referring at the time to the provisions with respect to AWAs rather than the allowable matters in the awards.

Mr Noakes—I am sorry. We were speaking at cross purposes then.

Senator CRANE—Thank you for that. You have saved me asking you at least two questions with that answer. This morning the Business Council said to us that, in fact, they viewed this bill as one not of deregulation or deregulating but of decentralisation. Would you agree with that comment?

Mr Noakes—Yes, I agree with that. I have already said that the bill does not introduce a significant amount of deregulation. In fact, in some areas it introduces more regulation. There is more regulation about Australian workplace agreements, for example, in terms of the provisions concerning the role of the employment advocate in relation to Australian workplace agreements, which we had a discussion about on the last occasion. But it is impossible to say, in my view, that the bill introduces any significant degree of deregulation. On the other hand, it is possible to say that it represents another step in the decentralisation process of trying to shift the level of negotiation from the industry level to the enterprise level, and, to some extent, from the collective level to the individual level.

Senator CRANE—Thank you for that additional information on independent contractors, because I asked for that. In Sydney, I asked the transport industrial organisation a question—I just forget the full name because I don’t have it in front of me—about when a subbie ceases being a subbie in the transport industry and becomes an independent contractor. Their answer to me, in essence, was that they believed a subbie who just owned and drove his own prime mover, which could be valued, as we know, somewhere between $200,000 and $350,000, should not be considered as an independent contractor.

I just want to contrast that against a person who works, for example, in the building industry as an independent contractor who can own a Holden ute worth $8,000, a cement mixer worth about $1,500 and a few bits and pieces and with a capital outlay of somewhere between $15,000 and $20,000. As we know, there are plenty of those around. They are considered to be independent contractors. Where would you draw the line? Do you think it is reasonable when somebody has an outlay in the order of $250,000 to $300,000 not to be considered as an independent contractor?

Mr Noakes—I do not think it is possible to be specific about that. That is one of the tests that has been used from time to time. But I think the more usual test is one of direction and control in terms of whether a person is regarded as an employee or an
independent contractor. I do not think it is a definitive question. I do not think the question of the amount of investment is always definitive.

Senator CRANE—Finally, I would like to thank Mr Hamilton for his explanation with regard to what has occurred for the last 92 years. For clarification, my understanding is that those arrangements existed unchanged for that period of time, without any change whatsoever, and that it was not until the 1994 legislation that they changed it, or did you say the 1992 legislation?

Mr Hamilton—Yes, the 1992 legislation. It is quite an astonishing result to have a 1904 provision on such an important issue essentially unchanged for 88 years.

Senator MURRAY—Firstly, Mr Noakes, thanks for answering the questions, it is appreciated. Secondly, I would like to congratulate your organisation. In my view, we have had far too few employer organisations before the committee. Your organisation has made a consistent effort in every state to assist this committee, and I am personally grateful for that. I would like to move to the secondary boycott issue. We have received some evidence from the DIR showing that the ILO views the ban on secondary boycotts as a clear breach of freedom of association and the right to organise.

Proposed 45D(b), which builds on the old 45D(1)(a), goes much further than the classic secondary boycott because it picks up primary boycotts, consumer boycotts, environmental protests and so forth. We are dealing here with fundamental issues of individual and human rights. In this bill we have quite often been concerned with the two major themes of money for employers and employees and rights, which is particularly sensitive.

Does your organisation view the economic damage which can be done by secondary boycotts as so important as to override those internationally recognised rights to take political action or to express an opinion politically through boycott activity?

Mr Noakes—We have never accepted that there are internationally recognised rights to indulge in secondary boycott action. Many countries do expressly prohibit secondary boycotts—even countries which have what might be called fairly open labour legislation which gives extensive rights to employees and to trade unions.

It is true that the ILO has made some comments about section 45D and E. That was some time ago and we at the time expressed our disagreement with the comments. We think they were misinterpreted by the previous government.

The ILO comments were directed towards, firstly, sympathy strikes which are often a different thing from secondary boycotts and, secondly, one or two specific situations. One that I can recall in particular concerned the possibility of problems existing on a construction site in the occupational health and safety area where, although only one set of
employees working for one employer might have been directly involved, the consequences might have extended to all of the employees on that site working for various other employers. This is the example where the ILO said, ‘Secondary boycotts in that sort of situation might be justified.’ We do not even accept that. But I am simply making the point that they put their comments on section 45D and E in a very limited context. It was not, by any means, an all-embracing criticism of those sections.

Senator MURRAY—Thank you, Mr Noakes. Your answer is, as always, thoughtful and I appreciate that too. Do you support the provision in the bill that damages for unfair dismissal should be mitigated to take into account the economic viability of the employer?

Mr Noakes—Yes, we do. I can recall instances where decisions made, particularly by judicial registrars, have imposed very significant costs on small employers. One of those was, in fact, in Perth where the business was involved in significant disruption and lengthy and expensive hearings and then a very large sum was awarded to the employee in question. I believe that it is appropriate to take into account the effect of possibly very large compensation awards to individual employees on the viability of the business. If the business—

Senator MURRAY—Can I interrupt, if I may, Mr Noakes, because I am being signalled that we will run out of time. I need to follow, really, the point of that question and that is: on the basis of the same argument, would you agree that the damages for a secondary boycott or industrial action should also be mitigated to take into account the economic viability of the union or the individual worker? Because if unfair and illegal actions of an employer should be mitigated for breach of contract, in the interests of balance should not breach of contract actions of employees similarly be mitigated?

Mr Noakes—I think they are two different things. I would distinguish the unfair dismissal situation; that is totally different. But also there is a distinction to be made because the viability of the business does not only affect the employer, it affects the other employees. It seems an argument is to be made that there is not much sense in compensating one employee to an extent which puts other employees out of work or causes them to lose their employment—and this is a very real possibility with small businesses.

Senator MACKAY—Mr Noakes, can you refresh my memory in relation to the paper that you have included with the responses to the committee’s questions, from J. W. Nevile and B. Tran-Nam? Can you refresh my memory as to who they are?

Mr Noakes—Professor Nevile is a professor of economics at Sydney University. I think he is a very well-known economist. As to Mr Tran-Nam, I am afraid I cannot tell you.

Senator MACKAY—I looked and looked and I could not see any indication of
who they are, so I wondered whether you knew.

Mr Noakes—We will find out and let you know.

Senator MACKAY—I have just had a flick through and it strikes me as a fairly extraordinary piece of research. So rather than go into detail now, it might be better for me to get in contact directly with them, if you could advise me as to who they are. Did they prepare this paper for the organisation or was it already written?

Mr Hamilton—No, it was given, as I recall, a number of years ago to an economics conference. It was written up in the media. I contacted Mr Tran-Nam and obtained a copy. I put it to the Human Rights Commission inquiry into allegedly discriminatory over-award payments which resulted in the Just rewards report. Unfortunately, despite my request, the Just rewards report did not, as I recall, even address this paper.

Senator MACKAY—How long ago was this paper released?

Mr Hamilton—it would have been in about 1992 when that report was prepared.

Senator MACKAY—I might raise some of these issues later on with Sue Walpole.

Mr Hamilton—She was not involved in that inquiry at the time. Ms Quentin Bryce was the Sex Discrimination Commissioner then.

Senator MACKAY—I will look at it. If you could provide an indication as to who these two people are, I would appreciate it.

Mr Hamilton—Yes.

Senator MACKAY—Do you believe there is a nexus in this bill between the institution of the bill—I know you do not like the term ‘deregulation of the labour market’, so whatever appropriate term you wish to use; that is the term I would choose to use—and productivity increases? Do you think there will be a correlation?

Mr Noakes—Yes. We think the provisions of the bill, if enacted, will give the opportunity for employers and employees to negotiate and enter into agreements in a way which should increase productivity.

Senator MACKAY—but productivity as it is measured in terms of the formula that is used by the ABS—and by the Western Australian government, incidentally? Do you think productivity overall will increase?

Mr Noakes—One of the great problems in this country is our low rate of produc-
tivity improvement. Since 1979, we have been considerably below the OECD average; certainly, far below the experience in some of the closer Asian economies. That has occurred despite all the steps that have been taken to try to increase productivity.

We have had, as we have already said, changes in the approach to legislation, changes in the wage system, a greater emphasis on enterprise agreements. The productivity improvement is coming through very, very slowly. One of those reasons, we believe, is the emphasis which is still placed in the legislative framework on the provisions of awards, and the lack of emphasis that is placed on agreements and agreement making. This bill goes a long way towards redressing that.

Senator MACKAY—If that is the case, then you would expect, surely, that there would have been an increase in productivity in those states that have already instituted industrial reform.

Mr Noakes—Firstly, there has not been a very long period to judge it by. Secondly, despite what I said before about the period 1979 to the present, there has been an increase in the 1990s. We have slowly lifted our performance in the 1990s, so it is getting better but it is still way below what it should be.

Senator MACKAY—You are saying there has been an increase in productivity in the 1990s.

Mr Noakes—There has been a measurable increase but it is still, from memory, between 1½ and two per cent.

Senator MACKAY—Is there a differentiation in those states that have introduced industrial reform in terms of productivity and those states that have not? It could be logically concluded that there would be, if your assertion is correct.

Mr Noakes—I do not think it is possible to answer that question on the statistics.

Senator MACKAY—I have got the statistics, and there has not been.

Mr Noakes—I think they are all done in an aggregate, Australia-wide way.

Senator MACKAY—No, they are not. They are done state by state. But I will table those at another time.

Senator FORSHAW—You said, Mr Noakes, that awards will be left largely intact—or untouched, I think were your words—and it will be 18 months before the legislation removes automatically the provisions that do not fit within the allowable items. How can you logically argue that awards will be untouched when what that will mean is that a lot of clauses will disappear out of awards? I would venture to say that in many
cases those awards were inserted by consent, that is, by agreement between the parties, which is the very philosophy that you claim to support, that is, having agreements? This legislation will retrospectively remove the result of those agreements.

Mr Noakes—It is very difficult to find things that will be removed from awards. If you look at some of the things that have been said to this committee—protective clothing, meal breaks, superannuation, which is covered by legislation, anyway—it is very difficult to find matters of any significance which fall into that category.

Senator FORSHAW—Of significance to whom—you or the employers and employees?

Mr Noakes—Of significance to anybody. Let us not forget that—

Senator FORSHAW—Your value judgment may be different from that of the employees, but let us move on because we are running out of time. The other point I wanted to raise is this: as you are aware, there are a lot of state awards, particularly in states like New South Wales, which are counterpart to federal awards. If they are not direct counterparts, they closely follow the federal award—rural sector, construction industry, small manufacturing. A lot of employers who would be members of associations represented by you through, say, the employers federation are covered by those state awards. Isn’t the result of this legislation to create greater disharmony between federal and state regulation because of the fact that the state awards will continue to exist with provisions in them which will be removed from federal awards by legislation?

Mr Noakes—that may happen, Senator, but if—

Senator FORSHAW—How does that create greater harmony which is the objective of your—

Mr Noakes—Could I finish the answer.

ACTING CHAIR (Senator Ferguson)—Let the witness finish the answer before you start the next question.

Mr Noakes—I said that it may happen but it probably will not. If they are true counterpart awards then the tribunals in the state areas ought to reduce the conditions in the same way as—

Senator FORSHAW—So you rely on the New South Wales state commission—

ACTING CHAIR—Senator Forshaw—

Senator FORSHAW—He has answered the question. We are running out of time.
ACTING CHAIR—I am sorry, but the witness does not interrupt the questioner. I think that the witness must be allowed to answer the question in the way he sees fit.

Mr Noakes—I think I have answered it. If they are counterpart awards they should have the same provisions as the federal award.

Senator FORSHAW—So if the federal awards get varied by legislation to remove those provisions, it then requires the New South Wales industrial commission to vary those same counterpart awards in those same industries to remove the same provisions, is that your position?

Mr Noakes—I do not think the state tribunal is required to do that. I think if there was an application made to do it they would have to consider it very seriously.

Senator FORSHAW—So federal legislation will drive state legislation, which is the antithesis of what you say this legislation should do?

Mr Noakes—On your own example it has.

Senator FORSHAW—Mr Hamilton argues that that should not be the case.

Mr Noakes—that has been the practice. If there are counterpart awards, it is the federal system that has driven the state system.

Senator FORSHAW—I will leave my comments there.

ACTING CHAIR—This morning, Mr George Wason said that employers do not care and take shortcuts when it comes to health and safety measures, and that only a small minority of employers have any care about health and safety measures with regard to employees. Have you got a comment to make on his evidence in that regard?

Mr Noakes—I did not catch who it was.

ACTING CHAIR—it was Mr George Wason from the ACT branch of the CFMEU.

Mr Noakes—I do not agree. I think employers are very concerned about the health and safety of their employees. They are also subject to extensive regulation, enforcement of the provision of those regulations and very expensive workers compensation premiums and possibly claims. I do not accept that whatsoever.

ACTING CHAIR—There is one other issue and that is the issue of small businesses. I raised at an earlier hearing the fact that anecdotal evidence would suggest that many self-employed people do not take on employees because of the complexities and
paperwork involved with employing people and also to some extent the consequences of unfair dismissal. I notice in the small business in Australia document that, for instance, in the construction industry there are 143,000 own account workers—that is, those who employ nobody—and only 40,000 employers who employ in total only a few more than the own account workers. Whether the fear of the paperwork or the unfair dismissal provisions is real or imaginary, is it not a fact that it does have some effect on employment opportunities?

Mr Noakes—There is no question about the unfair dismissal legislation and we did address this on the first occasion we appeared. We referred to the various surveys which had been undertaken including our own. As to the other matters, in my view there is also no question that excessive regulation and administrative requirements are a further discouragement to employers in taking on additional workers.

Senator Margetts—You talked about hysteria, exaggeration and misrepresentation and yet when the committee heard evidence from various bodies in Western Australia we heard frequently from people who actually had so-called minimum pay and conditions removed. We also heard how the public advocate is supposed to advise their rights on how to get around the definition of ‘coercion’ in relation to individual contracts. It seems that coercion was only important if a person was already employed. If a person was applying for a job they did not seem to have any rights against coercion if they were required to give up an award in negotiations. Would you like to comment on that? It does not seem like those incidents were hysteria; they were clear evidence that the system in Western Australia has no way of guaranteeing any particular minimum rights for workers.

Mr Noakes—It is very difficult to comment on the examples that you mentioned. I have not had the benefit of hearing what was said or reading the Hansard because it has not been available. I think one would need to look very carefully at those sorts of claims. There are some protections in the Western Australian system and there are protections in the workplace relations bill. I would think, without wishing to address the Western Australian legislation because other people can do that, the protections that are in the workplace relations bill are, as I have said previously, quite extensive.

Senator Margetts—The other example that you mentioned was productivity. One of the other examples that was given from Western Australia was that Hamersley Iron announced that it had increased its productivity over a period by 60 per cent but the increase in rates for workers was 10 per cent. To get that 10 per cent they also had to trade off pay and conditions. Would you comment on whether you think that is fair and that is what you think we should be aiming for under workplace agreements?

Mr Noakes—I just do not know the answer to that one. We would need a lot more information. Hamersley Iron probably has invested many millions of dollars in trying to keep its operation going and to provide continuing employment.
Senator MARGETTS—I am asking you, as a leader of a group of employers, whether that is what you think you are promoting in terms of productivity benefits—that, even if there is a fairly large increase in productivity, the workers will gain an increase in rates if only they also trade-off conditions. People are saying that the benefits of extra productivity will go to workers. Are you sure this is going to be the case?

Mr Noakes—There should be benefits to both parties in productivity growth. They may be in terms of increased wages and conditions. They may be in increased employment or in increased security of employment. They may be benefits to the community in terms of lower prices, for example. But I think that so far as the direct parties are concerned, the employers and employees, there needs to be some benefit to both which derives from productivity growth.

ACTING CHAIR—Senator Margetts, we will have to stop there. We are over time; we have a long night ahead of us. Mr Noakes, I suggest that perhaps for Senator Margetts’s benefit we may be able to get you the transcript of evidence that she was referring to. If necessary, you may be able to respond to that to Senator Margetts.

Mr Noakes—Yes; thank you.

Senator CRANE—to actually respond to what was said.

Mr Noakes—Yes. There seems to be some delay in the provision of the transcript.

ACTING CHAIR—There is, because we have been on the road all the time and it is very difficult to get hard copies. Thank you once again, Mr Noakes and Mr Hamilton.

Short adjournment
[3.56 p.m.]
CAMBRIDGE, Mr Ian, Joint National Secretary, Australian Workers Union, Suite 15, 245 Chalmers Street, Redfern, New South Wales

ACTING CHAIR—Welcome. I believe we have a submission from you here. I invite you to give a brief overview of that submission and we will then ask questions.

Mr Cambridge—At the outset I thank the committee for the opportunity to provide some further submissions in addition to the written submission that was provided. Given the time constraints, I will try and abbreviate my comments as much as I can.

This submission is divided into two parts. The first part is essentially a case study of what our union believes will be the practical impact of the proposed legislation. In this respect we have specifically looked at the pastoral industry award. The second part of the submission relates to some proposed changes with respect to schedule 15, matters relating to registered organisations and specifically the proposed new sections 280A and B, those sections relating to financial reporting of organisations and the obligations upon registered organisations with respect to financial reporting.

The first part of the submission relating to what I have referred to as a case study attempts to identify what we see as being some very practical problems that would result from this bill if it should become law. We have identified a number of real, practical problems and, in the submission, we have spoken about the specific nature of the pastoral industry and the history of the pastoral industry award and the effect that the proposed section 89A, in particular, would have on the pastoral industry and the pastoral industry award.

We believe that although the parties to the pastoral industry award have not always been happy with some of the outcomes, it has, by and large, well served the parties to the award very over a long period of time, and if it were to be stripped of provisions which it currently contains, which would occur as a result of the proposed section 89A, which limits the areas which can be held to be the subject of an industrial dispute, then some very real practical problems emerge for the industry.

In this regard, we have specifically referred to a discussion which has taken place between the peak parties to the award—the Australian Workers Union, the National Farmers Federation and the Shearing Contractors Association. Those three parties recently formed a body which goes by the unusual acronym of PANIC. It is a negotiating committee which deals with various matters relating to industrial relations in this industry.

I suppose most senators would be well aware of the fairly rocky history the pastoral industry has had in terms of industrial relations over the years. That committee was formed in recent years to try to avoid a repetition of those sorts of problems and the confrontation that has beset this industry over many years. I think that committee has been
quite successful, even though it has been only fairly recently formed. That sort of cooperative and collaborative approach to industrial relations which was occurring has already been disrupted by the proposed legislation.

