COMMONWEALTH OF AUSTRALIA

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SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE

Reference: Workplace Relations Amendment (Work Choices) Bill 2005

THURSDAY, 17 NOVEMBER 2005

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SENATE

EMPLOYMENT, WORKPLACE RELATIONS, AND

EDUCATION LEGISLATION COMMITTEE

Thursday, 17 November 2005

Members: Senator Troeth *(Chair)*, Senator Marshall *(Deputy Chair)*, Senators Barnett, George Campbell, Johnston and Stott Despoja

Participating members: Senators Abetz, Barnett, Bartlett, Boswell, Brandis, Bob Brown, Carr, Chapman, Colbeck, Coonan, Crossin, Eggleston, Evans, Faulkner, Ferguson, Fielding, Fifield, Forshaw, Hogg, Humphries, Hutchins, Johnston, Joyce, Lightfoot, Ludwig, Lundy, Mason, McEwen, McGauran, Milne, Nash, Nettle, O'Brien, Payne, Polley, Ray, Santoro, Sherry, Siewert, Stephens, Sterle, Stott Despoja, Trood, Watson, Webber and Wong

Senators in attendance: Senators Barnett, George Campbell, Carr, Johnston, Marshall, Murray, Nash, Siewert, Sterle and Troeth

Terms of reference for the inquiry:

Workplace Relations Amendment (Work Choices) Bill 2005

WITNESSES

Committee met at 9.02 am

HERBERT, Mr Andrew Kenneth, Legal Adviser, Australian Workers Union

LUDWIG, Mr Bill, National President, Australian Workers Union

SHORTEN, Mr Bill , National Secretary, Australian Workers Union

CHAIR (Senator Troeth)—I declare open the resumption of these hearings on the Workplace Relations Amendment (Work Choices) Bill 2005. I welcome our first witnesses this morning. Do you have any comments to make on the capacity in which you appear?

Mr Herbert—I am a barrister in private practice based in Queensland. I have been acting for the AWU, amongst others, for about 15 years. I have been advising the union in relation to these matters.

Mr Ludwig—We took the advice of the minister when he said, 'Bring your lawyers and your accountants with you.'

CHAIR—The committee notes that, Mr Ludwig. Thank you for your submission. I invite you to make a brief opening statement before we begin our questions.

Mr Shorten—In its submission the Australian Workers Union has recommended the committee reject the bill in its entirety. Having had a little more time to consider the provisions of the bill since putting in our submission, the AWU is now even more aware of the detrimental effect this legislation will have on Australian workers. Therefore, we strongly recommend that the committee should reject the bill in its entirety and we urge all senators to seriously consider rejecting this bill in the Senate.

We are gravely concerned by the way the Prime Minister has misrepresented the purpose and effects of this bill to the Australian public. The Prime Minister has spoken time and again about the rights of employers and employees to determine the working arrangements that best suit their needs. He has spoken time and again about choice, and has gone so far as to call this bill Work Choices. I am sure the Australian Workers Union is not alone in noting the irony of the bill's title. This legislation will not provide choices. For example, the provisions of this bill will deny employers that are constitutional corporations and their employees the choice of remaining in a state system or moving to the federal system. It will deny workers the right to choose to be covered by a collective agreement where an employer makes the acceptance of an Australian workplace agreement a condition of employment and it will severely limit the terms and conditions that employers and employees can include in a workplace agreement.

The legislation, however, will abolish the award safety net; erode workers' conditions; enable employers to solely dictate the terms and conditions of employment; remove the job security of employees of a business employing 100 or less employees; significantly curb the right of unions to represent effectively the interests of their members and the public and workers in general; and completely undermine the role of the Australian Industrial Relations Commission. Indeed, in the state systems we believe this bill will have a negative effect on strong state economies currently working under the state industrial relations system.

Furthermore, in conclusion to this opening component, we believe the drafting of this law has been rushed through at a breakneck pace, and we believe there are unintended consequences—even unintended by the government—arising from the poor drafting.

Specifically, we are very concerned that with the take it or leave it approach of Australian workplace agreements there is no protection for employees against the duress of their employers. The proposed section 104(5) says that a person must not apply duress to an employer or an employee in connection with an AWA. However, section 104(6) states:

To avoid doubt, an employer does not apply duress to an employee for the purposes of subsection (5) merely because the employer requires the employee to make an AWA with the employer as a condition of employment.

The explanatory memorandum behind this subsection means that the employer may make an AWA as a condition of the person becoming an employee, but the drafting is so poor and ambiguous it conceivably applies to all current employees. Hence, under the current wording of your legislation a current employee can be told that they have to enter an Australian workplace agreement as a condition of ongoing employment. In other words, it is take it or leave it.

Furthermore, there are some other clauses to do with accident make-up pay which I cannot believe that the government intends to remove. At present, section 89A(2)(j) provides for allowances to be an allowable award matter. Item 17 of schedule 13, the transitional arrangements for parties bound by federal awards, changes the scope of the current section 89A(2)(j). Under the proposed amendments, only certain types of allowances will be allowed to be dealt with by awards: monetary allowances for expenses incurred in the course of employment, responsibilities or skills not taken into account and rates of pay for transitional employees or disabilities associated with the performance of particular tasks or work in particular conditions or locations.

Some senators may not be aware that under the current section 89A accident make-up pay was determined to be an allowable award matter—the Commonwealth Bank officers case, 1997. The effect of the proposed change in the current law, if it remains unamended, is that accident make-up pay will cease to be an allowable award matter. In many awards there are more generous accident make-up pay provisions than currently exist under state legislation. The effect of not amending the current draft bill will mean that all injured workers who currently receive make-up pay will lose that as an entitlement.

Finally, I draw the committee's attention to issues surrounding termination of agreements. It is proposed under section 103L that a workplace agreement be terminated after its nominal expiry date on 90 days written notice. This is a change from the current law, where an enterprise agreement remains in existence until a new agreement is achieved. The proposed section 103R, following on from section 103L, provides that employees' terms and conditions are to be protected under the Fair Pay Commission's standards—which are a lot less than those in all enterprise agreements—after an agreement is terminated. What concerns us is that, where an enterprise agreement refers to the award, once the agreement expires the enterprise agreement ceases to be in place and therefore any relationship to the award stays in place. What the new legislation means is that, where we have members, right or entry for union officials is being removed by virtue of this section. We think this section needs clarification.

CHAIR—Thank you. I should point out a technical error in your submission. You say in paragraph 3.4 that the committee has only allocated four days for public hearings. The

committee has allocated five days for public hearings. We are working Monday to Friday this week, and all of that time will be occupied in public hearings.

Mr Shorten—With no disrespect, Senator, to give five days is still a complete joke. We have only got an hour or so. You will have plenty of opportunity to comment. We would like to talk about our problems, without technical objections, with your legislation.

CHAIR—Yes; I felt, though, that I should point that out to you.

Senator JOHNSTON—Mr Shorten, you say you have got how many members—120,000, was it?

Mr Shorten—More than that, Senator.

Senator JOHNSTON—How many?

Mr Shorten—We have 126,000.

Senator JOHNSTON—I should say that I was once a member of your union.

Mr Shorten—We will check if you owe us back dues!

Senator JOHNSTON—I had them automatically removed from my salary, you would be pleased to know. It was a very convenient system for me when I was a student.

Mr Shorten—Did you say it was a convenient system to have payroll deduction?

Senator JOHNSTON—It was.

Mr Shorten—We agree. That is why it should be an allowable matter.

Senator JOHNSTON—But I gave specific consent for that to happen, you see.

Mr Shorten—All our forms do that.

Senator JOHNSTON—Good. The point I want to ask you about is that in Western Australia in the last five years, maybe even longer, we have seen a substantial movement away from collective bargaining in the mining industry. What has been the track record of membership in your union across Australia? I think it has gone down, hasn't it?

Mr Shorten—No, it has held steady and in some states gone up and in some states gone down.

Senator JOHNSTON—Enterprise bargaining commenced in 1992-93 or perhaps 1991—around then—and my understanding is that your numbers have gone down substantially since that time. In the same time, individual workplace agreements, particularly in the mining industry, have been at large.

Mr Shorten—Can I answer your question in the following manner: do you believe in God, do you go to church?

Senator JOHNSTON—Yes.

Mr Shorten—Apparently the attendances at the traditional organised religions are down. Do you therefore think that God does not exist?

Senator JOHNSTON—I've got to tell you that if there is a great big black cloud coming over the horizon with as much fire and brimstone as you suggest this bill has, mate, I'd be going to church, let me tell you! They are not going to your church. Why is that?

Mr Shorten—Senator, I think the reason why you are raising your voice at me—

Senator JOHNSTON—I am not.

Mr Shorten—Well, the reason why your body language is shifting is because you understand that values remain relevant regardless of the number of people participating in organisations. I would not suggest, to pick a less controversial example, that Rotary or Lions or Kowanis or all sorts of community groups, merely because they have fewer people participating in them, become less relevant in the community. So why is that you are justifying these terrible laws—indeed, these black cloud laws, as you correctly characterise them—merely on the basis that our membership is static? Let us talk about mining in Western Australia. In fact, you are a senator from Western Australia and you should be standing up more for states rights, as a matter of observation. But you know that the mining industry was given a free kick under the state laws that were introduced by your conservative colleagues. Let us to talk about—

Senator JOHNSTON—It is the most efficient in the world.

Mr Shorten—And do you know who makes it efficient? It ain't your laws. It is the workers. Why on earth are you wasting your very valuable Senate mandate on these sorts of laws? Why don't you do more to build two train tracks in the Pilbara? Why don't you do more to challenge BHP Billiton and Rio Tinto's duopoly in extracting?

Senator JOHNSTON—I take it you accept the proposition—

Mr Shorten—I accept nothing you have said.

Senator JOHNSTON—I know you do not—that your workers and your members are not bashing down our doors here in parliament complaining about AWAs. The system is on foot, and no-one is complaining.

Mr Shorten—Senator, three to four per cent of Australians are on AWAs. Thirty-five per cent are on enterprise agreements. If you want to claim that AWAs are so good based on three or four per cent, why on earth don't you give the same credit for 35 per cent of the Australia work force that is covered by collective agreements?

Senator JOHNSTON—You see, Mr Shorten, I would expect, with Mr Combet telling us this is going to bring greater deaths in the workplace and with Mr Della Bosca saying it is an act of fascism, that you would have your membership going through the roof. The fact is that the average employee out there—indeed, the Boeing situation brings it right home—is very comfortable negotiating privately with his or her employer. All of this beat-up that you are going through has no relation in fact to what is happening in the workplace.

Mr Ludwig—Senator, it is obvious that you have been sitting around Canberra here for some time and you have not been out in the work force and you do not know what is going on out there. In terms of the AWAs, there is no choice. At Century Mine in Queensland if you do not sign an AWA you do not get a job. There is no choice—no choice at all.

Senator JOHNSTON—That is precisely my point.

Mr Ludwig—So you think that is fair and equitable in our society?

Senator JOHNSTON—No-one is complaining about that.

Mr Ludwig—As I said, you have been sitting down here.

Senator JOHNSTON—I am out in Kalgoorlie, I am in Karratha, I am in Port Hedland, I am in Tom Price, I am in Paraburdoo and I am in Newman. No-one is complaining to me.

Mr Ludwig—We are getting plenty of complaints. I suspect they would not complain to you because you would not take any notice of them—would you?

Senator JOHNSTON—I would. I am out there talking to them.

Mr Shorten—Senator, how many complaints would it take to make you change your mind seeing as you are saying that it is the complaint register meter which is obviously going to decide what you do?

Senator JOHNSTON—Let me explain my measure of that to you because I am running out of time. I get about four or five complaints a day about child support and the Family Law Act. I cannot remember, prior to the introduction of this bill, when I had someone complain to me about the fact that in order to have a job they had to sign an AWA. I have never, ever had someone come to me—and I get about 175 proper emails, not spam, a day. All of my colleagues are the same. I ask them.

Mr Shorten—Let me invite you to visit the Boeing picket line because we can give you your week's quota of complaints. The reality is that 46 out of 62 Boeing mechanics were on individual contracts for nearly four years. They tried for a year to change the contracts themselves. They failed. For five months after they joined our union we tried to negotiate with the company. The problem with your legislation is that it does not provide a level playing field. If a company does not want to negotiate with the representatives of workers, it does not have to. You should not draw any consolation from the fact that Boeing—

Senator JOHNSTON—Ninety-three per cent of Boeing employees are very happily employed.

Mr Shorten—I am sorry—

Senator JOHNSTON—You have 20 out on strike at the moment.

Mr Shorten—I am sorry. What you actually fail to understand is that we have offered a secret ballot to Boeing to see how happy all these people really are. The company you are backing publicly in this dispute will not allow us to have a secret ballot. When you are afraid of the ballot box, you should not get up in the morning.

Mr Ludwig—Chair, I would like to make some comments on this process and the extraordinary circumstances that prevail.

CHAIR—Yes, Mr Ludwig.

Mr Ludwig—We have never had legislators determine industrial outcomes in Australia. What we had was legislators that gave us a system, an institution through the commissions of the state and federal acts, that we could go to and argue for positions. That system took us

from a situation where our kids were going to school with bare feet because their parents could not afford shoes. The submissions that we made over many years for justice in terms of disruption to families, allowances, overtime—all of those things—took long and hard submissions to an independent tribunal to achieve. Now, through legislation, you are going to wipe away all of those allowances—all of that justice that was delivered over a long period of time.

Senator JOHNSTON—How?

Mr Ludwig—How? Read the legislation.

Senator JOHNSTON—You tell me the sections. Do not tell me to read the legislation; give me the facts.

Mr Shorten—If I may, I will give you a fact. Proposed section 100B is what I call the Anzac Day massacre clause. What happens is that proposed section 100B would have the effect of protected award conditions being read into a workplace agreement unless the agreement expressly modifies or excludes them. That is what it says. There was an illustrative example set out in the explanatory memorandum to the bill. It states:

Matt is employed by Frances Furnishings Pty Ltd as a curtain cutter. Frances Furnishings Pty Ltd operates in NSW. It is a respondent to the federal Home Furnishings and Interior Decorators Award ... The award provides for, among other things, entitlements to public holidays in accordance with NSW legislation and penalty rates for work undertaken on public holidays. On 1 July 2006, Frances Furnishings makes a collective agreement with its employees. When the agreement comes into operation, Matt and other employees to whom the award would apply will receive entitlements to public holidays and penalty rates in accordance with the award unless the agreement expressly removes those entitlements or changes them and the majority of employees approve the agreement.

Five years later, Frances Furnishings Pty Ltd makes a second collective agreement with its employees. It turns out that the first collective agreement expressly excluded the award.

Note: 'expressly excluded the award'. It continues:

Even so, public holidays and penalty rates in accordance with the award would be included in the agreement unless the second agreement expressly removes or changes those entitlements and the majority of employees approve the agreement.

That is a nice example. It makes clear that the so-called protected conditions—Christmas Day, Anzac Day, all of the public holidays; when you no doubt get out and put your badges on and celebrate—can be expressly excluded in an agreement, and there is no obligation under your proposed laws to compensate employees and to ensure that their wages and conditions are, on the whole, no less favourable under the agreement than they were under the award. Can I just suggest that something called the law of unintended consequences applies here. I do not like your law. But if you are interested—especially those senators listed at No. 3 who are interested in getting returned next time, because I actually do not believe all the Liberal senators privately agree with all of this legislation; I suspect that some of you are worried about the haste and the detail—can I suggest for your own political stability, your own political job security, that some of the protected award conditions be moved into the fair pay and conditions standard. It is possible for employers to take away public holidays and penalty rates, and your own example proves it. That is what Bill Ludwig is talking about.

Senator JOHNSTON—You obviously have not read section 92 and all of its subsections which guarantee all of these provisions. You have not read section 98. You are taking one section completely out of context, because it is a workplace agreement. In order to have a workplace agreement, there are embedded guarantees that you just do not want to refer to. You do not want to address what the bill does. Some of us understand that.

Mr Shorten—If you are right, that is fine. The problem is: if you are wrong, will you pay out of your own wallet for all the public holidays that people do not get because of your poor drafting. If you are so certain that that is the intention, be wise enough to pick up the lack of clarity in the drafting so that some of the scallywags out there do not take unfair advantage of it.

Senator JOHNSTON—I accept that, and I think that is a reasonable position. I am interested in your right of entry problem. Could you take us through that.

Mr Shorten—Sure. It is tied up with all of your termination of agreement stuff. Proposed section 103L provides for a workplace agreement to be terminated after its nominal expiry date—that is, 90 days.

CHAIR—Before you go on, right of entry is not one of the provisions that is being considered by this committee and was excluded by the Senate motion.

Mr Ludwig—How did we get in here?

Mr Shorten—That is no doubt true, but I am not actually referring to that. I am referring to section 103L. Are you telling me that I cannot talk about section 103L?

CHAIR—If it is about right of entry, no. That was excluded.

Mr Shorten—It is about section 103L.

CHAIR—Would you tell me what section 103L is?

Senator JOHNSTON—'Unilateral termination with 90 days written notice.'

CHAIR—Go ahead.

Mr Shorten—'When an agreement is terminated under proposed section 103L, an employee's terms and conditions of employment will be derived from the fair pay and conditions standard'—that is proposed section 103R. Section 103R provides for an employee's terms and conditions to be protected under the fair pay and condition standard after an agreement is terminated. Section 103R(1) provides: 'An industrial instrument mentioned in 103R(3)'—that is, an award or workplace agreement—'has no effect in relation to an employee if the workplace agreement that operated in relation to that employee was terminated.' That is the first bridge.

Once an agreement expires, you cannot refer to the award which underpinned that agreement. This means an employee would not fall back onto another industrial instrument but would only be entitled to the fair pay commission standard—that is, those five fairly dodgy matters—and the voluntary undertakings. That is under section 103M. It should also be noted that, as a result of this clause, termination of a collective agreement may also impact upon the right of entry of union officials. The thing is that, whilst you can pretend not to talk about the right of entry, the consequences of section 103 mean that you can take away,

through the back door, the ability of union members to represent existing members and existing organised work sites.

The other point I should make about termination of agreements is that, once an agreement expires, under the current system the two parties have to reach a new agreement or one party has to make an application to the commission to resolve the matters. You are going to reward lazy corporate behaviour because, once an agreement terminates, there is no point in negotiating with your workers ever again, if you can simply refer them to the Fair Pay Commission standard. Not all employers will do that. My problem with your legislation is that you are rewarding bottom-feeding corporate behaviour.

Senator JOHNSTON—Can't that happen now at the expiry of a collective agreement?

Mr Shorten—No. We had this problem with Esso in Bass Strait where, after the expiry of an agreement, the largest oil company in the world tried unilaterally to move workers from a one-and-one roster to a two-and-two roster for 600 days. By legal means, we were able to prevent that and now Esso has come to its senses and the world oil prices are at a record high.

Senator JOHNSTON—Was that after the expiry of the EBA?

Mr Shorten—Yes. This is the real world.

Mr Herbert—As a matter of law, what happens at the moment is when an enterprise agreement expires it continues—that is, when it passes its nominal expiry date in the agreement it continues to operate until it has been set aside. That happens in the state jurisdictions as well as the federal jurisdiction at the moment. After the nominal expiry date, one party can have it terminated, but they need to approach the commission and have it done by the commission; it does not happen automatically.

Senator MARSHALL—Mr Shorten, you are probably aware that Senator Abetz, on a regular basis in the Senate, has used some of your criticisms of the existing industrial relations processes and legislation as justification and support for this bill before us today. I have always found it a very long bow to draw, and I think it is a ridiculous connection to make that, simply because people have a criticism of the existing system, somehow they are supportive of what this government is putting before us. I think your presentation today makes that fairly clear, but I would invite you to respond to those specific comments, if indeed you are aware of them.

Mr Shorten—The comments to which this senator refers were taken from the building industry royal commission and something like 160 pages of statements and cross-examination. The senator has kindly borrowed at least one sentence out of all those words. We do have multiple jurisdictions when it comes to occupational health and safety, and the harmonisation of state laws is always a logical idea. However, there is no case made for robbing state jurisdictions of the provinces upon which they have regulated for many years and have improved laws over that time. It is intellectually flaccid to misquote selected pieces of people's testimony in a royal commission and simply say that this, therefore, makes the case. If Eric Abetz is keen about my opinion—

CHAIR—Senator Abetz.

Mr Shorten—If Senator Abetz is keen about my opinion, then what I would say to him is do not cherry-pick. What you should actually do is take my opinion on this legislation, and then I might the inclined to hear what he has to say on other matters.

Senator GEORGE CAMPBELL—Mr Ludwig, I want to ask you a number of questions about state awards and state coverage. When we had the six state and two territories industrial relations ministers here, their description of this proposed unitary system was that it would finish up as a dog's breakfast—which is probably an apt description. But we have had an issue raised in relation to councils. I know in Queensland your organisation covers most council workers up the coast. Have you had any discussions with the various councils in Queensland as to whether they have a capacity to incorporate and whether they will seek to move over into the federal award? What is the intention of those councils?

Mr Ludwig—Their preferred position would be to stay in the state industrial relations system. I have had discussions with them on this issue, and they are very confused because since the system of contracting and tendering started some councils have actually won jobs in other councils' jurisdictions through the competition policy—so they think they are traders but they are not sure. Whether or not they are incorporated is going to cause them an immense amount of difficulty, and they are seeking a lot of legal advice now. We have only had this bill for a very short period of time. There were a few explanatory notes earlier that they took on board to try and get some clarity in the situation. But not only is it the councils; the majority of employers that I deal with in Queensland want to stay in the state system. They do not want to move. They have had the option. We operate in the two systems, both federal and state. If they had wanted to do this, they could have done it at any time, but their preference is to stay with the state system because, to be quite frank, in their view it is a more accessible system than the federal system. It is easier to get settlement of disputes and easier to get to the commission with industrial issues. They have never been counselled on this.

Mount Isa Mines, which is fairly important to the state's economy, want to stay in the state system. They said: 'We've never asked to go into the federal system. Why would we be dragged there?' That is the thing, particularly for a lot of businesses in Queensland. The government have never made the case for why we have to shift from a system that has been working well, as I said earlier, a system that has put shoes on our children's feet. It has come about through submissions, not through legislation. The legislators did not give us the money to buy shoes; the commission did through long and hard submissions.

This is to take away all of those hard-won benefits—which, if you like, are going to be omnibus—in one hit. Those benefits are going to be put at risk in one hit. They certainly did not get there in one hit. Over many years all of those issues and the effect that they would have on the economy were taken into account through submissions to the commission. All of those issues have been dealt with. Now, through legislation, with no commitment to the system that got us there, we are just saying: 'We're going to change the rules now. We've changed the goalpost. We've taken the referee off the field and you're on your own.' I am sorry, Senator, Queensland is as one. Even your National Party colleagues in Queensland—and I have discussed the issues with them—want to support the state industrial system. They cannot find a reason why the state industrial system in Queensland should be gutted.

Senator GEORGE CAMPBELL—Mr Ludwig, have you done any analysis? Mr Herbert, you operate in Queensland. Has the union movement in Queensland done any analysis of what percentage of the work force in Queensland would remain under the state system, even if this law is enacted?

Mr Herbert—It is very difficult to say. In answer to the question you asked earlier about the local authorities in Queensland, I think the respectable legal opinion in Queensland is that Queensland local authorities are probably constitutional corporations and will probably be covered by this legislation because, as Mr Ludwig said, apart from anything else, most local authorities engage in commercial trading activities of all kinds. They sell water, power and other commercial services. So they would fit the constitutional definition of a constitutional corporation, and they are presently incorporated. In that sense, under this legislation the current regulation of all blue-collar workers in all local authorities in Queensland will be transferred automatically into the federal system. That will create the difficulties that are adverted to in the submissions—that is, you then have to bring the unions with you.

In respect of those that will remain behind, there are a number of statutory authorities which it is, shall we say, doubtful are constitutional corporations. Over the last 10 or 15 years there has been a high level of corporatisation of public sector functions in Queensland and there are a large number of what are called government owned corporations, GOCs, and there is legislation to cover them. They are corporations. The question is whether they are trading or financial corporations for the purposes of the Constitution. In some cases they may be, in some cases they are not and in some cases they are. Litigation is probably in front of us to determine that.