During discussions at the PANIC there has been broad agreement that if the award provisions are removed, by virtue of the operation of proposed section 89A, there will be considerable confusion and an absence of certainty in terms of this industry, and it will lead to some real, practical problems. In the submission we have actually touched upon some of the practical problems we see by current clauses in that award being removed and by the operation of the proposed legislation.

We have touched on a number of specifics, but I will mention just one; that is, the issue of a thing called the found rate deduction. Anyone who is familiar with this award and this industry would know that the award contains what is called a found rate deduction. Under proposed section 89A, that is a clause which would disappear from this award. It is then a practical example of an absence of any certainty arising in respect of what is a very important issue relating to this industry. Employees and employers would then be forced to try and agree on a rate of wage deduction that might apply in the event that particular employees are provided with food when they are employed in this industry. That is just one example. We have touched on a few others.

Essentially that demonstrates, in our view, the practical problems that arise if this particular part of the proposed bill becomes law. It is not just the union saying that. This is a matter which has been discussed in the PANIC forum and broadly agreed amongst all the participants. The NFF and the shearing contractors expressed in the PANIC forum the same concern about what would become the absence of any certainty and degree of understanding in relation to some very important provisions in this industry. We have done a very brief analysis of a number of other clauses in the award and tried to categorise those that would be removed by the operation of proposed section 89A, and that is contained in the written submission.

Another effect of this proposed legislation, if it were to become law, relates to another benefit that the award currently provides this industry in terms of certainty for contractor engagement. We describe contractor engagement in the submission. Contractors in this industry have to tender sometimes many months in advance of the actual shearing operation. They have to base that tendering process upon some benchmark. The benchmark in terms of wages is obviously the award. If these changes to the award are made and the possibility for AWAs then arises, the contractor is left in the very difficult position of having no certainty at all upon which to tender for any of these operations. That simply then could be the subject of negotiations in respect of an AWA.

Because of the very nature of this work, because it is work which is very spasmodic, we could see the ludicrous position arise where employees and employers might be attempting to negotiate an AWA in respect of, say, two weeks work. That negotiation
might take a number of days to conclude, all of which is an unnecessary delay. Although the general theory of driving industrial relations back to the workplace seems to have some nice rhetoric about it, in a practical sense in some instances it would simply become an impediment to productivity.

Looking at those things which would be removed from this award by the operation of proposed section 89A, here we would see an award become less relevant. The industrial relations prescriptions would become less relevant, not more relevant, to this particular industry. It would not serve the industry at all. We would see potential for all sorts of enormous differences in outcomes if AWAs arose in terms of every shearing shed in this country. That is the case study we have tried to provide to the committee as demonstration of some very real, practical problems with the proposed legislation.

The second aspect of the submission relates to schedule 15 and the proposed changes in respect of section 280A and 280B. We have actually said that we think those changes are good changes. We think there is merit in what is considered there.

However, when one examines the bill, there is an interesting change that is proposed in respect of the insertion of a new provision under section 189(1)(a). This relates to the criteria by which registered organisations can become registered. It introduces a new criteria. It states:

(aa) in the case of an association of employees—the association is free from control by, or improper influence from, an employer or by an association or organisation of employers.

I think such a proposition is an admirable one, and one has to wonder why it is that such a criterion is being introduced. It is obviously going hand in glove with those changes that are being proposed in respect of the establishment of enterprise branches—I think that is what they are referred to as—of organisations. When one looks at that, as admirable as it is, there is not sufficient strength in the legislation to actually ensure that such a thing could even be identified, let alone provided for.

So what we have proposed is that the legislation should go further in respect of those requirements in relation to ensuring that employee associations are free from control or improper influence, particularly from employer bodies—or from anyone else for that matter. In that regard we believe that there is a need for strengthening the financial reporting provisions of the legislation to provide for greater accountability of officers of registered organisations. In that regard, we have proposed three specific areas which we believe need to be looked at.

Firstly, we think there should be legislation which requires some form of pecuniary interest declarations in respect of officers of registered organisations. The parliamentary pecuniary interests are, I think, voluntary.

ECONOMICS
Senator CRANE—No, they are not.

Mr Cambridge—They are not? They are obligatory?

Senator CRANE—Yes.

Mr Cambridge—That is good. This should be obligatory also. Secondly, there should be requirements in respect of related party transaction declarations, particularly in respect of office holders who hold any position in registered organisations on committees of management and who deal with the financial affairs of registered organisations. Finally, the third point is that there ought to be some disclosure of the source of election campaign fund donations for persons who might be seeking office in respect of registered organisations.

We think those changes are necessary as a prerequisite to ensure that the criterion, which is talked about in the proposed new paragraph to be inserted after 189(1)(a), has any chance of doing what it wishes to do. Otherwise, there is a section there which, in reality, has no capacity to actually achieve anything. There has to be some complementary legislation to ensure that that actually occurs.

Senator CRANE—Those suggestions you have put there would follow 280 and 280A.

Mr Cambridge—I do not know where they would go. I am not drafting the legislation. What I am suggesting is that there ought to be some consideration given to addressing legislation relating to those issues. Otherwise, there is no point in putting that other provision in the criterion for registered organisations. Where it goes and how it is drafted is another matter.

In conclusion I simply say that we have clearly divided our submission into two distinct areas. The first one, of course, was really just an attempt to provide a case study of some of the practical problems that we see arising in the event that this bill would become legislation. In the second one, rather than be entirely negative, we have also tried to provide some positive suggestions in terms of the requirements in financial reporting, which we believe are necessary. I thank the committee and I am happy to answer any questions.

CHAIR—Thank you, Mr Cambridge. I am interested in the part of your submission which deals with pastoral workers. This follows on from some of the evidence we heard, I think, from the National Farmers Federation of Western Australia, which was generally to the effect that pastoral workers were usually paid significantly above the award in Western Australia and that the award had little relevance. Could you comment generally, in terms of the pastoral industry, on the irrelevance of award conditions and what proportion, Australia wide, you feel would be in that sort of circumstance?
Mr Cambridge—Being paid more than the award?

CHAIR—Yes.

Senator CRANE—Can I just make a clarification. They were talking about the farm workers award in WA, not the pastoral industry award.

Mr Cambridge—The federal pastoral industry award does not apply in Western Australia. We have a WA shearing contractors award that applies there. So I suppose there is a special set of circumstances for WA. Looking at the rest of the country—

Senator CRANE—But 8,000 properties have been cited under the federal pastoral award.

Mr Cambridge—There is, but there is a specific Western Australian shearing contractors award as well. So, by and large, in Western Australia we have the operation of that award, although there may be Western Australian respondents to the federal award as well. I accept that, yes.

Senator CRANE—There are 8,000.

CHAIR—Senator Crane, I will come to you.

Senator CRANE—Sorry, it was just a clarification.

CHAIR—Mr Cambridge, could you address the question in general, please.

Mr Cambridge—I think, once again, the circumstances in which workers in this industry might negotiate something above the award do occur from time to time. There is no doubt about that, but that would usually relate specifically to just the rate of pay that is paid. It would not be the norm. It would be, in my view, the exception rather than the norm.

Senator FERGUSON—At some stages during the inquiry some members of the committee have been at pains to talk about differences that occur between some employer groups and their representations to this inquiry. I was interested in one of your comments at the end of your submission because in Sydney we heard from Mr Harrison, who is the joint secretary of the AWU I understand—although I am not well versed in union activities. I do not recall that he mentioned, at any stage in his evidence, anything about financial accountability. I am just wondering whether there is a difference in your submissions, although you both represent the AWU.

CHAIR—Mr Cambridge, before you answer that question I should clarify one
situation which, unfortunately, I did not deal with at the commencement of this hearing. The secretariat had tabled your submission before the committee as an error when we were in Sydney, thus it was ensured that you had the opportunity to appear today. There was at the time an impression that Mr Harrison, appearing before us, was appearing with a written submission. He in fact did not do so; he spoke to us orally on the occasion. As I mentioned, your submission was tabled at that time rather than being dealt with now.

Senator FERGUSON—I must say in preface to that question that I had not read your submission until today, if it makes it any clearer for you.

Mr Cambridge—They touch upon different areas.

Senator FERGUSON—There was no recommendation from Mr Harrison to do with financial accountability, but you seem to make quite a strong point in your oral submission about financial accountability.

Mr Cambridge—Mr Harrison dealt with other issues. I have dealt with that one.

Senator FERGUSON—I will accept that.

Senator FORSHAW—As everybody here knows I was a former General Secretary to the Australian Workers Union, so I am at least familiar with some of the issues that have been raised. I do not think that is a conflict of interest, but I should mention it anyway. I am sure Senator Crane will mention his interests later.

Can I take your case study of the pastoral industry a bit further? I appreciate that it is just one example of the problems that can arise with the removal of award provisions that a lot of people might regard as irrelevant but, in this industry, are not irrelevant.

You may have been here when Mr Noakes was answering questions and I put this to him as well. As I understand it, there are a lot of awards—particularly for the AWU but other unions as well in the state jurisdictions, such as New South Wales—where they are either counterpart awards or closely follow the federal award. A similar situation would exist in the pastoral industry. Can you comment upon what you think might result from this legislation if federal awards have a whole swag of provisions removed from them by legislation but they will still remain in the state awards in those industries?

Mr Cambridge—The pastoral award does have a number of ‘mirror image’ awards of state jurisdictions around the country. If this bill becomes law and we have the removal, after the 18 months of transition, of the provisions in the federal pastoral industry award which would be prohibited by the operation of section 89A, we would then have a very confusing circumstance arise where those mirror image state awards would be at significant variance to the then federal award.
We would have some confusion arising as to what provisions should actually prevail, particularly in states where there is a common rule award applying. For example, if the federal award no longer prescribes a found deduction but the state award still prescribes one—even though the particular individual might be a named respondent to the federal award—given that the federal award is silent on that question, then I suppose the state award would apply in relation to found deduction. One would be looking at one award for that and another award for something else in terms of the provisions. It would become unworkable and very confusing.

Senator FORSHAW—What you seem to be putting to us is that in an industry like this, which is very important to our export income, the award plays a significant role in ensuring that there is a level playing field right across the country and that the employees—the shearers particularly—turn up at the job site and get on and do the work. What really determines their income is the piecework rate and how good they are, and there is a lot of competition in the industry. Is that the case?

Mr Cambridge—It is incredibly competitive. In the prediction that this became law, we have been attempting to reach agreement with the NFF in order to provide that so-called level playing field. I have certainly seen significant evidence that the employers and the contractors want it—not necessarily the employees, although they desire it as well.

There is the proposition of an accord, but the real dilemma we face is that even if the union and the NFF can agree on a whole variety of issues through our PANIC forum, there is no capacity for that to be legally enforceable by virtue of the operation of this bill. So even though the NFF and the AWU might reach a great historic agreement, we would not have any capacity to have that legally enforced.

Senator FORSHAW—My recollection is that the pastoral award covered two essentially discrete groups of workers, one being the shearing industry and the second group being farm workers on wheat properties and that. It is in that latter area that you would find a high level of over-award payments. But in the shearing industry, the award rate, essentially, is the rate used by the contractors to bid for prices. Is that your recollection?

Mr Cambridge—Yes, it is the norm. It is only in exceptional circumstances that there is an alteration.

Senator CRANE—Could I also compliment you on your submission addressing the issues? We actually have some new material in front of us in this submission which we have not had in a lot of the submissions. Can I come to this matter you raised about the various allowances? And I will declare my interest: I am a woolgrower, and I have been heavily involved for many years.

Senator FORSHAW—And a former union official.
Senator CRANE—A former union official, yes; with the Farmers Union. We will not go over history; it is well documented. A number of allowances have existed for a long time in the federal pastoral award. They were modified in the early 1990s when my colleague Senator Forshaw and others were involved. Why won’t they be covered under the provision of allowable matters, under allowances—J? My understanding is that they are allowances which are applicable to the federal pastoral award because of its peculiarity or special circumstances or what have you. I would have thought they would have been covered.

Mr Cambridge—A found deduction is not an allowance; it is actually a reduction from your wage. It is not a paid allowance.

Senator CRANE—But it is an allowance in the sense that you provide certain things in return for a different rate of pay. I do not see why that would not come under that particular aspect of it. Certainly now you have raised it I will examine it.

Mr Cambridge—This is the debate we had with the NFF and the shearsers’ contractors at the PANIC meetings, and we have been trying to second-guess what would be in and what would be out. It makes it very complicated. All one needs to do is to imagine that someone somewhere will challenge the new legislation and say, ‘How can a found deduction from a wage possibly be considered to be an allowance? How can the question of the provision of learners in sheds be possibly considered to be something comprehended by those matters which this legislation would restrict the commission to finding in an industrial dispute?’ It is fertile ground for argument, I guess; that is what I am saying. There might be a procession of cases testing every one of the provisions in the award to try to determine whether or not it should or should not be comprehended by the dispute.

Senator FORSHAW—It never happened in the past.

Senator CRANE—The commission will deal with that. When you combine that with 89A(2)c where it talks about rates of pay generally, whatever interpretation you put on it, whether you come from one end and say it is not an allowance or the other situation and say it is a rate of pay, I would believe that and I will certainly follow it through—the particular points you raised are covered in terms of those allowable matters.

Mr Cambridge—We have had a look at it and we have had discussions with the NFF and indicated that we thought they would not be.

Senator CRANE—They will be here tomorrow too. I will be interested to hear what they have to say.

Mr Cambridge—Yes, but when we have looked at these things we have not been certain as to whether they were allowable or not allowable. When you look at the formula
that is used to construct the rate per hundred for shearing, for instance, there was broad agreement that various elements and components in that would not be allowable and that therefore we might be in a position where we would have a rate struck by an award but no historical basis upon which that rate was derived. We would just simply have to say, ‘It is $156.50’, or whatever it is, and ‘Don’t ask any questions; that is what it is.’

That leads to a series of problems, too. It contains recompense or recognition for combs and cutters, et cetera. So what do you say then about those factors? Are they lost for all time? Are these people never going to be subsequently compensated for the fact that combs and cutters increase in price? I think the whole notion of actually restricting the ambit of industrial dispute to these prescribed points potentially leads to a position where what you will do is ensure that things that the parties in that industry really want to have in cannot go in, and that is a real problem with this proposed legislation.

Senator CRANE—I understand what you are saying. We have limited time. Can I come to another matter in terms of this and the operations of the pastoral award in the past? You had the main award which would be negotiated through the processes and what have you, and then you had other ones. For example, our operation was covered by, I think, the No. 4 roping-in award in Western Australia. Why wouldn’t you negotiate, in terms of that, your agreement with the NFF and the appropriate parties, and then do what was done in the past? In fact, with the No. 4 roping-in award, when there was any change made to the principal award, then that movement was made to mirror the No. 4 roping-in award to be the same as the previous one. Why wouldn’t that continue to happen?

Mr Cambridge—Because the roping-in award simply was an award that set rates of pay, terms and conditions for these named respondents, and if your company or farm was one of them it would be taken from that point onwards to be those terms and conditions that are those contained in the federal pastoral industry award as varied from time to time. If the federal pastoral industry award—that is the parent award we are talking about—cannot contain a whole series of provisions because they are proscribed by section 89A, they cannot be subject to an industrial dispute, then your roping in award cannot suddenly resurrect those things and put them into the parent award because the legislation will stop that happening.

Senator CRANE—Where does it stop that happening?

Mr Cambridge—Because it says that the commission cannot find an industrial dispute, or it is limiting the terms under which the commission—

Senator CRANE—I am sorry; I am talking about the agreement beyond the award that is established. You then negotiate the certified agreement—

Mr Cambridge—Right.
Senator CRANE—Which is basically the way I believe the shearing industry will continue to operate—they will negotiate their agreement above it, which will become the parent agreement, if you like. Why then, under the various other parts that fall under it—such as the No. 4 roping-in award—wouldn’t that continue to mirror what was negotiated in the certified agreement? I just don’t see how—

Mr Cambridge—I am not sure what you are talking about. Say we are going to get a parcel of woolgrowers from a particular region, and we are going to negotiate an agreement, we can put a whole variety of things into that agreement, I suppose. The problem is—and this is where the inconsistency starts to arise—when you leave those named individuals and you go to another set of individuals you either fall back to the original award or you have to negotiate another agreement.

Senator MURRAY—Mr Cambridge, with the somewhat extraordinary and rather public financial shenanigans that have been going on in your union I see the press have painted you as something of a white knight, but you sounded a little modest in your response to Senator Ferguson. I would encourage you, if you genuinely are a white knight, to be proud of it and promote it.

Following the awful shenanigans of some people in the corporate sector in the 1980s, the government moved to beef up the Corporations Act, the Bankruptcy Act and various other bits of legislation to try to stop a recurrence of what was a shameful period in Australian corporate history. I am not suggesting there is a shameful period in Australian union history going on right now, but you have brought up some accountability improvements which I think are helpful and useful.

My question is this: is this legislation the right place for that? Should there be a separate piece of legislation to mirror a much tighter accountability regime? In your view, does this go far enough? Are there areas which you think should be examined separately and developed in regard to improved accountability in union affairs?

Mr Cambridge—I have not contemplated the idea of a separate piece of legislation to deal with those questions because the existing requirements in relation to those issues are contained in this legislation. I simply have not considered whether it would be more appropriately dealt with in another piece of legislation. My initial feeling would be that this is the right place for it because this is where those organisations are registered. Sorry, the second part of the question—

Senator MURRAY—I wonder whether you have deliberately constrained yourself. Are there further areas, not in terms of putting people into handcuffs but in terms of greater accountability, more attention to fiduciary duties—that sort of thing—where greater attention should be paid other than those you have outlined here?

Mr Cambridge—I was looking at essentially the notion that will emerge with the
proposed legislation here, given that we could see a proliferation of organisations registered with the removal of the conveniently belong notion with this criteria that is being inserted seemingly to address the question of the possible proliferation of organisations or enterprise branches of organisations or whatever. I was really just looking at what legislative requirements would be needed to ensure that could occur. There would be a myriad of other things in addition to those three which would be needed in my view if we were to ensure the level of accountability that I think is necessary.

Senator MURRAY—Let me be a little more distinct in this sense—corporations law has to deal with public sector companies, public companies, private companies, partnerships, et cetera. There is a spectrum of different organisations. This legislation to some extent will result in a similar spectrum of union organisations. There will be the very large and multi state, for instance, and medium sized, possibly state based only, et cetera, all the way down to 20 members.

My question is: if the complexity of union organisations is now going to start to mirror the complexity of commercial organisations, has the time arrived for legislation which wraps that all up a little more neatly than the somewhat loose way in which it is still dealt with here? Again, I am not talking about handcuffs; I am talking about fiduciary duties, accountability, proper management and that sort of thing.

Mr Cambridge—I suppose I would go back a step and say that we are better off not changing those conveniently belong requirements and still instituting the sorts of things that are proposed here to ensure that there are higher standards of accountability. But with the best will and the best legislation in the world you will never ever avoid these things completely. I am not sure that it neatly fits into the notion of saying, ‘Well, if we are going to have a change to the structure, therefore we might need to have corporation style legislation.’

Senator MURRAY—I guess my point is that an industrial relations bill which deals with the relationship between an employer and an employee should not really be the place for a discussion about how an organisation should be registered and formed, what its constitution and organisation should be. The Corporations Act does not try to cover the relationships between businesses and customers or businesses and employees; it just talks about how they should be constituted.

Mr Cambridge—On that basis then you would segregate all those provisions relating to registered organisations and the industrial registrar. You would take all those things out of here, wouldn’t you?

Senator CRANE—We could have a rare old blue about that.

Mr Cambridge—I am not dismissing the notion, but I am saying that you would have to perform some major surgery and put all those things in another area.
Senator MURRAY—It just strikes me that this is trying to be all things to many different sectors. It is not a clearly focused kind of bill.

Mr Cambridge—I think it has been over-criticised, quite frankly. I think it tends to be a scapegoat. When you cannot blame anything else blame industrial relations is the catchcry, quite honestly. That happens all too often in Australian industry when people say, ‘If we are not productive or we are not doing XYZ, it is because of industrial relations; it is because of the unions.’ It is an easy scapegoat, quite frankly.
WALPOLE, Ms Sue, Commissioner, Human Rights and Equal Opportunity Commission, Level 8, 133 Castlereagh St, Sydney, New South Wales 2000

CHARLESWORTH Ms Sara, Private researcher, 98 Station St, Carlton, Victoria 3053

CHAIR—Thank you for arranging to occupy our very limited time space together so that we could get the substance of two very comprehensive submissions.

Ms Walpole—Thank you for the opportunity to address the committee. I have three additional documents to table. The first is a summary of the submission’s text and recommendations. I understand you have had a huge number of submissions. I thought it might be useful if you had some shorter, more concise outline of what is in ours. The second is a set of five flow charts which we constructed to illustrate the processes established by the bill in particular situations, and they will probably be returned to. The third is an extract from the last state of the nation report issued by the race discrimination commissioner in 1995. That represents a 20-year overview of issues to do with employment and people from non-English speaking backgrounds—and that is for the general information of the committee.

It is important to emphasise that my submissions today are on behalf of the Human Rights and Equal Opportunity Commission as a whole and that they reflect the concerns of the commission in its entirety with respect to the workplace relations bill. It is equally important to point out that HREOC is not just a complaints based agency; it also has specific statutory responsibilities.

The three most important responsibilities for the commission are the responsibilities to examine legislation and proposed legislation to ensure that it is consistent with Australia’s international obligations; to report on action required by the Commonwealth on matters relating to human rights and equal opportunity; and generally to promote understanding and acceptance of human rights and equal opportunity.

HREOC has for many years promoted its charter not by advancing the idea of victims but rather by advancing a rights and responsibilities approach. This approach recognises the significance of human rights to the most vulnerable in our society and the responsibilities of Australia’s major institutions in recognising and advancing those rights.

The approach is reflected in one of our principal concerns with the bill, and that is the excision of most of the United Nations and International Labour Organisation conventions from their current position as schedules to the Industrial Relations Act. It is HREOC’s view that the removal of these instruments sends a very negative and, we are sure, unintended message to the community about the government’s seriousness in
addressing such issues as economic, social and cultural rights, freedom of association and equal remuneration. HREOC is concerned that the bill as it currently stands treats human rights merely as a matter for complaint following an alleged breach rather than recognising those rights as the aspirations of all Australians.

Most importantly, HREOC is concerned that the excision of the conventions will lessen the community’s ability to address human rights issues on a broad and preventative basis. As our written submission makes clear, HREOC is firmly of the view that it was the combined inclusion of substantive clauses based on scheduled conventions and recommendations that led to such important achievements as the review of and removal from all awards of discriminatory provisions, the negotiation of and agreement to by all parties of a standard anti-discrimination clause for insertion in all awards and, of course, the groundbreaking family leave test case decision which was handed down last year.

What stands out in those examples is that it was the parties concerned which took responsibility for the changes, assisted by the institutional backing of the Industrial Relations Commission and the Industrial Relations Act. In HREOC’s view this is exactly as it should be. This committee has already heard and received many submissions on the bill. HREOC commends the government for many aspects of the bill, in particular the recognition of the needs of workers with family responsibilities. However, despite these recognised areas of achievement, HREOC is of the view that the bill inadequately addresses a number of issues which are within our charter. Specifically, HREOC is concerned about the proposals concerning equal pay as it is described in the bill, the consequences which may flow from the proposals concerning part-time and casual employment and the implications of not maintaining the family test case standards as part of the framework for achieving a balance between work and family responsibilities.

Of equal concern to HREOC are the practical implications of the bill with which HREOC, the Industrial Relations Commission, the Federal Court, the Employment Advocate, unions, employer associations—not to mention individual employers and employees—will have to grapple. Unless all these players in the labour market are perfectly informed, HREOC is of the view that the scheme as established by the bill will create confusion and uncertainty.

Take, for example, the small employer who has previously relied on an award to establish all the rights and responsibilities of the employment relationship. Assume she decides to offer Australian workplace agreements to her employees instead, given that the award does not now cover all areas. She will now have to check federal and state law with respect to other employment conditions, such as superannuation, which were formerly covered by the award if she wants to—if you like—do the right thing. Similarly, so will each of her employees.

Once there was a single source document; now there will be a plethora. What does that particular employer do if all her employees do not read English? Given the number
of alternative remedy routes, each with its own processes and remedies, how can she plan a sensible approach or predict any possible outcomes if she does end up in a dispute with an employee? Such confusion and uncertainty is not good for business. It is also likely to result in increased legalism and litigation occurring in a myriad of jurisdictions, thus making it even harder to maintain that adequate knowledge of rights and responsibilities which is needed to work within the system. This, it seems to us, is the reverse of what the bill set out to achieve. In HREOC’s view these are not desirable outcomes at the practical level. They will place great strain on individuals and will be exacerbated by the continuing pace of change in the structure and make up of the labour market.

It does not appear that there is any capacity left to set general standards across that labour market that reflect these changing norms and expectations both of business and of workers. How, for example, under the bill would we be able to run a maternity leave test case or a family leave test or an equal pay test case? If the major institutions of Australia cannot participate in and take responsibility for the setting of standards regarding such important human rights, how do we maintain the cohesion and transparency of our employment structures and systems in a way that reflects the best aspirations of all Australians?

The government has set itself some very laudable aims with this legislation, particularly in relation to work and family. It should be congratulated for recognising and seeking to entrench such important goals, but goals are not sufficient. HREOC is not convinced that the bill will deliver the desired results. It removes a major area of assistance by deleting conventions, covenants and recommendations which codify internationally recognised standards; it inadequately deals with specific issues that are at the heart of achieving equality of outcomes such as equal pay; and it will, in our view, lead to confusion, uncertainty, increased litigation and legalism. In key respects HREOC believes it will not result in equity for all Australians. That is my opening statement from the commission.

Ms Charlesworth—To put my submission in a little bit of context, I am an independent researcher working in the area of employment and industrial relations and I won a tender to do some work for the ACTU, work that was funded by HREOC. That work was to look at the current system of enterprise bargaining particularly with regard to how the changes to flexible hours, particularly for women, were working both in terms of provisions and agreements and at the workplace level. It is really the outcome of that research; the project has just been completed. You have a copy in draft form where it was at the point at which the workplace relations bill was announced. It seemed to me that it was precisely the recommendation that I was making for the strengthening of a number of safeguards for women that were proposed to be watered down by the workplace relations bill. Hence, I decided to put in a draft copy of the report and send it to the committee.

I want to make three points on the research that I did where it has particular relevance in terms of considering the implications of the workplace relations bill. The first
point is—as Sue has just referred to—in relation to workers with family responsibilities. It is quite clear that their interests are an object of the act. However, the flexibility that is assumed in the bill is not unproblematic. What employees and employers want—I found this very much so in my research—is flexibility, and what they mean by flexibility is not necessarily the same thing at all.

My research shows that, in enterprise bargaining in the predominantly female and increasingly part-time service sector, flexibility and hours have been the most contested issues in enterprise agreements. The research findings indicate that for women, part-time workers and non-English speaking background workers, the system of enterprise bargaining that we currently have needs to have strengthened safeguards, particularly in relation to a more comprehensive no-disadvantage test and a better monitoring process for the information consultation and consent requirements of the current act. As I said, it is precisely those which the proposed bill would in fact weaken.

The second point that comes out of my research is that the consultation process is absolutely vital in securing minimum protections and standards which make it possible for many women and workers with family responsibilities to work. I ran in total 15 focus groups with 124 women in them. A survey also went out to 173 workers. So there was a fair chance across a number of industries to get wide ranging views. It showed that it is only through a fairly comprehensive consultation process regarding the specific interests of part-time, casual, non-English speaking background workers and women that allows the development of what Ann Juna from the University of Canberra terms ‘equiflex solutions’; that is where you have an overlap of employee directed flexibility and employer directed flexibility. It is only through a strategic consultation process that you can get a flexibility that women workers by and large can live with, especially in terms of their family responsibilities within the operational constraints and requirements of a particular company.

The workplace relations bill, particularly with the requirement for just 50 per cent of the workforce to vote, will not ensure that women who are a minority in the workplace, who are part-time or casual or who do not have sufficient competency in English, are adequately consulted. That came through to me very loudly and clearly in one of the case study workplaces—the food processing place in Queensland. The only consultation the workers had was a meeting in a car park of 2,000 workers. Three-quarters of these workers were from non-English speaking backgrounds. A lot of recently arrived immigrants were not there that day. A number of casual workers were not there that day or were not rostered on. So those workers had no say in that agreement. It was voted in and nine-hour shifts were introduced, which has had considerable impact on a number of those workers’ lives.

The fact that the current act provides that specific consultation should be undertaken with particular groups—women, non-English speaking background workers, et cetera—has led the human resources manager of that company in the current enterprise bargaining...
round, rather than the union, to go about initiating some specific focus groups with the women workers to find out exactly what they want in terms of flexibility. That has come not out of a benign attitude on the part of that employer but because he thought it was the law. That has been terribly important.

The third point I want to make relates to the removal of a lot of what have been termed restrictions but what are in fact protections for part-time workers in awards—protections that relate to minimum hours, rostering arrangements, the ratio of part-time to full-time workers, etcetera. My research indicates that even under the current legislation, without a strengthening of protections, where minimum hours are decreased or people’s consent to those decreases is not negotiated, that can lead to a casualisation of the workforce.

There is a tendency, particularly in a number of the service sectors including retail, hospitality and community services, to reduce part-time hours to a bare minimum. They are then flexed up when customer demand requires. So those workers are nominally part-time, for example 20 hours might be spread over five days, but can be required through mutual consent—and, as you can imagine, in the workplace how mutual consent is interpreted can be quite problematic—to work additional hours in busy times.

Quite often those flexed up hours are paid for at 10 per cent or at no particular loading at all. So you are getting a casual workforce for ordinary rates. The weakening of those protections for part-time workers in the award has very real ramifications for workers where agreements are being negotiated because you have no benchmark against which to mark any disadvantage—or advantage for that matter.

It is probably obvious, but I think it is worth pointing out that many women work part-time because they work full-time at home; they are not opting to work part-time because they have got a lot of spare time up their sleeve and can work any time at all. A lot of women work part-time because they are unable to work full-time. Increasingly, in a lot of the service sector industries full-time jobs are decreasing. ABS data tells us that almost a quarter of women working part-time want to work more hours and the fewer hours that women work the more they want to work more hours. My research—particularly in the focus groups that I ran—highlighted the fact that the majority of women workers want regular predictable hours. They want suitable rostered hours which fit in with available child care, school hours and the sporting fixtures, et cetera, to which they take their children and are not flexible. They are fixed so they often have to adjust their working hours around that. As I indicated, they are wanting to work enough hours in order to provide the income that they need.

That is basically what I want to say in relation to my submission, but I would be very happy to answer any questions.

CHAIR—Thank you very much. We will move on to questions now.
Senator MACKAY—First of all, I would like to congratulate Ms Walpole and Ms Charlesworth on the quality of their submissions. I think that they really—from my perspective—encapsulated a lot of the points that witnesses have been bringing out throughout these hearings. I am very pleased that the quality is so high.

Ms Walpole—My staff—

Senator MACKAY—Yes, and your team—you and your team. I should have said so. My question is to Ms Walpole. We had ACCI in an hour and a half or so ago and they presented a paper which I hope you have had a chance to skim through. It is entitled ‘Factors causing an inequality in earnings between men and women’ by J.W. Neville and B. Tran Nam. As I understand it, this was submitted by them in relation to the deliberations in the lead-up to the Just rewards report. It comes up with some fairly what I regard as sort of bizarre conclusions. Essentially, it ends up saying that there is virtually no employer discrimination that can be dealt with other than through attitudinal change and that the notion of discrimination in relation to remuneration is somewhat flawed. I understand it is quite old—it was tabled in 1992. I wonder whether you have any comments in relation to it? First of all I had difficulty in understanding it and, secondly, I could not quite believe the conclusions.

Ms Walpole—I read the article very briefly this afternoon and some years ago when it first came out. I must say I found it somewhat confusing too, but then I am not an economist by training. However, it seems to me from my brief review of it that what it actually does is make a fundamental mistake in terms of how it defines discrimination. It seems to imply—I cannot state this categorically—that discrimination can only exist if somebody intends it. It says attitudes are one thing but discrimination is actually about doing something which you intend to have this bad outcome. That is not what discrimination is and, in fact, our experience in 1996 is that for the most part very few of the cases that, for example, we deal with under the Sex Discrimination Act are about intentional acts. Sexual harassment is a slightly different area but, if you are talking about discrimination, it is generally not about people with bad intentions; it is about looking at what are the outcomes of genuine decision making processes and whether or not those outcomes are equal. That is a very common confusion and it is one that comes up commonly in the equal pay debate. If I may have leave, it is probably worthwhile going through the critical points that we see in relation to equal pay as it is described in the bill and where this might lead us to some problems.

The first point that we make in our submission—I think, perhaps, it is the most important one—is that the definition is changed in the act from equal remuneration to equal pay. It is one of those funny debates about what is in a word. In this case there is quite a lot in that particular word. Most pay packets in Australia are made up of more than an award minimum. They include bonuses or over-award payments; a whole range of different things. They may include a car, if you happen to be in senior management or whatever. It is those additional bits over the award minimum that are the location—as this
paper indicates—of the major differences in pay outcomes between men and women. I will forget about part-time employees for the moment. Also, as Just rewards pointed out, they are the areas of least transparency in the wage system and as such they have not been subject to very much scrutiny or to very much consideration in terms of standard setting. Finally, it is important in fact to exclude part-time workers, as this article does, because they are very rarely accessible to part-time employees.

Under the current act, the legislation says that we must define equal pay in a way that will take all of these extra things into account. The reason for this goes back to the comparable worth test case in 1985 where a full bench of the Industrial Relations Commission said that they could not look at these other areas of payment. They were charged only with looking at what was in the award—and it was outside their jurisdiction. So the change of definition meant that for the first time the Industrial Relations Commission could look at these other pay issues in respect of equal remuneration. The idea in the legislation was based on and backed up by the inclusion of ILO convention 100 which is the equal pay convention and recommendation 90 which gives, if you like, the practical hints on how to do it.

In HREOC’s view, the inclusion of those conventions is very important. Equal pay is a very difficult and complex issue, as I think all the evidence you have seen illustrates. The convention and recommendations provide some pretty clear guidance to people as to what is expected in this area. It has another value though apart from the guidance and that is that, if we are to achieve equal pay, it seems to HREOC that we need to encourage some consistency across the board, rather than having a system grow up on the basis of an individual bringing a set of litigation.

We need to be able to look across different employers for our comparisons, particularly in the Australian situation. Australia has the most sex-segregated labour market in the OECD and it has been pretty commonly accepted amongst employers and union organisations that, unless you can compare women in female dominated areas with other occupational groups, women will always end up in some form of disadvantage—and I think this article actually acknowledges that.

It is important too that, whatever legislative structure we have around equal pay, there is some acknowledgment of the complexity of current company structures. A good example would be to take a large accountancy partnership. I am not an accountant, so maybe I should use the example of lawyers since I do have a law degree. I will take a legal practitioner so then I cannot be accused of getting at anybody. It is very common practice in such an organisation for the legal practitioners to be hired by the partnership, but the accountants and the other people who are working in that organisation will in fact be hired by a services company which is owned by the partners. So you have two organisations sitting there as employers. If you cannot—as is the case in the bill at the moment—look at both of those different employers in the one organisation, you could end up with a very narrow and inequitable basis of comparison.
Although I made the point in my oral submissions that HREOC has never proposed that human rights are about victims, I think we have to acknowledge in the area of equal pay that whichever way you read the evidence women just are not good bargainers. It does not matter whether you look at managerial salaries, whether you look at over-award payments or whether you look at bonus payments or any of these key extra areas of payment, women do not do as well. We are all hopeful that this will change over time, but at the moment it would be HREOC’s view that we need a legislative framework that will take account of that objective evidence.

Senator MACKAY—Just in relation to that last point, I notice on page 27 of your submission the effect of similar provisions in other countries. You say that the impact of the New Zealand Employment Contracts Act by the institution of a decentralised system has had what seems to be a fairly stunning effect in relation to the different wages between men and women, which is clearly connected to the point that you were making. Do you want to comment further on the impact of a decentralised system in relation to comparable wages?

Ms Walpole—Unfortunately, I do not think we even need to go as far as New Zealand. If we are looking at evidence, we can look at what has happened in Australia as bargaining has increased. I am not saying bargaining is a bad thing; I am just pointing to what the evidence is. If you take average weekly earnings as described in the ABS catalogue 3603 for full-time, non-managerial employees and compare the outcomes in the male to female ratio between 1994 and 1995 for full-time adults, women received 81.6 per cent of male earnings in 1994. In 1995 they received 80.9 per cent. If you look at ordinary time earnings you get the same sorts of outcomes.

When you go into the areas we are looking at that will not be covered by the current definition of equal pay in the bill, such as over-award payments, in 1994 the ratio women received was 55.2 per cent and in 1995 the ratio had dropped to 48.5 per cent. Just in the course of one year in a free bargaining environment the equal pay outcomes have dropped off overall by about two percentage points.