The Queensland government probably has the capacity to alter that equation a bit by rearranging the functions or even deincorporating some of the GOCs, because the government owns them all. In that sense there can be a bit of manipulation. What I am leading to is this. It is very hard to measure the size of the field to understand how many are going to be left in and how many are going to be left out. When one looks at the health sector, for example, there has been a lot of corporatisation of health sector functions—public sector functions—so the resulting entities in some cases could be said to be trading corporations or not. Depending upon the attitude of the employer as to whether or not it wants to be brought under this legislation, the employer, being the state government, has the capacity to pull back functions and to alter the nature of the corporation.

Because this legislation is pinned upon the employer who is not already under the federal legislation being a constitutional corporation, and because that is a fairly narrow test in many respects—particularly when you are dealing with public sector or quasi public sector entities—it is able to be manipulated by governments to a large extent. When I say 'manipulated' I do not mean that in any pejorative sense. It is able to be altered and changed. As I say the size of the fields that we are measuring is very much up for debate until all of the issues as to who is in and who is out have been settled. The best measure that I have heard—and it is really only folktales—seems to be that about 30 per cent to 35 per cent of workers currently covered by the state jurisdiction in Queensland will stay covered by the state jurisdiction in Queensland.

Senator GEORGE CAMPBELL—I think your state minister said it was 40 per cent. I wondered why that was a bit higher.

Mr Herbert—He may well be right. I think his sources are better than mine. He has a bigger staff than I have.

Senator GEORGE CAMPBELL—Have you had a chance to examine the transitional provisions for people who move across from the state system into the federal system in terms of the preservation of their awards—the three-year time frame?

Mr Herbert—In relation to awards, that is an extraordinarily complex system. I have to say that a lot of my colleagues who work in this area are rubbing their hands together and ringing their boatbuilders and their brokers because there is going to be an extraordinary amount of litigation and legal work to be done out of all of this. Every single corporation in Australia is going to have to sit down now and work out what its industrial regulation is going to be, because from the commencement of this legislation industrial regulation is going to be different from what it is today effectively. That may not happen immediately, but certainly for those who have ongoing agreements their rights in relation to those agreements will have changed and the future of their negotiations after those agreements expire will be completely different. So every corporation in this country is going to have to sit down and assess where they are.

There are extraordinarily complex and difficult paths in front of corporations which currently are 100 per cent regulated in the state jurisdiction. Their agreements and their awards are both going to be in effect deemed to be transitional federal agreements and will then be preserved, even though they are awards which currently have an ongoing life and can be amended at any time in any way by the commission. That will all stop; they will cease to be awards. They will then become locked-in-place agreements.

There is a massive flurry of activity in the state jurisdiction—in Queensland at least—of people rushing around to get their awards all tidied up and to cram everything they can into their awards before they become frozen in time. The difficulty with that is that the majority of employers in the rural and farming sectors—I think you heard from the NFF the other day that the rural sector consists of a very great mix of corporations and private employers—as I understand the evidence you heard from the NFF, are in fact unincorporated.

I instance the sugar industry award. Sugar is still the largest rural commodity in Australia and is all state covered in the state of Queensland. The sugar industry award, as it applies to corporate employers, will be frozen in time and will be deemed to be a federal agreement. That same award, so far as it applies to the non-corporate employers, will be amenable to being constantly amended and updated by the state commission—and all the other things the state commission does to it now. So there is going to be a very great temptation on corporate employers, particularly in those sorts of industries, to transfer the business over to non-corporate entities for the purpose of employment.

Senator GEORGE CAMPBELL—So what you are saying is that, because some sugar producers are corporations and some are not, at some time in the future there will be a divergence from the current award—some will go into the federal system and some will go into the state system—and, in fact, you could finish up with two different sets of conditions?

Mr Herbert—By definition, that is what has to occur so long as the AWU does what the AWU has been doing for 100 years—that is, religiously bring the sugar industry award up to date on a very regular basis. If the AWU continues to do that, the sugar industry award in its home base—that is, in the Queensland state commission—will continue to march forward as it has done for 100 years. But if you are Joe Farmer Pty Ltd—a corporation—your award will be frozen in time as a transitional federal agreement. Those award conditions will be subject to being stripped down and subject to prohibited conditions, preserved conditions and protected conditions. Once you have worked out that alphabet soup, that will be your regulation, but the core of that regulation will be a preserved state award. As I say, Joe and Mrs Farmer next door—an unincorporated partnership—will remain covered by the sugar industry award, which will evolve with time as the AWU and the other unions that have respondency to that award continue to move it up. So, side by side, those two farmers will have different terms and conditions over time as a matter of inevitability.

Senator STERLE—Mr Shorten, I am mindful of the time, but I have a couple of very quick questions. When I listened to the minister launch the bill in the other house last week, my ears pricked up when I heard about the transition of business clause and I had visions of alsatians and balaclavas. I would be interested to know what effect that clause could have on your union and your members if this bill were to pass through the Senate.

Mr Shorten—In answer to that question, I make this observation to the coalition senators in particular, because I think the Labor senators and senators of the other parties understand these issues: be careful of what you are wrecking if you put through this bill unamended. What happens in Australia at the moment is that, when one business is sold to another, either the workers get made redundant or they transfer on existing terms and conditions. Under your proposed new bill, you could see some dreadful outcomes. To give the government senators the benefit of the doubt, they would be unintended outcomes, but you need to fix this loophole. What could happen 12 months after the transmission of business in the new bill is that, for example, company A sells to company B and company B can unilaterally vary the conditions of the employees. You might say that perhaps the Australian Workers Union suffers from a negative view of employers, but you just have to look at the North American experience in insolvency law, and indeed in Australia from Ansett to Pasminco, to see a range of corporate collapses that have been high profile. Unfortunately, some companies behave badly, from HIH to FIA. If you put in a legislative formula, a system that rewards corporate avoidance, then what you will get is corporate avoidance behaviour.

The transmission of business laws is dreadful. I freely concede that I do not support these laws—the economic case for them has not been made out. Having said that, you have an opportunity to prevent at least one atrocity. If you vote for the bill in unamended form on this issue of transmission of business, what you are saying is that in the future you cannot guarantee to all Australian employees that companies will never, after 12 months of purchasing the old company, simply vary workers conditions. But, if you think that it is possible for some directors and corporations to buy an old company and then 12 months afterwards unilaterally simply vary the terms and conditions of employment, you should remove and excise the transmission of business sections. If you do not, whenever there is a

transmission of business and this behaviour occurs, there is no question that Senator Johnston will get plenty of emails and they will not be spam.

Senator STERLE—In your submission you mentioned the accident make-up pay, obviously representing a large swag of blue-collar workers, who I would assume are subjected to physical injury more than other groups of workers. Could you let the committee know what the implications would be for working men and women in Australia if that clause or right is removed?

Mr Shorten—Senators may or may not be aware that awards contain provisions for accident make-up pay. Under the state workers compensation systems, when you get injured you get certain benefits. Negotiated over 100 years in a range of awards is a provision called a gap payment—make-up pay—where for a longer period you get an amount, supplemented by the employer, higher than the workers compensation system for injured workers. Take, for instance, the metal industry award, which is 39 weeks. The point about this is that the gap payment is not a high-gap payment. If you are off work after 26 weeks and up to 39 weeks, more often than not the chances are that you have suffered a serious injury. It was established in the 1997 Commonwealth bank officers case that accident make-up pay is an allowance. Under your proposed legislation—the wording is ambiguous and you can clarify this—accident make-up pay is not guaranteed. To my way of thinking, there can be no economic case for trying to rob injured workers in that zone between 26 and 52 weeks of 30 per cent of their pay. These are the people least able to protect themselves, and by not making it an allowable matter you are punishing literally tens of thousands of Australian workers who have generally been injured through no fault of their own. To remove that make-up pay clause when you could simply sit by and amend the definitions you have in there, to me, would be reckless indifference to injured workers.

CHAIR—Thank you. That section has expired.

Senator BARNETT—Mr Shorten, firstly, congratulations on your preselection efforts as a Labor candidate for the electorate of Maribyrnong.

Mr Shorten—Was that seriously a question or were you just trying to demonstrate you read newspapers, somewhat indifferently? We are here on a serious matter. If you cannot take your responsibilities seriously, then I think the voters of Tasmania need to have a good look at you.

CHAIR—Thank you for that. Please proceed, Senator Barnett.

Senator JOHNSTON—He has obviously struck a nerve.

Senator BARNETT—Yes, it has obviously hit a point. It is in the context, Mr Shorten, that you are a member of the national executive of the Labor Party.

Mr Shorten—Yes.

Senator BARNETT—You are aware that the union movement in Australia has donated $47 million to the Labor Party since 1996. You have made comments similar to Greg Combet's where he said that this campaign is all about a change of government. You have said on a number of occasions that you want to get rid of not only these laws but the people who

make them, so I am wondering today which hat you are wearing—that of a hopeful federal member for the Labor Party or a member for the union movement today?

Senator STERLE—Chair, really this is just pathetic.

CHAIR—That is a question and I expect that Mr Shorten will proceed to answer it.

Mr Shorten—I agree it is a question; it is just not a terribly clever one. What I would say about this is that I represent the Australian Workers Union. Every day AWU officials from Cooktown down to Tasmania get out and represent people. They all do that job first and foremost. In terms of your proposition about what has been said by Greg Combet or me, I think that your legislation is a challenge of the most serious nature. I do not believe that laws in Australia should simply be based on a 39-37 majority. I think Australians expect the people in government to make their laws based on foundations of fairness. Simply relying on a two-vote majority and saying all reform is good reform to me is insufficient. I do not accept that your government deserves to remain in government if it treats as incurable diseases economic anxiety and job insecurity. That is not the basis for legitimate government or legitimate policy.

Therefore, I believe that the only strategy that can involve reforming this legislation, if we are unsuccessful in persuading the open-minded government senators here to try and reform their legislation—not presuming that you had already made up your minds before you came here and that therefore this whole process is a complete farce but assuming that in fact you still, despite what you hear, persist with this legislation in its most brutal form as put forward—is six words, Senator Barnett: the removal of the Howard government.

Senator BARNETT—We have got the message, Mr Shorten. I think you have made that clear. I am interested in your views on AWAs. You have expressed your castigating views on the effect of those today in this committee. Many in the union movement support the abolition of AWAs. I am interested in your views, particularly in the context of the electorate of Maribyrnong, where 1,464 people are on AWAs and where, in the September quarter, 196 AWAs were signed. So do you support the abolition of AWAs?

Mr Shorten—I do not mean to be distracted by the disingenuous interest you display in the western suburbs of Melbourne. What I would say to you is this: there are many thousands more people in the western suburbs of Melbourne on collective agreements. What I want to know is why on earth you are making it harder for those many thousands of people who have chosen to be on collective agreements—

Senator BARNETT—Can you answer the question: do you support the abolition of AWAs?

Mr Shorten—My answer—

Senator GEORGE CAMPBELL—On a point of order: because he does not like the answer—

Senator BARNETT—No, I am waiting for the answer.

CHAIR—You will allow the witness to answer the question.

Mr Shorten—You may describe what we say as scaremongering. The truth of the matter is that all we are doing is putting forward the truth—it just happens that the truth is scary. I do

not see the intellectual case for AWAs without a no disadvantage test you are proposing. You could drive a Mack truck through the standard you are applying to AWAs. I do not believe AWAs are good at building communities—as you well know from the north-west mining communities of Tasmania, based upon what we have done to reform irregular rosters in the mining communities of north-west Tasmania. Ian Wakefield, our Tasmanian secretary, did that, supported by the Tasmanian government. We know that individual contracts in the mining communities of north-western Tasmania led to the fact that the four local football teams in Queenstown had to disappear because dad could never get down to training because of irregular rosters. I do not see the economic case for AWAs in Australia. Why is it that we are not having a Senate inquiry into the price of petrol?

Senator BARNETT—Thank you, Mr Shorten. Do I have one last question?

CHAIR—No, you are out of time.

Senator MURRAY—I have been distracted from where I want to go because of the previous set of questions. I actually think you being asked about your political affiliations, and the union connection with the ALP is an important question to be raised. I want to pursue it, because I am afraid that underpinning this bill is an improper intention of weakening unions as an indirect way of weakening the ALP. That would be a disgraceful motive if it were true. I want to know whether you have the opinion that any of this legislation has that motive and is improperly constructed with that motive in mind? I will address the question to you, Mr Shorten, since you have been the prime spokesman.

Mr Shorten—I would also welcome our national president's view on this. The observation I make is that this is an attack on the ability of unions to organise. In my view this is political legislation—it is payback legislation—for the 30 years that the conservatives have not controlled the Senate. There has been no case made against collective bargaining. We enterprise bargain every day. We have contributed to productivity improvements in thousands of companies. There are thousands of workers and hundreds of companies who have benefited from the hard work of union officials collectively bargaining. There is no case to be made for an attack on collective bargaining. Therefore, the only rationale that can be assumed to be motivating this legislation is the attack upon unions. Minister Kevin Andrews is buying himself a whole world of difficulty in this legislation with the provision of the minister reserving the right to decide what an essential service is, for instance. There are so many unintended consequences in this action that in fact there will be a backlash.

To answer your question, Senator Murray, put simply, this is an attack on the base of the Labor Party, which is the union movement. The Labor Party was formed from the union movement. This legislation is designed to discourage activists, to penalise delegates, to fine unions and to make it very difficult for unions to represent workers. Therefore, hopefully, by damaging the roots of the tree, the parliamentary part of the Labor Party will in fact wither, which is the motivation of this legislation.

Senator MURRAY—I will have to move on, Mr Ludwig. Could you be quick, because I have not been given much time.

Mr Ludwig—I would just like to make a comment on Senator Barnett's point on the contribution that the union movement have made to the Labor Party. It pales into

insignificance when you consider the amount of money that the taxpayers pay through public funding to all major parties. The survival of the Labor Party does not depend on how much money the unions contribute to the Labor Party.

Senator MURRAY—Thank you, Mr Ludwig. According to your item 11.15 on page 34:

Section 100(1) of the Bill provides that a workplace agreement comes into operation on the day that the agreement is lodged.

Mr Shorten, that may seem to many almost irrelevant, because most contracts with suppliers or landlords or with anyone in a business arrangement come into operation on the day the agreement is lodged, provided they are subject to stamp duty. However, you know, don't you, as I know, that the reason that has not been the case in workplace agreements is that there is no real mechanism to enforce and ensure that every agreement complies with the law? Therefore, they have always been referred to a tribunal to be examined. My question to you is this: there is no penalty in this bill, is there, if an agreement that is lodged and comes into operation on the day it is lodged does not comply with the law? Therefore, this is just a device to allow for the avoidance of the provisions of the act, isn't it?

Mr Herbert—I might deal with that. As for the process of the agreement coming into effect on the date it is lodged, the difficulty associated with that, from experience with the present act, is that, even when the commission—which it does now—goes through the agreements and checks them for viability, in many cases, even where both parties have genuinely tried to make sure the content is correct, they are still found to be wanting on very many occasions. A huge number of agreements lodged for certification with the commission now are found not to have sufficient content. If an agreement comes into effect when it is lodged and then there is a process for subsequent certification or ratification offered by the OEA and things are missed, as they often are, you then have an invalid agreement in legal effect. It is given the effect of the force of law of the Commonwealth by this act, even though it may not comply with the legislation.

As I read the legislation, in order to then bring that to heel there is a complaints driven process where one has to go to the office of workplace services—I have forgotten the name of the entity—which is now charged with enforcement processes. But that is a complaints driven process. If somebody, being an individual or a worker at a workplace who is not versed in these things, does not complain because they do not know, then the agreement will never be rectified; it will never be looked at. As you say, there is no penalty for any of that. These agreements, and experience has shown this, may in fact remain in force and effect for months or years containing invalid content, being invalid agreements—agreements that should never have been given the force of law of the Commonwealth. There does not seem to be a process by which that can be picked up, and there is no penalty that applies.

Senator MURRAY—If the government is determined that this particular provision goes through, isn't an appropriate amendment one which would say that, in the event of a part of the act being left out, by default it automatically applies—so that is point 1? Point 2 is that if there is a deliberate omission of any provision of the act a penalty should apply. Would that assist?

Mr Herbert—As to something of that order, it would depend on the nature of the omission. If it is an omission—that is, it is as to an entitlement that otherwise should be or something of that kind—one would think that there would be an automatic, retroactive entitlement conferred on the employees back to that date so that—

Senator MURRAY—Could I ask you to draft me an amendment along the lines of what I propose? I cannot see the government throwing it out but I do want to try to amend it so that a default provision operates and a penalty operates. Would you be willing to do that?

Mr Herbert—Certainly. That would be quite a simple thing.

Senator MURRAY—Thank you. Moving on to another major issue that concerns me: Mr Shorten, I was surprised to hear you—and perhaps it was just because you feel irritated by it all—describe the five minimum conditions as dodgy, because I think they are very substantial conditions. My concern is not that there are five but that there should be 20. Can you indicate to me why you described them as dodgy?

Mr Shorten—I certainly support having at least five measures in, but with some of them—even the five measures—the drafting would not pass law school 101. The averaging of hours, which I know this committee has heard about, needs to be tightened up. You just cannot have 38 hours over 52 weeks of the year. I think that is either reckless or so sufficiently indifferent as to be reckless. The parental leave clause is also of concern to me as to how that is going to work.

I just want to make two very quick points about the Fair Pay Commission standards. The first concerns the parental leave provisions—in division 6 and part VA—where it is prescribed they not fall below the August 2005 family provisions test case standard. Without reading the whole lot, there is a right to request, which is very clear. I can attach for this committee the authority's and the commission's conclusions. Also, there are the protected award conditions which I referred to earlier in terms of Anzac Day, with minimum entitlements not being embedded. Put simply, the parental leave provisions do not even meet the August 2005 standard which exists and we need to—not 'we' because the government is not going to ask me to do it, but someone needs to—tighten up those family leave provisions. So in fact two of the five conditions are actually not even what they appear on their face to be.

Senator MURRAY—On notice could you provide some amendments or recommendations for amendments to us on those?

Mr Shorten—For you, Senator, yes. But I would just say that the best amendment I could provide to this act is to cut out everything after the first page and start again.

Senator SIEWERT—I would like to follow up on the point you raised earlier about ministerial powers and essential services but also the points you made on page 38, sections 12.3 through to 12.5, about the minister's powers to terminate bargaining periods. Can you outline some of your concerns in terms of essential services and how they relate to these provisions?

Mr Shorten—Despite Senator Barnett's encouragement, I am not a politician, but I do wonder about any politician, any minister, who would want to take upon themselves the responsibility of becoming the one person, one-stop shop for most industrial disputes. The

definition of 'essential services' has been litigated over many years, but the legislation is completely woolly, or imprecise, on it. What minister of what government wants to be called upon when an employer says: 'What I do is valuable to the economy. Stop this strike'? As soon as the minister makes a decision either way, there are going to be unhappy parties. That is why we have the Industrial Relations Commission. The centralisation of decision making about essential services is far too severe a tool just to rest with a minister in terms of industrial relations. The right to strike—there is no question in my mind—is being narrowed down to an infinitesimal speck upon an easel or a picture. It is going to be very difficult for people to exercise the basic right to strike.

This is the 25th anniversary of the foundation of Solidarity, Solidarnosk. Many conservative politicians say how good it was that Solidarnosk helped to make some of the changes it did in Poland. The reality is that with the laws they are creating it will take Solidarnosk type action to have an effective union. It is interesting that if Lech Walesa came to Australia and tried to practise these laws he would be breaking the law. Look at what is happening in Zimbabwe—which some senators have commented on. Why is it that in such countries the leaders of the opposition tend to be trade union leaders? We advocate for better treatment of people in Zimbabwe, yet we are not advocating for the same treatment in Australia. The East Timorese labour code on the right to strike is superior to the one being proposed in Australia. We preach to people overseas, but we don't practise it at home.

Senator NASH—I appreciate your intense enthusiasm for this, Mr Shorten, but for you to say, as you did earlier, that the bill would not provide choices and would abolish the safety net is blatantly incorrect. How much time do you spend in rural areas in a given month, averaged over the year?

Mr Shorten—I would probably spend two days a week visiting non-metropolitan Australia. I would not want you to characterise my comments as intense enthusiasm. They are intense disregard for these propositions. I do not think the case is well made. When I say that the award safety net is being removed, it is. In Victoria, for instance—Bill Ludwig can speak about his experience in rural Australia—there are 20 minimum matters covering Victorian workplaces. That will go to five minimum matters. That is a reduction.

Senator NASH—Thank you again. It looks like intense enthusiasm. Your concerns are that wages will be driven down under the new bill. Is that correct?

Mr Shorten—Yes.

Senator NASH—Given the shortage of workers in regional areas—

CHAIR—Sorry, Senator Nash. We are out of time. I think your question is on the record. We will have to leave it there. I thank the witnesses for their appearance here today.

Senator BARNETT—Chair, can we put a question on notice to Mr Shorten and Mr Ludwig.

CHAIR—Yes, we can do that.

Senator BARNETT—It relates to annual leave, Mr Shorten and Mr Ludwig. I just want to know your union's policy on cashing out annual leave in the context of views of other

members of the union movement who do not support cashing out of annual leave. If you could advise the committee, that would be good.

CHAIR—If you could provide a written comment on that to the committee by tomorrow, that would be very helpful. Thank you.

Mr Shorten—I will see what I can do.

[10.05 am]

GOWARD, Ms Pru, Sex Discrimination Commissioner, Human Rights and Equal Opportunity Commission

HUNYOR, Mr Jonathon Neil, Senior Legal Officer, Human Rights and Equal Opportunity Commission

MOYLE, Ms Sally, Director, Sex Discrimination Unit, Human Rights and Equal Opportunity Commission

TILLY, Ms Jo, Senior Policy Officer, Sex Discrimination Unit, Human Rights and Equal Opportunity Commission

CHAIR—Welcome. Thank you for your submission. Do you have any comments to make on the capacity in which you appear today?

Ms Goward—I am also the commissioner responsible for age discrimination.

CHAIR—I invite you to make a brief opening statement before we begin our questions.

Ms Goward—Thank you, Madam Chair, and senators for the opportunity to appear before you this morning. HREOC has a significant history of involvement in workplace issues since at least 1984. Issues concerning employment equality and the economic opportunities and outcomes available to men and women in Australia are critical elements of achieving substantive equality. I am here to represent the Human Rights and Equal Opportunity Commission as a whole this morning. Our submission is from the commission as a whole, and it is our duty, in a sense, to present to you the worst-case scenario.

HREOC does not wish to disagree with the factual outcomes regarding existing AWAs released by the government, although there may be reasons to believe that were AWAs extended to all the workplace these outcomes might change. It is also true that, if the last 10 years of industrial deregulation are any guide, these reforms may lead to further job creation, and we would all welcome that. However, in the sense that all regulatory change involves winners and losers, the Work Choices bill is no different. Inevitably there will be winners and losers, depending, amongst other things, on the strength of the Australian economy.

Workplace relations reforms introduced since the mid-1980s, particularly those of 1993 and 1996, have created significant flexibility for employers, while at the same time increasing Australia's productivity. Since 1993, Australia's labour market has delivered strong jobs growth, falling unemployment and underemployment, rising productivity and real wages, low levels of industrial disputation in the Australian context and falling real unit labour costs.

However, HREOC does have grave concerns about the implications of dismantling or removing any significant planks of a social, legal and economic contract in Australia which has evolved over 100 years and around which a variety of institutions, policies, cultures and government programs have grown up. Unless careful adjustments are made to surrounding institutions, laws and policies, inevitably that whole contract is challenged. The Work Choices bill, particularly in conjunction with the Welfare to Work changes, represents a wholesale

change to the way Australian workplaces operate and, as a consequence, will have major implications for the Australian community more broadly.

HREOC strongly urges the government to take extreme care in implementing these changes to prevent unforeseen consequences which mean that Australian employees and their families might suffer and require changes to other institutions. For example, the spread of AWAs will inevitably mean that the present system of employer funded paid maternity leave will disappear. This is because employer provided paid maternity leave, in the absence of a national government funded scheme, has been provided by Australian employers as part of negotiated enterprise agreements or, less often, as part of awards.

As the Australian Catholic University paid maternity leave case demonstrates, this is possible in a collective bargaining arrangement because workers agree to trade off part of a pay rise against that 12 months paid leave. Other employers have done likewise. This will not be possible where there are not collective agreements, which explains why so few AWAs have paid maternity leave. Either the government will need to replace employer funded paid leave with a national government funded scheme or we will be back in the nightmare of low fertility and/or of women dropping out of the work force at a time when the country needs them most.