I do not think that the answer is to turn the clock back and say, ‘We will not have any bargaining any more.’ That is clearly not appropriate. However, I do think that there needs to be within the industrial relations framework an adequate range of definitions to enable those who are most vulnerable in the work force to have their issues properly addressed.

Senator MACKAY—So what you are saying is that a further decentralisation of the industrial relations system is going to worsen outcomes in terms of how it is applied to this country?

Ms Walpole—What I am saying particularly is that, in relation to equal pay, if there is no central point at which these other elements of the pay packet can be looked at,
such as over-award payments and bonus payments, and if they are left purely in the bargaining framework with no other point of reference, then I think we can predict that there will be worse outcomes, yes.

Senator MACKAY—Given that, Ms Walpole, do you think that this bill actually meets the government’s commitment of equal pay for work of equal value?

Ms Walpole—It is HREOC’s opinion that it does not, and we have had considerable discussion with Minister Reith about this—and we are continuing to have discussion about this. At the moment we continue to differ but, in the final analysis, for all we the commissioners think that we are a fine institution, we do not actually think that we are the institution which should be setting wages for 52 per cent of the population. We think that this is not our job. It is not what we were charged with in terms of our legislative charter. It is a job that properly rests with the Industrial Relations Commission.

Senator CRANE—Could I raise a couple of points here? Obviously we cannot go through the whole submission, but I am particularly interested in page 6 of your summary where you suggest the splitting of (j) and putting it there. While I see what you write, I have not absorbed why it makes any difference.

Ms Walpole—This fits with our basic idea that we are strongly of the view that the critical ILO conventions, such as ILO 111, which is the anti-discrimination convention, should be part of the act and clearly the objects of the act should be clearly linked to those conventions. Now the reason for then splitting as we have suggested is that respecting and valuing the diversity of the work force is actually not part of the terminology of the convention; all the rest of the words there are. We think it is important to make that link all the time as clear as possible in the objects.

Senator CRANE—To make you feel more comfortable? My next question deals with 170XM and 170XT. You have already talked about equal pay as against equal remuneration, so I will not revisit that. But I am rather intrigued as to why you think taking out ‘for the same employer’ will in fact give justice. I am a West Australian and I live down in a place near Esperance which is some six hundred miles from Perth. If you were working for the same employer and you had to have something written in the act whereby the people doing the same work in Esperance got exactly the same remuneration or pay as somebody working in Perth, you would get nobody to go down to Esperance and work.

Ms Walpole—Absolutely. Many people have advanced the same argument as to why people who work in Sydney should get paid more than people who work elsewhere.

Senator CRANE—We do have some empathy with decentralisation.

Ms Walpole—I understand the point that you are getting at. These comments are
specifically directed only at the equal pay provisions. This is not about other issues to do with pay. The reason for emphasising that we must look beyond the same employer really goes to the experience all around the world in terms of how do you actually go about the process of setting the rules for what is an equivalent? To give you an example, Sharon and Bill both sell meat pies. They are both doing the same job and one works in the food hall at David Jones and the other one works in the bakery at Myers. All of Sharon’s colleagues are women and all of Bill’s colleagues are men, which is not uncommon in the Australian work force.

Now Bill and his colleagues get a bonus payment of $20 a fortnight as part of their agreement, while Sharon and all her female colleagues receive no bonus payment. Under the suggested provisions in the bill, Sharon would not be able to bring an equal pay case to the Industrial Relations Commission. She may perhaps—and we do not know—be able to bring a complaint to HREOC, but she would not be able to bring an equal pay case. Now, where you have a situation like that with two sets of people both doing exactly the same job but for different employers—and we are not talking about the Esperance/Perth situation—it seems to us that that is not what was intended. Certainly it is not what the minister has said is his intention in relation to the bill.

**Senator CRANE**—We have to find a better solution, if that is the problem that you are addressing. Because in fact you would create the Perth/Esperance situation which I have just raised. I think you mentioned Coles and somebody else. If the Myers was in Esperance and the Coles was in Perth, nobody would go down there and work.

**Ms Walpole**—Then the difference is about location; it is not about sex. This is about equal pay between men and women. The example I gave was quite deliberately couched in terms of Bill and Sharon to emphasise that this is about different pay, apparently on the basis of sex, not location.

**Senator CRANE**—But it could be.

**Ms Walpole**—It could be but that would be a matter of evidence.

**Senator CRANE**—I understand what you are getting at and I am not knocking your suggestion. But I think you would have some unintended consequences which are clear to my mind.

**Ms Walpole**—There has never been that limitation to only looking at the same employer in any of the legislation in relation to equal pay. Perhaps the closest you could get would be the 1969 equal pay decision which talked about equal pay for the same work. That had very little positive consequence for women. Only about 18 per cent of women achieved a pay increase out of that. It was not until the definition was broadened to equal pay for work of equal value, so that you could look outside a particular organisation or a particular occupation to establish what is the value of the job, that women moved
way beyond the 60 per cent that they were getting in 1969 to what they are now.

Senator CRANE—I understand what you are saying, but I still want to be able buy a pie when I go to Esperance. Could I now go to page 19 where you say:

. . . there should be a positive obligation on employers to provide employees whose first language is not English. . .

We do not want to load up employers with another cost. We know that a lot of employers in many parts—particularly in regional parts—are under enormous pressure. Why should that not be a function carried out by the employment advocate?

Ms Walpole—That would provide the solution that we are looking for.

Senator CRANE—Because it is the intent to have interpreters.

Ms Walpole—Yes. You will notice that we have actually set it out. We do not have any argument with the idea of an employment advocate. It just seems to us that perhaps the advocate needs to be given a much better defined role in terms of vetting and making sure that issues such as discrimination do not occur.

Senator CRANE—Yes, I noted that.

Senator CHILDS—in view of the fact that the legislation proposes to give you a whole range of work that you do not have now which has been dealt with by the AIRC, based on the work that you have already done, what are the difficulties you would see if the jurisdiction is given to you as far as equality of things is concerned?

Ms Walpole—There are number of difficulties, not the least of which currently is that HREOC of course has no enforcement ability. The government has stated its intention to address the issue posed by the Brandy High Court decision. I understand that they will be making an announcement about that in the next couple of weeks. But whatever it is, we know that determinations will go out of our relatively flexible and informal process into the Federal Court. The High Court has left no room for manoeuvre there. It will become a much more legalistic process than it is, even if we do resolve the enforcement issue. That is one problem.

The second, and perhaps more critical issue as far as we are concerned, is that our legislation charges us with redressing past harms. If somebody comes to us because there has been a breach of the legislation, if that is found to be substantiated, it is either conciliated or there is a determination to that effect and they are compensated for that past harm. We cannot make any rules for the future. We are not a court and our legislation does not allow it in any case. So, even when it moves to the court, they will not be able to either. For example, if we did have a case come to us in the area of over-award payments,
we might come up with the perfect solution as to how to solve it. I think it is unlikely, but we might. We could not effect that solution in anything other than the case that we were dealing with.

The big advantage, of course, of the test case system in the Industrial Relations Commission is that it has allowed an open and public debate of issues of substantial public interest—such as the maternity leave test case—where everybody has been able to come along. There has been able to be a new set of standards agreed to by all the parties. The rules have been established and that is how everybody behaves from there on in. We do not have that capacity.

**Senator CHILDS**—So you are really saying that the attitude change process—which is an essential part of your work and yet is claimed by the proponents of the bill—is going to be less effective with the proposed legislation because you will not have the effect of a general discussion being caused in industry?

**Ms Walpole**—I do not know. The Human Rights Commission seems to be able to establish a fair amount of discussion around issues generally, but I do think that it is true that we cannot look at anything other than the issues of the particular case in front of us. That can lead to some quite narrow outcomes that may not be in the best interests of industry as a whole.

**Senator CHILDS**—I wonder if I could ask you a question about sexual harassment because it is something you deal with in your charter and, in my view, the AWA process will give a great deal of power to employers. Do you believe that this will raise the possibility of sexual harassment increasing in industry?

**Ms Walpole**—It is very hard to make predictions like that; all I can recount is our historical experience. Sexual harassment remains the biggest single area of complaint under the Sex Discrimination Act and under all state and territory anti-discrimination legislation. In our experience, the cases that we deal with broadly fall into two categories. One is medium to large organisations which, on the whole, have got good policies and good procedures. We only get to deal with a case from those large organisations because something has gone wrong; they generally deal with it themselves. Most of the cases that we deal with are from small business where the owner of the business is, in many respects, the least equipped in terms of knowledge and understanding of the law’s requirements to deal with the responsibilities under this act.

I would have to say that, although it is not the common circumstance, there are a sufficient number of cases where I can say—I am trying to find a nice word to say this—that basically people have felt that they could put the hard word on because they were the boss. They have gone about it if not with malevolence, certainly with ill intent. That is of concern, and those cases tend to turn up in situations involving very young women who are not well educated—that tends to be the pattern.
I do not know if this bill and AWAs will change that terribly much. Our experience is that most of these young women, I have to say, are not being paid award rates now. They are often on labour market programs in any case and, by the time they get to us, they are unemployed again, but it certainly adds another element where potential pressure is likely. What, perhaps, is more important in terms of the bill’s own framework, however, is illustrated by the flow charts that I have given to you. I have done one there that gives two examples: dismissal on the ground of age and dismissal on the ground of pregnancy. What the examples actually make very clear is that you have to pick which way you are going to go. Many people we see who have been through a sexual harassment situation have been what a lawyer would describe as constructively dismissed, so they would have a claim for illegal dismissal under the terms of the bill because that is part of the definition of discrimination. What they will no longer be able to do, however, is to make good the whole package, if you like. They will either be able to get back pay of their lost salary and reinstatement if the Federal Court so decides, or they can come to HREOC and they can get damages for the pain and suffering that they have incurred—and maybe some other things that we generally recommend in these situations, such as apologies. But they will not be able to actually receive damages if what they want is their job back. That does not seem to us to be a particularly fair outcome.

Senator MURRAY—Ms Walpole, at pages 69 and 70 of your submission you make some remarks on youth rates. We have submissions from witnesses from employer groups who have, almost to a person, said that the abolition of junior rates will result in fewer young people getting work, the implication being that if either youth rates are raised or held where they are that unemployment will not diminish. In contrast, in South Australia we had a young person’s group claiming that there is no evidence to support the view that lower wages will result in more employment or that in fact raising wages to a minimum level will reduce employment. Their view is there is a certain number of those kinds of jobs and that is that. In fact they advocated a minimum wage of $8 an hour which they extrapolated to an annual wage of $15,800, which seemed to me hardly a high wage.

Is there any research or further comment you may like to provide on the impact of youth wages on employer attitudes to young workers? Incidentally, you may not have had the benefit of it, but the CCI produced a report which was helpful indicating that 75 per cent of a small sample that they looked at—20 young persons, so it is a very small sample—were actually happier with their wages as they were, the implication being that they did not need to be lifted.

Ms Walpole—I will just check with my colleagues. HREOC cannot provide you with any further empirical evidence that we have conducted, but I guess there are a couple of things to be said about junior wage rates. From our point of view we have to start from ILO Convention 111 which does prescribe age discrimination. So our statutory responsibility is to say we should not be discriminating on the basis of age. That then leads us to the question of why there are junior rates. What sits behind junior rates? Is it in fact
discrimination or is it some differentiation based on a relevant characteristic? Perhaps, again, some examples might be useful. We would say that it would be very difficult to justify a situation where, for example, young workers who stack shelves in supermarkets should be paid half the rate of older colleagues who do exactly the same work. It would seem to us that stacking shelves at supermarkets is not something where age is a relevant characteristic on which to discriminate.

On the other hand, there may be situations where you can produce objective evidence that says it takes two years to accumulate the necessary skills to do a particular job on the job. So you could then say it is relevant to pay a different rate if you are at the beginning of the two years than at the end of the two years. That is still not, however, a justification for age discrimination. It is a justification for paying different rates for the job depending on the amount of relevant experience that you have accumulated that means that you can do the job.

Therefore, the approach that we have publicly argued for for some time in this area has been that the appropriate way to address the issue is to look at competency based schemes, to actually say what is required to do this job and pursue it in that way.

We have to remember when we are talking about age, too, that it applies at the other end of the scale as well. It may not just be that we have a system that says we will discriminate against young people on the basis of their age. We also have a system that says we will discriminate against old people by not giving them a job at all. The government did state as part of its election policy, in its superannuation policy in fact, that it intended to introduce age discrimination legislation—and HREOC looks forward to that day.

Senator MURRAY—I made the point earlier today that two of the major themes that have emerged in the set of hearings have been money and rights. We do not have a bill of rights in this country and some of the rights we hear about are rights in our minds rather than perhaps in practice but are not recognised as such by international law or international conventions. I think one of those is the right to strike. I am not sure that it is actually acknowledged as a right in international conventions but you will be able to tell me whether it is or is not. I would be interested in your view, for example, on how the proposals to place secondary boycotts back into the Trade Practices Act infringe on union members’ political rights?

Ms Walpole—On union members’ political rights! I do not know whether I am allowed to do this but that is one I do not think we considered in our submission and I would have to take on notice.

CHAIR—You certainly can do that.

Senator MURRAY—I am very happy for you to do that.
Ms Walpole—I will make sure that the committee gets a copy of the relevant sections out of the international covenant on civil and political rights which was ratified by the Fraser government in 1980. It is within that convention that most of Australia’s obligations with respect to the right to organise, the right to strike and those sorts of things are located. But I will get you the relevant sections.

Senator MURRAY—Would a bill of rights improve matters for us in this kind of area?

Ms Walpole—HREOC has always very strongly supported a bill of rights, yes.

Senator MURRAY—I knew that; I just wanted it on the record.

CHAIR—Final question, please.

Senator MURRAY—in page 46 you highlighted the problems which confidential employment agreements have in pay equity issues. Is there a right to privacy on employment issues which might override that?

Ms Walpole—This is a very interesting issue which I discussed, I have to say, with the Privacy Commissioner as we were putting together this submission. Again, I can provide some additional information to the committee if you so desire. It is an issue that was discussed at quite some length at the last annual international privacy commissioners meeting in New Zealand and several papers were presented on this.

There appears to be debate as to how far the right to privacy in employment arrangements goes. But perhaps of more interest to the committee has been the consequence of what has been assumed to be the privacy rights under arrangements similar to AWAs. The consequence has been that it has been the Privacy Commissioner, of all people, who has actually been, if you like, making employment law. It has been the Privacy Commissioner who has actually had to set the rules, look at the documents and establish codes of conduct in this regard. My colleague Kevin O’Connor, the Privacy Commissioner, was a little wary of this prospect, it would be fair to say.

CHAIR—Thank you. Where did you get your reference, Ms Charlesworth, to the phrase, ‘equiflex’?

Ms Charlesworth—I must admit it is not my own. Ann Juner from the University of Canberra has been doing a lot of work, particularly around part-time women working and enterprise bargaining. She used the term in a report that was actually before the Department of Industrial Relations, but I am not sure whether it is going to be published. I have certainly found it very helpful in thinking up ways in which to really marry the very disparate interests of employees and employers in flexibility.
CHAIR—There would be countless questions I would like to ask you about your research, but perhaps I will limit it to just one. In the research on employees’ views about flexibilities that have been introduced through enterprise bargaining, have you come across any employees who have said they need more flexibility in accessing employment?

Ms Charlesworth—Yes. Starting and finishing times is a major issue on a regular basis, that is, to have a starting time that allows them to do a little bit of housework, get the kids off to school, catch public transport to work and likewise at the end. So, in having compressed hours where you go from working 7½ or eight hours a day to nine, may be 12, that has been a real issue. And having flexible starting and finishing times in the sense that every now and again, because of emergencies, a child is sick et cetera, one needs an extra hour in the morning and they would like to be able to make it up. So there are two types of flexibility with starting and finishing times.

CHAIR—Have you come across any through that have had problems with the minimum and maximums prescribed through awards and agreements?

Ms Charlesworth—Yes, particularly where a number of agreements—and you would probably be aware yourself—in the retail area have lowered the minimum number of hours for part-time work. That has also been the case in agreements, although there have been relatively few, in the community services area. That has been a major issue because that represents a very tangible slice of the take-home pay.

In the community services case study, the particular women had gone down to a guaranteed number of hours. They had moved from being casual to permanent part-time and having a lower guaranteed number of hours and were trying desperately to scramble and work additional shifts just to maintain the income that they had had beforehand.

CHAIR—Are there people from the other extremes saying that the minimum is too high and they cannot perform this type of work because of those sorts of reasons?

Ms Charlesworth—No. Not one of the 124 women raised the fact that the minimum was too high. It was always that it was low and it was decreasing.

CHAIR—Ms Walpole, on page 12 of the summary—and thank you very much for the summary of the submission as well—with respect to the exemption which exists in the Sex Discrimination Act, we have received submissions to the effect that equal remuneration is not necessarily such a problem because people can go to the Human Rights and Equal Opportunity Commission. With respect to awards becoming minimum safety nets, then that might not be such a problem with awards. But, from what you say in your submission here, the amendments appear to extend the exemption to cover certified agreements and enterprise flexibility agreements, in which case it is dealing with more than just minimas. So, on the one hand, the commission would not be able to deal with equal remuneration. But, on the other hand, if it is a matter pertaining to a certified
agreement and an enterprise flexibility agreement, the exemption in your act would apply.

Ms Walpole—This is my understanding, but I would emphasise that it is an area that is quite unclear legally. We have received two different forms of advice as to the implications of this. Our view is, and always has been, that we should be seeking to minimise the number of exemptions in the legislation rather than expanding their purview.

CHAIR—Thank you very much and thank you for your submissions. I am sorry, Senator Margetts. We are well behind time on this session.

Senator MARGETTS—I just had the one question.

CHAIR—The committee has agreed to allow you one question.

Senator MARGETTS—Thank you very much. I just want to know what, in your opinion, the connection should be between the basic rights of employees; that is, whether or not the legal minimum can be removed whether or not their name is on an agreement which they may have been coerced into signing. What connection, in your opinion, should there be between the rights of employees and access to a remedy?

Ms Walpole—HREOC’s view would be that rights are only something in the ether unless they are connected to some form of enforceability, so a general view would be that there should be a remedy available.

Senator MARGETTS—Would access to the courts for many people with small bargaining positions be acceptable as a remedy?

Ms Walpole—HREOC has expressed concern about the court, particularly the Federal Court, as we understand its current operations whereby there are things such as filing fees involved and the current rules state that you must be represented by a lawyer. That, of course, involves expense. There are those sorts of issues. From the commission’s point of view we think that there are real access and equity issues concerning the Federal Court which must be addressed if the system is to be able to operate fairly.

Senator MARGETTS—Thank you very much.