I will make one correction to the first page of our submission. The second dot point says that the bill fails 'to ensure equal remuneration for work of equal value'. Of course, no legislation can ensure that. The missing words were 'a mechanism for equal remuneration for work of equal value'. As you will see from our submission, HREOC's chief concerns about the bill relate to its impact on the protection of workers with family responsibilities, on pay equity between men and women and on the protection of employees in vulnerable and lower skilled positions in the Australian labour market.

I have spoken to many hundreds of people around Australia over the course of the last six months as part of the consultations for my discussion paper *Striking the balance: women, men, work and family*. Despite the assurances of the government in relation to the Work Choices bill, there is already significant concern in the community about the impact of increasing casualisation of the work force and long, irregular and extended working hours on family life under our existing system. As our submission points out, many AWAs already increase ordinary working hours and allow averaging of wages over an extended period. HREOC is very concerned that the default position in the Work Choices bill will be 38 hours averaged over 12 months and strongly urges the committee to recommend that this be amended to a maximum of one month, unless specifically requested by the employee.

HREOC would like to have seen the Work Choices bill deliver improved minimum standards to help employees balance their paid work and family responsibilities. Such minimums could include legislated paid maternity leave and a right for employees to request a variation to their working arrangements for family care responsibilities. These standards are currently lacking from many of our industrial arrangements. The bill could be seen as an opportunity to include them.

HREOC would also like to bring to the committee's attention a number of other apparent drafting errors in the bill, particularly in relation to maternity leave. Section 94K of the bill, for example, requires women to take a compulsory continuous period of six weeks of

maternity leave following birth. This appears to be a new requirement from existing provisions in the Workplace Relations Act and creates two difficulties for women. Firstly, it reduces choices for families about how they arrange their responsibilities to care for their children. If, for example, a father with entitlements under a certified agreement to paid paternity leave wished to take time off to care for his child within six weeks of the birth, the mother would not be able to access any unpaid maternity leave at a later stage. Secondly, the implication of the section is that, if a woman returns to work within six weeks of the birth, the leave she has taken would not be considered to be maternity leave, thus potentially removing other protections, such as the right to return to her former position. HREOC believes section 94K should be removed.

Pay equity is the second area in which HREOC believes the legislation must go further. The existing equal remuneration provisions of the Workplace Relations Act have proved singularly unsuccessful in achieving pay equity, and HREOC is concerned that the Work Choices bill will not address this issue. Under the new Work Choices regime, it is important to note that pay equity claims will only be able to be dealt with by the AIRC in relation to collective and individual agreements. Awards will no longer contain wage rates. The AIRC is also excluded from making orders in relation to any application which impacts on a decision of the AFPC or would have the effect of changing a wage set by the AFPC or where a comparator group of workers is being paid a wage set by the AFPC—see section 170BAC.

The impact of these restrictions will be that equal remuneration claims can only be brought to the AIRC as regards workplace agreements where none of the employees in question or any comparator employees are being paid rates set by the AFPC or by individuals in relation to AWAs. This makes it critical that the AFPC consider equal remuneration when setting wages.

While the bill certainly requires the Australian Fair Pay Commission to apply the principle that men and women should receive equal remuneration for work of equal value, there are no procedural requirements on the AFPC. What is more, the process is not required to be transparent and is not reviewable. Without such a mechanism, it is difficult to see how the principle alone can deliver pay equity. HREOC encourages the government to put in place processes that ensure transparent oversight of the work of the AFPC. Certainly, at a minimum, the provisions in section 97ZR should be included in wage-setting parameters under section 7J of the AFPC.

It is of significant concern to HREOC that there is no capacity for decisions of the AFPC to be reviewed or reconsidered and there is no right of appeal against decisions of the AFPC. Section 7L provides that, in relation to wage-setting functions, the AFPC need only comprise the chair plus two commissioners, with the effect that wage determinations can be made by three people, with no right of judicial or other review.

One apparent oversight in the bill is that the description of pay equity in section 90ZR has not been included on the same basis in the matters the AIRC must take into account. Section 44B details the discrimination issues the AIRC must take into account as ‘the need to apply the principle of equal pay for work of equal value without discrimination based on sex’. While this is a technical point, senators should be aware that it has important implications. One of the key difficulties for the AIRC over the years in making orders in relation to equal remuneration has been the necessity for parties to establish that there has been discrimination

based on sex. HREOC would urge the committee to recommend the removal of the words 'without discrimination based on sex' from section 44B in order to bring it into line with requirements of the AFPC in section 90ZR.

State industrial tribunals have proved more successful in addressing the historical undervaluation of women's skills and in assessing the work value of occupations traditionally carried out by women employees. HREOC is concerned that the restriction of state industrial jurisdictions will remove an important avenue of redress for women employees seeking equal remuneration. We recommend that the government seriously consider introducing equal remuneration provisions similar to those in New South Wales or Queensland. HREOC also regards it as essential for gender pay audits and work value tests to be conducted before the federal minimum wage is set by the Australian Fair Pay Commission and recommends that the Work Choices bill be amended to require this. Our submission contains a number of further recommendations for strengthening the bill's capacity to improve pay equity, and we urge the committee to give serious consideration to the matter of pay equity.

Finally, HREOC is concerned that the bill fails to adequately protect vulnerable employees and job seekers, particularly workers with disabilities, Indigenous people, people moving between welfare dependency and paid work, and those in low-paid wage jobs, for which there are many competitors and who consequently have little individual bargaining power. The capacity for more vulnerable employees to bargain effectively and to choose their employment arrangements is impinged upon by the existence of so-called 'take it or leave it' individual bargaining arrangements. Allowing employers to make employment conditional on an employee taking up an AWA, for example, means that that choice of employment arrangements, especially for those on minimum wages, is extremely limited. The consequences are felt not only by workers but by their children and families. HREOC has serious concerns that, once an agreement is terminated, neither that agreement nor an award is in operation, with employees presumably to be covered only by the standard. This means that an employer can terminate an agreement unilaterally after the nominal expiry date of the agreement and that all employees covered by the agreement revert to the standard. This provides employers with a great deal of leverage over the terms and conditions of any new agreement.

HREOC is also concerned about the potential effects of Work Choices on Indigenous Australians at the same time as changes to the Community Development Employment Projects scheme—CDEP—and the lifting of remote area exemptions in relation to social security benefits. The additional pressure that is placed on Indigenous Australians, sole parents and people with disabilities to move to employment in the context of changes to Welfare to Work arrangements and CDEP changes will potentially affect their ability to bargain effectively and achieve fair conditions of employment. This is particularly the case in rural and remote areas, where there are limited job opportunities. HREOC is also concerned about the impact of the bill on outworkers, especially with the removal of state based deeming provisions and the spread of AWAs.

Work Choices will enable a greater degree of trade-offs by individual workers than enterprise bargaining or awards have made possible. Many of these trade-offs will benefit employers and employees and may well increase the total amount of work available,

especially at the low-skill, declining end of the labour market. But, depending on labour market conditions, it will leave some workers worse off in terms of either wages or conditions—and, as I say, that especially includes low-skilled people, mothers returning to the work force after considerable absences and single parents. I repeat: it will certainly mean the end of employer funded paid maternity leave.

Provision of a greater number of minimum conditions is conducive to, and necessary for, family functioning such as: the right to request part-time work and have it reasonably considered, which is especially important for parents who wish to meet their family responsibilities; the right to have certainty of hours included in work contracts, which is especially important for mothers with child-care arrangements to meet; and the right to be paid overtime rates for working excess hours, which is especially important for fathers who work long hours at overtime rates not only to put food on the table but, as our consultations have established, to enable their wives and partners not to work—in effect, to enable them to be full-time parents.

Without penalty rates, there will be reduced discipline on employers to manage workloads. While low-paid workers will have less return on excess hours, they will need to work more hours to maintain the same standard of living and family arrangements. Protecting men from excess hours is critical for their access to family life, including post separation and divorce. If the Work Choices bill does not regulate their hours, then the Child Support Act, the Family Court Act and, arguably, family taxation arrangements will also need to change to compensate men in particular for what could well be reduced access to family time. This, again, is a loss not only for men but also for women and particularly for their children.

These changes also require a greater role for government in protecting the living conditions of families, including the amount of time parents are able to spend with their children. Should there be no greater government commitment to families, then the existing social fabric of Australia, woven as it is from workplace protections as well as welfare arrangements and services, is inevitably compromised. A society is only as stable and strong as its most fragile.

Senator GEORGE CAMPBELL—Is it HREOC's view that the government has made the case for such radical change as proposed in this legislation?

Ms Goward—That is a very big question. I would say that the case is certainly made for the need for flexibility. The constant concern of people with children is that they need flexible arrangements that suit their particular working circumstances. The case for flexibility is a very strong one. The alternative argument is that people need choices in the way they negotiate those arrangements. For some people the enterprise bargaining arrangements are the best way of negotiating them, as I said, for trade-offs between workers at a site, such as the Australian Catholic University case over paid maternity leave. That was achievable in a way it would not have been if they had all been put onto AWAs. There is no doubt that the need for greater flexibility was made clear in all the consultations that we held. Workers and particularly parents also want a range of options for how they negotiate those flexibilities.

Senator GEORGE CAMPBELL—Since 1905 the Industrial Relations Commission in its national wage cases has always made its decision in both the economic and social context of

the day. Is it your view that the provisions in this bill setting up the Fair Pay Commission will break that nexus?

Ms Goward—The Fair Pay Commission has a number of considerations that it has to make and, of course, amongst those are the economic circumstances facing the economy at the time. There are a number of minimum requirements that it has to make in regard to people's family circumstances. If we are moving to a system where the industrial relations system is going to judge these matters by only their economic outcomes then, as other Western countries have found, there has to be a greater involvement of government in providing other supports and services to families that are no longer available through the industrial system.

Senator GEORGE CAMPBELL—How is the averaging of hours clause, which you referred to, going to establish certainty of hours in the workplace for individuals with family responsibilities?

Ms Goward—We have pointed to that in our submission as a concern, particularly if it is averaged over 12 months. That is why we have suggested that the committee recommend that hours be averaged over a four-week period.

Senator GEORGE CAMPBELL—There is also, in that provision, no provision for any consultation between the employer and the employee about the change of hours. And, in fact, in the current provisions there is a time frame within which rosters can be changed. There is no provision within the bill for that to occur, and it is open to an employer to tell a worker on a Friday: 'You have only been working 20 hours a week because the company has not been operating at full capacity. Next week we want you to work five 12-hour shifts.' There is no ability within the current provisions for that to be resolved other that in favour of the employer, who will tell them if they do not come ready to work the 12-hour shift on Monday then do not come to work at all. Does that sort of gap in the legislation concern you?

Ms Goward—That, again, is why we recommend that it be averaged over a month rather than a year, and it should be included in an AWA so that the employer and the employee and are obliged, on a much more regular basis, to negotiate the hours.

Senator GEORGE CAMPBELL—So your argument is that the averaging should be limited to a month?

Ms Goward—Yes.

Senator GEORGE CAMPBELL—That currently applies in some of the agricultural awards at the moment.

Ms Goward—Yes.

Senator GEORGE CAMPBELL—Another issue in respect of that was raised yesterday. Mr Steven from COSBOA said that workers should be prepared to take a lower rate of pay if they—

Senator BARNETT—I raise a point of order, Madam Chair.

CHAIR—Yes.

Senator BARNETT—Mr Steven certainly did not say that, and I ask the senator to withdraw that statement.

CHAIR—I would like Senator Campbell to restate that and I will listen carefully to it.

Senator GEORGE CAMPBELL—When questioned about this issue of flexibility, the elimination of penalty rates and the application of penalty rates, yesterday Mr Steven said—and I am not quoting him precisely because I have not got the *Hansard*—that people should be prepared to take a lower rate of pay—

CHAIR—Senator—

Senator GEORGE CAMPBELL—if it enabled—

CHAIR—Senator Campbell, will you kindly listen?

Senator GEORGE CAMPBELL—Let me finish the question.

CHAIR—No, I will not. I am asking you to listen to me. You have admitted that you do not have the words in front of you and that you do not have the *Hansard*. I would dispute what you are saying and I am asking you to rephrase the question to Ms Goward.

Senator GEORGE CAMPBELL—The context of Mr Steven's comments were that workers should be prepared to accept a flatter rate of pay if it enabled them to go and pick up their children after school and to meet those family responsibilities.

Ms Goward—That is already happening.

Senator GEORGE CAMPBELL—That may well be already happening, but do you accept as a general rule that, somehow or other, women in particular should be penalised as a result of being able to carry out those family responsibilities?

Ms Goward—That is already happening with a large number of, particularly, casual employees, most of whom are women. And it is of concern to those families that they do not have any control over their hours and that they find themselves making those trade-offs. That is why we are concerned to see the pay equity provisions of the bill strengthened to improve that mechanism. Under the current arrangements, where people make those trade-offs—and I am certain that they are aware that they are accepting lower rates of pay—they would say that they are making them willingly. The question is whether, if you extended this wholesale across the workplace, you would end up with a much greater earnings gap between men and women, whether you would find women deciding it was not worth working and you would find low-income families placing a greater reliance on the welfare system as a consequence. I would say that some people would say they make those trade-offs willingly because what is more important to them are their conditions. They currently accept that they accept less money for it. The question is whether large numbers of workers can afford to do that on a take it or leave it basis where there is not the same room for negotiation. I suppose it stands without needing to be said, perhaps, that of course people should be paid properly for the value of the work that they do.

Senator GEORGE CAMPBELL—In the ACTU submission yesterday, Ms Burrow pointed to the fact that significant gains had been made over the past 20 years or so in respect of conditions governing the employment of women—paternity leave, maternity leave,

et cetera—all of which had been achieved through the capacity to present national test cases through the Industrial Relations Commission to set those national standards. Do you have a concern as to whether or not there are adequate provisions in the current act for those test cases to continue into the future, for those arguments to be made in respect of setting national standards that will improve the family/working life relationship?

Ms Goward—It is true that the AIRC has been important in setting in place those family-friendly standards but it is also true that enterprise bargaining arrangements have accelerated the pace over the last 10 years, which every union I have ever spoken to agrees is something they have found very useful to them because it then goes eventually into the award. So I would say that it has been a combination. I guess as long as there was the capacity to negotiate these conditions at a group level, at the enterprise level, the absence of the AIRC's role would not be so apparent.

Ms Moyle—There needs to be a mechanism, whatever it is, by which the changing social standards can be incorporated as a norm into workplace agreements and workplace standards—whether that be by the AIRC, as has always been the case for the last century, or whether enterprise bargaining processes can allow the norm and the accepted agreed terms of what Australians should work under to be negotiated that way. Certainly we agree that the AIRC no longer has that power.

Senator GEORGE CAMPBELL—The issue, Ms Moyle, is whether you have a system, which you have had in the past, where the AIRC has set a broad national standard framework which has then been translated into specific provisions at the enterprise—perhaps with a bit of flexibility to suit the needs of the enterprise and individuals—or whether you can do it in reverse by thousands of enterprises negotiating around a particular issue which somehow or other eventually gets translated into a national standard. I think that is a much more difficult proposition in the area we are looking at than what was the traditional role. It concerns me that there does not appear to be the capacity within this new bill to argue those national standards type cases. I am talking outside of wages here; I am talking about the sorts of issues that have been important to women over the years.

Ms Goward—The Australian Fair Pay Commission could be considered to take up some of those issues.

Ms Moyle—If we are moving to a situation where we are legislating minimum standards, it is always open to legislate, I suppose. But certainly in the case of paid maternity leave, for example, it has been through the enterprise bargaining processes that we have seen more women access paid maternity leave over the last five years rather than through the award system. So if it is done appropriately, there are still processes by which we can change the agreed norms by which we work. But I agree that the loss of the Australian Industrial Relations Commission is a setback in that regard.

Senator CARR—Did I understand you to be saying that in regard to parental leave you believe that the removal of that matter from the allowable award matters in this bill would see a reduction or removal or parental leave?

Ms Goward—No; I was making the point that most paid maternity leave is negotiated through enterprise agreements. It is negotiated clearly as a trade-off. An enterprise trades off,

as the Catholic University's case demonstrates, a wage rise—I think they dropped their wage claim from 14 per cent to two or three per cent—in exchange for a year's paid maternity leave for those members of staff for whom that would be appropriate. When you individualise each of those negotiations, there is no capacity for trade-off. In effect, it has been workers giving other workers family flexibility in exchange for wage increases.

Senator CARR—So is it your contention that the consequence of this legislation will be a reduction in the level of, or the capacity for people to get, paid parental leave?

Ms Goward—If you are not directly negotiating with your employer you would be carrying the full cost of it yourself which would mean that at the best it would be unpaid parental leave because the employer has no capacity to trade-off your 12 weeks, six weeks or three weeks—whatever your enterprise bargaining arrangement has given you in the past—against a wage rise, or other conditions which have cost money, for the rest of the staff. So once it is individualised there are no trade-offs. In a tight labour market that might be quite attractive to employers because at the moment they have to offer paid maternity leave as a way of keeping staff. But I cannot see why there would still not be a discount for the woman involved, and perhaps sometimes the man involved, if they were to negotiate paid maternity leave for that 12 months—which is why you do not see it often in AWAs.

Senator CARR—I will take you to your submission on page 13. You say that where the question of family-friendly conditions is left to the market they tend to favour high- to middle-income earners and those in the public sector.

Ms Goward—That is true throughout the world.

Senator CARR—You say that if the government reforms do not provide sufficient protection for those with family commitments, and in particular women, we may well see increasing inequalities not only in the labour market but also in society, with social instability becoming more likely and children in low-income families particularly at risk. What is your evidence for that?

Ms Goward—I think we know that the majority of people who are currently in receipt of paid maternity leave are professional and managerial level women—nurses and teachers—and also people in the public sector. If they do not have the capacity at the enterprise level to negotiate paid maternity leave, for example, then we are really talking about all women being back to square one. It is true that low-paid women have never had much access to paid maternity leave—I think there is one retail agreement that provides for paid maternity leave—but this means that logically there will be none anywhere. It will have to be funded by the parents themselves.

Senator CARR—But your concerns are not just for women but for men. I notice on page 16 you drew our attention to your consultations with employers, unions and community groups. You were particularly concerned about men in a range of industries and the effects on family life of increasing working hours. Are you telling this committee that you believe there will be an increase in working hours as a result of these measures?

Ms Goward—It depends on how the AWAs are worked out. Obviously, already there are many men in the construction and mining industries who have gone in favour of very big wage increases in exchange for huge working hours. They have fly-in, fly-out arrangements.

You would be familiar with them. Already there are men who have done that trade-off, but they are in the short supply sector. That may happen more generally for low-wage people like truckies, who are not in the short supply but who rely on the overtime and the penalties associated with the overtime to fund their family lives and often to enable them to have a wife at home. They often said to me, 'We do this so that she can stay at home; we think the kids need a full-time parent.' If you remove the penalties they will obviously be, in some senses, less willing to do it but in another sense they may be forced to do it to compensate for the loss of penalties so that they can maintain their families' living standards and to keep their wives at home. So the alternatives for those families might well be that the wife then goes back to work—which we might say is no bad thing given the need for greater participation—or that those men then work even longer hours.

Senator CARR—But you say it actually increases economic loss and poverty. That may well be another consequence, if we follow through the logic of your argument as contained on page 16.

Ms Moyle—That is right. If people lose penalty rates and they are working the same number of hours as they otherwise would have, they may well suffer a loss of income.

Senator CARR—Finally, let me take you to the question of the changes to agreement making, the termination of agreements provisions. How do you see that operating, whereby agreements can be unilaterally terminated at the end of any agreement and therefore no awards will apply in that industry thereafter for those workers with that employer?

Ms Goward—I think I made reference to that in my opening remarks. That does require people in that swishing group of workers, where they go in and out of work and there are people competing with them for cleaning jobs and part-time casual jobs in the retail sector, to in a sense go onto minimum conditions. It is then a matter of how confident they are about being able to negotiate back the conditions that they had under the existing agreement.

Senator CARR—How fair do you think that is?

Ms Goward—I think that for those families it is going to make life pretty tough.

Senator CARR—But is it fair?

Ms Goward—I have met a lot of people who say, 'A job is better than no job, even if it's not fair,' and I guess that is what this whole bill is about: the trade-off between having a job at all and having a job with decent conditions or with some certainty. I guess the econometric question for the country is whether increasing the availability of jobs in the low-skilled, marginal end of the labour market is worth it compared with the reduction in certainties that would accompany that for not just those extra workers but also their peers in that part of the labour market.

Senator CARR—And you would hold that view—

CHAIR—This is the last question, Senator Carr.

Senator CARR—You would hold that view, even if it creates economic loss and poverty, as your submission tells us?

Senator BARNETT—Chair, I take a point of order. Senator Carr is referring to the economic loss and poverty on page 16, and he is taking that out of context.

Senator CARR—I am asking the question.

Senator BARNETT—I would ask you to read the whole in context.

CHAIR—Senator Carr will ask the question and Ms Goward will answer it. That is Senator Carr's last question.

Senator CARR—I am talking about the question of creating a whole generation of the working poor. And you think that is fair?

Ms Goward—Working poor is better than non-working poor, and I do not think we can resile from that—or I certainly cannot. But obviously there are going to be trade-offs and that is why, as I say, the whole social contract changes. That is why the government's commitment to welfare spending and the government's protections for children—who, as you say, are more likely to be in working poor families—have to be adjusted.

Senator CARR—And there is evidence that all that is happening?

CHAIR—There is no need to answer that, Ms Goward. I would like to ask you a few questions. Firstly, on the government side, I would like to assure you that we did meet with a group of outworkers yesterday. I think it would be fair to say that their general working conditions, rates of pay and economic position in the work force horrified all senators. Government senators have undertaken to discuss that extensively with the department when we meet with them tomorrow, because that is a terrible situation.

I would like to take you to a couple of things—firstly, in relation to the COSBOA remarks yesterday. I do not have the *Hansard*, but I have Mr Steven's submission in front of me and I will read what he said in that submission. It is a brief statement. He said:

> Lower costs can be gained by way of negotiating a flat rate instead of penalty rates and overtime loadings for example ...

I asked him about that. With due respect to Mr Steven, he probably did not put it very well in that statement. What he meant was that it was rolling penalty rates and overtime loadings into the rate so that there would be a higher flat rate. You might look at that and tell me what you think of it.

Ms Goward—That happens already.

CHAIR—That is right.

Ms Goward—In AWAs, in industries such as construction and mining where workers are in short supply, that clearly works to the advantage of everybody. The whole of the journalism industry was based on exactly those contracts where we traded overtime penalties for a higher base rate. The question is whether it will also work for workers who are not in short supply—cleaners, retail people and people who are looking for a few hours of work here and there who do not have the same bargaining capacity.

CHAIR—I understand that, but that takes me to my next point. Would you agree that at the moment there is a labour shortage, certainly in skilled workers—

Ms Goward—Yes, in skilled work.

CHAIR—and possibly in some unskilled areas as well?

Ms Goward—In some unskilled areas, such as the fruit packing industry, there are shortages of unskilled workers.

CHAIR—And would this give some workers a certain amount of leverage in bargaining for conditions?

Ms Goward—I think that would be logical.

CHAIR—Does your research show that there is a certain labour market for older, mature, experienced women workers who are looking to enter the work force? What are the pros and cons of that position?

Ms Goward—What do you mean by a market?

CHAIR—Do they have difficulty finding jobs?

Ms Goward—Yes, they do.

CHAIR—They do have difficulty generally?

Ms Goward—Yes, they would be part of this group that moves between welfare, work, unpaid work and so on. They are often out of the labour market for 10 years, so the skills they had when they left the labour market to have child No. 1 are no longer relevant.

CHAIR—But they would also be able to perhaps get a foot back in the labour market by taking a part-time job with particular hours that might suit their particular circumstances?

Ms Goward—Yes, and that is why, as you say, particular hours and certainty of hours for mothers, in particular, are absolutely crucial. But I have to say that I have seen AWAs under the existing law which do not provide for certainty of hours and, in fact, require people to work a minimum number of hours but up to a maximum number of hours, which is terrible in providing child care—and, even if you do not have child care, just getting home before your kids get home from school.

CHAIR—I would like to ask you to look at some degree of comparison between awards and agreement making and the way that that affects women. Would you agree that awards, by their nature, are one size fits all when in fact women often need more flexibility to manage their time and circumstances?

Ms Goward—Yes, that has to be the case. May I just add that, increasingly, it is not just women who need those flexibilities; it is men and it is people with other caring responsibilities.

Ms Moyle—The awards are a base system upon which people can bargain and have bargained. Many of the flexibilities that women have received are through the bargaining process, on top of the awards system.