CHAIR—Thank you very much.
JOHN, Mr Gregory David, Director, Strategy and Corporate Relationships, Victorian Employers Chamber of Commerce and Industry, 50 Burwood Road, Hawthorn, Victoria 3122

GREGORY, Mr David Bruce, Senior Policy Adviser and Chief Advocate, Victorian Employers Chamber of Commerce and Industry, 50 Burwood Road, Hawthorn, Victoria 3122

ACTING CHAIR (Senator Ferguson)—Welcome. We have your submission and we have allocated three-quarters of an hour for your presentation. Would you like to speak to your submission and then allow us time for questioning afterwards? I invite you to speak now.

Mr John—Thank you. I will give you an outline of what VECCI is, whom it represents and what it stands for and then I want to move into some general comments about the bill. VECCI is a multi-industry business organisation representing employers in industries as diverse as manufacturing, distribution, transport, retailing, wholesaling, building and construction, hospitality, tourism, property, business services, and health and community services. More than 7,600 companies are currently members of VECCI; I think the specific figure is 7,642 companies.

These businesses employ between 450,000 and 500,000 persons. The majority employ less than 50 employees and the marked majority employ less than 20 employees. So, in terms of a spectrum of businesses, VECCI represents many of Australia’s top 50 companies, but it also represents by far and away the largest number of small and medium-sized employers—if not micro-employers in some cases—that you can imagine from a range of industries, as I have indicated.

With that membership and their interests in mind, VECCI strongly supports the Workplace Relations Bill. This is a bill that deserves the support of all Australians because it is a positive step forward in the process of change in Australia’s industrial relations system which supports the continued move towards a full enterprise bargaining regime. It is not a revolutionary step in our view, but an evolutionary one. It recognises the directions of change that have been taking place and the fact that enterprise bargaining is already a major part of the industrial landscape. It advances the possibilities of enterprise bargaining by providing further flexibilities for use by those that choose to use them.

It provides a continuation of the award system for those who choose not to move to enterprise bargaining arrangements. It provides for low-paid employees and those who do not benefit from enterprise bargaining to continue to be within the protection of Australian Industrial Relations Commission. And it represents the implementation of a policy position that, in our view, was quite clearly articulated by the government in the last election campaign.

ECONOMICS
The bill advances an industrial relations systems that, while evolving, continues the connections with Australia’s industrial traditions. Some, even amongst VECCI’s membership, would argue, and argue strongly, that it does this to a greater degree than is required because of what is the critical importance of allowing businesses to gain access to a system of industrial regulation that is fair, yet will produce the competitive performance that must be achieved for Australia and Australians to prosper. The bill does not abolish the award system. The bill is not comparable to the New Zealand Employment Contracts Act.

The bill does not allow for the introduction into Australia of United States-style bargaining. The Australian Industrial Relations Commission is continued in existence; its role and influence continue to be a major force in determining standards under which thousands of Australians will work. No other country in the world has such an institution. The bill continues to recognise and respect the role of trade unions in the operations of the industrial relations system that it creates. Australian unions continue to have a more advantageous position than that which is accorded to New Zealand unions, for instance, under the Employment Contracts Act or US unions under various legislative provisions in that country.

The bill retains a far more comprehensive set of minimum standards covering wages and conditions of employment than that which applies in either the US or New Zealand. In what for many is the most important area, wages, equivalent outcomes to those available under the relevant award are guaranteed. Even if an award does not apply in a particular area, the bill creates a means of deeming the application of an appropriate one so that employees are able to access the basic guarantee that the bill acknowledges.

The bill also seeks to put in place a very important shift in emphasis in terms of Australia’s industrial relations system. The object which it contains are relevant to the business and employment circumstances of the 1990s. The industrial legislation that we have had in place to this point in time has been about managing the relationship between employers and employees through representative organisations, and putting in place an institutional framework for dealing with differences and disputes that might arise—in other words, the identification and management of conflict.

On the other hand, the bill takes an entirely different approach. It is about encouraging cooperation and constructive employment relationships and about providing a framework for those relationships at the enterprise level. Representative organisations of employers and employees continue to have an important role, but the system does not revolve around them. Individuals or groups wishing to access the system do not have to survive an entry test imposed by a gatekeeper organisation. They can gain access on their own, or they can utilise the experiences of one of the representative organisations; the choice is entirely theirs.

The bill, in our view, is an empowering piece of legislation. It rejects the prescrip-
tive model that has dominated the past and, by so doing, creates flexibility and freedom. By moving away from prescription, it demands much more from the parties that use its provisions.

The challenges that face management in effectively using the provisions of the bill are at least as large as those that face employees. Both employers and employees will need to appreciate the essential dependency of their relationship to emerge as winners. The adversarial nature of the present system creates distortions which result in many never appreciating the criticality of that dependency.

The clearer recognition of what is possible under the bill has the potential to significantly aid the efforts of many employers and groups of employees, whether union or non-union, to negotiate mutually beneficial, productive advantage.

The bill treats employers and employees as mature and honest people; it does not proceed on the proposition that, given half a chance, employers will exploit employees; and it does not treat employees as unable to think and act for themselves. It does face both groups with the consequences of their actions in jointly and separately dealing with the employment relationship that binds them.

And that, Senator, is the end of the opening statement that I wish to make. I am happy to answer questions on the submission or other issues that you and your colleagues may wish to raise.

**ACTING CHAIR**—Thank you, Mr John. During the course of the inquiry over the past 16 or 17 days or whatever it has been, we have heard many statements from unions on the possible effects of this bill on their workplace. Has the Chamber of Commerce and Industry any examples of where the union movement has deliberately misled employees regarding any possible effects of the bill?

**Mr John**—At the present time most workplaces, particularly in traditionally unionised industries like manufacturing and building and construction, for instance, are being deluged with amounts of paper from individual unions or from peak bodies like the Victorian Trades Hall Council or the ACTU, or a variety of other sources.

Amongst some of that material are statements which we view as being misleading—and seriously misleading. Today, in Melbourne, a substantial rally was conducted under the auspices of the Victorian Trades Hall Council. More of this publicity material was, of course, available to ordinary members of the public as a result of that rally.

But let me quote from one particular source, and this is a so-called fact sheet—fact sheet one—distributed by the Victorian Trades Hall Council. Under the heading of ‘You lose’ there are listed a number of instances where losses are allegedly supposed to have
occurred. So you have on the right hand column of the page ‘Taken away’ and then on the left hand column a list of things headed ‘This means you lose. . .’.

Senator SHERRY—I cannot read from here.

Mr John—I am happy to hand it up to you later.

ACTING CHAIR—Could we incorporate it in Hansard.

Mr John—I am quite happy for it to be incorporated, Senator; it is not mine.

ACTING CHAIR—At the end, we will seek to incorporate it into Hansard.

Mr John—I am happy to hand a copy of it up. But under the heading of ‘Taken away’, is this dot point:

. Maximum hours of work, shift and spread of hours arrangements.

Under the heading ‘This means you lose. . .’:

. You lost your right to having a life outside work—goodbye family.

Looking at the bill under section 88A, which lists the scope of industrial disputes, under 2(b) there is the very clear statement:

For the purposes of subsection (1) the matters are as follows:

(b) ordinary time hours of work and the times within which they are performed.

That is listed as an industrial matter with which the Australian Industrial Relations Commission can deal; it comes within the scope of the prescribed matters. Following on, under subclause (4) of section 89A, as the bill indicates, is this statement:

The Commission’s powers to make or vary an award in relation to matters covered by paragraph 2C(r) does not include (b) the power to set maximum or minimum hours of work for regular part-time employees.

That, in other words, is the only limitation on the commission’s power to deal with hours of work and the scope of those hours that I can find in the bill.

Nothing there would support the statement that maximum hours of work, shift and spread of hours arrangements are totally without coverage in the system that is proposed by the workplace relations bill. A second statement contained in this is that meal breaks are lost, taken away—you lose the right to eat.
Another bald statement is that occupational health and safety is taken away. This means you lose, you are no longer safe at work. As far as occupational health and safety is concerned, in Victoria there is an extensive piece of legislation requiring employers to abide by a regime of regulations in occupational health and safety. That piece of legislation is, I think, replicated in every other state.

In common with every other state, the Victorian legislation is perfectly clear: it imposes an obligation on employers to provide a safe workplace—no limitations, a safe workplace. That piece of legislation guarantees the right of employees to expect a safe workplace.

The Occupational Health and Safety Authority in Victoria is charged with the responsibility of enforcing that and undertakes that in a variety of ways, not the least of which is through inspections, extensive education and training programs and the publicity of guidelines of a variety of sorts. Given the existence of that legislation, I see no effect on occupational health and safety as a result of this workplace bill.

On the meal breaks question and also on the question of another one of the alleged ‘losses’ concerning minimum breaks between shifts, the Victorian Employee Relations Act at this time specifies that there should be a maximum of five hours between meal breaks. That is totally separate from any award provisions or agreement provisions. That protection exists as a guarantee for Victorian workers.

The bald statement is made in this document that dot point rates of pay are taken away. This means you lose dot point; first they downsize jobs, for instance, sack more workers, now they can downsize your pay.

The guarantees under the workplace relations bill are very specific: the pay elements are linked to the appropriate rate of pay in the appropriate award. If no award can be found that is binding on an employee’s employer, then there is provision for an award to be identified in order for that guarantee to be made enforceable. I simply do not see how these statements can, in fact, be supported.

**ACTING CHAIR**—On the last page of the ACTU kit of the things they ask union members to do is to circulate and sign a petition to the Senate. I do not know whether you have seen one of these kits; perhaps we could invite Jennie George tomorrow morning to table one for the Senate so that we can understand what sort of program has been conducted.

**Mr John**—I am sure, Senator, that you have seen many results from the kit.

**Senator SHERRY**—In the Victorian jurisdiction which you have referred to in part, Victorian state agreements, are there protections for things like weekend penalties, shift provisions and annual leave loadings under the Victorian act in respect of state
agreements?

Mr John—No, there are not. The Victorian act includes in schedule 1 a very limited set of protections compared with the protections that exist in this bill.

Senator SHERRY—Are you aware that under this bill, in the sense of reversing industrial relations on its head, state agreements can override federal awards and federal agreements?

Mr John—Yes, I am. I am equally aware from statements that the Victorian Minister for Industry, Science and Technology, Mr Birrell, has made to the Victorian parliament that the Victorian government is actively engaged in considering the transfer of its powers and responsibilities in relation to industrial relations to the Commonwealth in order to allow the workplace relations bill, if it is passed by the parliament, to act in Victoria in the place of Victorian state legislation.

Senator SHERRY—But that is not the case at the moment, is it?

Mr John—It is not the case at the moment, but nor is this bill a fact.

Senator SHERRY—But it is not the case with respect to Tasmania or Western Australia that the sorts of issues I have just referred to—

Mr John—No, I can only speak for Victoria.

Senator SHERRY—Isn’t it true then that a worker under a Victorian state agreement that would override a federal award or a federal agreement can be worse off?

Mr John—Only if that situation continues.

Senator SHERRY—That is right. If that situation continues, you are quite correct. So workers are worse off under a Victorian state agreement. Coming to this issue of misleading, do you believe the Prime Minister or Mr Reith have misled the Australian public by assuring them with an absolute rock solid guarantee that not one worker will be worse off in terms of wages and conditions as a consequence of this bill?

Mr John—Not if the situation that the Victorian government appears to be considering, and considering actively, in conjunction with the Commonwealth comes about. From my understanding of public statements and discussions that we have had with the Minister for Industrial Relations, the Commonwealth’s desire to have either complementary legislation to reflect the decisions that it has taken in federal legislation implemented by the various states, if they were put into place, then the Commonwealth would be able to enforce its guarantee.
Senator SHERRY—If that happens, given your discussions with the Victorian government, do you have any idea of the timing of such a proposal by the Victorian government?

Mr John—I can only refer to the statements that Mr Birrell has made to the Victorian parliament. They indicate that detailed consideration of a referral of powers will occur later this year. The focus that the Victorian government is now taking is on both the content of the government’s workplace reform package and the passage of that package through the federal parliament.

Senator SHERRY—Would you support such a move by the Victorian government?

Mr John—VECCI has indicated that there would certainly be some considerable cost to a number of Victorian employers as the result of the requirement that they meet a higher bar as far as minimum standards are concerned, but we are also aware that there is in other aspects of the workplace relations bill a transition period. If there were accommodating arrangements within that transition period, then the decision of the Victorian government, if it did make the decision to transfer the powers, would be something that the members of the chamber and the chamber itself would be prepared to accept and work under.

Senator SHERRY—So the workers who are worse off would be worse off for an unspecified transitional period?

Mr John—I have simply indicated that the question of the transition period might be something that we would want to discuss with both the Victorian government and the Commonwealth. It would depend upon the attitude of both of those groups to the issues that we raise as to whether or not there is any effect at all or whether the imposition of the higher standards is immediate.

Senator SHERRY—Given the new found concern of the Victorian minister, have you any idea why he has not submitted this proposal that he submitted to you to this Senate committee, given that we are considering the bill?

Mr John—I have no idea at all. To speak for the Victorian government is not my role.

Senator SHERRY—You touched on competitive performance in your introduction, vis-a-vis other economies I am assuming you are referring to. What do you mean by competitive performance? How do you expect Australian workers to compete vis-a-vis other economies? What are the changes that you want to see?

Mr John—I think that is an extremely complex question. I think it is accepted,
even in the domestic marketplace, that competing within Australia is tougher now for many businesses than it has ever been before. It is certainly tougher as far as those people who compete in our region are concerned, and certainly tougher for larger companies which are competing on a global basis. We have a number of members of the chamber, for instance, who have substantial parts of their business in New Zealand. They have been seeing those parts of their business under attack and they have had to find a variety of competitive ways to meet those challenges.

Senator SHERRY—Such as?

Mr John—Such as guaranteeing greater reliability about delivery times and accommodating production schedules or service delivery to the demands of customers absolutely, rather than the demands of the best logistical way to lay out production schedules. They have had to produce when they have been required to produce, rather than simply producing from stock, building up a stock of their most common parts and drawing on that stock for orders and saying to people, ‘You’re just going to have to satisfy yourself with part of the order now and wait six weeks when we get to producing that part again.’ There are a variety of ways of going about it.

Critical to this has been a battle in many workplaces for attitudinal change. That attitudinal change has affected the performance of managers as well as employees in many businesses. The other day a senior managing director said to me that he thinks the most significant change that he has made in recent times is the very simple change of recruiting for attitude and training for skill. He believes that the right attitude in his business is more critical than the right skill. He can fill a lot of the skill requirements but he cannot change the attitudes overnight.

Senator SHERRY—Do you think any of this approach includes lower wages and conditions? A lot of our competitors have lower wages and conditions, including New Zealand, in many sectors.

Mr John—I do not see too much evidence of that, nor do I see too much evidence of the companies that I am familiar with in VECCI’s membership that compete with Taiwanese and Singaporean companies dealing with the traditional low wage proposition. If you look at some of the service companies in areas such as architecture, quantity surveying, engineering and consulting services that are selling in great numbers in places such as Indonesia, Kuala Lumpur, Malaysia generally and Singapore, you will find that Singaporean companies are paying more.

Senator SHERRY—So you do not believe that in any form lower wages or conditions is a factor in any of the discussions you have had?

Mr John—No.
Senator SHERRY—You said earlier that the Victorian government’s foreshadowed approach in handing over its industrial relations powers to the federal jurisdiction may mean an extra cost. Why would that be of a concern then?

Mr John—It is a fact that it is an extra cost. The impact of costs in any business is of interest to the proprietors of that business, whether they be owner managers or whether they be professional managers and shareholders. The impact of those costs is different in every business. In some cases it may be that the business is prepared to meet those extra costs without any concern. In other cases it may be that the business is simply facing a set of business conditions or market conditions at present which cause concern for it.

The issue here is that the business has entered into agreements registered under an appropriate jurisdiction and made in the appropriate way and now, because of a change between two governments, there is an effect on the applicability of those agreements.

Senator SHERRY—I assume these agreements are agreements that have reduced wages and conditions in some way in Victoria.

Mr John—It has to be a varied situation. I simply do not know.

Senator SHERRY—but if you do not know, how do you know it is going to increase their costs if there is a transfer back to the federal jurisdiction?

Mr John—I think that it is reasonable to assume that there are some agreements being made by employers in Victoria that do no more than apply the legislation, just as I am sure that there are plenty of situations in the federal jurisdiction that do no more than apply the legislation.

Senator SHERRY—I am not denying that what has happened in Victoria is in accordance with current Victorian law. It is the result of that. You do not deny that there are some circumstances where there have been lower wages and/or conditions result from the Victorian legislation?

Mr John—No. I do not think it is fair that I should deny that.

Senator CRANE—The witness said quite clearly he does not know. You cannot go on extracting views that he does not know out of somebody.

Senator SHERRY—I can ask what I like.

Senator CRANE—Mr John, I would like to compliment you on your submission, particularly the flow charts that are here which I think are very useful in terms of assessing precisely what the situation is and killing some of the furphies that have been
thrown at us during this inquiry. You would see on that sheet of paper some of the questions that you have answered for Senator Ferguson today.

My first question concerns a confirmation of what you have already said. In terms of the various provisions made for pay—from the award structure that remains in this bill right through the various employment streams to pieceworkers and casual workers—are you satisfied that in fact each one of those is underpinned by the relevant award?

**Mr John**—Yes, I am.

**Senator CRANE**—We were told this morning by the Business Council of Australia in their submission, that this was not a deregulating bill. It was in fact a decentralising bill. Would you agree with that?

**Mr John**—Yes, I would.

**Senator CRANE**—We have had discussions with Senator Sherry in this case and others about the situations which exist in the various states. Are you aware that from 1902 until 1992 there was a situation which existed between the states and the federal jurisdiction not dissimilar to what is proposed in this bill? It has only been in roughly the last four years that we have adversarial arrangement between the states and the Commonwealth, is it not?

**Mr John**—Yes.

**Senator CRANE**—Do you have any comment to make on the impact of the change that was made at that time in terms of the relationship in the workplace and a cooperative position as against the adversarial position that we have had in recent years?

**Mr John**—I think the impact of that is very clear in Victoria. In 1992 the Victoria parliament passed the Employee Relations Act. On passing the act, it became an act not of the Victorian government, but of the Victorian parliament. Almost immediately the federal government at that time moved to pass legislation which frustrated the Victorian parliament’s intention as expressed in that act. That has continued ever since. Whatever one might think about the Employee Relations Act in Victoria, one cannot deny that it has been cut off at the socks before it got a chance to do anything.