CHAIR—By comparison, do agreements—and I am talking about AWAs perhaps—offer a greater diversity of conditions, arrangements and entitlements in the sense that women can more often vary the conditions under which they work?

Ms Goward—Yes, that has to be true. But it is also true, as Ms Moyle has said, that the negotiations over flexibilities begin from a base level because, as you know, the existing law has a no disadvantage test in it; so you cannot go down.

CHAIR—Are you aware that nothing will change for most people on a federal award or on a federal collective agreement—that if you currently work under a federal award your minimum wage and basic entitlements are guaranteed by law under the new fair pay and conditions standard?

Ms Moyle—Could I add, though, that there has been a reduction in the allowable matters in awards, including parental leave, and that has been removed because it is now part of the fair pay standard.

CHAIR—That is correct.

Ms Moyle—However, that means, for example, that the award conditions above the fair pay standard are no longer included. For example, I understand that all of the outcomes of the family provisions test case are now no longer available for awards.

CHAIR—Yes, but if your award differs—that is, if it is lower than the fair pay and conditions standard—the more generous standard will apply.

Ms Moyle—Okay.

CHAIR—That is correct. Again, are you aware that, if you currently work under a federal collective agreement, all the working conditions and entitlements negotiated in that agreement will remain except for clauses which inhibit the ability of the parties to bargain or which are currently prohibited; otherwise, no changes can be made without the approval of the employees to the agreement? Are you aware of that?

Ms Goward—Yes.

Ms Tilly—Presumably until such time as they expire.

CHAIR—Yes, which can be up to five years—that is true. But people's life circumstances often change after five years. Indeed, you may want a different set of working conditions five years down the track.

Ms Goward—I think it is also true that labour churning means that not many people stay in jobs for five years.

CHAIR—That is very true.

Ms Goward—And when they go to a new employer I understand that they could then be offered an AWA and they will not necessarily be on the EBA of the existing work force.

CHAIR—Yes, that is correct, if they move to that job. I wanted to make sure that you were aware of that. I will hand over to Senator Barnett.

Senator BARNETT—Thanks for your submission. As the chair has noted, we will be asking the department about the outworkers' concerns that were expressed yesterday and which were included in your submission, so thank you for that. Indeed, further questions will be put to the department on the 38-hours a week averaging, so thanks again for your submission in that respect. I just want to clarify this possible misunderstanding by some with

regard to paid maternity leave or paternity leave and to confirm your understanding that, under the Work Choices bill that we have before us, there will be no change to the provision of paid maternity leave. You may disagree with that, but my understanding is that that is included in some awards. It is not in others, but it is essentially an agreement made between the employer and the employee, and the bill does not change that. So those opportunities, as they exist now, will exist in the future.

Ms Goward—Yes, and because they are negotiated at a collective level that is the case unless that person leaves that employment, and new entrants to the labour force have to negotiate an AWA. Then I would have thought that it would be very much funded by the employee. It would otherwise be a wage rise for that particular employee.

Senator BARNETT—Sure. But, as I say, that exists under the current arrangements.

Ms Goward—Yes. I should have made that clarification. For people under existing arrangements the paid maternity leave arrangements would stay.

Senator BARNETT—Since 1996 we have made some reforms which brought more flexibility into the industrial relations arrangements here in Australia. We have 900,000 new jobs now that have been taken up by women and, of the 1.7 million new jobs, over half—I think it is 53 per cent—have been taken up by women. So the concept of flexibility is very important, and I think that is one of the key aspects of the bill which is supported by many. Yesterday we had a submission and a witness, Ms Sheridan Dudley from Job Futures, who referred to a number of groups in the community that would specifically benefit as a result of improved flexibility under this bill. She talked about single and sole parents, she talked about retired baby boomers or women over 45 and then she referred to partners of fly-in fly-out workers. You have mentioned it once this morning, and I would like you to describe the impact of this bill on fly-in fly-out workers in terms of the flexibility that it provides the partners of these workers. For example, on the west coast of Tasmania they go from the north-west down and work for four or five days and then go back to the north-west coast. They leave their families there and it allows the mums to work and gives them the flexibility to work for a couple of weeks and then have time off. What is your understanding of the impact of this bill on those partners of fly-in fly-out workers?

Ms Goward—What I gathered in Western Australia was that the partners of fly-in fly-out workers tended not to work. Because his hours were so long, when he was away they were single parents. When he came back the whole family had to try and get its act together again and get used to dad being home for two weeks or whatever it was. In fact, people in Kalgoorlie made the point that there was an underrepresentation of married women in the work force in Kalgoorlie. They believed, and I think both employers and employees believed, it was because of the difficulty of working around his uncertainties.

Senator BARNETT—Yes, exactly. This is the point Ms Dudley made yesterday that there will be benefits that will flow through to these people as a result of increased flexibility in terms of working time, starting time, finishing time, time in lieu and so on—those sorts of arrangements. So I was seeking your views as to whether you concur.

Ms Moyle—In the United Kingdom there is a tendency now towards term time working for mothers of school-age kids. That is a flexibility that would suit parents extremely well, but

again it is a matter of who is able to ask for the flexibility and who is able to negotiate that. It is a matter of bargaining power.

Ms Goward—And how it fits with the employer's requirements. But obviously greater flexibility means that, if he is away for two weeks, she wants to be home full time because she is essentially a single parent and, then when he comes back, he is the single parent. They do not see each other, but maybe she could then go and negotiate some work.

Senator BARNETT—You alluded earlier to the protection from pay discrimination and equal remuneration for men and women. The bill actually provides those protections. I am trying to clarify whether you are saying that those protections currently in the bill are inadequate.

Ms Goward—That was why I corrected it at the beginning. I said obviously that no law can ensure an outcome of equality of payment, but what we were concerned about was that, although the principle of pay equity is referred to, there was no mechanism described. Arguably that is up to the Fair Pay Commission to do, but there are very few known requirements on the way the Fair Pay Commission should work and how it should come to its decisions. I think the issue of pay equity is so sensitive that it would be worth giving the Fair Pay Commission some instructions about how to at least monitor the pay equity outcomes and ensure that it is a consideration—for example, in work values.

Senator BARNETT—So you are talking about clearer instructions than those that are already in the bill?

Ms Goward—Yes.

Ms Moyle—Can I just add one other thing. I think there are a number of sites at which pay equity needs to be taken into account in our workplace relations systems. One is in relation to the Fair Pay Commission and we have made recommendations in relation to that in our submission. The second is in relation to agreement making and we have made submissions in relation to that. The third is at the workplace level where, for example, contract compliance or audits may be carried out. If we look at the UK model, which we are drawing on for our Fair Pay Commission, that has a number of different mechanisms around it which have different processes, all of which seek to address pay inequities. I think if we are moving down that model we need to perhaps have a look at some of the processes that are in place there.

Ms Goward—Our submission, for example, nominates the Equal Opportunity for Women in the Workplace Agency as an institution or an organisation which could monitor pay equity outcomes and draw it to public attention.

Senator NASH—You stated earlier that the government had made the case for flexibility in the bill. I am following on the flexibility aspect, which I think is very important, certainly in rural areas. Trying to balance work and family is going to be a big issue for us over the next decades. Do you agree that there is greater flexibility under what is being put forward in the bill than what is currently in place in general?

Ms Goward—Yes, but obviously some of that flexibility is going to be for, as I say, this group of lower paid, lower skilled workers who are not in short supply but in fact in oversupply. That flexibility will not necessarily be something they will be able to negotiate.

Fruit-packers in a country town are in short supply. Even they have a limited capacity to negotiate flexibilities because they are now dealing with a world apple market, for example. So, yes, it will increase the capacity of people to have flexibilities, but that is the capacity in theory. In practice, your capacity to have flexibilities is about your capacity to negotiate them. I think you will find there are sectors of the work force where there is a surplus of workers, particularly with the welfare to work reforms meaning that there is now going to be an increase in that group of workers down at that end of the labour market, where negotiating those flexibilities will in some senses be more difficult.

Senator MURRAY—In opening, I would make the remark that, as a fly in, fly out, worker myself, it is not all it is cracked up to be! You used the expression 'econometric'—I thought deliberately—in one of your responses earlier. As you know, econometrics is the science and use of mathematics and statistics for economic analysis. I ask you this: the assumption is that lower wages, fewer conditions and more power to employers will produce more jobs, but you are aware, are you not, that the government have not produced any modelling, any economic case, any substantive empirical argument—say, on a comparative basis to the GST stuff, which they did very well—of any kind, and therefore it is just an assumption that more jobs will be produced out of this package?

Ms Goward—Yes, that is true—although, as a journalist, I certainly recall years when there was econometric analysis which suggested that a wage rise would actually cost jobs in particular sectors.

Senator MURRAY—They said that about the women's increase, did they not?

Ms Goward—Yes, they did, and they were wrong.

Senator MURRAY—Yes. I think the Liberal Party were against that, but perhaps they can correct me. In your submission, you recommend several places the Australian government should look at and implant work and family policies of the United Kingdom. I find this interesting because the Prime Minister and the minister responsible for this legislation have on numerous occasions said that the Australian labour market is more regulated than that of the United Kingdom, and they use this to justify the need for this bill. Do you think that the United Kingdom has greater safeguards and protections than those which this bill proposes in the work and family area, and do you know whether the United Kingdom work and family regulations had a negative impact on employment or productivity levels?

Ms Goward—Obviously the UK legislation does provide greater protections and safeguards. There are trade-offs in that, and that is what they have done. Whilst I am not aware of the econometrics, you would have to say that the UK economy is booming and they do not seem to have created an unemployment problem as a result of those flexibilities. They are pretty conservative. The right to request part-time work if you are a parent with a five-year-old and to have it reasonably considered is not radical; it is just the right to request and to have it reasonably considered.

Senator MURRAY—Are you familiar with the Scandinavian countries? I have recently been to Denmark and Sweden. Although their underemployment figures are similar to ours, their employment statistics, which are done on the same basis as ours, are lower than Australia's, yet they have a higher range of wages and conditions than we do. That leads me

to conclude that you cannot necessarily say that one model is the only model which will produce good productivity—the Scandinavian countries have better productivity than us—or good job outcomes and that there are many ways in which you can address this issue. You have paid a great deal of attention in your professional field, the HREOC field, to overseas efforts and models. Have you had a look at the Scandinavian models at all, and have you drawn them into your thinking?

Ms Goward—No, I have not looked at the Scandinavian models, except in the sense that the Scandinavian economies, the societies, are very different to our own. Certainly I have looked at their paid maternity leave arrangements and, if you like, the fertility consequences of those, but I have not looked at the impact of their work and family arrangements on national economic outcomes. All I would argue is that there is, I guess, OECD evidence that paying attention to work and family arrangements is actually helpful in fertility. Certainly it is helpful in expanding the availability of workers, increasing the participation rates of a society; it enables more people to be in work because there are capacities for them to manage their work and family responsibilities.

Senator MURRAY—Yes, those countries are ahead of us on world competitiveness and productivity. I would agree with you that work and family considerations can actually make a positive rather than a negative contribution to productivity.

Ms Goward—I said participation rates; I am not sure about productivity. Certainly their participation rates are much higher than ours, for women particularly, including older women, whereas ours are down the bottom end. Arguably that is because they do provide the sorts of protections for people with caring responsibilities that enable them to both work and meet their caring responsibilities. But I do not know about productivity.

Senator MURRAY—You can have a look at the figures, which is what I am suggesting you do. The interesting thing, of course, is that their politicians complain as much about their system as our politicians complain about ours. Whatever it is attracts attention. Your submission really focuses on those who you might categorise as disadvantaged within our society.

Ms Goward—That is our job.

Senator MURRAY—The question has been raised in this inquiry by me in response to some of the people representing disadvantaged people as to whether there should be a two-tier system; namely, lesser protections for the able and the general population and more protections for the disadvantaged—so perhaps more minimum standards for lower income people. I can see arguments both for and against that. I would like to have your reaction to the potential for, say, a larger number of minimum conditions—greater protections—for disadvantaged people or people who have difficulty in entering the work force.

Ms Goward—That depends on the results of the trade-off. How you would institute it, I do not know. I take it by what you are saying that there would be more protections for people at the lower end of the labour market?

Senator MURRAY—Can I give you a specific example—it may help you. The disability people said, for instance, that rostering should be added to the minimum conditions. The

government might not agree to that for the general population. The question is: would they agree to it for people with disabilities?

Ms Goward—Discrimination law could definitely cover that.

Ms Moyle—Discrimination law already does. In the Disability Discrimination Act there is a requirement to make reasonable accommodation for people with disabilities. But of course that is a complaint based, reactive response rather than being a regulatory baseline.

Senator MURRAY—Which is the point they made. They want it set into the actual agreement-making process.

Ms Goward—It becomes a bit of a precedent. You could strengthen the family provisions of the Sex Discrimination Act so that people with family responsibilities could have greater protection against uncertain starting and finishing times than people without family responsibilities. But it is the long way to China. It is a long way around, but it is certainly possible under existing arrangements. With a bit of strengthening, some well-publicised court cases and, if you like, the education of employers about what those requirements of the acts mean it is possible.

Senator MURRAY—The point is that in two weeks I have to argue my case in this debate and put amendments. The question I am putting to you is: would you be supportive of amendments which in fact might introduce additional protections for disabled and disadvantaged people or not?

Ms Goward—I think we would take it on notice.

Senator MURRAY—Could you have a look at the Australian Federation of Disability Organisations submission and let us know. I can see arguments for and against, so I am not sure. That is why I am asking you.

Ms Goward—The trade-offs are against jobs.

Senator MURRAY—Could you let us know?

Ms Goward—Yes.

Ms Moyle—There is, in a sense, a de facto two-tier system by having a no disadvantage test above which those who are able to can negotiate, and with baseline protections.

Senator MURRAY—Are you are aware that I put the no disadvantage test into the legislation in the first place in 1996?

Ms Moyle—No, I was not aware.

Senator MURRAY—Just remember that that act was affected by the Democrats.

Senator SIEWERT—I want to go back to the issue of the working poor. I want to understand your position clearly. Given your comments, and I may be misinterpreting your comments to Senator Carr, do you believe that this legislation will result in the working poor, particularly when you combine it with welfare to work?

Ms Goward—I think it is going to depend on labour market conditions—we have booming labour market conditions at the moment. As the senator has pointed out, there is no modelling that predicts this. Economic theory has always said that if you lighten up and ease

up on working conditions, you get more jobs out of it—although, at a certain point, that does not become feasible. It does mean that there will be more working poor and fewer welfare poor, if the theory holds good. Certainly, if labour market conditions deteriorated, the price that would be paid for that job would be less certain conditions or weakened conditions. In other words, it depends, obviously, on a number of factors other than the industrial relations laws.

Senator SIEWERT—Given your comments about the impact on the vulnerable and on pay equity—you are fairly clear in your submission about those—it is likely that, if the market situation deteriorates, those people will end up as the working poor in this country. Do you find that acceptable in Australia?

Ms Goward—That is a very big question: do I find the working poor more acceptable than people in dole queues—is that what you are asking me?

Senator SIEWERT—What I am saying is that, if, due to the changes the Australian parliament may pass in two weeks, we end up with more working poor, is that acceptable in a country such as Australia?

Ms Goward—As I say, I think it is about trade-offs. Obviously, a lot of people who will become the working poor—people who have a job at the moment and who, therefore, are going to suffer a decline in their working conditions, not immediately but as the years roll on, compared with where they are today—would say that it has cost them. But other people who have been able to have jobs would say that this has been to their benefit. The tenor of the submission is that this is part of a very big historical compact that has elements of welfare, regulations and culture as well as industrial relations laws governing it and that, if you end up with working poor—which could well happen—it is incumbent on the government to then protect the working poor, because the children of the working poor need an opportunity as well as the families themselves.

Senator SIEWERT—If you are a single mother who is being forced back into the work force and you take a job that actually reduces your circumstances, why is having a job in those circumstances better than being at home looking after your kids?

Ms Goward—It is not, and I understood that the Welfare to Work provisions did not require you to take—

CHAIR—That is correct, Ms Goward. If the cost of taking the job means that it is not economically feasible to work, you are granted an exemption.

Senator MARSHALL—That is arguable.

Senator SIEWERT—Exactly.

CHAIR—That is beyond the scope of this inquiry.

Ms Moyle—Our submission does point out that we—the commission—believe that people should be paid an adequate wage for the work they do.

Senator JOHNSTON—Ms Goward, on page 2 of your submission you mention section 90ZR, and you complain that it is not included in the wage-setting parameters. In the second

dot point there you say that the section 'does not specify how the AFPC is to take these matters into consideration'. When I look at the section, I see that it says:

(1) Without limiting sections 90 and 90A, in exercising any of its powers ... the AFPC is to ...

and then it goes on to do all the things you say you are happy with. If the words 'is to' were changed to 'shall' will that help you at all? I am uncertain as to why you are worried about the wording of this section, because I think it is clear.

Ms Goward—I am sorry; I do not have that with me.

Ms Moyle—In effect, what we are asking is that these be included in section 7J as wage-setting parameters. That would give it extra certainty. But you are right; if the AFPC were directed to take these matters into account, in effect, it may well have the same outcome.

Senator JOHNSTON—So would you be happy with the words 'is to' changed to 'shall'? In other words, 'shall: (a) apply the principle ...', 'shall: (b) have regard to ...', 'shall: (c) take account of ...', 'shall: (d) take account of ...'?

Senator MURRAY—Take it on notice.

CHAIR—Yes, perhaps you could take it on notice.

Senator MARSHALL—The minister, Mr Andrews, this morning has dismissed your concerns that the new laws fail to ensure equal pay for work of equal value. He is quoted as saying that the bill says that the Fair Pay Commission has to try to apply the principle that men and women should receive equal remuneration for work of equal value. I wonder whether you want to comment about the minister's dismissal of your concerns.

Ms Goward—As we have made clear already, it is really about process. You can declare that you believe in a principle, but in order to affect that principle there should be processes that the AFPC has to follow that mean that it is delivered. That is the discussion we have just had.

Senator MARSHALL—And you are saying that the processes are not there?

Ms Goward—They do not appear to be there as clearly as we would have liked.

Senator MARSHALL—Thank you.

CHAIR—Thank you very much for your appearance here today.

Proceedings suspended from 11.15 am to 11.31 am

CROSDALE, Mr Mark Matthew Archibald, Newcastle and Northern Sub-branch Secretary, Transport Workers Union of Australia

DEWBERRY, Mr Paul Francis, Lorry Owner-Driver; and Member, Transport Workers Union of Australia

DUFFIN, Mr Linton Robert James, Federal Legal Officer, Transport Workers Union of Australia

CHAIR—Welcome. Thank you for your submissions. I invite you to make a brief opening statement, if you wish to do so, before we ask questions.

Mr Duffin—I believe that each of us wishes to make a brief opening statement.

CHAIR—That is fine.

Mr Duffin—I begin by saying that the comments in our submissions deal with only some aspects of the legislation, for two reasons: firstly, the terms of reference of the current inquiry; and, secondly, the time permitted to deal with these matters. It should not be taken that the absence of any specified comments in relation to other provisions indicates some sort of implied approval of, or consent to, them. The union does not in any way support these provisions, whether it has specified that in detail or not.

At this point, I refer only to the Transport Workers Union of Australia submission. I understand that there are two further TWU submissions—one on behalf of the New South Wales branch and the other on behalf of the Victoria/Tasmania branch. We point out in our submission that, contrary to much of the rhetoric surrounding this legislation, the Work Choices bill is a substantial reregulation of the employment relationship and on a much broader and detailed basis than has probably ever been the case in Australian employment history. We note that the Prime Minister suggested that these matters were an article of faith for coalition members. That may well be true, but faith is simply not evidence—were it otherwise, the flat earth society would be still quite confidently advocating its case.

I will turn briefly to some of the aspects that most concern us that are addressed within the terms of reference—limited though they be. We indicate some of the substantial concerns about proposals for agreement making, of which one is the idea that individual statutory agreements be given precedence over any other form of employment arrangement. It should not be thought that the Transport Workers Union is unable to deal with individual arrangements; indeed, Mr Dewberry on my left is a member of the TWU, an independent owner-driver whose individual contract will be negotiated in some forms by the Transport Workers Union and regulated in other forms by other systems. What we are concerned with is this Henry Ford approach to agreement making—which is that the parties can have any agreement so long as it is black—being the preferred government model. We are also particularly concerned with this unique thing, the employer greenfield agreement. I suspect much has been said about that already. Suffice it to say the idea that one can make an agreement with oneself and that that should then bind all persons who come to work for one is a somewhat illogical notion. It is just an extraordinary provision.

In relation to prohibited content, the union is bemused. That would be the politest way of putting our position in relation to that set of circumstances. The idea that a minister can say what parties can even discuss, let alone put into an agreement, is to our way of thinking the most perverse and micromanaging form of government involvement in what was supposed to be agreement making between the parties.

We also believe the termination of agreement provisions, which provide for a party to terminate an agreement and effectively put people back on to a fair pay and conditions standard after 90 days, is sadly a great incentive to some classes of employer to exercise substantial benefits to their advantage. We are not saying that every employer is going to do it, but the nature of our industry is that it is highly competitive. Competition is very heavily determined by wage costs. Fuel costs are largely an external factor. The cost of trucks is largely an external factor. Interest rates are an external factor. There are relatively few things, other than the cost of labour and the quality of service, that companies compete on. It is London to a brick that there will be pressure placed by some employers which will flow through to the rest of the industry. The impact of that will not be in any way a favourable thing for anyone, frankly. There have been numerous inquiries as to how competitive pressures in the transport industry lead—and, frankly, this is not putting too high a price on it—to fatalities within the road industry.

I do notice the time. There are a number of other things I would wish to highlight just briefly, such as issues relating to the nature of the Fair Pay Commission; the statutory context in which it is established; and its lack of what might be perceived to be natural justice with respect to the way that the Industrial Relations Commission operates—with formal hearings where parties can see what is being said, articulate positions and test opponents' positions. All of these things would appear to be forgone in the new system. We have in our submissions referred to various other things relating to unfair contracts and transmission of business. The position of the Transport Workers Union is that this bill ought to be rejected by the Senate.

CHAIR—Thank you for that, Mr Duffin.

Mr Crosdale—My position is as the Newcastle and Northern sub-branch secretary of the New South Wales branch of the union. As such, I have an area of responsibility from the Hawkesbury River north to the Tweed and west to an imaginary line in the sand somewhere between Dubbo and Broken Hill. I cover a fair bit of ground. I cover a lot of long distance and intrastate long distance drivers within New South Wales, and we travel some distance further. I speak from the perspective of a union official, but I also have a history in this industry as a long-distance truck driver driving semitrailers and road trains over a great part of the country. I was also a journalist and editor reporting on this industry for one of the industry magazines for several years and a senior staff member for an organisation now known as the Australian Trucking Association. So I have a reasonably wide level of experience.

My observation of this bill is that it will heighten the crisis that already exists in road transport. In New South Wales alone, road transport kills on average two people a week. Last year there were 108 fatalities in truck related accidents in New South Wales alone. Road transport is a price taker, not a price maker. Such is the competition in our industry that when a contract is put out it often goes to the lowest price, and the lowest price can go one way or another. Firstly, it can be the lowest prices put in by the trucks of the person who goes for the

contract. Secondly, it can be the contractor down the chain and the low price that you get as the prime contractor means that you pass the loss down the line to the contractors further down the chain.

When you own a truck, or when you operate a small business, you cannot buy your trucks any cheaper. You cannot get your fuel for any less. The only thing you can do is either work your trucks longer hours or pay your people less. In terms of the hours that you work your people, in our industry legally you can work 14 hours a day, six days a week or you can work 14 hours a day for a period of 12 days straight and have two days off. If you think about it, that means going to work at six o'clock in the morning. You do not finish work until eight o'clock at night, plus the legal breaks that you had mean that if you do the job legally you can start work at six in the morning and finish at about nine or 9.30 that night. The reality for people in our industry is that that is a short day. What often happens is that the only way you get the job done is to get there and then load and unload in periods of time when you are not subject to the levels of scrutiny of a logbook, through various mechanisms, and you can find yourself working without having it recorded. That is the way you get the job done.

This legislation will allow employers to deregulate wages, allow them to pay less. In 2000 a House of Representatives parliamentary inquiry report called *Beyond the midnight oil* showed there is a link between what you pay people and the level of safety in road transport. As I say, two people a week currently are killed. If that was in a trade in the building industry, electricians perhaps, there would be an inquiry into why people were being electrocuted on the job. In our industry, it is called a road accident. Those people are at work. It is a workplace injury and it is a death. I have not got the statistics on how many people we maim, but two people dying a week is certainly significant in my view.

Add to that the proposed changes to exempt people who work in businesses with up to 100 employees from the unfair dismissal provisions, and we then have a situation that says: 'The load has to get there. I don't care how you get it there. I don't care that you are not going to shut your eyes for two days.' That is not an uncommon experience in road transport. I say it from the perspective of having mates who are still out there doing it night after night—'I don't care how you get the job done. If you don't get the job done, you won't have a job next week. I don't have to give you a reason because I don't have to comply with unfair dismissal.' Every community in Australia—and certainly in New South Wales, the state that I am from—is going to see and feel the effects of this legislation. Our industry touches every community.

Senators, when you get off the plane and you are driving back to your house and you pass a semitrailer coming towards you, grossing 42 tonnes—if it is a B-double, it will be grossing 62 tonnes and, if you live in the bush and it is a road train, it will be grossing over 100 tonnes—think about how rested that driver is, how safe they are as that vehicle passes within a metre of your right-hand mirror and think about the effects of this legislation.

CHAIR—Mr Dewberry, do you wish to make a statement?

Mr Dewberry—Although my past has not been as colourful as Mark's, I can speak with some experience in the long-distance industry, as well as the short-haul industry. Twenty-seven years ago, at the ripe old age of 21, I bought a business, incorporating goodwill and hardware such as a truck. I purchased that business to make a life and a lifestyle for my

family. As a senior delegate of the union—after being a member for a number of years—I had occasion to be involved in the negotiations with the company TNT. I can speak with some authority of how employers, with only profit in mind, tried to drive down the rates and conditions in this industry. It was a long-haul industry and, after 12 years, I chose to get out of that industry to improve my lifestyle. I went into the short-haul industry, where I have since been involved as a delegate.

Obviously, over the last 15 years I have worked with the union hand in hand to try to regulate our industry—an industry that we are proud of in terms of where we currently are. We have a good model for deregulation—that is, the long-distance trucking association. As Mark has just said, there are two deaths a week on our roads, mainly attributable to people trying to make ends meet, trying to survive, trying to put food on the table and provide education for their children. That is what happens. We need to regulate our industry more, not deregulate it, as the government is trying to do with this legislation. Personally, I feel that is the way it is going with this legislation.

As I mentioned before, I paid more for the goodwill of the short-haul business because of the regulation in it. I am happy to say that I have nurtured that goodwill to a point where I wish to pass it on to my children so that they can have a better lifestyle than what I ever had, and that is what it is all about. It is about family—I believe that is where we are coming from. I believe that, if the legislation goes through, it will drive down our rates and conditions to the bottom, and it will not be long before safety, maintenance schedules and everything else associated with the transport industry suffers and, if they suffer, in turn the safety of the general public will also suffer.

CHAIR—Thank you.

Senator STERLE—Mr Crosdale, what effect will this legislation have on road safety with regard to not only truck drivers but other road users if the major users of transport have the ability to force transport operators to bargain down current rates and conditions to the minimum five allowable matters?

Mr Crosdale—There are a couple of immediate ramifications of this legislation. In a general sense it will remove some of the things that Mr Dewberry was talking about. I will expand on them. It will remove access to what is called chapter 6 of the New South Wales industrial relations system for people such as Mr Dewberry who own proprietary limited companies. Chapter 6, effectively, has what is—for want of a better term—an award for owner drivers. It states, 'If you are an owner-driver, and you work within certain restrictions and with certain types of freight you should be paid an amount that is on a set calculation done by the New South Wales Road Transport Association and the Transport Workers Union.' That gives Mr Dewberry a level of remuneration based on safety and allows him to operate a profitable business.

That section of the legislation also has a contract of carriage tribunal that allows us to easily access an independent umpire to discuss issues such as Mr Dewberry's goodwill or if he felt that he was disadvantaged. If he felt that someone operated in a way that would remove the goodwill from his business, we can have that matter determined in a very accessible and cost-effective way. Under this legislation, that facility will go.

Let us put the goodwill issue to one side for a moment. That has its own ramifications, in the sense that Mr Dewberry would then be more inclined, I would argue, to work harder to try to build more money on a day-to-day basis as opposed to building up a less material asset. Let us consider the issue of taking away the base rate, or the floor, for owner-drivers. The floor for an owner-driver means that he can operate his business effectively and safely. The incentive to work harder is that, if you are not making enough money, you still have to cover your fixed cost and your floating costs, if you like. The fixed costs are registering your truck, maintaining it and insuring it, and the floating costs are obviously fuel costs. With the more kilometres you drive—that is, the harder you work that vehicle—the ratio changes and you have the potential to take more money out of the business. If you are operating unprofitably and then you actually work 18 to 20 hours a day then you might get it up to the point where you are at a break even or a profitable level.

Some people have significant business overheads. If you were to set yourself up with a new B-double out there on the road today—a prime mover, a couple of trailers and a couple of fridge vans—you would probably be looking at between $500,000 and $600,000. So if you have that sort of business overhead and you are actually trying to pay it then the incentive is there to work harder. If there is no minimum that someone can pay, you will take a load and you will take it at any price. In my experience, there is a myth in the road transport industry that says, 'While ever the wheels are turning you are making money.' That is simply not the case. But, if you can keep going harder and harder, you might eventually break even—if you do not actually crash and destroy yourself, your rig and members of the community in the process.

Let us leave owner-drivers to one side for a moment and look at employee wages and what coming back to five allowable matters means for people in our industry. If you look at the award rate of pay for an employee in New South Wales driving a truck versus the award rate of pay for an employee in the federal system, there is about $100 a week difference for a semitrailer driver. If you take someone out of the New South Wales system, they will lose $100 a week straightaway. If you then move them into a system which allows the wage rates to be stripped out of the awards—and someone can have a change in employment, perhaps, and find themselves on an individual contract or, indeed, on no contract at all but effectively being paid at the minimum rate—then the incentive is for them to drive for much longer just to try to make ends meet.

Certainly in one experience that I looked at recently, an employee of a transport company was underpaid an amount of about $8,000 in the first quarter of 2005. If you extrapolate that out over the year, that person was underpaid by about $30,000. I also happened to find records of how many hours that person worked, and that person worked between 80 and 90 hours a week on multiple occasions over a five-day period—it was a five-day operation. So, for me, that backs up what the House of Representatives inquiry found—that there is a link between the amount of money someone gets paid and the amount of work that they have to do. I think it is going to have a drastic effect on safety.

Senator STERLE—Mr Dewberry, obviously a trucking business is not just the man behind the wheel; there is normally a wife at home who does all the hard graft, not only trying

to raise a family but running the family business. If this legislation went through as it stands now, what do you think the effect would be on working families?

Mr Dewberry—You would take away the family unit. Being the father, I would have to expand my hours to make the same adjustments to my affairs, so I would be working longer. Obviously the truck would suffer because I would not have the money to spend on service scheduling, tyres and maintenance. Everything else would be expanded to a point where it was unsafe. The family would be broken up because I would be away doing more hours, as I said, trying to ratify the legislation—trying to increase my hours, my conditions, my rates of pay and everything else. It would tear the family unit apart.

Senator STERLE—I said to people who were doing an earlier submission that when the minister launched the bill in the House of Representatives last week the thing that jumped out at me was the transition of business clause. I know that labour hire in the transport industry is alive and well, that it is very large because of the seasonal work. What effect do you think the transition of business clause would have as it stands in the bill today?

Mr Crosdale—My understanding of it is that the effect could be that people are forced to work for a labour hire company. My understanding of the transmission of business provisions is that their rates of pay would continue for a period of 12 months and after that time, firstly, they could find themselves as casual, so they have lost all their entitlements to sick leave and holiday pay; and, secondly, they could find themselves working for a much lower rate of pay. That gets back to my central argument that that is then going to have a direct effect on road safety. Added to that are job security concerns, because they are casual and effectively hired by the day, so if they do not do the work they will not be there the next day.

Senator STERLE—For the transport industry what are roughly the current percentages for full-time, casual and temporary employees? Do you have those figures?

Mr Crosdale—I do not, but anecdotally I know that there is a significant percentage of labour hire companies operating in the industry and that a significant amount at some of the major transport yards is labour hire. I note too the definition of a small business and that employers with fewer than 100 permanent employees would be exempt from the unfair dismissal provisions of the legislation. My understanding is that there would be a significant incentive for someone to bring in a large amount of labour hire into a yard, which means that they would then get the work done but not be covered by unfair dismissal. It is only permanent full-time employees is my understanding, so you would make people part time or you would bring in casuals to get yourself out of the unfair dismissal provisions.

Senator STERLE—Take a large trucking yard in your home state of New South Wales: how many full-time, casual or other employees are we talking about?

Mr Crosdale—Certainly for a very large operation in my area, which, as I say, is outside the metropolitan area, it would be between 40 and 50 employees. If you are up around the 80 or 90 mark, you are a major player—and I could probably name those on one hand. Everyone else is smaller than that. So effectively it would deregulate unfair dismissal in the area of my responsibility geographically.

Senator MARSHALL—Mr Duffin, I want to take you to your submission in respect of model dispute resolution cases, something that the committee has not yet heard much about.

You are critical of a process that would lead to significant delays in what is proposed. I am wondering if you could expand on that as to how that would be a difficulty in your industry.

Mr Duffin—Perhaps before getting into the specifics I should say that one of the purposes of having a dispute resolution procedure is to resolve disputes. That is so obvious that it goes without saying. Yet there is a mechanism which puts in a 14-day delay as a minimum. Disputes may be as simple as 'We're unhappy with where some things are' and those things can get sorted out on the job, but where there are genuinely held views between two parties which are significant issues the idea that you should automatically delay things by 14 days just because the legislation says you ought to strikes me as entirely counterproductive and more likely to lead to greater disputes and industrial action. Using the former definition of industrial action, things that the employer does unilaterally would serve as well to alter the conditions upon which work is performed. So you are getting a situation fundamentally where by legislative fiat you are actually encouraging disputes to become more intractable rather than less. It seems to me to be a thoroughly nonsensical proposition. If the parties believe that they need the thing sorted out more promptly, they ought so do. The idea that you would put in legislation a dispute procedure which prohibits or prevents them from so doing is entirely counterproductive to my way of thinking—and any reasonable mind that deals with these things would think so.

Equally, there are some other very curious and entirely perverse things within the model dispute procedure clause. There is one section—and I cannot quote it off the top of my head; I would have to go through the legislation to find it—that says something along the lines of 'The commission cannot appoint a board of reference, even where the parties agree to this.' That is just the strangest thing to have. The minister and the government are standing up and saying, 'This is all about parties going and doing what they want to do,' yet there is a provision that says: 'Forget what the parties want to do. We have a legislative dispute procedure which entirely prohibits the parties from doing what they want to do.' It is a nonsense.

Senator MARSHALL—What happens within the 14-day waiting period? Given some of the other provisions of the bill—the 38-hour week being averaged over 12 months and some of the changes to the definitions of what constitutes shift work, for instance—if there were an arbitrary decision by an employer to change a roster or to substantially increase the amount of hours, with this decision to take effect immediately, and if an employee could not make these changes because of family commitments, what would happen during the 14-day waiting period? Is the employee obliged to cop those changes to rosters or those additional hours?

Mr Duffin—I think the answer to that is yes. Obviously, with the demise of the unfair dismissal jurisdiction for places with fewer than 100 employees, not only are they forced to cop it but they have no remedy in the event that they say, 'This is not appropriate,' and the employer says, 'You've got two choices here: you take my way or the highway.'

Senator MARSHALL—So there is no provision for the status quo, which is a usual feature of dispute settlement?

Mr Duffin—That is a very common dispute resolution procedure; that is correct.

Senator MARSHALL—So your only recourse, effectively, is to be sacked or to resign?

Mr Duffin—Or to cop it for the period of 16 days, 18 days, until you get into some jurisdiction—where the government have said there are very limited powers for anyone else to look at what is going on in any case. In one sense, the worst aspect of this is that this is a dispute procedure which is being put into legislation. The OEA has for some time been putting model dispute resolution procedures into AWAs which effectively require that both the employee and employer jointly agree a mediator and share the costs equally. That is equally illogical. My background is in the law. The idea in some of these dispute resolution procedures that the Law Institute will appoint a mediator in the event that the employer and employee cannot agree to this thing and that the costs will be equally shared again demonstrates illogicality and the misplaced emphasis that the employee is somehow in an equal position to negotiate and bargain in relation to these issues. The idea that you would specifically put these things into legislation demonstrates what I can only say is a misplaced optimism in human nature.

CHAIR—One more question, Senator Marshall.

Senator MARSHALL—A number of witnesses before our inquiry to date have really blurred the difference between productivity and cost reductions. They are very different things. I think Mr Crosdale and Mr Dewberry talked about some of the obvious productivity obligations in your industry such as simply working longer hours, driving for longer or making more use of the vehicle on the ground. But can you explain to me the impact of simple cost reductions? How will potentially cutting wages and driving down the wage cost lead to higher productivity in your industry?

Senator BARNETT—On a point of order, Madam Chair: Senator Marshall is directly implying that the legislation is driving down wages and terms and conditions—which it is not.

Senator MARSHALL—I do say that because that is what I believe will be the consequences of this bill, and that has been clearly demonstrated by nearly every witness before this inquiry—except for employer organisations.

CHAIR—All right, Senator Marshall, you have made your point. Have you asked your question?

Senator MARSHALL—Yes, I have asked my question.

CHAIR—Do you want to answer it, Mr Duffin?

Mr Duffin—I am quite happy to answer it. On a previous occasion I indicated that I can put on an economics hat in these forums as well. There is simply no linkage whatsoever between cost reductions and productivity improvements. Productivity, at its most basic level, is the number of widgets per unit of labour; it is not the number of widgets per unit of labour cost. Notwithstanding some beliefs to the contrary, what is likely to occur with this legislation is reductions in labour costs. What that means in practical terms is not cost reductions in labour costs in our industry but wage cuts to workers. The ramifications of that, as both Mr Crosdale and Mr Dewberry have pointed out, are matters of public interest, not matters of private interest. These are real things. The House of Representatives *Beyond the midnight oil* inquiry—which was a multiparty, joint inquiry and there was a joint outcome—found the connection. I heard the minister this morning talking about the importance of looking at these

legislative things with commonsense rather than through evidence based things. What we are saying is not rocket science; it is commonsense.

CHAIR—Mr Duffin, I would like to put to you a question about the scenario you raised a moment ago which implied that workers with families can be sacked for not being able to work extra shifts at short notice, and what you have talked about is reminiscent of the ACTU television advertisement. Would you agree that the Workplace Relations Act provides these words: 'That the act will continue to provide protection against unlawful termination. This includes protection against termination on the grounds of religion, gender, union membership, pregnancy and family responsibilities. Employers who terminate an employee for unlawful reasons are liable for fines, penalties and compensation under the act.' Do you accept that that is a truthful recognition of the government's intention?

Mr Duffin—There's many a slip betwixt cup and lip, with all due respect, Senator. What may be an unlawful termination is very easily characterised—and is almost invariably characterised—as being something entirely different in practical terms. If the Senate, and indeed the government, really believes that the unlawful termination jurisdiction is likely to resolve these issues with a speedy, cost-effective mechanism, then perhaps it ought go back and have a look at Federal Court decisions and cases over the past decade. Even putting the most 'good faith' hat on that I can, which is that the government truly believes this, it can only truly believe this if it has not actually looked at the material.

CHAIR—I am putting to you that that is what is in the act. Do you agree that that is what is in the act: 'liable for fines, penalties and compensation under the act'?

Mr Duffin—I do not know because you have not quoted me a section, but let us assume that you are correct because I have no reason to doubt that you would not have read the words out in their exact form. That does not in any way derogate from the answer I have given you.

CHAIR—Nevertheless, it does mean that ultimately, even though there is a process to be followed, employers will be dealt with for not abiding by the act.

Mr Duffin—There are a number of assumptions built into your question to me, most of which I think are very easily unpicked. I would not alter my basic answer to you, which is that what you might put in the legislation, in the event that it passes the Senate, is frankly unlikely to be of much assistance to anyone in a situation similar to that of the woman in the ACTU ads whose name I temporarily forget.

CHAIR—I think that underestimates the legislative capabilities of the government and the Senate.

Senator BARNETT—Mr Dewberry, you made the statement that in your view more regulation is in the best interests of your industry. Is that correct?

Mr Dewberry—That is exactly right.

Senator BARNETT—We had some small business representatives here yesterday, and they had just been to a forum on the merits of reducing red tape. I put it to you that there is a different view held, not just in the transport sector but across the community, particularly in the small business sector, that we should actually try and reduce red tape, the cost of regulation and the cost of compliance. Your view seems to be entirely contrary to that.

Mr Dewberry—It certainly is. I believe we should work closely with associations like the Road Transport Authority in further regulating requirements for hours worked on the roads and for fatigue management. You talk about red tape. I believe that we should strengthen up and support small business. I believed that this government was about supporting small business. I feel that this legislation does not prop up small business at all.

Senator BARNETT—COSBOA had a different view yesterday. They supported the legislation and the thrust of where we are going with flexibility and the need to cut back red tape.

Mr Dewberry—I differ from that.

Senator BARNETT—Mr Crosdale and Mr Duffin, I understand you have worked with Senator Sterle before as paid officials with the TWU—

Senator STERLE—Proudly.

Senator BARNETT—He indicates that he was proudly a trade union official with the TWU. In answer to questions from Senator Sterle, you referred to the likely increase in road deaths as a result of the bill. Can you confirm for the committee that it is your view that the bill will lead to increased road deaths? I put it to you that we have had similar allegations from Labor politicians, who say there will be an increase in the murder rate and there will be riots in the street. The opposition leader has referred to an increase in the divorce rate. John Della Bosca, the New South Wales Minister for Industrial Relations, talked about the bill being the equivalent to fascism. I would like you to outline for the committee how you think it will increase the number of road deaths and the reasons for such a statement.

Mr Duffin—The first point we would make is that it ought to be every senator's objective to minimise road deaths. I can confidently assert that this bill will do nothing to minimise road deaths. Mr Crosdale has provided you with an economic perspective of this industry, and I am happy to reiterate it. Road transport companies are price takers. Real freight costs in the road transport industry have over the past 30 years fallen by 45 per cent. The top four firms in the road transport sector have a market share of about 15 per cent. If you compare that to the banking sector or the retail sector, you will start to get an appreciation of how competitive our industry is. Mr Crosdale has gone through the fixed and floating charges that exist in the industry and has, in my view—and it is not just my view; the Quinlan inquiry has done this—

Senator BARNETT—Mr Duffin, could you address the question.

Mr Duffin—May I finish?

Senator BARNETT—Will this increase road deaths? It is not a trick question.

Mr Duffin—Senator, may I finish?

Senator BARNETT—Please.

Mr Duffin—The simple fact is that wage costs in our industry are one of the few things that can be pushed. The result of wage costs falling will be an increased requirement for drivers to work longer hours to ensure that they maintain rates of pay. It is not rocket science to go from there to knowing what the result is of fatigue on drivers. We are not talking here

about things that are terribly complex. If you follow each one of these steps, we are not going into a situation where—

Senator BARNETT—We are a bit tied for time, Mr Duffin. Is there anything else you want to add, Mr Crosdale?

Mr Crosdale—Yes. The reality is that people in our industry work longer hours than people in any other industry that I have ever come across in any of the various jobs that I have had, and I have had a few. They do it not because they want to; they do it because they have to. They have to do it because they have significant financial pressures on them because they own the vehicle or because they are told, 'If you don't get the job done then you may not have either the job or the vehicle next week.' Two people a week being killed on New South Wales in truck related accidents I think speaks for itself.

Senator BARNETT—But you are not blaming the Australian government for that, are you, Mr Crosdale?

Mr Crosdale—No. I am saying that there is a system in place which drives down costs to the point where the person who is actually doing the work cannot get sufficient return—whether they own the vehicle or are driving it for someone—to actually make a living legally and safely.

Senator BARNETT—Thank you.

Mr Crosdale—When you increase that pressure, you are actually going to see an increase in the result.

Senator BARNETT—In road deaths?

Mr Crosdale—Yes. From personal experience, I have had a situation. I will give you one example. I had been driving between Taroom and Theodore in Central Queensland. I had been driving in excess of the hours I was supposed to drive and I was trying to get into Theodore just to put my head down. There was nowhere to stop. Slowly, my eyes started to close and the next thing I knew I had one wheel dropped off the tar and I was out in the middle of a paddock. I had a load of pumpkins. I could have been killed that night, and it was purely because I knew I had to get that load in. I knew that once I got to the next town I could get an hour's sleep and then keep going.

Senator BARNETT—None of us wants to underestimate the importance of safety on the road and minimising road deaths. Please accept that we are all of the same view in that regard. But occupational health and safety is a responsibility of the states. You have said that the legislation will lead to road deaths and there is a reference here to say that the safety of the public will suffer. I am just clarifying with you, I am just asking you this question: do you believe the legislation before us today will lead to increased road deaths for those involved in the industry and/or the public?

Mr Crosdale—Yes, I believe this legislation will lead to increased deaths on our roads because there are fewer protections for people who drive trucks, which will make them more fatigued. When someone in our industry, unlike in any other, suffers from excessive fatigue they can kill themselves and they can also kill other people in the community very easily. A

truck driver can fall asleep driving past a bus stop full of kids. We had the situation up on the North Coast at Cowper. These things happen.

Senator BARNETT—Sure. Thanks, Mr Crosdale. I want to turn the cashing in of annual leave and the policy of the TWU. There have been views put to our committee from the union movement that they oppose the cashing in of annual leave. What is the position of your union on the cashing in of annual leave?

Mr Crosdale—I can only speak for the New South Wales branch of the Transport Workers Union. We have not cashed in annual leave and we do not support it. We believe that, in an industry that already works too hard, people need all the leave they can get. However, if you have a system that means that people may ultimately be paid less at the end of the day, there will be an absolute incentive for people to cash in their annual leave, which once again gets back to my concern about fatigue and its resulting road safety impacts.

Senator BARNETT—Mr Duffin, do you have a response?

Mr Duffin—I think the federal union would have a very similar response.

Senator BARNETT—I have before me—and I am happy to table this—the Australian Industrial Relations Commission agreement between the Australian Integration Management Services Corporation Pty Ltd and the Transport Workers Union 2005. At 6.1.2.1 it says:

An employee who is a full time employee is entitled and who has accrued in excess of 160 hours paid annual leave may cash out part of their annual leave accrual ...

Mr Crosdale—I have never heard of that company.

Senator BARNETT—I have a number of other examples of different unions signing agreements with relevant businesses and employers including the cashing out of annual leave.

Mr Crosdale—As I say, if you work in a system where you are not getting adequately remunerated, there is a lot of incentive to do that. I have never heard of the company you speak of. If you could tell me a little more, I might be able to comment. It is not within my knowledge.

Senator BARNETT—I am happy to table that.

Mr Dewberry—Through you, Chair, I wish to respond to Senator Barnett's interjection during Senator Marshall's questioning about companies forcing down rates and conditions. I can tell Senator Barnett that three months ago I petitioned my company, with 168 families, all holding long-term contracts with that company, signing that petition. His response to that petition was that he would have no part of it and that he would look at the legislation and use that legislation to his and his company's best advantage, which meant pushing down rates and conditions. I am sorry, Senator Barnett, but he would do that to the detriment of my family.

Senator BARNETT—Rather than the federal industrial relations system and the industrial relations systems that we have in every state but Victoria, do you support one industrial relations system for this country?

Mr Duffin—The federal union does not.

Mr Crosdale—The New South Wales system we believe is an excellent system in that it provides for employees and for effectively tied contractors, such as Mr Dewberry—who in

one view of it are employees who supply extremely expensive tools of trade. If the Senate were to consider rolling the New South Wales system out federally, we would certainly look at it.

CHAIR—You have eight minutes, Senator Murray.

Senator MURRAY—My summation of your evidence is that you are saying that the law will make a bad situation worse. That leads to my question. There is a general proposition that an action produces a reaction. The government has tried to anticipate that in that proposed section 7C of the bill sets out the Commonwealth's intent to have the Workplace Relations Act operate to the exclusion of certain state or territory laws insofar as they apply to employment relationships covered by the new federal system. My expectation is that the states and territories will operate a defensive strategy.