**Senator CRANE**—I note in these flow charts that the AIRC continues to have a significant role in terms of its operations under this particular bill. There also have been changes in terms of the role of the AIRC. I would say it is a more focused role. Are you satisfied that the changes that have been made in terms of the role of the AIRC—bearing in mind that it is highlighted very heavily in terms of these flow charts you have provided—is a move in the right direction?
Mr John—Yes, I am, Senator. I agree with your description that the Australian Industrial Relations Commission has had its role more focused as far as this bill is concerned. The bill does not damage the capacity of the Industrial Relations Commission to establish standards, to enforce those standards and to play a considerable role in the supports for the system which is now very firmly a system of enterprise bargaining.

Senator CRANE—You said that this legislation is not United States legislation or New Zealand legislation and, more importantly, that unions in Australia will be much better off than in New Zealand and the United States. Could you expand on that statement?

Mr John—My understanding of the New Zealand Employment Contracts Act, for instance, is that employers are not bound to recognise any union that seeks to represent employees employed by that employer in the course of negotiations of an agreement covering that employer. That is clearly not the situation contemplated by this bill. In fact, the recognition of Australian unions as registered industrial organisations and all of the legal status, protections and benefits that flow from that, is preserved for Australian unions by this bill; it is not altered at all—and Australian unions get a considerable measure of protection from that status. For instance, they are protected from suit, by and large, and from the applications of a number of aspects of common law.

Senator CRANE—In the objects of the bill, which is a change in emphasis once again away from adversarial to cooperative, evidence was given to us earlier on the importance of the commission’s decisions being consistent with the objects of the bill. We have had some suggestions about minor changes to the objects of the bill. Are you satisfied that the objects of this bill meet the requirements of modernising the Australian industrial system?

Mr John—Yes, Senator, I am. They, I think, more effectively deal with the prevailing business circumstances of the 1990s than the objects of the current act do.

Senator FORSHAW—In the last part of the submission—and this has also been evident in submissions of other employer organisations—you tell us what this bill will not do. That is taken up by saying that union comments, such as the ones you referred to in the Victorian Trades Hall brochure, are unfounded concerns. I have heard a heck of a lot of hyperbole and, indeed, quite outrageous and untrue assertions about what the unfair dismissal legislation did in this country. It was even put quite regularly that, if it was not for the unfair dismissal legislation, we would probably have a heck of a lot more people employed.

One can accept a certain degree of licence when people are trying to put their point of view across. To come back to the points made in the document you referred to from the trades hall council, why shouldn’t workers who are currently covered by awards where there are a whole host of provisions which may have, in many cases, been put in by
agreement, by consent and may have existed for some time, react with that sort of a response when we have legislation which just removes provisions from awards? You also say, ‘Some of these things exist in legislation such as health and safety’, or ‘You can find these things somewhere else.’ From my long experience as a union official, when people are interested in finding out their terms and conditions, they like to have them all in the one document such as an award. Why should people not react that way?

Mr John—As far as the choice of employees having all of these provisions in one document, having a simple, clear-cut situation is concerned, in a complicated area like occupational health and safety, the provisions that are included in award documents are extremely simple. They do not deal with the complexities of the situation. And the more specialised provisions that are available in the acts themselves, supported by specialist agencies in posing those acts or enforcing those acts on business generally, are likely to bring greater benefit to employees.

I have never in my experience seen many employees who have carried a copy of the award around in their back pocket. I have seen even fewer who understood more than the simple questions of the pay rate, the hours of work, whether there were penalties and what the penalty provisions were concerned with. I do not think many employees have any idea what is in the award. They are concerned with some basic questions that largely have to do with income and their ability to sustain their life choices. Then they want to know whether they are going to be treated fairly if there is any dispute and that there is a quick and easy way of them resolving the disputes.

In the course of the submission that we have made, we have identified three particular awards and given a list of those issues that are in the award at the moment, that are not covered by the prescribed matters in the workplace relations bill. Some of those are as simple as posting the award; questions of summertime and what it means; and questions of blood donors, boiling water, lockers, meal allowance and meal breaks. No employer that I am aware of is unsympathetic to the provision of basic conditions for employees to come to work, store their personal possessions, change in reasonable conditions and dignity, allow themselves to shower and do a variety of other things, without the award providing that he should do that.

Senator FORSHAW—Yes, but so what? If you regard those things as trite, and others may and others may not—and I beg to differ with you that all employees do not know what is in awards but let us put that to one side—why should we have legislation which just carte blanche removes those provisions from the award because some people happen to think that a clause in an award which talks about blood donors or a clause in an award which talks about meal breaks is somehow an insignificant and trite item and should not clutter up an award document?

Even if you are right, what is the point of removing it unless people then think that once you take them out of the award there is a greater chance of them disappearing in
I can point you to awards where I have been involved in negotiating clauses which provide for occupational health and safety representatives on sites and for employers to provide insurance coverage for such people in the oil drilling industry. All those sorts of provisions will disappear out of awards by legislation—and they have been agreed to by employers, unions and employees and put into awards. If you are on about agreements, why do we now have legislation proposed which actually removes the very agreements that are currently in awards?

**Mr John**—Senator, this legislation does not remove the capacity for those agreements to be made; it simply says that—

**Senator FORSHAW**—But they exist in the awards now.

**Mr John**—It does not remove the capacity for those agreements to be made or those agreements to be made effectively. It simply says there are a series of prescribed matters which will form the basis of awards determined by the Australian Industrial Relations Commission as the result of conciliation or as the result of arbitration as the process is now. There is plenty of capacity for employers and employees to contain in a supplementary agreement—which will apply alongside the award—any issues in the workplace which they consent to. They can do that. They can have that agreement recognised as a certified agreement by the commission or they can have that agreement recognised as an Australian workplace agreement.

**Senator FORSHAW**—Why can’t they have it recognised as an award?

**Mr John**—Why do they want it recognised as an award and only as an award?

**Senator FORSHAW**—Because it exists at the moment in many, many industries. No matter how much you try to dodge around it, the fact is that this legislation proscribes from awards provisions that currently exist and have long existed in awards. Why should people be put in the position of having to go back and renegotiate to put those same provisions into a certified agreement?

**ACTING CHAIR**—We should now let Mr John answer the question because it has been a long one. I think he should be allowed to answer it now without interruption.

**Mr John**—I can only conclude from the tone of your comments that you believe that employers are motivated by a desire to exploit employees. That is a motivation I reject and I reject it totally and absolutely.

**Senator FORSHAW**—I will interrupt you, because I am talking about the government’s legislation. I have not said anything at all about employers’ motivations.

**ACTING CHAIR**—Senator Forshaw, would you let Mr John answer the question
now please?

Senator FORSHAW—I am not going to be verballed.

ACTING CHAIR—You will have a right to reply at the end.

Mr John—I do not accept that there is any suggestion in this legislation, or indeed in the motivation of employers generally, that they would not wish to continue agreements that they have made with employees. All this legislation says is that certain matters which might currently be in awards—and which are in awards as the result of consent and which employers and employees have agreed to—whether or not that consent has been with the assistance of unions or not, it is included in the award.

I think many employers see a situation under this bill where they would negotiate an agreement, either as a certified agreement or as an Australian workplace agreement to act alongside an award provision which would be made by the Industrial Relations Commission along the lines that the bill accommodates. I do not see a situation in which employees are likely to automatically lose a number of the provisions that they currently enjoy.

Senator FORSHAW—My last point is that we started out this discussion on the basis of the reaction of unions to what is proposed with the limitation of allowable items to go into the award. I put it to you that, if legislation was proposed to remove stand-down provisions from awards which are there for the benefit of employers—and I have experienced many occasions where employers have needed to rely upon them and have argued strongly to retain those provisions—no matter what fallback common law position may exist, there would be an outcry from the employer ranks in this country that such a provision would be proposed by legislation, just as we had similar outcries in respect to some earlier changes to the secondary boycott legislation. On that basis, one can understand the reaction of people seeing those other provisions removed.

ACTING CHAIR—I am not sure whether that is a question or not. If you choose to respond, you can.

Senator FORSHAW—Would you like to comment? Because I note stand-down provisions are still an allowable item, as is notice of termination.

Mr John—Yes, there are allowable items and if this bill becomes law then employers will no doubt continue to seek those provisions from the Industrial Relations Commission.

Senator FORSHAW—I am sure they will.

ACTING CHAIR—Time has expired, but I have just one point of clarification. I
understand when we are talking about things being removed from award provisions that the 18 provisions are minimum provisions and there is nothing to preclude extra provisions being put into any award.

Mr John—There are 18 prescribed matters. I think if you look at the seven provisions that need to go into Australian workplace agreements, there are some additional questions that are a grey area there. But, as I understand it, those 18 prescribed matters are the only prescribed matters that the Industrial Relations Commission can deal with. But outside that, an employer and a group of employees can make an agreement and have it certified and recognised by the commission in relation to any matters at all.

Senator FORSHAW—And slug it out if they have to.

Mr John—And slug it out if they have to.

ACTING CHAIR—Thank you very much, Mr John and Mr Gregory, for appearing before the inquiry this evening. Is it the wish of the committee that the Victorian Trades Hall Council document referred to earlier by Mr John be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows -
QUIRK, Mr Mark, National Manager, Human Resources, Australian Chamber of Manufactures, 380 St Kilda Road, Melbourne, Victoria 3004

WATCHORN, Mr Barry John, Director, Australian Chamber of Manufactures, 380 St Kilda Road, Melbourne, Victoria 3004

CHAIR—I call the committee to order. Our next witnesses are representing the Australian Chamber of Manufactures and I welcome you to the hearing. We have allowed for your submission a period of an hour. Could I ask that in your preliminary comments you take up to about half an hour so that we will have sufficient time for questions as well.

Mr Watchorn—Senator, if I could respond to that: we have put a written submission to the committee. I had intended to briefly traverse the areas covered by the submission and then to give the committee the opportunity to ask us questions. That has a particular significance because I am not quite sure how long my voice will last.

CHAIR—You are Canberra-based, are you?

Mr Watchorn—No, Melbourne-based. It is alleged that this disease is South African in origin. I cannot vouch for that one way or the other but it certainly leaves one feeling a little low. If that course is satisfactory to the committee that is what I propose to do—perhaps 10 minutes or quarter of an hour running through the basics of the submission then giving the committee the opportunity to ask us any questions would seem appropriate.

CHAIR—Certainly.

Mr Watchorn—Perhaps I could start by referring to the role which ACM plays in the industrial relations system under the existing legislation. We are a registered organisation of employers and we are a fairly significant participant in the system because we are respondent to something like 100 federal awards and agreements in our own right. And, of course, we provide service, advice and representation for our members in relation to those awards and also in relation to awards by which they are bound in their own right as named respondents.

The total membership is of the order of 6,000 companies covering some 400,000 or more employees. It needs to be said that this is not necessarily a focused organisation in terms of size. If you talk about our membership, effectively it represents a cross-section of Australian industry. That is, the overwhelming majority of our members are enterprises of 30 employees or less. They are, therefore, very much a sample of what Australian manufacturing industry is—and probably Australian employment generally. There is,
therefore, a very substantial element of small business in our membership in manufacturing.

The submission makes it clear that we support the adoption of the legislation as a matter of priority for the parliament. We make our reasons in support of that position clear. Going back to the time in which the thinking about the structure of the industrial relations system began to turn towards enterprise bargaining, we see the proposed legislation as a further step in the devolution towards the enterprise which really began in the mid-1980s, particularly the first steps along the track by the Australian Industrial Relations Commission in 1986 and successive decisions taken by the commission over the period up until 1991. There has, of course, been legislative intervention by the parliament as well as the steps initiated by the commission.

Our position has been that, in assessing the way in which Australian industrial relations needed to go, we had to take into account the fact that the economy was becoming deregulated, that the exposure of Australian manufacturing and Australian industry generally to competition was proceeding apace with tariff reductions and the like. The increasing internationalisation of thinking in the community dictated that we must move from our previous industry based award structure to one which recognised the realities of differences at the enterprise level. And against that background we adopted a policy at ACM in 1988 which called for awards to be structured along the lines of the industry defined by the activity of the employer rather than that defined by the activity of the employer’s employees. That initiative got some support from the commission at one stage but has not really proceeded apace.

But part and parcel of that process was the proposition that awards were far too prescriptive, that they were predicated essentially on a one-size-fits-all basis, that awards dealt with matters in far too much detail and that it was appropriate that that detail be stripped from awards—and I use ‘that that’ term not in a pejorative sense, not in the sense that it has acquired some pejorative connotations—and for there to be greater scope for the enterprise to reach arrangements suitable to its own working pattern and needs. That proposition, I think, has gained strength over the years since 1988 and, indeed, was echoed by some of the parties in fairly recent proceedings in the Australian Industrial Commission in the last two or three years.

We, in fact, made fairly extensive submissions to the then Minister for Industrial Relations, Laurie Brereton, in the context of his then consideration of the 1993 industrial relations reform legislation. Consistent with the approach that we had taken, we suggested core provisions which we thought were appropriate to be covered by awards and leaving other matters for consideration at the enterprise level. That is covered, I think, on pages 4 and 5 of our written submission. I will not go into that any further.

There is a great deal of similarity between the approach that we took—indeed, some of the issues that we specified as appropriate for minimum award provisions—and
the approach that the government has pursued in this bill. It has to be said that there are some differences. We, for example, took the view that it would be appropriate to protect award rates of pay rather than the approach which the government has taken on this occasion to protect take home pay which covers penalty and other loadings, allowances and so on, whereas I suppose it could be said that we were looking at a lesser level of specification of protection in that context. I suppose it is fair to say that our position now is the same as it was then; that is, that we would not have gone as far as the government has proposed in this bill in terms of protection of take home pay.

It could also be said that we took the view that award provisions regarding leave are those that ought to have been protected and, accordingly, we note that the government’s proposals in relation to carers leave in effect involve a slight increase in the quantum of the sick leave component of that for a number of awards—in fact, in most awards in relation to the first year’s employment. So, against that background, we see the philosophical approach which the government has taken as: being on the right track; providing a set of choices which are available for employers and employees at their own enterprise to reach arrangements suitable to their own needs; focusing more on agreement than dispute settling; and providing a set of protections, against the background of which the legislation relating to agreements must be considered.

We had particular concerns in 1993 about the proposed role of the agreement stream, particularly in relation to enterprise flexibility agreements when they finally emerged. We believed, from the experience that we had under the second tier system in the mid-1980s, that the necessary involvement of unions in agreements at the enterprise level would act as a dampener of enthusiasm for employers to proceed with enterprise bargaining. That is, small employers in non-unionised workshops would, in our experience, resist any suggestions that we would make that they should pursue an agreement on the basis that they could bring about some effective change within their enterprise when they realised, as we were obliged to tell them, that the agreement would be brought to the attention of the union when it required approval.

Rightly or wrongly, most of those employers took the view that, in those circumstances, they were not prepared to ratify an agreement which required the union to be aware of it because they did not want to attract the union’s attention to their own enterprise. We expressed our concern to Minister Brereton about his proposals then and he did not take that on board.

At the end of the day we have seen an outcome in the numbers of EFAs which suggests that that may well be a factor in the very small number of EFAs which have been approved by the commission. That is not said with any sense of being critical. It is simply saying it is a reality of life that if people perceive a particular course of action to be one which is not in their interests, then they do not usually adopt it and run heavily down that track, notwithstanding that their concerns may not be, in reality, as severe as they appear to them to be—perception being what it is all about.
We are pleased to see the proposed changes to the legislation in relation to unfair dismissals, as they are colloquially known. That is a more substantive way for the commission to deal with these provisions and is a better way to proceed than the heavy legalism which is implicit in the existing provisions.

The involvement of the Industrial Relations Court and the application of strict legal precepts to the existing provisions is a factor which has not helped in, again, the perception of many employers about the impact of the legislation, amply backed up from time to time by some of the horror stories that I am sure all of us have read in the press about some of the decisions.

So we see the move towards a greater role for the commission, the concept of a fair go all round and the framework that is proposed in relation to unfair dismissals, as a decided improvement. If my colleague Mr Quirk thinks that there is anything he needs to add, he will take the opportunity to say a few words to you during the course of the discussion.

CHAIR—Thank you, Mr Watchorn.

Senator CHILDS—What industries do you cover?

Mr Watchorn—The whole panoply of manufacturing. How long is a piece of string? It is from textile, clothing and footwear through to automotive parts, metals, heavy engineering, light engineering, printing, packaging, rubber plastic cable making and electrical electronics—the whole spectrum of manufacturing.

Senator CHILDS—Taking any one of those industry sectors that are very competitive within those particular sectors of industry, does the award not play a substantial role in giving a common denominator for all those employers, for example, as you say, up to 30 employees, allowing them to compete on the production of their particular place rather than compete on wages only and being undermined by the person who undercuts the award rate, as is sometimes possible, or to be paid very low wages?

Mr Watchorn—I would not wish for a moment to suggest that we support the concept of cutting wages as the prime purpose of any employer. Nothing in our submission would suggest that—I would hope not. We have to recognise that the award system certainly does provide the common denominator; but it is also extraordinarily prescriptive, going into such details as the timing of tea-breaks, for example, being a set and rigid figure across the industry.

Enterprises work in different ways. Not everybody is configured the same. The whole concept of flexibility is about how you adapt your production process better to fit the needs of your workers, your customers and your own engineering and other specifications. It is not about simply looking at wages and saying, ‘They’re the sorts of things we
cut.’ It is about saying, ‘How can we put ourselves together better to produce what we need to produce for the benefit of the client and, ultimately, for the benefit of the company and its employees?’ That is about making things better, making them smarter, improving quality and improving the quality of life for your employees too.

Senator CHILDs—I have some difficulty because you said that you see a more substantive role for the commission. Yet AWAs and taking away the no-disadvantage test will surely have the opposite effect on the commission’s role.

Mr Watchorn—Ever since the commission began to introduce national wage guidelines it has, to some extent, decided to constrain the way in which it exercises its powers in certain particulars. For example, it would not arbitrate above a safety net except in a special case. A special case requires consideration by the president, and, ultimately, the establishment of a full bench.

There is really nothing new in the concept of the commission controlling the way in which it exercises its powers. That the legislation seeks to define the allowable award matters in section 89A is certainly a new proposition. But, philosophically, I would suggest to you that it really is not that radical a departure from the kinds of voluntary confining of jurisdiction which the commission itself has put in place since the days of the principles going back to the mid to late 1970s.

Senator CHILDs—Could I turn to the question of trade union coverage and the conveniently belong clause. With all the disparate areas that you cover, don’t you face a real possibility that, if the current proposals were to become law, you could have quite a struggle taking place for jurisdiction in the various aspects of the manufacturing industry that you cover?