Do you think, if the state and territory governments agree with the proposition you have put today, that they are likely to either introduce or extend industrial manslaughter laws—which they could do under road safety, criminal law or any other law—so that, if the wages and conditions applied to drivers result in death or injury, then the company will be directly responsible, both in a monetary and in a criminal liability sense? Isn't that where you go if you remove the potential for people to sort these things out though the industrial relations system?

Mr Duffin—I think, in part, one of the premises of your questions is action and reaction, and I suspect there will be a further reaction. Industrial manslaughter laws in the ACT have already prompted a reaction on the part of the government, so it is difficult, notwithstanding the fact that I would anticipate the state and territory governments doing something, to believe that the current government would not seek to legislate again and again and again. Certainly I suspect ACCI will be in their ear before the day is over about this sort of thing.

Senator MURRAY—On the same lines, I am intensely concerned about the shift from a third-party system to essentially political interference in industrial relations. Our founding fathers and their successors were wise enough to realise that these matters were so sensitive that you needed to keep the politicians out of them, and that was the reason that independent tribunals were set up. Therefore I move on to the disputation area, which you picked up on. It seems to me that one of the great virtues of our system has been the protective measures—the global no disadvantage test, the 20 allowable matters, the industrial tribunal, the certification of agreements. All those sorts of things, I think—as a result of the wisdom of the Keating government in 1993 and the wisdom of Peter Reith and my wisdom in 1996—have resulted in lower levels of disputation, basically. It seems to me that, if you take those things away, the only recourse for people ends up being much more disputation. I think in your industry that would mean a stop work—industrial action of that kind. Am I right in that action-reaction sort of thought?

Mr Duffin—It is difficult to know, but I suspect the answer is yes. It is very difficult to see any other substantive remedy. A classic example is unfair dismissal. It was not so long ago—and we are talking 20 years ago, maximum—that, when someone was dismissed at the workplace, most of the workplace went out and there was industrial action with a view to having the dismissal either overturned or resolved in some other way. Indeed, there were very

flourishing jurisdictions in both state and federal commissions which were unfair dismissal jurisdictions by any other name. That was the means by which these things got resolved. It is difficult to see that that will not be more likely to occur. Mr Crosdale is talking about yards of 40 or 50 drivers in Newcastle and northwards. It is very difficult to see that sort of response not occurring in those circumstances.

Mr Crosdale—We already have industrial action in an unregulated jurisdiction: it is called owner-drivers in the long-distance industry, and they are called truck blockades. Recently we had some owner-drivers pull their trucks across the road up at Macksville, on the New South Wales North Coast. It is very well-known in the industry that blockades have happened as far back as 1988, 1989. When people have nowhere else to go, when they go to work to wear out their trucks and wear out their old clothes, they get very angry. If they feel that there is no other option, they take the only option that they see available to them and that is to stop themselves going to work and to stop other people doing their work, which results in a truck blockade.

Senator MURRAY—Exactly. The present system enables an owner-driver or an employee to go cheaply and quickly to the tribunal because the union carries the cost. It is a cooperative venture, a collective venture. Now it would need to go through the courts. People will not go through the courts; they will go for direct action. That is my assumption—the action-reaction kind of thesis.

Mr Duffin—I think that is probable.

Mr Dewberry—That is caused by two reasons: (a) the financial situation of going through the federal system; and (b) the time frame of getting into the federal system. Those reasons would limit it.

Senator SIEWERT—Following the line that we were talking about before about the eight-hour standard and what impact the legislation will have particularly on safety, the number of hours you drive and things like that. What potential impact will that have on your industry?

Mr Crosdale—I think most people in our industry operate far in excess of 38 hours. So the removal of the base standard will be another way of reducing remuneration, which will then add to the pressures that I have spoken about.

Senator SIEWERT—What I am specifically referring to is the spread. Instead of it being 7.5 or whatever hours over five days, it can now be worked out over a year. What potential impact will that have?

Mr Crosdale—Many people in our industry are paid on a kilometre incentive type basis, but for people who are paid on an hourly basis it will mean that, if you put two drivers in a vehicle and work one driver a greater number of hours earlier in the week and then put in the other driver for later in the week, effectively you will pay both drivers less than what they would earn if they were working on overtime rates towards the end of the day.

Senator STERLE—Chair, we have a little bit of time left. For the *Hansard* I want to say that I have spoken to the Western Australian secretary of the Transport Workers Union—

CHAIR—We are out of time, Senator Sterle.

Senator STERLE—I want to get this on the record; we have time, Chair. I need to defend the AIMS agreement. They are prison guards. They were working for the government and were picked up by a private company.

CHAIR—Senator Sterle, you are out of order.

Senator STERLE—They are able to cash out years of accrued leave. I wish to get that on the record.

CHAIR—We are out of time. Thank you for your attendance here today.

Proceedings suspended from 12.32 pm to 1.35 pm

MAY, Ms Robyn Lee, Research Fellow, Royal Melbourne Institute of Technology

PEETZ, Professor David Robert, Department of Industrial Relations, Griffith University

POCOCK, Associate Professor Barbara Ann, Research Fellow, University of Adelaide

STEWART, Professor Andrew John, School of Law, Flinders University

CHAIR—Welcome. Thank you for your submission. I invite you to make a brief opening statement.

Prof. Pocock—Thank you for the opportunity to meet with you today and to put forward our views on the Workplace Relations Amendment (Work Choices) Bill 2005. We are very conscious that your time is precious, but we would like to make some brief opening remarks before responding to questions. We would like to speak briefly in turn. I will begin with some introductory comments.

This submission brings together the views of a large group of Australian academics with expertise in industrial relations. Thirty-one of the 151 signatories are professors, 28 are associate professors, half of each of these two groups are from business and management schools, the remainder are from industrial relations, psychology, law and employment fields. All have expertise and solid, scholarly track records in the field of industrial relations. Many have several decades experience in analysing the Australian and international situations and all are published and experienced. You are probably grateful we have not brought the whole 151—we might be here for a very long time and it would be very expensive—but I do want to draw your attention to the diversity that is represented in the submission.

I want to also draw your attention to the fact that we are accustomed to very vigorous debate in our community of thinkers and analysts. We very frequently disagree with each other and we are often on opposite sides of a range of workplace and industrial relations questions. We have never acted as a group together before in making a submission like this. Our agreement, which we want to make plain to you today, may be a long time coming in the future. It has taken a very significant set of proposals in the Work Choices bill to bring about this very unusual circumstance and our shared grave concern. You will appreciate that this week is one of the busiest on the academic calendar with marking under way in universities, so we feel a responsibility today in representing to you the views of our group of 151, who have contributed to and are signatories of the submission. You will be aware from our documentation that our shared concerns are multiple, but I want to emphasise a few before handing over to my colleague Professor Peetz.

Firstly, the proposed changes deserve a thorough public discussion, which the government's timetable does not allow. These changes are, in our view, profound, they are not evolutionary, and beyond their intended consequences the bill has potential for serious unintended consequences. The second question that we are concerned about is the issue of complexity. One of the government's goals is to reduce complexity. However, the bill adds a whole raft of new complexities, so we do not view this as deregulation; it is increased regulation. Thirdly, there is the question of a changing balance between employers and

employees. Employees and employers approach the labour market with different levels of power. Internationally, labour law is designed to protect workers from exploitation and to ensure basic rights, including the right to organise and to bargain collectively. The bill ignores these widely accepted views and shifts the balance in Australian workplaces—a historic and radical change, which is in conflict with international treaties to which Australia is a party.

Fourthly, we are concerned about increased inequality in the labour market arising from the bill. Such inequality has already been growing in Australia. It has important social consequences, a large body of social research tells us, for things like social exclusion, violence and health. Finally, the bill reduces the existing work and family supports in Australia, and it offers no general way forward to improve the important areas of labour law and workplace life. This has very important implications for future labour supply and for those least able to bargain for themselves, as well as for many other Australian men, women and children. My colleague David Peetz will now pick up some additional points.

Prof. Peetz—I want to mention three things of particular concern. Firstly, we are concerned about the way in which the bill promotes the individualisation of employment relations, promotes individual contracting, in the context of declining minimum standards—the taking away of award protections that underpin agreements through the operation of the no disadvantage test and replacing it with the set of five minimum standards. The evidence that we have seen to date indicates that individual contracting through mechanisms such as AWAs for ordinary employees leads to lesser outcomes in wages, hours, conditions of employment than collective bargaining does, yet the provisions of the bill, while promoting individualisation, will remove the floor underneath individual contracts—AWAs—and increase the scope for downward movement in pay and conditions through AWAs.

Senator BARNETT—Did you say that AWAs had lesser outcomes than collective agreements?

Prof. Peetz—That is right. The second point concerns the increased scope the bill gives for unilateral decision making by employers contrary to the objects of the bill regarding promoting the making of agreements between employers and employees. It does this through enabling employees to make agreements with themselves. More importantly, it does it through enabling employers to terminate agreements once they have expired and then, after those agreements have been terminated, to unilaterally determine pay and conditions, including potentially reducing pay and conditions as long as it is consistent with the five minimum standards.

The third point of concern is the lack of strong evidence to support the case for these changes. We have been told that the main benefits that they generate will occur through increased productivity, but when we look closely at the evidence on productivity we see that there is just no persuasive evidence there to tell us that the proposed provisions promoting individual contracting will lead to higher productivity.

Ms May—It is our submission that the experience of New Zealand under the Employment Contracts Act 1991 is highly relevant to an analysis of the possible outcomes of the changes contained within the Work Choices bill. Until the late 1980s, New Zealand and Australia had very similar industrial relations systems. In 1991, the Employment Contracts Act dismantled

New Zealand's award system and, instead, placed collective and individual bargaining on an equal footing before the law. The effect of this was that collective bargaining levels collapsed in favour of individual bargaining. However, bargaining was not really what was happening. Instead, often workers were offered standardised individual contracts that unilaterally removed conditions. These were presented on a 'take it or leave it' basis.

The Employment Contracts Act, like the Work Choices bill before us, in effect placed bargaining power firmly in the hands of the employer. Some of the outcomes associated with the Employment Contracts Act are worthy of reflection. The 1990s in New Zealand saw increased inequality in income distribution, a significant fall in the full-time work participation rate for men, flat productivity, a minimum wage that did not keep pace with inflation and real wage cuts for many vulnerable workers. In some sectors, such as retail, penalty and overtime payments were unilaterally removed by employers without compensation. A significant wages gap between Australia and New Zealand opened up, estimated to be somewhere around 20 per cent, even accounting for the fact that over 400,000 New Zealanders live in Australia and not just for the good weather. We submit that the New Zealand experience represents very solid evidence in support of our serious concerns about the long-term effects of the changes contained within the Work Choices bill.

Prof. Stewart—For my part, I am here for two reasons: I am a member of and a representative of the group of 151 academics that has made this very substantial submission and also I have made my own submission independently to the committee. I want to briefly allude to some of the points in that individual submission before coming back to some of the themes of the broader submission. In my own submission I have highlighted the failure of the bill to satisfy the government's own test of creating a simpler, fairer national system. It will not create a national system even for employers who are subject to the new federal system. It will not be a unitary system. There will be disputation and uncertainty as to which state laws operate on those employers and which do not.

I have questioned the fairness of the bill particularly in terms of preserving the integrity of the award safety net. One of the stated objectives of the new legislation is to ensure that there is an award safety net that will apply where workers do not choose to make agreements. I have highlighted in my submission—and this very much picks up points which are also apparent from the group of 151 submission—a number of points where the bill does not preserve an award safety net. Indeed, in a number of respects it would be possible for workplaces to become award free even for workers who have not chosen to be on workplace agreements. Finally, in my submission I have addressed the issue of simplicity and suggested that this regulation is indeed extremely complex.

Here I want to return to the broader submission. It is one of the points that we have made collectively as a group. This is extraordinarily complex legislation that is being rushed through parliament before there has been a proper attempt by independent experts to analyse it with anything like the care that it deserves. We understand that the bill is likely to go through. We have attempted in our submission to suggest that it is rushed and, indeed, fundamentally flawed. Nevertheless, recognising the reality that the bill will probably go through parliament in something like its current form and in offering an addition to the formal

submission we have put forward, we do want today to highlight some of the more important areas in which the bill might be amended so as to address some of its more serious defects.

There are five broad points that we want to allude to. Firstly, it would be preferable for incorporated businesses not to be forcibly transferred into the federal system but to have the choice of remaining subject to their state systems. That would avoid the need for complex and burdensome transitional provisions for those employers. Secondly, we believe that the minimum standards that form part of the Australian fair pay and conditions standard should be strengthened in two respects in particular. Firstly, the working hours standard should be subject to an overriding requirement that employers should not be able to either require or request unreasonable hours to be worked. Secondly, it needs to be ensured that those standards reflect the Australian Industrial Relations Commission's decision in the work and family test case.

Thirdly, we suggest that the integrity of the award system as a safety net should be preserved by firstly ensuring that workers presently covered by state awards can remain covered by awards if they choose not to make workplace agreements, by removing the provision for employer greenfields 'agreements', by retaining the existing rules on the application of awards in the event of a transmission of business and, perhaps most importantly, by providing that awards should be revived if a workplace agreement is terminated.

Our fourth broad proposal is that the integrity of genuinely negotiated agreements should be preserved by making collective agreements genuinely binding on employers, by preventing those employers from offering individual agreements on less favourable terms than those in the collective agreement, by specifying prohibited content in the act rather than in yet to be tabled regulations, and also by confining prohibited content to provisions which would breach laws on discrimination or freedom of association.

Fifthly and finally, if there are to be exemptions from unfair dismissal laws, those exemptions should be confined to small businesses, related corporations should be counted as a single business for the purpose of any threshold number and the overly broad operational reasons exemptions should be deleted from the bill. That series of areas is where we believe that helpful and sensible amendments could and should be made.

Senator JOHNSTON—I am sorry, I missed Nos 4 and 5. Could you just repeat them?

Prof. Stewart—Certainly. We do have a document here, which has been very hastily prepared, and we would be happy to table it for the committee.

Senator JOHNSTON—That is fine.

Prof. Stewart—I will very quickly repeat them. Fourth is to ensure that the integrity of genuinely negotiated agreements is protected, firstly, by making collective agreements binding on employers so that they cannot simply offer individual agreements at any time on less favourable terms; and, secondly, by confining prohibited content to discriminatory provisions. The fifth one was a series of propositions about exemptions from unfair dismissal laws being confined to small businesses, for related corporations to be counted as a single business and for the operational reasons exemption to be deleted.

CHAIR—Thank you. Your submissions have many points in common, particularly where they have referred to the individualisation of bargaining, even where the majority of employees are members of unions. The minister has previously expressed the view that a majority of employees will continue to be employed on collective instruments under the new system—in other words, that things will not change very much. Do any of you accept that view?

Prof. Peetz—I think we can expect some pretty major shifts from awards to individual contracts. If the minister is referring to awards as being a collective instrument, then we would certainly expect some shifts away from awards to individual contracts. Indeed, my recollection is that the minister himself foreshadowed that. I recall him saying in May or June that he expected that within five or 10 years very few people at all would be covered by awards. The impact it will have on collective agreement coverage is harder to tell, because it is very hard to anticipate what will be the impact of these new laws on how much employers will exercise the scope they have to offer individual contracts that override collective agreements at any time and a whole range of other mechanisms. It is also very difficult to predict what employees' responses will be in joining or leaving unions. Those things make it very difficult to predict the level of collective agreement or collective instrument coverage in a few years time.

Prof. Stewart—Perhaps I can add to that. A number of aspects of the bill are antithetical to collective bargaining. One of them, which David has mentioned, is the ability for employers to make a collective agreement but then contract out individually. A second would clearly be the heavy restrictions to be placed on the capacity of workers to take industrial action. If workers are unable, effectively, to take industrial action without breaching the law, as we suggest is the case under this bill, that must over time make it more difficult for employees to secure collective agreement coverage.

Ms May—If I may also add to that the experience in New Zealand where the award system was removed, employers were able to use individualisation of bargaining as the mechanism by which they undercut the previous collective arrangements. That saw collective bargaining levels literally halve within a couple of years and was the basis by which employment conditions were undercut quite seriously in many sectors.

CHAIR—You also acknowledge that there are currently low levels of industrial action here in Australia. At the time of the 1996 reforms, a number of commentators suggested that those reforms would lead to higher levels of industrial action. Would you agree that those commentators were clearly wrong?

Prof. Peetz—There has been a trend for declining industrial action that started in the early 1980s, first of all with the prices and income accord in its centralised form, and then, with the shift to enterprise bargaining and the right to strike and the areas where people are not meant to strike more clearly delineated, the level of industrial disputation declined again. There is pretty much a global trend towards declining levels of industrial action, so the fact that industrial action is now at low levels is not surprising in that context.

Prof. Stewart—To return to a point that I made in answer to your previous question, the capacity to take industrial action is important. If you make it much harder and much costlier

for unions and employees to take industrial action, as the bill proposes, then that must reduce the bargaining power of those workers. Often, it is not so much the action that is taken but the action that could be taken or the action that is threatened that matters. The bill dramatically reduces the potential for protected industrial action to be taken.

CHAIR—Those same 1996 critics also predicted that wages would fall. For example, Mr Beazley predicted the 1996 act would lead to a 'low-wage, low-productivity industrial wasteland'. Would you agree that those predictions were also clearly wrong?

Prof. Peetz—Since 1996 and over the long term there has been a tendency for real wages to rise, because there is a long-term tendency for labour productivity to rise. The capacity for wages to fall under the Workplace Relations Act is very severely constrained by the operation of the no disadvantage test. That basically meant that, if you signed an agreement, whether it be an individual contract, an AWA or a collective agreement, your total pay and conditions could not fall below the value of the award.

The other thing to bear in mind is that the level of individual contracting through Australian workplace agreements has been pretty small. It has grown quite a bit in the last year or so, but it is still only around four per cent of employees who are on individual contracts. There are a couple of things there that are quite different to what is being envisaged by this bill—one being that the no disadvantage test will be no more and the second being that it is anticipated that there will be substantial growth in the use of AWAs. The strategic plan of the Employment Advocate predicts that there will be a million people on AWAs by the middle of 2008—in 2½ or so years time. That is a trebling, roughly, of the level that is there now. It is a bit of a different scenario now to what was the case as a result of the Workplace Relations Act coming in.

Prof. Pocock—I do not think any signatory to our submission would argue that the wage level is a simple, straightforward and direct function of the industrial relations regulatory regime. It is a very complex set of factors that shape wage outcomes, not least the state of the economy. Of course, our economy has been in a significant upswing. That has an important effect as well.

CHAIR—If you are saying that now looking back, would you make the same statement about looking forward, that wage levels are not just the result of the industrial relations regime?

Prof. Pocock—I think you could consistently argue, and there would be many labour economists and studies which would suggest, that there are multiple factors that affect wages and that the industrial relations regulatory regime is one significant element of that, but the state of the economy and other factors are also important.

CHAIR—You warned in your submission of deeper economic and social inequality. I think the same predictions were made following the 1996 act. You would be familiar with the work of Ann Harding on economic inequality.

Prof. Pocock—Yes.

CHAIR—I put to you her recent findings, which were reported in the *Australian* on 2 April. In case I am accused by my colleagues of not having the piece of work in front of me, I am sure you know that she said:

> ... the distribution of final income over the period from the mid-1990s to 2001-02 remained much the same. That is, we don't believe that Australia became more unequal ...

Whereas page 6 of your submission refers to higher levels of societal violence, are you predicting higher levels of violence in society as a result of the implementation of Work Choices?

Prof. Pocock—What we are predicting is that the wages and labour market is likely to see, as it has since 1996, a widening level of inequality. As I recollect Professor Harding's work, it examines income. In fact, your quote exactly said that.

CHAIR—Yes, it did.

Prof. Pocock—She was not examining inequality in the labour market and in the wages system; she was examining the larger, very diverse and broad range of incomes that people receive. There is very good evidence from the government's own ABS collections which suggests that the bottom end of the labour market has had a much lower rate of increase of income from work earnings in absolute and percentage terms than the top end of the labour market. I think that that is the inequality that you could very plausibly argue will increase under the new arrangements, and there is very strong sociological evidence that inequality is statistically robustly related to social disease, like widening inequality in health outcomes and violence. We reference that material.

CHAIR—Yes, that is correct. In that same article, again of 2 April 2005, I would point out that she did mention that there is strong growth at the bottom; the bottom has not been left out.

Prof. Pocock—That is taking account of the welfare system. We are talking about the industrial system.

CHAIR—We are talking about total income here, but I would take your point.

Prof. Pocock—I would also say that that is a lively academic debate and there are others who disagree with Ann Harding about her total income story.

CHAIR—I understand that.

Senator JOHNSTON—Dr Pocock, did you support the use of the external affairs power to impose unfair dismissal legislation on a federal basis in 1994?

Prof. Pocock—Did I personally?

Senator JOHNSTON—Did you support the use of the external affairs power?

Prof. Pocock—I do not think I took a public position on it in 1994.

Senator JOHNSTON—You did not take any position at all?

Prof. Pocock—Personally?

Senator JOHNSTON—Yes.

Prof. Pocock—I cannot remember where I was in 1994, but I—

Senator JOHNSTON—We are talking about the use of Commonwealth powers.

CHAIR—No, we are not going into unfair dismissals.

Senator JOHNSTON—Can I ask Dr Pocock and Professor Peetz to explain to us their current relationship with respect to contracts from the ACTU with respect to research.

Prof. Pocock—Professor Peetz and I have historically participated in a joint piece of research funded by the Commonwealth government through the Australian Research Council—it is a linkage grant—which examined workplace representation systems. That project has concluded. We did also jointly an Australian Research Council Commonwealth funded project looking at union representation. That was an earlier project. Those two are the Australian Research Council funded research projects we have done. I have done contract research also—this is all on the public record—on casual work and long hours of work, where I was a witness in a Commonwealth case.

Senator JOHNSTON—Who for? Who required you to undertake that work?

Prof. Pocock—Part of the funding for the casuals research came from the University of Adelaide and a small proportion, 20 per cent, came from the ACTU.

Senator JOHNSTON—Which was how much?

Prof. Pocock—You are stretching my memory—$6,000. I would be guessing.

Senator JOHNSTON—And that is the only contract you have done for the ACTU?

Prof. Pocock—And I did a long hours research project interviewing a group of workers and their partners who did long hours of work for an amount which I cannot recollect but which would be in the ballpark of $30,000 total.

Senator JOHNSTON—For the ACTU?

Prof. Pocock—Yes.

Senator JOHNSTON—No others?

Prof. Pocock—I have done a great number of other projects for many other companies and state governments and so on, but that is my recollection of my—

Senator JOHNSTON—For unions?

Prof. Pocock—I have a joint project at present with the Brotherhood of St Laurence and the Liquor, Hospitality and Miscellaneous Union, and three labour councils are also contributors—that is also a project which is cofunded with the Australian Research Council—examining the impact of low pay on Australian workers and their families.

Senator JOHNSTON—Which is worth?

Senator MURRAY—Why is this relevant?

Senator MARSHALL—Do you have any questions about the academic work?

Prof. Pocock—The project is going over three years and, from memory, I think there is total Australian Research Council funding of about $120,000. But I am guessing. I do not have my paperwork with me.

Senator JOHNSTON—Professor Peetz?

Prof. Peetz—Dr Pocock has already answered in relation to the Commonwealth funded projects we have done. There was a test case in the Industrial Relations Commission on determination, change and redundancy provisions, for which I was asked to be an expert witness.

Senator JOHNSTON—Was that by the ACTU?

Prof. Peetz—That was by the Queensland Council of Unions. That then led to the same case being run by the ACTU in the federal commission, as opposed to the state commission. And there was a case involving freedom of association. That was a case between the Commonwealth Bank and the Finance Sector Union for which I was asked to be an expert witness, but the case never went to trial because the parties reached agreement.

Senator JOHNSTON—What were they worth to you?

Prof. Peetz—The one on freedom of association would have been worth a few thousand dollars—maybe $6,000 or something like that. As for the termination change redundancy cases, I do not think I actually got paid for one of them. I was given airfares and that sort of stuff.

Senator JOHNSTON—Are you being retained today?

Prof. Peetz—No.

Senator JOHNSTON—So you are appearing as objective academics today?

Prof. Pocock—We are not just appearing as objective academics; we are objectives academics. I would like to clarify—

CHAIR—We take the point.

Prof. Pocock—that none of the income that I have received—and I receive income from very large companies through to the state governments and so on—is taken as personal income; it is taken as research income which funds other research projects and staff. I think it is important to clarify that. I am quite willing to supply a list of the companies which I work with, and I am sure that David would be willing to do the same.