Mr Watchorn—Senator, it is fair to say that we were not enthusiastic supporters of the position adopted by the government on conveniently belong some nine years ago. But that is how long it has been in the coalition’s policy position. When that policy has been up front and clear for that long, then, as far as we are concerned, we are prepared to say, ‘Well, we don’t agree with you but we certainly agree that you have the right to implement that policy, provided our concerns in a particular connection are addressed.’

It is fair to say that the minister was prepared to listen to the submissions we made to him in relation to the need for a power in the commission to deal with matters relating to demarcation. The proposed retention of powers, similar to those in existing section 118A, is in the bill. We support that, and we think that that provision will have the advantage of preventing the sort of debilitating competition to which you have referred—in other words, having the power in the commission to be able to deal with demarcation in that particular way.

Senator FERGUSON—Mr Watchorn, there has been some criticism by my
colleagues on my right about the lack of submissions from individual companies or from organisations representing employers, more from individual companies. As a peak organisation member, did you ask representatives to put submissions to this inquiry, or was it generally accepted that you would make a submission on their behalf?

Mr Watchorn—The situation is that we have our own consultative mechanisms within ACM. They are comprised of, if you like, a consultative group of representatives of member companies. They were certainly involved in the preparation of our submissions to the government and have been in relation to the submission on this occasion.

I should say that at least two of them have told me that they were approached and asked whether they intended to make the submissions themselves, to which their response was, ‘That is why we belong to a representative organisation like ACM. It has the capacity to represent the views of its members.’ They said, ‘In our view, it is quite inappropriate for individual companies to make submissions of that kind in their own right. That is why you belong to a representative organisation.’ Perhaps Mr Quirk would like to add to that.

Mr Quirk—In effect, just from an operational perspective, our discussions across the industry sectors that we represent has been an expectation from each of those sectors that we would make a submission that represented a manufacturing position. So that may be a partial explanation.

Senator FERGUSON—Can I follow on with a different question? The previous witness quoted from a document which in part says:

The politicians in the Senate must get the message that the draconian measures in the bill are totally unacceptable.

Yesterday or the day before in Adelaide—I cannot remember which day—we heard a different point of view from Professor Judy Sloan, who said that she considered the changes to this industrial bill were very modest changes. In other words, that the bill could, if anything, have gone further. So we had the view that there were modest changes and we have the view that they are draconian measures. Would you like to comment on where you think the changes of the bill stand in relation to those two comments?

Mr Watchorn—I think it comes through in our submission that these are significant changes, but they are not revolutionary. They are a consistent follow through from the thinking which developed in the 1980s and which matured in the 1990s. In my view, they contain a number of elements that were at least believed to be behind the thinking of the then Prime Minister in April 1993 when he made that famous or infamous company directors’ association speech. He talked about award with fewer clauses, less detail and similar sorts of concepts. I do not think this legislation can be construed as revolutionary. I do not think it can be construed as draconian. But it is certainly significant and it is
probably one of the more significant changes since 1904. But then again, Australia has changed since 1904 and is still changing.

**Senator FERGUSON**—And so have our competitors.

**CHAIR**—Mr Watchorn, I am just curious about your representative nature, as you have described it. Why would you not encourage member organisations to make submissions when, for instance, the chambers of commerce and industry would?

**Mr Watchorn**—I think that reflects the difference between the two organisations. We are an organisation which has individual employers as its members. So we have a Cadbury Schweppes—

**CHAIR**—We did visit Cadbury Schweppes, by the way.

**Mr Watchorn**—Yes, I was aware of that, and we have an ICI.

**CHAIR**—We visited it also.

**Mr Watchorn**—I am aware of your visit there, too. And we have a number of smaller companies. They belong to ACM as an organisation representing manufacturing industry. If you take the Australian Chamber of Commerce and Industry, however, it is an organisation of organisations. Its members are employer associations like ACM. In effect it is not an organisation of employers so much as an organisation of employer organisations, if I can put it that way. That is the difference between the two of us. ACCI’s members are organisations which have employer members in their own right and they undoubtedly would wish to make submissions in the same way as we would.

**Senator CRANE**—They are state branches.

**Mr Watchorn**—In a sense they are, except that there is a substantial number of organisations and members of ACCI in a number of states.

**CHAIR**—I am interested also in your comments earlier that you would not encourage—and I am trying to summarise it and you can correct me if I am wrong—the facilitation of wage reductions through a new legislative arrangement. Particularly with respect to section 152, there have been several concerns raised before this committee about the impact for some state jurisdictions meaning that some workers will be worse off. Would you have a difficulty with the retention of the current federal no disadvantage test?

**Mr Watchorn**—If I can deal first with the question of section 152, and I was certainly here during the evidence by Mr John and I am not unaware of the proposed legislation, in Victoria in due course—
CHAIR—We are not.

Mr Watchorn—Certainly it has been the subject of some press coverage and I think the minister has made it perfectly clear, as Mr John mentioned, that that is intended. As we said in our submission, a variety of conditions apply to agreements at the state level and that differs from state to state and, given the nature of this country, that is always a possibility. In this legislation there is a very substantial move towards greater complementarity, greater participation of the state systems in this federal system. We, for our part, have been arguing that for years and we strongly support it still.

That some agreements can be struck which have different conditions attached to them in section 152 is a reality, but that can only be done by agreement. The burden of your question is whether that is a problem. One response is that it can only be done by agreement. If one were to provide a role for the employment advocate in that process in agreements under the state system, that might be helpful too.

CHAIR—Dealing with that issue before you move on, other evidence has dealt with the question of whether it is by choice or by agreement. One of the issues raised has been how you ensure that, particularly for prospective employees. Would you have a difficulty if it were made unacceptable under this bill that the signing of an individual contract separate from the award be made a condition of employment, as is the case within much of the public sector in Victoria?

Mr Watchorn—The existing provisions of the bill deal with that question, do they not? Is it not the case that, while it is possible to have an agreement before employment commences, the agreement itself cannot come into effect until the employment commences?

In other words, you can sign an agreement before you commence employment but it has no effect unless and until you actually commence the employment. I would have thought that that was a reasonable proposition and I do not know that there is any necessary virtue in the proposition that you have just put.

Provided that there is adequate protection against duress—and certainly this legislation has, both in certified agreements and in AWAs, a fairly substantive set of provisions, including fairly significant penalties for employers if they do the wrong thing—I do not see, against that background, that it can be said that it is easy to get away with duress in the regime proposed under the bill.

CHAIR—What is duress? Following through from your example of a prospective employee, are you suggesting that under this bill an employee going for a job who is told that it is a condition of employment that they sign an individual contract—actually agree to an individual contract—then turn up to their employment and say, ‘Oh, no, actually I want the award,’—is that the real choice that faces employees?
Mr Watchorn—No, it was not that. It was a combination of things. The bill provides that, while you can sign up to a contract, it does not take effect until you actually start. But the protections that apply under the award in that connection would apply to that employee. So you cannot offer to a potential employee provisions which breach the minimum standards simply because they are not an employee at the time. They are subjected to the same protections as are existing employees in the legislation.

CHAIR—No, a different test applies with respect to the award as opposed to an Australian workplace agreement.

Mr Watchorn—They are still subject to the same minimum standards, as I recall.

CHAIR—No, the award has one set of minimum standards which it has been proposed will be reduced to 18 allowable matters. Whereas with respect to Australian workplace agreements, I think it was seven or eight points retaining the remuneration components of the award as one of them.

Mr Watchorn—It is my understanding that there are 18 allowable award matters upon which the commission is able to conciliate and arbitrate and include in the awards.

CHAIR—Yes, that is right.

Mr Watchorn—Then the legislation provides for a set of minimum standards applicable to both AWAs and to certified agreements.

CHAIR—That is correct.

Mr Watchorn—That is, the protected provisions of no reduction in take-home pay, jury service, 12 days carers leave, four weeks annual leave et cetera. They are consistent as between AWAs and CAs.

CHAIR—Yes.

Mr Watchorn—So that is the same protection in award provisions which applies whether you are an employee under the act at the time an agreement is offered to you or whether you are a potential employee.

CHAIR—No, I do not think that is quite the case. The protections you have as a potential employee if you do not have access to the award because it is made a condition of employment for you to commence your employment are the seven or eight matters pertaining to Australian workplace agreements, not the 18 allowable matters which would be covered within the relative award.

Mr Watchorn—We may have a difference of view about that. All I say is that the
18 allowable matters are the matters that the commission can cover in an award.

CHAIR—Yes.

Mr Watchorn—The protection that applies to an employee in both an AWA and a certified agreement are the separate provisions of the minimum standards specified elsewhere in the act, and perhaps you can have a quick look to check that up.

CHAIR—Yes.

Mr Watchorn—In that connection, as I understand it, it is not open to an employer to offer to a potential employee conditions less than those specified in the minimum conditions applicable under the act in CAs and AWAs.

CHAIR—Yes, that is correct, not the award.

Senator CRANE—Earlier in the day, Mr George Wasson from the CMFEU, said that employers did not care about occupational health and safety. Later in his verbal submission, he said only a small minority of employers cared about it. What is your members’ experience in occupational health and safety? In particular, the various frameworks under which they work and the stringency or otherwise of the various state acts with regard to occupational health and safety. How high do employers regard the importance of proper health and safety standards in the workplace?

Mr Watchorn—Perhaps my colleague Mr Quirk could answer that question as he has particular expertise in that area.

Mr Quirk—One of the strongest growing areas operationally would be occupational health and safety provisions, whether they are in the form of legislation or in the form of guidelines. In our case we obviously have a very careful monitoring and review of the state provisions because they are the majority. In that respect I would like to point out that we continually run training course with five professional counsellors. These courses typically attract on an annual basis over 1,000 managers and employees. We also run consulting services to industry right throughout Australia. There is a continual and ever growing demand for ACM service.

Senator CRANE—Do you provide that service yourself for your various members?

Mr Quirk—Yes.

Senator CRANE—They are constructed according to the state acts?

Mr Quirk—They are customised and tailored to the various state OH&S provi-
sions and to the requirements and plans of the individual businesses and industries.

Senator CRANE—One thing I must say—and I think this is about the third or fourth time your organisation has appeared before this committee on an IR or other matter—is that you are consistent in your views. They have not changed very much since 1990.

If I could take you to page 10 of your submission under the heading ‘Term of Reference (d): the effects of similar provisions in other countries’ where you say:

While ACM does not wish to pursue the detail of legislation in other countries, we would observe that Australia is one of a very few countries which has in place a system of compulsory conciliation and arbitration which covers such a substantial part of the workforce.

Obviously, you looked at that from an international perspective. Could you expand on the comparison between the role of the AIRC under this bill as what occurs in other countries, particularly the ones mentioned here, New Zealand and the United States—I am not excluding other countries; you may wish to comment on Europe or elsewhere for that matter?

Mr Watchorn—Perhaps I could respond to that. For my sins, in a previous life I had some significant involvement with the International Labour Organisation and was the Australian government representative in Geneva for three years, having had responsibility for the international labour area of the then Department of Industrial Relations for a number of years also.

It is abundantly clear when one is associated with organisations like the ILO that a system of conciliation and arbitration, such as we have had in this country since 1904, is very much a rarity. One is constantly required to stand up in the chambers of the ILO to explain that not everything is collectively bargained and that there are systems of conciliation and arbitration. It was the case that New Zealand, Australia and Singapore for a time during the 1960s and 1970s were really the stand-out examples of such a system within the ILO, with very few other countries having similar systems.

New Zealand has obviously changed fairly significantly and so too has Singapore, although I understand there is still some provision for arbitration in that country. But our system is very much sui generis viewed across the board in the international community. In my experience, the buttressing or the support mechanisms which this bill proposes in terms of minimum standards is more extensive than is available under collective bargaining systems and is backed up by the Industrial Relations Commission and its, albeit, more limited powers in relation to awards. That, however, is far more extensive than any similar mediation or voluntary arbitration body in other countries of which I am aware.

Senator CRANE—You made some comments about the harmonisation of the state
federal systems and particularly relative to Victoria. Can you give us any information at all about some of your member organisations as to whether or not they have had similar discussions in other states? We have been told in South Australia and Western Australia, and I have been told of other states, that they are keen to work towards harmonisation, but I thought you might have information from some of your member organisations which would be of use to this committee.

Mr Watchorn—I do not think I can say anything other than that which is fairly well in the public domain from press articles and the like. I have had no direct advice from members, but there has certainly been a general policy from within our own organisation encouraging, ideally, one system of industrial relations in this country. We recognise you have got to crawl before you can walk, and it is a fairly big ask to get there in one hit, but we see the proposals in the legislation as a pretty substantial move in that direction as a first go.

Senator MACKAY—Mr Watchorn, please excuse me if you need to repeat yourself in relation to my line of questioning. I came in when you were talking about the representative nature of your organisation. Would you please go through, for my indulgence, what consultation occurred with your member organisations in relation to your submission?

Mr Watchorn—The way in which we operate is that we have our membership base and we have a series of consultative mechanisms, one of which deals with industrial relations and employment related issues. We called this committee together—

Senator MACKAY—Who is on that committee?

Mr Watchorn—There are representatives of Cadbury Schweppes, ICI, Southcorps, Westons Foods, Alcoa, Pacific Brands, Pacific Dunlop and so on.

Senator CRANE—They are all large companies.

Mr Watchorn—Yes. We try to get it as representative as possible of the industry base of the organisation. That consultative group in effect put together and endorsed a series of submissions that we made to the Minister for Industrial Relations on what we wanted to see coming out of the bill. It is really out of those documents, as endorsed by that consultative group, that this submission has emerged. It is a distillation of the views that were put in the submissions to the minister.

Senator MACKAY—Do all your members agree with your submission or is it just the consultative group on industrial relations that agree with your submission?

Mr Watchorn—One can respond to that in this way. The policy position that ACM has adopted since 1988 has been very much up-front in our periodical publication

ECONOMICS
that goes to all our members, our newsletter called the *Bulletin*—not the other kind of *Bulletin*, but that is what we call it. The fundamentals of our position are crystal clear. We have made it abundantly clear that the issue of the government’s legislation was a matter for consideration.

Immediately after the election, we referred again to our policy position. We have since made clear in our journals our views about the legislation along the lines set out in this document. We have heard no dissent from that. I would not be so bold as to say that there is no member within our organisation or any other organisation that might not agree with us. I would be astounded if there was not someone, somewhere, who did not like it. There are many who may have a political persuasion which would not be terribly favourable disposed. I don’t know, but it is possible. People’s votes in the ballot box are their own business. But certainly it has not been brought to our attention any dissent in relation to our position on this bill.

**Senator CRANE**—It has been consistent since 1990. I can tell you that.

**Senator MACKAY**—So you did not actively encourage your individual member organisations to put submissions into this committee?

**Mr Watchorn**—We did not actively encourage or discourage them. We worked on the basis that, as my colleague Mr Quirk said a little earlier, there was an expectation of members that we would be putting submissions in.

**Senator MACKAY**—I heard that.

**Mr Watchorn**—And some of the members of the organisation, admittedly members of the consultative group, contacted me to say that they had been asked to make submissions—they being individual companies—and they had responded that that is why they belonged to an organisation like ACM, to have their views represented in its submissions.

**Senator MACKAY**—Who asked them to make submissions to this committee?

**Mr Watchorn**—I am not sure where the approach came from. These are large companies and one of the companies was invited to play host on one particular occasion. I am not sure where the invitation came from, whether it was from one of the staff of the organisation or not. I really cannot answer that question, but I do know, because it was raised with me, that that was the response.

**Senator MACKAY**—The member organisations who raised it with you did not indicate where this invitation to put submissions before the committee came from?

**Mr Watchorn**—I cannot remember who had invited them, but I was told that they
had been asked. They had said, ‘No, that’s why we belong to ACM.’ Now, that may well have been from one of their employees, one of their managers. I cannot answer the question because I simply cannot remember.

Senator MACKAY—In relation to your comments that this bill will not result in a diminution in wages and conditions, given that you are a representative body of large employers, can you guarantee, in terms of this consultative committee that you referred to, that at least the members of the consultative committee will adhere to the commitment that there will be no reduction in wages and conditions as a result of this bill?

Mr Watchorn—Perhaps I should come back to the question of what is your understanding of the position. What I said in answer to an earlier question was that we would not wish this submission to be seen as encouraging people to the view that the new regime is about cutting pay and conditions.

Senator MACKAY—But can you guarantee that at least the members of the consultative committee will not cut pay and conditions if this bill becomes law?

Mr Watchorn—I can guarantee to this committee that the members of ACM will be advised by the organisation to comply fully with the provisions of the act and that if there are any members who wish to depart from the provisions of the act, they will be advised that that approach is not appropriate in terms of the legislation.

Senator MACKAY—And your understanding of the spirit of this act is that there will be no reduction in wages and conditions as a result of the introduction of this act? That is what you have advised your members, have you?

Mr Watchorn—That is what we have advised our members. We have pointed out what the no reduction in take home pay provision actually means. As I said a little earlier, that goes rather further than we would have wished and than has been our policy. But that is what is provided for in the legislation and we will certainly respect that. We think that is a little more far-reaching than we would have gone.

There is one circumstance, however, that I think needs to be taken into account, and that is that there is specific provision in the bill for a short-term business crisis and, in the circumstances of such a crisis, for the commission to approve an agreement which may, in fact, depart from such a minimum standard on a temporary basis to get that company out of a deep mire. Certainly that is provided for in the legislation and I would not want to be understood as in any way saying that under no circumstances would any of our members refuse to take advantage of that if there was such a short-term crisis in their operation.

Senator MACKAY—What provision of the act is that?
Mr Watchorn—Perhaps my colleague can check it out for me, but it is certainly there.

Senator MACKAY—Could you point me to that section of the bill? What will you do if you discover one of your member organisations has, in fact, used this bill to reduce wages and conditions?

Mr Watchorn—Let me put it to you this way: if a member requests our advice and assistance in dealing with a certified agreement and putting that through the commission, we would provide that member with advice and assistance which reflected the reality of the legislation. Consistent with our obligations as an organisation registered under the act, we would faithfully represent what that meant to the member and put the case to the commission in terms of a certified agreement as best we could, including, as I have suggested, a case where a firm was in a short-term business crisis. It would be our responsibility and our task to comply with the provisions of the act as appropriate.

Senator MACKAY—So you do not see yourself as having a regulatory function with regard to your member organisations?

Mr Watchorn—That is not our role: our role is to represent their interests and to put them on the right track. We are not there to discipline them—we do not have disciplinary powers of that order to apply to members—but we have a long-term capacity and a long-term reputation for abiding by the law of the land and encouraging our members to do likewise.

Senator MACKAY—Have you found that section of the act yet?

Mr Watchorn—It is certainly there.