Senator MURRAY—They will go for them. This is McCarthyist stuff.

CHAIR—That comment is unworthy of you, Senator Murray.

Senator MARSHALL—It is quite a reasonable observation.

Senator JOHNSTON—I asked the question because I note, Professor Peetz, that you are the resident bard—is that the term?—of Unions New South Wales?

Prof. Peetz—I am not the resident bard of Unions New South Wales. However, I am aware that some comments were made along those lines and along more extensive lines in the Senate last week. Those comments went to the question you have just asked us and to this particular question. It went to some poems I wrote many years ago—being a poet.

Senator CARR—Is it illegal to be a poet?

Senator BARNETT—It depends what the poet wrote.

Senator GEORGE CAMPBELL—They were not seditious ones.

Prof. Peetz—All sorts of quite astonishing allegations were made. I will be writing to the President of the Senate about that and asking that it be referred to the Senate Privileges Committee. Personally, I would rather the issue be dealt with there and we get on with the real issue at hand, which is the Work Choices bill, rather than spending too much time on dealing with these issues.

Senator JOHNSTON—I just wanted to establish the basis upon which you made your submission to this committee.

Prof. Peetz—The basis upon which we made the submission to the committee was that we represent 151 academics in the fields of industrial relations, labour law and labour market analysis. There are 147, apart from those of us here. You could perhaps seek to look through their CVs as well. I am not sure what you would find but I think you would find that they are 151 highly respected, publishing academics from around the country. They come from 26 institutions and include 31 professors and 26, I think, associate professors. We are not just a couple of people who have done some work for unions in the past coming forward and putting their views on behalf of unions. It is a very different ball game.

Senator JOHNSTON—You wrote a report card in June of this year on the proposed reforms. I am interested to note that the legislation was not even on foot then, and yet you complain of inadequate time to debate the significant changes. It seems that you did not even need the legislation to start commenting on the government's IR reforms.

Prof. Peetz—There was a statement by the Prime Minister to the House of Representatives on, I think, 26 May. That certainly contained the broad brush of what was being proposed. It outlined the general philosophic directions and it outlined—

Senator JOHNSTON—You are opposed to the general philosophic directions—I think that is the essence of what you are saying.

Prof. Peetz—Let me continue.

Senator MARSHALL—Let him say what he is saying.

Prof. Peetz—It outlined the abolition of the no disadvantage test. It outlined the five minimum conditions. It outlined the abolition of unfair dismissal protection for workers in firms with fewer than 100 employees. It outlined a narrowing of the role of the Industrial Relations Commission. It outlined in very broad terms restrictions on rights of collective bargaining. It did not go into the detail of these things. It is only when you move from the Prime Minister's statement of four or five pages, I guess, to a document of 690 pages that you can really get a sense of the detail of what is going on.

We knew enough in June to make some comments based on what the Prime Minister said in his speech to the House of Representatives in May, to offer some views about what happens when you abolish a no disadvantage test, what happens when you promote individual contracting, what happens when you move to five minimum standards. But there are a lot of things in this legislation that were not set out in the statement of the Prime Minister. They include such things as the way in which awards cease to operate once people sign individual contracts and the operational reasons for the exclusion for unfair dismissal provisions. There

is a whole range of things—about 690 pages worth—in here, many of which were not clear or were not mentioned in the earlier statement.

Senator BARNETT—Professor Peetz, in your submission you refer to dismissal for operational reasons. You are quoted on the *AM* program on 3 November, where you make a range of comments. You say there is a provision that says that, for employers of any size, if you are dismissed and part of the reason for your dismissal is to do with operational reasons—and that can mean all sorts of things—or to do with the structure or technical requirements or whatever of the organisation, then you can be dismissed. You can be targeted for dismissal because the boss does not like the way you chew gum or whatever. You have no recourse for unfair dismissal. You then went on to say you cannot even lodge a claim. I put it to you that that is entirely incorrect. With respect to chewing gum, I am not sure if it was a joke—or do you wish to withdraw that statement?

Prof. Peetz—In which way is it incorrect?

Senator BARNETT—Do you stand by your statement that a boss can sack you for chewing gum?

Prof. Peetz—If you are in a firm with fewer than 100 employees, then you can be sacked for any reason whatsoever unless it is an unlawful termination. Unlawful termination relates to discrimination. There are discriminatory reasons. Chewing gum is not a discriminatory reason covered by the unlawful termination provisions. Therefore, if you are in a firm with fewer than 100 employees, you could be sacked for chewing gum. I am not saying that an employer would sack you for chewing gum; I am saying what is possible. In firms with more than 100 employees—where operational reasons apply—if you are precluded from making a claim because of what the bill defines as operational reasons, then it does not matter what other aspects of your dismissal were relevant to your dismissal. You cannot make a claim. So if the employer is able to create a situation in which you are covered by economic, structural, technical or similar reasons for dismissal as part of the reason for dismissal, then you can be dismissed.

Senator BARNETT—I am just about out of time.

CHAIR—You are out of time, Senator Barnett.

Senator BARNETT—I hope you know that what you are saying is wrong, and that you have recourse to the Australian Industrial Relations Commission.

CHAIR—We are out of time. Senator Barnett, you will stop your questions now. It is now time to hand over to the Labor Party. I understand that Senator Campbell will lead off for them.

Senator GEORGE CAMPBELL—I want to pose a question to all four of you because I think the answer will come from different perspectives. I want to put it in context initially. I note that this morning it was said, in reference to the group of academics, that there is no substitute for commonsense proposals. I hope that at least we can get some commonsense answers from you to the questions that we ask.

One of the issues that has been discussed here this week, particularly by some of the peak bodies, and hotly contested is whether or not an economic case for change has been made out

by the government. ACCI have argued that there has been; the ACTU have argued that there has not been. The department, in its submission to this inquiry this week, stated under the government's reasons for reform:

A central objective of this Bill is to encourage the further spread of workplace agreements in order to lift productivity and hence the living standards of working Australians.

The Government believes that the best workplace arrangements are those developed between employees and employers at the workplace.

There are two things to add to that. The department admitted on Monday that no economic modelling was done to underpin the contents of this bill. It said that some economic modelling had just been completed by the Centre of Policy Studies at Monash University, but this bill would have been written well in advance of that economic modelling being carried out. The second point is in relation to the direct relationship between employees and employers at the workplace. It would appear from the contents of the bill that in fact it is very highly interventionist from the perspective of the government in respect of its involvement in that relationship. In fact, the government is substituting itself as a third party in those direct relationships.

ACCI's submission referred to some 54 different pieces of academic work to underpin the argument that the economic case is made for these changes and to underpin the changes that are proposed in the bill. Firstly, are you aware of any of that academic work; and, secondly, are you aware of any other academic work that has been carried out that substantiates the argument that this bill is necessary to achieve those two central features outlined in the government's reasons for reform?

Prof. Peetz—I have had a quick look at the ACCI submission, and indeed it does refer to a number of studies. In assessing whether the evidence supports the claims made about the bill, it is important to remember that the claims made about the bill's effects in terms of its economic benefits ultimate relate to its impact on productivity. It is through productivity that we are told that we will have higher wages, higher employment and so on.

When you look at those studies that are referred to by ACCI, very few of them actually refer specifically to the sorts of things that are directly related to the impact of the bill upon productivity. In particular, the most important aspect of the bill is the promotion of individual contracting at the expense of other methods of wage determination. A lot of the studies that are referred to are not about productivity at all. As their explanatory variables, a lot of them use things that go well beyond individual contracting. For example, you see studies in there that talk about the productivity benefits from reform—labour market reform or workplace reform—which is a very broadly defined topic.

Sometimes they refer to enterprise agreements. Indeed, there are a couple of studies in there that talk about the productivity gains from enterprise agreements, but you have to recall that the bill is actually aimed at reducing enterprise agreements, reducing collective agreements and promoting individual contracting. The mere fact that there is evidence that may show that collective enterprise agreements lead to higher productivity does not in itself demonstrate anything about the impact of individual contracting on productivity.

A study referred to there, which was undertaken by Access Economics, sought to show that industries with the greatest level of flexibility had the highest rates of productivity growth, and this a study that has been cited a number of times. When you look at how they measure industries with labour market flexibility, the measure they used was that they just added up the number of people on union agreements, non-union collective agreements and individual contracts and divided them by the number of employees in an industry. I should say that they were federal union and non-union agreements and so missed out on the state systems. One of the problems was that that meant that their measure of labour market flexibility, the main element of it, was union collective agreements. The biggest bulk, the biggest proportion, of people in those three categories is made up of people on union collective agreements. So what the study was really showing was that union collective agreements were associated with higher productivity according to the measures that they used. In fact, if you take different time periods, you do not even get that result; you get zero correlation. If you look at the level of AWAs by an industry and try to correlate that with productivity, you do not get a correlation.

They had another chart which showed that award coverage was negatively related to productivity growth. This was a chart that formed the basis for, really, the only piece of evidence in the explanatory memorandum to the bill. It purported to show that higher productivity will be associated with these reforms. What the chart in Access Economics showed was that, although higher award coverage was associated with lower productivity, it was entirely dependent upon the years that they had. They in fact used data that was over a year old. If they had used the data that had been published by the ABS about three months before the report was published, there would have been no relationship there. In the explanatory memorandum, there is a similar sort of thing. You have award coverage in 2004 being used to explain productivity growth from 1990 to 2004, which conceptually does not really make sense. How can something in 2004 be used to explain productivity growth between 1990 and 2004? The time travel is in the wrong direction for that to help. When you go back and try to look at these relationships using time periods that make sense, you find that, if you get the earliest figures on award coverage that are available—which are in 2000—and look at productivity growth from then onwards, the relationship is the reverse to that which was posited in the explanatory memorandum.

Some other studies are referred to in the ACCI report—or some other claims that are put forward, perhaps. There is reference to evidence from the IMF, the OECD and the Reserve Bank. A lot of the comments from these bodies are not actually based on empirical research, particularly the annual economic surveys that are done by the OECD or the IMF. They are not based upon original empirical work within those bodies, so whatever claims are made in there are really more matters of faith. What happens with those reports is that the OECD officers or the IMF officers come out to Australia and talk to a few people—mainly from Treasury—and then they write a write a report that is not unlike something that Treasury would be writing if it were not writing under its own name.

There is a study there that seeks to compare productivity levels in Australia and the United States. That suggests that Australia could improve and get closer to the US productivity levels if it went through more labour market reform. What I thought of when I read this study was that 17 years ago the Business Council of Australia was saying that there was a 25 per cent

productivity gap between Australia and the United States which could be overcome if the reliance on awards was reduced and an enterprise based system of bargaining was implemented down the track. When you look at the changes that have taken place, you see that a huge amount of changes that have been supported, endorsed or proposed by the BCA have taken place, and that the 25 per cent productivity gap is still there just as much as it was when the comment was originally made, despite the changes that are said to have taken place.

Comparing Australia with the US does not really make a huge amount of sense, because the US is the centre of global capitalism. It is a massive economy, 12 or 15 times—whatever it is—the size of Australia's, with a totally different history and tradition to Australia's. Much more relevant is comparing Australia with New Zealand, which is just down the road, so to speak, and much closer in size to Australia's economy than the United States is. In New Zealand you have the advantage of being able to see what happened when a major change to industrial relations policy was introduced in the form of the Employment Contracts Act in 1991. Previously, for about 14 years before then, the two countries' labour productivity growth rates had pretty much tracked each other. After 1991 they diverged significantly. Australia by this stage had a system that was based upon enterprise based collective bargaining; New Zealand's was based upon individual contracting. New Zealand's rate of productivity growth fell away quite seriously over the period following the introduction of the Employment Contracts Act.

One other aspect you can think about that was referred to in the submission is that the rate of growth of productivity under the most recent productivity growth cycle, which started after the Workplace Relations Act came into place, was actually no higher than the rate of productivity growth under the traditional award period of the 1960s and 1970s.

Senator GEORGE CAMPBELL—Does anyone else wish to add to that?

Ms May—Can I can pick up on some of the points that the ACCI submission raises specifically about New Zealand. They make much of this notion of multifactor productivity from a Treasury paper, and what I would like to point out is that there is a bit of cherry picking going on there of the particular years used. In fact, if you take a time frame one year forward in relation to that data, you end up with a result that is almost half a percentage point worse. So when looking at New Zealand it is much more relevant to look at output per worker, and what we know is that that was very flat for the period of the whole nineties. Certainly ACCI raise points from Roger Kerr about New Zealand now having very low levels of strikes and having one of the lowest unemployment rates in the OECD. I would point out that unemployment started to drop off in 1999 and that coincided with the election of the Clark government and a legislative regime that, in fact, actively promoted collective bargaining and gave unions access rights. It has been much more progressive in that regard and it recognises in the legislation the inherent inequality in bargaining. So, yes, that is correct that New Zealand has low unemployment and at the moment has historically low strike levels, but that is, as I said, under a much more progressive legislative regime.

Senator GEORGE CAMPBELL—You say in the summary of your submission: 'The bill is based on a series of assumptions and are not supported by evidence. Indeed, we find that they are contradicted by a sizeable body of empirical evidence. The available evidence

indicates the longer term impact on labour productivity may be perverse.' Can you explain what you mean by that statement?

Prof. Peetz—It may be perverse because of the potential for employers to shift from productivity enhancement strategies to cost minimisation strategies. The bill provides considerable potential for employers to focus on reducing labour costs as a strategy. In fact in many ways it provides the employers with a greater capacity to do that than was the case in New Zealand under the Employment Contracts Act, because in New Zealand you still had to sign an individual contract that changed your terms and conditions—even if it was cutting your pay and conditions you still at least had to sign it. There had to be some degree of acquiescence to what was going on.

Under this regime there is the capacity for the employer to unilaterally reduce pay and conditions once an agreement has been terminated. So there is quite a bit of scope there to reduce the pay and conditions of employees and labour costs. This means that, if you have reduced labour costs, there is less of an incentive on employers to invest in labour saving technology, to invest in the deepening of capital. In many ways that is what we saw in New Zealand. Labour productivity growth fell off because employers no longer had the incentive to invest. It is not just a matter of investing in labour saving technology; there is also the question of investing in training and in the skills development of the employee. So you can see it degrading not only the physical capital but potentially the human capital.

Senator GEORGE CAMPBELL—That is also what has happened here between 1996 and 2004.

Senator CARR—Professor Stewart, page 10 of your submission draws our attention to the termination provisions of the bill insofar as you say:

> ... an employer may give 90 days' notice of the termination of an agreement, and have that notice take effect the day the agreement expires.

You then go on to say that your reading of clause 103L suggests that an employer can give notice at any time. Could you explain to us how you have come to that conclusion?

Prof. Stewart—The way the provisions of the bill are worded, there are two things that have to happen for an agreement to be unilaterally terminated. One is for a notice to that effect to be lodged with the Employment Advocate. That must happen after the agreement reaches its nominal expiry date. So that is the lodgment. Secondly, notice of the termination has to be given to any affected parties. There has to be at least 90 days notice, although it could be as little as 14 days notice if the existing agreement had a clause in it that permitted termination at any stage. The way the bill is currently written, the notice can be given at any time. Therefore it would be possible, for example—to take an extreme case—for an employer to enter into an agreement and the same day give notice that they were intending to terminate it. When the agreement reached its nominal expiry date, which of course could be up to five years away but it does not have to be—it could be three, four or six months away; any amount of time is permissible—the notice of termination is lodged. So the scheme of the bill allows for termination the instant that an agreement reaches its normal expiry date provided notice has previously been given and the relevant document is lodged with the Employment

Advocate. I am not certain whether or not that was the intention of those who drafted the bill but it seems to me to be very clearly its effect.

Senator CARR—What effect does that have on existing agreements that are in force now? For instance, in the building industry in Victoria, I understand a series of agreements have been rolled over for three years. Can they be altered retrospectively by this legislation?

Prof. Stewart—No. Existing agreements would not be caught, but any new workplace agreements would be able to be terminated. That is my understanding of the bill.

Senator CARR—Can I turn your attention then to employer greenfield agreements. On page 7 of your submission you refer to these agreements which you say are not, in fact, agreements at all. Why do you say that?

Prof. Stewart—I think the minister this morning was speaking about commonsense. It is commonsense that if you have an agreement that is made with a single party, that is, the employer—I think the bill is tolerably clear that there is no other party, although it is described as a collective agreement—it clearly cannot be an agreement. It is a unilateral determination of terms.

Senator CARR—These employer greenfield agreements are where the employers negotiate with themselves. That is effectively what you are saying?

Prof. Stewart—Yes.

Senator CARR—Do they not override any existing agreements?

Prof. Stewart—They will override any existing agreements and any awards that would otherwise apply. They can override a notional agreement, which would otherwise be preserving state award provisions, for example. This is as long as you have a new business. Of course, it is not just the way the new business is defined: it is not just a genuinely new business; it can be an established business that has developed a new project or a new undertaking—for example, a new location. The acquisition of another existing business could be described as a new project. Before any staff are actually hired, the 'agreement'—the unilateral determination—can be made. That instrument need only conform to the five minimum standards set by the fair pay and conditions standard. For a period of at least a year that will be able to govern the terms and conditions of anyone who is hired in that new business, project or undertaking.

Senator CARR—I will come back to my first question, though: does that not therefore mean that the MBA agreements in Victoria can effectively be overridden by the use of such employer greenfields agreements?

Prof. Stewart—Sorry, I had understood in the question before you were asking whether the termination applied.

Senator CARR—Is that not the effect of that?

Prof. Stewart—As I read this provision, the effect of this will enable any business to engage in a corporate restructuring exercise. I am not suggesting that all employers will be doing this or even many employers, but some will certainly be advised to think about this. Businesses will be able to restructure their arrangements, regardless of what awards or

agreements they currently have in place, set up a greenfields agreement for a new project or a new undertaking and therefore clear the way entirely of any previous award or agreement conditions.

Senator CARR—And under that provision you cannot go back to the award?

Prof. Stewart—Once that 'agreement', which is defined as a collective agreement under the bill, is in place, workers in jobs covered by that agreement can never again be subject to an award.

Senator CARR—My final question is to all of you. You say in your submission that this legislation makes Australia the only OECD nation which legally discriminates in favour of lockouts and against strikes. Can you explain what you mean?

CHAIR—I am sorry, the witnesses will have to take that on notice. It is now 2.38 pm and your time has expired. Please take it on notice and give the committee your views on that. I will now pass to Senator Murray.

Senator MURRAY—In opening, Dr Pocock and Professor Peetz, I will make the remark that I have always found that attacking the person rather than the argument shows weakness and not strength. I want to deal with the issue of simplicity, Professor Stewart. I was startled, perplexed and puzzled the other day when the legal counsel to the Australian Industry Group in answer to a question of mine said that he thought the new system would produce much greater simplicity. It was not clear to me then what he meant—this is my interpretation of what he meant; let me put it that way—until I read your submission. Whilst the bill itself is very complex to read and to fit into the existing act, the provisions which allow for an employer to escape their current arrangements is very simple. There are a few steps you take and you are out of the collective agreement and the award provision which may currently pertain. I must stress that that does not apply to all those businesses which are on the cusp between state and federal arrangements, where there are some difficulties. But that seems to me to be the simple part of the act—that it enables people to get out of existing commitments. Is that a correct interpretation of what you have said to us?

Prof. Stewart—Yes, I think it is. There is nothing simple about the bill. There will be nothing simple about the Workplace Relations Act when it is in its amended form. There is nothing simple about it right now, for that matter. There will be nothing simple about the process of giving advice. It might be a pertinent time to point out that my major consultancy work is for a law firm which advises employers.

There will be nothing simple about the process of giving advice to employers as to how this bill affects them. It is true that it will simplify certain objectives and that down the track, particularly as the transitional arrangements wash out, businesses will ultimately, if they follow certain courses, be able to enjoy much greater freedom to set employment conditions unencumbered by awards and, for that matter, unencumbered by the need to do workplace agreements.

Senator MURRAY—In terms of the bill's provisions, that is a relatively easy set of steps, is it not?

Prof. Stewart—The correct answer to that is no and yes. 'No' in the sense that what is not simple is making sense of these voluminous and verbose provisions and being able to pin down exactly what can and cannot be done. That is a matter for very complicated legal advice, particularly for those businesses who currently are caught by state awards or are subject to state agreements. There is a massive degree of uncertainty and difficulty for those many small to medium sized businesses in that category.

Once you have worked your way through the provisions of the bill and worked out how the transitional arrangements apply to a particular business and sorted out which state laws do or do not apply, it is true that there are some relatively simple steps that can be taken to become award free. In some cases, that may be a matter simply of waiting. One of the issues that I have highlighted in my submission is that there is no guarantee in the bill, and therefore there will be no guarantee in the act if the bill is passed in its current form, that workers or businesses currently covered by state awards will ultimately become subject to federal awards. So one option will simply be to wait out the loss of award coverage.

But there are other ways of achieving an award-free workplace: making an agreement then terminating it; using a transmission of business from one company to a related company; or setting up a new project or undertaking and making a greenfields agreement. It is true that many of those steps are fairly simple.

Senator MURRAY—Because this is a hostile takeover, I have thought this bill may trigger actions for compensation and just terms under the terms of the Australian Constitution. I have thought of that in three sectors: firstly, state governments who are affected by these provisions; secondly, those who have made agreements, both employers and registered organisations, because there will be great cost to them in being forced to shift and the way in which things occur; and, thirdly, there may be individual employees who experience a loss of wages, conditions and/or jobs. Have you given any thought to that? Is that a fancy, a possibility or a likelihood?

Prof. Stewart—What I believe you are alluding to there is the provision in the Constitution which says that the Commonwealth cannot take away property without giving compensation.

Senator MURRAY—That is right.

Prof. Stewart—I have no doubt whatsoever that that issue will be raised by one or more of the states or union groups when they are challenging the constitutional validity of this bill, if it is passed. That aspect of the Constitution is a very complex one. When I have looked at this before I have found it very difficult to form a concluded view as to whether there would be an argument to say that this kind of measure is taking away existing property rights. But I can certainly say this: I believe that it will be argued before the High Court and that there is some plausibility to that argument. That, of course, will simply add to the uncertainty of this legislation. I am on record—and here I am speaking personally—as saying that I believe that much of what the government has proposed in this bill will be constitutionally valid, but this one aspect I am not sure about. I have also highlighted in my submission that there is considerable uncertainty about whether or not the Commonwealth can make a hostile takeover to cover what are effectively state instrumentalities or state agencies which happen to be corporations.

Senator MURRAY—In reading your submission, I felt that, With respect to the time over which these effects will occur, I agree with both Mr Howard and Mr Beazley—Mr Howard saying that the sky will not fall in the day after the bill passes and Mr Beazley saying that there will be a slow burn. The head of the Australian Industry Group and others have said that they expect a three- to five-year time period before the full effects of the legislation come through. Given that that is a general opinion, when do you think the earliest effects will occur? What areas will have the most immediate effect?

Prof. Stewart—I guess we each have our own views about that. Briefly, I think the way to look at this bill is predominantly in terms of creating a potential for a reduction in existing terms and conditions of employment, particularly for award-reliant employees, and creating a potential over time for a decline in their real wages. In both cases, if those things are going to emerge, it will be over a period of time. I do believe that in certain industries, particularly highly competitive industries with high work turnover—for example, the hospitality industry and some parts of the retail industry—I suspect that we will see some fairly immediate impacts as some businesses move to take advantage of some of the opportunities posed by this legislation.

Senator MURRAY—Are you saying the low-paid sectors, the casual sectors—those sorts of sectors?

Prof. Stewart—Very much so. The opportunities to immediately offer conditions that remove or reduce penalty rates, for example, will be an overpowering temptation for many small businesses in those sorts of industries. But I would certainly agree that the ultimate impact of this set of proposals will have to be judged over the long haul.

Prof. Pocock—I am not in disagreement with that. I am of that mind as well.

Prof. Peetz—I would agree. I would add that the impact will be particularly severe in areas where there is a high degree of labour cost competition between employers—for example, in an area like contract cleaning, where you bid for a contract, and the main factor that determines the competitiveness of your bid is the labour costs that you face. You could have an industry where 90 per cent of employers have high levels of respect for their workers, they seek commitment strategies and they want to do all the right things, but it only takes a small proportion of employers to start taking away business from all of the other employers so that even the good employers will have to start to respond by adjusting their labour strategy. So, potentially, you have a small number of employers who will start off by reducing pay and conditions. Then you will start to find it erodes the rest of the industry because of the competitive pressures that those other employers are facing. It will vary between industries, depending upon how reliant labour cost competitiveness is on employer strategies, according to the relative bargaining position of employers and employees as a result of regional and industry unemployment rates and so on.