Senator MACKAY—Could you find it and get back to me? I actually want to know what section, if that is all right. If you could find that, thanks.

CHAIR—Thank you, Mr Watchorn and Mr Quirk.

Mr Watchorn—Thank you, senators.
[7.45 p.m.]

HERON, Ms Alex, Member, National Women’s Justice Coalition, GPO Box 3148, Canberra, Australian Capital Territory 2601

EARLE, Ms Jennifer Louise, Member, National Women’s Justice Coalition, GPO Box 3148, Canberra, Australian Capital Territory 2601

CHAIR—Welcome to the hearing. We have allowed three-quarters of an hour for this period of evidence. Could I suggest that you confine your statements to around about 20 to 25 minutes. That will allow us time to deal with questions arising from your submission.

Ms Heron—I have actually prepared something for five minutes because that is what we understood would be more appropriate. First of all, I would like to say we welcome this opportunity to give evidence to the committee. You already have our written submission and we would like to table the corrected version of it, a list of the members of the coalition, information from the maternity alliance and our press release.

The part of our submission which we want to highlight in our evidence tonight is, firstly, that Australia lags behind many of its European and Asian counterparts in failing to provide for paid maternity leave. Secondly, paid maternity leave is not on the whole a subject appropriate for individual or even workplace level bargaining. Thirdly, as an organisation we fear that what little paid maternity leave there is in Australia will be undermined by the bill’s provisions.

We make these points despite the economic constraints on the government because it has emphasised its interests in helping parents combine work and family responsibilities and its support for equal pay and anti-discrimination measures in employment. Whilst women suffer substantial economic loss upon having children, none of the above aims can be fulfilled.

I want to make three brief points. Firstly, Australia has outstripped most of the world in narrowing the gap between men’s and women’s pay in terms of award wages, at least, but only 17 per cent of women workers are eligible for paid maternity leave in Australia compared with 87 per cent in the United Kingdom, which is the least generous of the 11 European countries surveyed in the table attached to our submission. Japan, Taiwan and Malaysia have also made provision for state funded paid maternity leave.

Secondly, the apparent optimism generated by the recent agreement for paid maternity leave entered into by Ford cars and the unions is belied by the statistics available from the Department of Industrial Relations. For example, its 1994 annual report on enterprise bargaining shows that all of one per cent of these provided for paid parental leave. In any event, it is only reasonable to spread the cost of paid maternity leave
throughout the community by providing it through a government funded system.

Finally, we are concerned that the paid maternity leave which does exist, mostly in the Public Service, may well be bargained away in the award stripping-down process in return for pay rises and especially if workplace agreements begin to be made in the public sector. This is because only a small minority in any workplace will have an active interest in preserving it at any given time.

I was asked on the radio this afternoon if I thought the government was likely to include paid maternity leave in the safety net under the bill. All I could say was that in terms of its cost, which we covered in the submission, and the number of comparable countries which provide such provision, it is not an unrealistic demand. Your support in asking the government to ensure that those employees who already have access to paid maternity leave do not lose it, and requesting the government to investigate how it could be implemented, would bring its reality a step closer.

Ms Earle—I would like to make one or two additional points, points that actually are not made in the written submission that you have already received but that are alluded to in the additional material that we have tabled from the Maternity Alliance, which is a member organisation of the National Women’s Justice Coalition.

They make a couple of points in particular. One is the need for a universal right to reasonable paid time off to attend antenatal appointments which is something that exists in most Western industrialised countries now but does not exist in Australia, which leaves it to individual women to negotiate with their employers. This is a very stressful process for them to engage in at a time when they are under stress as a result of their pregnancy. Also, of course, it has very uneven results and it has uneven results depending on whether someone is dependent on the public health system or the private health system and how much flexibility therefore they have with their pregnancy care.

The other point that is made in their material is that it is government health policy for women to breastfeed for a minimum of 12 to 13 weeks and realistically that requires a period of absence after the birth of at least 12 to 13 weeks. The health benefits for both mother and baby of breastfeeding are now well recognised, but unless there is paid time off to enable that to happen, then it can only happen at tremendous economic cost to the individual woman and to her family. So that is an additional point to make in relation to the need for a guaranteed minimum period of paid maternity leave in this country.

The other point that is perhaps worth making which is developed in our submission—and we have some additional material if you need further convincing on it—is that of course you will be aware that there is now this thing called the maternity allowance. It has been dubbed the ‘baby bonus’ and some people have taken that to mean that there is now paid maternity leave for most women. But the fact is that that is a social security benefit. It is not linked to work force participation or to income in any way and in fact if
you average it out in terms of average earnings, it constitutes something like roughly 11 per cent of women’s average earnings per week. So we do not consider this new social security benefit, which exists in most of the jurisdictions that we are comparing the position with, in addition to paid maternity leave that is available as of right to women as a result of their involvement in the paid work force.

CHAIR—I am interested that the National Women’s Justice Coalition has come forward and concentrated in your submissions on this maternity issue. I think you will appreciate that at this stage of our hearings—17 days around the country—it is refreshing to be able to focus on one particular area of concern. I understand that this is an area of concern that has been raised specifically with the minister by several groups.

I am interested in your comment that individual contracts are going to make it more difficult to facilitate improvements up from that 17 per cent in terms of it being a reasonably fundamental change to the type of system that we have had. I am sure you are aware that historically—I think since about the mid-1970s—at least from the trade union movement there has been an agenda to move towards maternity leave, parental leave and special family leave. I think the whole gamut was back in the claims in the mid-1970s, but it took only until very recently to achieve special family leave. Actually even paid maternity leave was part of that plan back in the mid-1970s. Is it your view that this sort of change in our system of industrial relations is actually going to make it even slower to improve that agenda?

Ms Heron—I think that in most of the countries we are talking about, the paid maternity leave is part of the statutory safety net. I think that it is probably very difficult for any woman to front up whilst negotiating her individual contract of employment and say, ‘By the way, I’d like to arrange to have 12 weeks paid maternity leave,’ because the immediate assumption is, ‘Yes, you’re going to have a baby. Well, that’s bad enough and you want to be paid for it.’

Ms Earle—Actually we refer in our evidence to a report produced by the New South Wales Anti-discrimination Board which details the extent of discrimination on grounds of pregnancy and in particular the incidence of pregnancy-related dismissals. I think that it has to be understood that women are very anxious about the consequences for their employment prospects of not just admitting, but negotiating on the basis that they intend to take time off to have children. I think it is probably still one of the biggest areas of sex discrimination. It is very hard to prove which makes it very hard to challenge. It is in that context that we think it will be very difficult for women to negotiate on an individual basis to improve their maternity entitlements. It also means that in a sense an additional price is attached to the head of each woman employee, which is why we think it is important to make it a universal right the cost of which does not fall wholly on individual employers.

Senator FERGUSON—First, let me say as a mere male it is a bit difficult to ask
all the questions about maternity leave. But there are a couple of issues that you raised that I just wish to clarify, because I am a father and I am a recent grandfather, I might say. You spoke about pregnancy as being a very stressful time. Can I say that, from what I can remember for both my wife and my eldest daughter, it was probably one of the happiest times of their life, not the most stressful.

Ms Earle—It is happy if it is working well and your employer is sympathetic to the change in your circumstances.

Senator FERGUSON—I understand that. Who should pay for maternity leave?

Ms Earle—Basically, we believe that there should be contributions from employers and from central state funds towards the cost of maternity in a similar fashion, say, to how superannuation is funded. There can be levies on employers and from central funds funded through the taxation system—that sort of joint funding, if you like.

Senator FERGUSON—When you talk about central funds, you are talking about taxpayers’ money.

Ms Earle—Yes, taxpayers’ money, that is right; working women being able to draw on the taxes they have paid through their working lives to fund this period of their lives when they cannot be at work.

Senator FERGUSON—The taxpayers are already funding to a certain extent, aren’t they, a maternity period or when a child is born, for a certain period of time. The question that concerns me is that I can see positions where a small businessman, for instance, who is under considerable stress, if he also has to pay for maternity leave in a paid maternity leave situation as well as having to replace the worker, he might find it very difficult to get over a particularly difficult economic period.

Ms Heron—I think it is very important that individual employers are not landed with the bill.

Ms Earle—Not with the full cost. The context that I am most familiar with is that for three years I worked for an organisation in Britain called the Maternity Alliance, which worked with employees and employers to further maternity rights. In that jurisdiction the system was that employers paid the maternity pay, but they were able to claim reimbursement for something like 90 per cent of the cost of the maternity pay from central funds. That was funded notionally by the national insurance scheme there but actually in many ways that is similar to a tax levy, obviously. But basically individual employers can claim reimbursement in that system. In many European countries there is a similar sort of social insurance system, if you like, to fund it. So, whilst it may be administered by the employer who pays it in the form of wages, they claim back the cost.
Senator FERGUSON—I am going to have to be very careful how I phrase some of these questions. It is also a situation where in current times, with more and more women being involved in a career, there is a significantly increasing number of women who are choosing not to have children. Do you think that they would feel that they were being disadvantaged or discriminated against by the fact that the person who chooses to have a child gets paid leave and someone who chooses not to has no benefit at all? I hope it is not a terrible question.

Ms Heron—It is an argument. I also think it is an argument I have only heard fairly recently. I think it is important to make the point that we all rely on the next generation for our old age pensions, et cetera—

Senator FERGUSON—Certainly. I do.

Ms Heron—And that those of us who actually have children should not bear the whole cost of them, and you do bear a huge cost, obviously, to which 12 weeks paid maternity leave is only a small contribution, I think.

Ms Earle—There is that issue of society as a whole taking responsibility for production of the next generation, rather than individuals bearing the cost personally and privately. There is also a very important equal opportunities issue: at the moment, men can have children without it resulting in direct economic loss. Obviously, there is cost to men involved in having children but they do not automatically and immediately suffer loss of wages for the length of time, and in the routine fashion, that women do as a result of having children.

If, in an ideal world, you think having children should be a joint decision of men and women then surely there should be an equal allocation of financial penalty to that, or a sharing by society of the cost, otherwise it is women who suffer in terms of lost income and lost employment opportunity. It is something that society, through the government, needs to tackle and deal with, if you like, to level out the playing field.

Senator FERGUSON—With respect, I know when I am out of my depth, I think I will quit while I am behind.

Senator CHILDS—I think that you are pushing against the tide, if I could put it that way. I appreciate that you have probably taken the coalition’s proposals at face value when they have included in the objectives those objectives that you refer to. But I find it hard to believe that we will get to a situation where a woman who is, perhaps, ethnic, will, as a negotiator in an AWA agreement with her employer, be able to say, ‘It is in the objectives of the bill: I am sure you will agree to our request.’ How do you answer that? The whole thrust of what the government is doing is to make it more difficult, so far as I am concerned, for somebody to get that—
Ms Earle—We are asking for an amendment to the bill.

Senator CHILDS—Perhaps I am getting cynical after so many days of this hearing.

Ms Earle—We are asking for something major, and we did say at the beginning that if you were convinced by our arguments then, obviously, your statement of that in your report would assist in the general argument. But, on two very specific things covered in the submission, I would hope that you might think of making very specific recommendations. One is the ability under Australian workplace agreements for people to take payment for their personal and carer’s leave in advance of needing it. I think that will be very detrimental to women because, if in a workplace it is agreed that they will all take that now and just hope that they do not get sick, then if our dependents get sick, be they our parents or our children, the person who is going to take the unpaid leave is likely to be a woman. I have seen figures: the carers for both the elderly and children are, overwhelmingly, women. So if that provision alone, which we have outlined, could come out of the bill, that would be of some assistance.

The other issue is public service maternity leave, which, we are convinced, is at risk in the award stripping down process. That is a benchmark to which the rest of the community should be striving rather than seeing it undermined. That, too, could be changed by specific preserving of those rights.

Senator MURRAY—I was told by somebody rather clever that maternity is a fact and paternity is an opinion. My opinion, for what it is worth, is that this is, as you correctly outline, a choice for society. It is a social choice and my opinion is that women need to be encouraged to breastfeed their children and to have as much time with their children, particularly when they are young, as possible because that is good for the community and good for the future.

I would suggest that, since we have a Prime Minister who hangs his hat and his heart very firmly on the family, anything which encourages the bonding and the future of our children with their mothers is to be welcomed. In that respect I would suggest to you that what you have to say is of great interest to the government, regardless of the economic rationalist opinions. It falls right in the lap of advancing the family—that was not a question, it was a statement.

Ms Earle—Of course, as we make the point in our submission, it would then bring us into line with Australia’s international human rights obligations because the convention on the elimination of all forms of discrimination against women also requires the provision of paid maternity leave, not just unpaid maternity leave. Australia has currently got a reservation on that particular part of the convention but I think it is time that the reservation was lifted and full compliance was entered into and that we came up to the level of our international counterparts in this area.
Senator CRANE—If I could just go to page 26 of the bill in terms of dealing with your submission and just draw your attention to (h) as one of the allowable awards matters before the commission. This covers:

(h) parental leave, including maternity and adoption leave;

I would have thought in terms of the argument you have put that that is a big step forward as far as those particular aspects are concerned. While I am dealing with that, if we go to the minimum standards for agreements, once again there has to be a provision of 52 weeks of parental leave or adoption leave.

Ms Heron—That leave is all unpaid.

Senator CRANE—In terms of the minimum standards, there have to be 52 weeks.

Ms Heron—Yes, of unpaid leave.

Ms Earle—Our point is unless it is paid.

Senator CRANE—I will come to that in a minute but I am just pointing out to you that in terms of this particular bill, and particularly following Senator Childs’s comments, we have only just come into government and we certainly address this issue in terms of those particular aspects.

The other thing that people like myself have to weigh up, and it is a subject that we have to approach, I tend to be more of the old fashioned style who thinks that if a couple makes a decision to have children then there are some responsibilities back on that couple. I have no problems with what exists now, maybe an expansion of that, but I do not think it is really the role of society to pick up all of the costs in terms of parenthood because it does involve couples.

The other point I would like to address in terms of priorities is that we were given evidence in Adelaide on Monday that they have youth unemployment there to a level of 40 per cent. So, where do we put our priorities in terms of dealing with the social questions that exist?

Ms Heron—In terms of allowing the commission to deal with parental leave, they have considered that an industrial issue for some time. There have been the maternity leave test case, the parental leave test case and the carer’s test case. That is certainly not new in terms of the commission’s powers. What I think is of concern is that they are only allowed to make minimum rates awards and any improvement on a basic minimum has to be negotiated at the workplace. I will not reiterate all our arguments about why we think that is an extremely bad idea in relation to spreading the coverage of paid maternity leave.
Obviously, it is true, and we point that out in the submission, that paid maternity leave is a policy choice. I think we put in there illustrations of other very expensive policy choices like the rebates on dividend imputation, which I cannot say I am terrible familiar with but it certainly costs a huge amount of money and goes to extremely wealthy people. That is a policy choice: fostering investment or some such would be the logic. But we have got to foster investment in our future and that is our argument.

Senator CRANE—I understand that. Thank you.

CHAIR—I might take more time than others to ask questions, because I understand there are no other questions.

Senator FERGUSON—Well, you are more qualified.

CHAIR—Yes and no. You may be pleased to know that I did actually get paid leave to give birth to my child last year, but it was not paid maternity leave; it was paid leave that senators are eligible to receive for all sorts of different purposes. The only problem I had was that the extent of that leave was about 2½ weeks.

The point that I would like to go back to is in relation to page 26 of the bill and the provisions that will be regarded as allowable matters. I think one of the other submissions that we have received has raised concerns with the fact that whilst it includes parental leave, including maternity leave and adoption leave, the part-time work provisions are not included.

I seem to recall that at a part-time work convention—I think it was two years ago—the ILO actually had provisions in the recommendations that countries should be seeking to enable workers in particular circumstances, such as returning to work after pregnancy, to have access to part-time work. I think it is interesting in terms of what the government has said in relation to work and family and part-time work; that, in terms of the allowable matters, that is one component of the test case provisions which has not been carried over. Do you have anything to add on that issue?

Ms Heron—I think that is a real worry, yes. I think what is very unclear from the allowable matters is that one can only assume, unfortunately, that they will all be at a very bare minimum. So the commission may well be guided by the fact that the statutory minimum in lots of states is 12 months unpaid leave, full stop. They may not feel able to carry on all those other provisions such as returning to work part-time for two years. I agree it is a real worry.

CHAIR—Yes. I certainly also relate to your concerns about paid maternity leave and Australia meeting its international obligations. I regard the phase that the previous government went to with respect to the maternity allowances as a step and that further steps are necessary. Unfortunately, I tend to agree with your view, which is that a move
towards a system focused more on individual contracts is not likely to facilitate further movements in terms of our society meeting its social obligations in the future.

**Ms Earle**—I just want to supplement that point. There is a danger that this new baby bonus will actually act as a deterrent toward private industry coming into operation more actively in the area of paid maternity leave, because they see the problem as having been solved. Whereas, when the baby bonus was announced, it was made very clear that really what it is best suited for is covering the additional costs associated with having a child. It is not about income replacement.

I think the way it has been taken up in some agreements—even that Ford agreement—is that the paid maternity leave that the employer is agreeing to provide is being used to top up the baby bonus. So the baby bonus is already, in a sense, being diminished and also being traded off against this right to paid maternity leave, which I see as two very separate things.

**CHAIR**—Yes. I am interested in your comments there because my understanding of the original policy intention for the maternity allowance was that it would be an alternative for people who were not able to access paid maternity leave. From your submission, the new schemes coming into place are being designed in such a way as to ensure that some women will have access to both.

**Ms Earle**—Yes. The baby bonus is means tested, but that is another issue. It means that women who are not working are more likely to get it, in a sense. Certainly women who have got a right to paid maternity leave are not denied it, as long as the family income does not exceed the specified amount. I think it is a joint family income of around $66,000 per annum.

**CHAIR**—Yes, I appreciate that. I think I did not qualify on two grounds: the first one was because we conceived prior to the date relevant and the second one was, obviously, because of the income test, which did not bother me personally. But I agree with you that this is an issue which we need to address in terms of long-term industrial relations policy in Australia. I would like to thank you for focusing upon it as part of your submissions to us.

**Senator CRANE**—Madam Chair, I just wish to make a point of clarification for the previous witnesses from the Australian Chamber of Manufactures. The clause that Mr Barry Watchorn was referring to was 170LT on page 80 of the bill, particularly from subclause (4) onwards.

**CHAIR**—Thank you, I think that information had already been passed on to Senator Mackay. Thank you for appearing before us at this late hour as well.

**Ms Heron**—Thank you for the opportunity.
Ms Earle—Thank you for listening to us.

Committee adjourned at 8.17 p.m.