Senator MURRAY—In the short time I have left—and my questions are to any of you who wish to respond—if the changes are going to affect the low paid sectors first, such as you have described, do you agree with the government's view that there will be an immediate creation of jobs then?

Prof. Peetz—No. The government's argument about jobs is not based upon cutting wages. The government argue that there will be more jobs created through higher productivity. I am not aware—correct me if I am wrong—of the government saying, 'We will create more jobs by lowering wages.'

Senator MURRAY—I have been reading the subtext, so perhaps I should not have put it that way.

Prof. Peetz—That said, the literature on the impact of wages on employment is very large and it is very controversial. Richard Freeman, who is probably the world's most well-known labour economist from Harvard said that it is really an argument around zero, in the sense that some studies say that higher wages are associated with lower employment, some say they are associated with higher employment and some say they are associated with no effects.

Whatever the effect is, the consensus is that it is small and that in order to lead to a major increase in—an observable increase in or an observable impact on—employment, given that you have actually got ongoing growth in employment just as a result of the sorts of economic growth that we have, you would actually have to have a very large reduction in real wages for that to take place.

Senator SIEWERT—That leads very nicely into my question. I am looking at section 16 on page 27 of your submission where you make that point about it leading to a large decrease in wages, but then you talk about its link to and its implications as to unemployment benefits. Would you articulate your concerns?

Prof. Peetz—Yes. If your strategy to increase employment is to reduce real wages, then you pretty soon run into labour supply problems. If you reduce wages too much, then there is no incentive at all for people to enter the labour market, because they receive in effect a subsistence income from unemployment benefits and with the high effective marginal tax rates on unemployment benefits then it is not worth doing. So if that were your strategy, then you would in turn have to lower unemployment benefits in order to create the incentives for people to move into employment.

Senator SIEWERT—So you have got a race to the bottom yet again?

Prof. Peetz—In effect, yes. That is right.

Senator SIEWERT—There is so much in your submission that I could ask you about but, as I know I am going to get cut off in a minute, I am going to ask a big question. Is this bill amendable to get over the issues that you are raising?

Prof. Pocock—The consensus of the group of 151 people is that the bill as it stands has very serious problems at its heart and that we are very concerned that there is not more time to get to a closer analysis about the intended and unintended consequences of the bill. That said, we recognise it is quite probable that the bill will come to law, so we have a set of proposals—which Andrew Stewart read earlier—which goes to the most pernicious aspects only and we would not want it to be read as a comprehensive set of amendments by any means. Andrew has tabled those.

Senator SIEWERT—So those amendments would deal, as you said, with the most extreme aspects—I know I will be in trouble for using 'extreme', for want of a better word for

the time being. So you do not believe they will deal with the complexity of it or the range of issues that are at stake?

Prof. Pocock—Given that our concern is about adequate discussion of the bill in the public sphere and the shift in the balance that is implicit in many parts of the bill, our amendments do not go to that. They go to a range of issues which we think would result in amelioration of the effect of the bill.

Prof. Stewart—Chair, I wonder if I could say one thing very quickly in response to Senator Carr's question earlier about lockouts.

CHAIR—Yes, please proceed.

Prof. Stewart—Senator Carr, I want to direct you specifically to the material on page 21 of the group's submission because I think that the answers you were looking for might be there. Perhaps you might let us know—if this is acceptable—if there is some further information or further detail that you would like and we could provide that.

Senator CARR—I have read that section. I was asking you to enlarge on section 12 of your submission.

Prof. Stewart—In that case we will.

Senator CARR—Thank you very much.

CHAIR—Thank you for that, Professor Stewart, and now you know what is needed. Thank you all very much for your appearance here today.

[2.55 pm]

McDONALD, Mr Michael Joseph, Acting Chair, Australian Catholic Commission for Employment Relations

RYAN, Mr John, Executive Officer, Australian Catholic Commission for Employment Relations

CHAIR—Welcome. I invite you to make a brief opening statement before we ask questions.

Mr McDonald—The Australian Catholic Commission for Employment Relations is grateful for the opportunity to appear before the Senate inquiry. The government has proposed a number of changes which we believe will impact on the lives of many Australians. The government's case is that these changes are needed to secure Australia's economic future. Catholic social teaching seeks to integrate economic and social objectives. It would be unfortunate in this debate about employment regulation if these two aspects were seen as simple or opposed alternatives. The common concern should be about growing and strengthening our economy in a way that will provide prosperity and economic security for all Australians. Economic growth is needed to enhance social justice. Social justice should be an explicit goal of government policy on economic growth so that the burdens and benefits can be identified and considered.

The pursuit of economic growth by means that impose unfair burdens on the poor and vulnerable, and which impose burdens on struggling families, should be resisted. Our particular concerns go to aspects of the proposals relating to minimum wage setting, unfair dismissals, minimum conditions and agreement making, and the functions of the Australian Industrial Relations Commission. ACCER is open to the introduction of a national industrial relations system provided it is supportive of the values and principles necessary for a cooperative industrial relations system. Such a system must provide a fair and proper balance between employers and employees. It must also provide fairness and protection for the poor and vulnerable, whether employed, underemployed or unemployed—especially for working families and for young persons.

We believe the proposals which are currently before us do not satisfy the requirements that we believe should be in the legislation. Despite our general conclusion, we have some suggestions for amendments to the bill, in order to ameliorate its impact on families, the poor and the vulnerable, the employed, underemployed and unemployed. These are not exhaustive or prerequisites for any acceptable system; rather, they are matters that occur immediately to us. Time, unfortunately, has not permitted an exhaustive development of other amendments.

With respect to minimum wages and the functions of the Australian Fair Pay Commission our proposals are designed to enure that the needs of families are taken into account, that the Australian Fair Pay Commission is required to establish fair rates of pay having regard to a range of factors, including the interaction of the taxation and welfare support systems. Furthermore, the integration of public policy on wages, taxation and welfare support is critical to these matters, as is the impact on employment and unemployed workers. This is a matter,

however, for the government, and it is the government who has the capacity to resolve those issues.

Concerning bargaining and minimum entitlements, at present approximately 20 per cent of employees are award only, or award dependent. They are mostly employed in lower paid classifications. Typically, award only employees do not have the capacity to bargain above the safety net.

The proposed use of the Australian fair pay and conditions standard test has the potential to erode the benefits that are at present in the award safety net but not included in the Australian fair pay and conditions standard. The result is that there would be no need to take into account overtime rates, shift penalties, limitations on the spread of hours of work, weekend and public holiday penalties and other allowances fixed by awards. For many employees, these extra entitlements are a substantive and necessary source of income. Many employees who are currently employed, and especially those who will be offered work in the future, will be at risk.

The Australian fair pay and conditions standard does not constitute a fair minimum standard for the purpose of workplace negotiations. A departure from the current safety net would expose many low-paid and industrially weak employees to inequitable bargaining that will impact on their terms and conditions of employment and consequently their ability to support themselves and their families. This change will impact on low-paid breadwinners, on parents who work part-time to supplement family income, on young people in the work force, on those in rural and regional areas with limited job opportunities and mobility and on many unskilled migrants.

Security of employment is a matter of fundamental importance to the security of the family. Families need to be able to plan and have the confidence that their breadwinner will not lose his or her job by unwarranted dismissal. Employees should be protected from arbitrary and unwarranted dismissals. This is especially so for the low paid and for those who do not have the skills to readily obtain new employment. The loss of a wage that is barely sufficient to meet day-to-day living expenses will usually have dire consequences for the employee and his or her family. This is not to say that the case cannot be made for making procedural changes to the current federal unfair dismissal laws that will reduce the costs of that litigation for employers and employees.

We have mentioned, too, that claims for relatively small amounts of compensation could be heard by way of a small claims procedure without the involvement of lawyers or paid agents. Changes could also be made to the requirements for lodging applications. In order to facilitate the hearing of claims and dissuade the lodgment of claims seeking ‘go away’ money, applicants could be required to file a document setting out a prima facie case. That draws to a conclusion my brief remarks.

CHAIR—Thank you very much for that, Mr McDonald. I should point out to you that, under the resolution of the Senate, the matter of unfair dismissals is not going to be looked at by this committee. It has been the subject of previous Senate inquiries and, along with a range of other matters, was excluded from this committee’s consideration of the Work Choices bill.

Mr McDonald—Madam Chair, would you mind if I just make one comment in relation to that?

CHAIR—I am happy to hear your comment, but I do point out to you that it is beyond our scope.

Mr McDonald—I understand your judgment in relation to that. I will simply say that we have previously made submissions in relation to the proposed legislation by the government. In looking at the extent of this new, amended bill, we did see that the issue of termination of employment could be seen in a different context. That was the reason for us now bringing forward the issue in this context.

CHAIR—Thank you for that. I simply want to ask you about your understanding of the way a family's earnings can be made up. Are you aware that it is not just earnings but also things like family tax benefit A, family tax benefit B, parenting payment and so on, particularly for younger families?

Mr Ryan—Perhaps I could answer that. We are well aware of that. We have participated in the safety net review case for the last seven or eight years. Particularly in the last four or five years, we have raised that those matters need to be taken into account in assessing what the minimum wage should be. Further to that, we have called for an inquiry into these matters so that we research the needs of families in modern society and look at the interaction of taxation and welfare policies in that regard. We are concerned that matters such as taxation not only affect the incomes of low-paid workers but may also act as an impost on employers. We look at the fact that an employer has to submit an amount of income tax back to government in terms of whether it is acting as a disincentive on employers employing someone. We look at the issues concerning not only family support payments but marginal rates of taxation. It has been brought up in the safety net review case in the last couple of years by various parties that that is having an impact on the ability of people to move from welfare to work as well as acting as a disincentive. We call upon the government to look at those issues, which it has control over. It is our concern that the Fair Pay Commission is not going to be able to much more than the Industrial Relations Commission in this area. It does not appear to have the ability to make policy decisions concerning matters of taxation in regard to employment and family support and other welfare support payments.

CHAIR—Are you aware that matters such as taxation and family support payments are run from other departments and, therefore, are not in the remit of Employment and Workplace Relations?

Mr Ryan—That may be the case, but we look at this as a whole-of-government issue.

CHAIR—I agree with you. It does need to be considered as a whole.

Mr Ryan—It is a public policy issue.

CHAIR—That is correct.

Senator BARNETT—The welfare to work inquiry is on next week; I am not sure whether we will see you again.

Mr Ryan—No, we will not be participating in that, but one of our other organisations, Catholic Welfare, will be.

Senator BARNETT—I am on that inquiry, and I look forward to reviewing their presentation. I have a brief question in regard to the 600,000-plus children in Australia who live in a family where there is no mum or dad in work. I was wondering whether you had taken their interests into account, because I can assure you that the motivation of the government is to try and provide opportunities for people to be in work. That has been demonstrated over the last 9½ years with the creation of new jobs. We want to try and help those people as well.

Mr McDonald—Our submission has focused on the unemployed, the underemployed and the employed. Our concern, and I believe the concern of good government, is that we pursue the common good. In pursuing the common good, there is a need for us all to be mindful of those people who do not have work currently and for us to work to generate an economy that will be supportive of more people being employed and in which there are policies that will facilitate family life and skills development for people who need access to the workplace. Again, it comes back to a whole-of-government approach. Creating a workplace environment for people to be employed and a strong economy are issues which we fully support. We are also keen to make sure that people coming into work, having been people who either have a lack of skill or were unemployed for other reasons, come into a workplace where fairness and balance exist, where they are treated well and appropriately rewarded for their work and where their families and dependants are able to enjoy food on the table and clothing and have access to other benefits that we would say are appropriate in a civil society.

Mr Ryan—May I add to that, Senator?

Senator BARNETT—Yes, of course.

Mr Ryan—Again, in these wage cases we have called for research not only to look into the interaction with those matters I mentioned before—taxation, family support payments and welfare—but also to look at the interaction of those matters with the labour market and the economy. We are prepared to confront those issues. Unfortunately, in the cases, we never received any support from anyone else for those matters. We are hoping that the Fair Pay Commission will take that on. But, again, I say to you that some of these matters have to be dealt with by the government of the day.

Senator BARNETT—Sure. The reason I asked the question is the focus in your submission on the actual terms and conditions of the safety net and so on. That is entirely legitimate. It is just that we are trying to create a more flexible environment. As demonstrated in the last 9½ years, a more flexible environment has allowed for growth in employment—that has been a view put by some of the witnesses and I guess opposed by some as well. I am just making that point and seeking your response that it is not just the safety net conditions; we are trying to create a system in which all Australians have the opportunity to get a job, in particular the unemployed and those kids in families where there are unemployed mums and dads.

Mr Ryan—We see two parts to that equation. There is the part about getting people into work but also they need to be able to have a decent standard of living. That is the balance we have to find.

Mr McDonald—None of these issues are simple. The fact that we have had additional people going into employment is not simply a product of a government policy of greater flexibility. The reason we end up with people in work is a product of a whole range of things, including the state of the international economy on which this country is highly dependent in terms of export income and our capacity as a country to respond to that. We also had, through the system that has existed for over 100 years now, the building up of a cooperative working relationship largely between employers and employees. What we would like to see is a continuation of that. Part of any changes to legislation should be to ensure, as a key objective of the legislation, that there is fairness in the objectives of the act and that there is fairness then seen to exist in the key components that go into this bill. Your point about flexibility is one of a list of the ingredients. I think the list is much bigger than that. What we need to do is to take those on board appropriately and continue to build the sort of society which we believe is most appropriate for Australia.

Senator BARNETT—Do you support AWAs?

Mr Ryan—We rarely use AWAs because most of our workplaces are based around, I suppose, a teamwork approach. There would be AWAs in use in some of our workplaces. We have not opposed the use of AWAs in a proper environment. We would have people, on occasion, working in single person jobs. As long as the AWA is based on a proper safety net of conditions and it is not used to undermine a collective or teamwork approach, we have not had any issues about that.

Senator BARNETT—You would not oppose it?

Mr Ryan—Not in those circumstances. However, we are unsure about how AWAs are intended to be used under the proposed legislation. If they are intended to be used to undercut conditions that are in place or whatever—

CHAIR—They cannot.

Mr Ryan—That is why I say, Madam Chair, that we are unsure at this stage, because there is a lot to be read in here.

CHAIR—Yes, there is.

Senator BARNETT—Be assured that they cannot.

Senator MARSHALL—They can.

Senator BARNETT—Senator Marshall is putting a different view. I think if you look at the legislation and read through the explanatory memorandum—

Mr Ryan—We are continuing to read through the legislation and we will take both points of view on board and perhaps come back to you at some stage with our conclusion on those matters.

Senator BARNETT—That would be welcome. We would be quite happy to have any further feedback in due course.

Mr McDonald—I think if the government's position is that the purpose of AWAs is not to undermine existing terms and conditions then I do not see any reason why that then cannot be put into the act.

Senator BARNETT—You should look at the Australian Bureau of Statistics' statistics regarding people on AWAs who receive higher wages since it has been introduced. Have a look at the evidence yourself and you will see the merits of those people on AWAs receiving higher wages.

Mr Ryan—Is it possible to pick up my colleague's suggestion and put it in the legislation that they will not be used in that way?

Senator CARR—Make that clear.

Senator BARNETT—I draw the ABS statistics to your attention, and you can have a look at that.

Mr Ryan—We ask you to take on board our suggestion.

Senator BARNETT—Thank you.

Senator MARSHALL—Do you believe that the bill provides for balance and fairness between employees and employers?

Mr Ryan—We have doubts about that.

Senator MARSHALL—Do you believe that the bill provides fairness and protection for the vulnerable in our community?

Mr Ryan—That is of concern to us. The issues concerning the unfair dismissal laws combined with the proposed new bargaining arrangements combined with the new minimum wage setting arrangements plus some other matters do concern us in that regard.

Senator MARSHALL—I am prevented from asking you about unfair dismissal, even though I would like to. Government senators have had the opportunity to ask some witnesses about it but we are not able to. Do you believe that the minimum wage should enable a family to be supported in 'frugal comfort'?

Mr Ryan—That sounds like a line from one of our briefing papers, Senator.

Senator MARSHALL—I think it is from your briefing paper. Do you believe that this bill will provide for that?

Mr Ryan—We have provided suggestions in terms of the charter of the Fair Pay Commission—that it should take into account a fair minimum wage rather than just a minimum wage, that it should look at the needs of families in modern society, that it should take into account living standards and that it should look at the interaction with the taxation and family support and welfare systems to ensure that families can be supported.

Senator MARSHALL—But it doesn't, does it?

Mr Ryan—It does not say those things at the moment.

Senator MARSHALL—So what do you believe will be the likely outcome as a consequence?

Mr Ryan—We are concerned that, in the absence of government looking at those interactions with taxation and welfare and family support matters, workers will struggle at the minimum wage level. We see the commentaries in the newspapers by the proponents of change. I am not saying it is the government saying that the minimum wage needs to be

driven down in order to clear the marketplace and that therefore low paid workers would then need to turn to a greater dependence on government payments. We are concerned about that. We are concerned about the balance between the wage packet and the public purse.

Senator MARSHALL—And you believe that that is the direction it will take us?

Mr Ryan—We do not necessarily believe it, but we are concerned that, in the absence of those sorts of arrangements and those parameters being included in the Fair Pay Commission, we will see the possibility of market-driven wage outcomes for the low paid.

Senator MARSHALL—You mentioned tax benefits for the very low paid. Do you believe that the state should subsidise employers who effectively pay a wage below the amount needed to live in 'frugal comfort'?

Mr Ryan—We would like to see what is the necessary combination between the wage packet and the public purse to enable a worker to support his or her family.

Senator MARSHALL—Do you believe that lower wages will increase employment?

Mr Ryan—Not necessarily.

Senator MARSHALL—Do you believe overall, with what you know about the bill, that the common good is served by this approach?

Mr Ryan—Sorry, I did not understand the question.

Senator MARSHALL—From what you understand of the work choices bill before us at present, which we are inquiring into, do you believe that overall the common good is served by the passing of this legislation?

Mr Ryan—We are concerned about the common good in this context. In our workplaces we should have cooperative workplace relations where the values that underpin that are based on mutual respect and trust and respect for the dignity of the person. The common good is about us taking responsibility not only for our own wellbeing and welfare, both short term and long term, but for others. In that context, we are concerned about turning to a more individualistic and, in a sense, a more economic driven values system in our workplaces, which then can translate into the way we view society.

Senator MARSHALL—So, regardless of what the government may state as their intention, this bill really enables employers to make decisions about the employment outcomes for the most vulnerable in our community, despite what might have been the good intentions—I do not believe it myself—of the government.

Mr Ryan—In fairness to the government, none of us can ever be responsible for the employers within our domain. As a group of employers ourselves, we could suffer the same criticism. We can all find someone under a rock somewhere who could embarrass us.

Senator MARSHALL—Do you think employees will be more vulnerable under this bill than they are now?

Mr Ryan—In terms of the proposed bargaining arrangements, we are concerned for those without marketable skills, those who are industrially week, those who are coming out of unemployment and the young in rural areas, but especially anyone who does not have industrial strength or industrial experience to bargain with an employer. If you do not have

marketable skills—and I suppose this applies no matter what the system is—you are going to struggle. But under this system, with a reduced number of conditions for the no disadvantage test, those without marketable skills will possibly struggle more.

Mr McDonald—As I understand it, the first couple of paragraphs of the legislation impact statement, which appears in the explanatory memorandum, highlight the key position of the government to foster a direct relationship between the employer and the employee and to remove the interference of third parties, which I take to mean the Australian Industrial Relations Commission, trade unions or other bodies that might be currently involved in the process.

The concern we have is to strike a balance in that relationship for both the employer and the employees. There are situations where employer strength will make it difficult for employees—and John has highlighted some of those—and there will be circumstances where there will be considerable employee strength in dealing with an employer who may not have all the necessary skills to properly deal with the challenges of properly creating a constructive employment relations environment for his or her workers.

Our concern is about balance for both the employer and the employee. What we see is that we had a box that had in it the Australian Industrial Relations Commission and the trade unions. Those bodies have been put outside the box, largely. That is the perception, at least as I understand this. If a direct employer-employee relationship is going to be sorting out the whole employment relationship then I believe the government has a responsibility to say clearly in the legislation what its expectations are about how that relationship will be conducted. That relationship should be conducted on the basis of fairness, and there should be appropriate support for the employer and the employee in order to manage that relationship.

The government has said in its *WorkChoices* pamphlet that it is looking at a simpler, fairer, national system. If it is going to be a fairer system then I would have thought that, in the pursuit of the common good, it needs to be clear that fairness is identified as a clear objective of the government's. That should be identified in the objectives of the act, and it should then be appropriately inserted in the key provisions in the act, including that the Fair Pay Commission will deal with fairness and families as well as with the other criteria that have been outlined.

Senator MARSHALL—I agree with you, but I think it is a bit much to expect that a bill that simply allows people to be sacked unfairly would provide fairness.

Senator CARR—This committee has been advised that the historic record of the federal industrial enforcement agencies in recovering unpaid employee entitlements is very poor. With regard to this bill, it has been put to us that this policy and practice clearly favours the unscrupulous and law-breaking employers. It is likely that many employees are not being provided with their legal wages and conditions at the moment. Do you see any measures in the bill to enhance the capacity of people to collect unpaid wages they might be owed?

Mr Ryan—The area of compliance issues is one of the areas we were talking about before the hearing, which we would like to look at further. We just have not had time to look at those matters yet. It is an area we raised in a letter to the minister in July with a concern about how compliance is going to operate under the new system. Compliance can be an issue no matter

what the system is. We look at it in terms of the bargaining process. We are concerned about there being proper scrutiny of agreements that are lodged and so forth, and we are concerned about the lack of ability of the Industrial Relations Commission to be involved in matters to ensure that there is scrutiny and compliance.

Senator CARR—In listening to you today, would it be fair to say that the fundamental concern you have is about the shift in the power relationship between employees and employers that will occur through this legislation?

Mr Ryan—That is part of our concern. We believe the power relationship will shift further to the employer. We tend to look at it this way: we wonder who the legislation is for. We think there are many good employers out there, and we like to think that many of our employers are good employers. But, let us be honest; like anyone else, we are not perfect. But the power relationship does shift.

Senator CARR—The problem is, though, that under those circumstances, you might not need too many bad employers to drive every other employer competing with them to adopt a similar sort of behaviour. Would you agree?

Mr McDonald—I think there is a capacity for the trickle-down effect to happen. When you look at experience, the vast majority of employers do a good job. They have learnt the lesson that they have to look after their own staff in order to keep them, they have to build up their relationship with them and they have to make sure that they pay appropriate rates of pay to them. But there are always some employers who do the wrong thing and, regrettably, that impacts on employees. What we do not want to see is the capacity for the number who do the wrong thing now to be opened up to a wider group because of the lack of a clear message from the government that this legislation has to be about fairness in the way the relationship between employers and employees is to be conducted in this country.

Senator CARR—Mr McDonald, my understanding of Australian history is that there were changes in conditions of employment not necessarily simply by moral persuasion but by law. I think of the sweatshops. What is to stop unethical employers pursuing courses of action that lead to other employers being obliged to follow them if they want to stay in business? Under these provisions, is it not the case that the regulatory environment will fundamentally change, that this law will override state legislation, for instance, with regard to sweatshops? There is no protection in here against sweatshops. In terms of your perception—the Catholic commission's view—what is to stop the unethical dominating the ethical?

Mr McDonald—My colleague John, who is here, has said to you and to members of the inquiry that we have concerns. Those concerns go to the whole wage fixing system and to the relationship between employers and employees. Our concern in coming here today is to alert the Senate to the need to ensure that this legislation insists that there is balance and fairness in how this is to be conducted.

We have heard this afternoon that we will not see the sky fall down when this legislation is proclaimed, but we will see something unfold and we will become aware of it over time. What we want to do today is alert the Senate to our genuine and sincere concerns about the conduct of employment relations in this country, not only for Catholic employers—and there are many of those—but also for the general community, the wellbeing of this community and

the common good. That is what this government, along with any government in this parliament, has an obligation to insist is its key objective.

CHAIR—Mr McDonald, if I could just intervene there. Senator Carr was not present yesterday when the committee met with a group of outworkers in the textile industry. I can assure you that the entire committee was concerned about what they had to say, although many of us knew about it before. That is a matter that we have agreed to take further.

Senator CARR—I am touched by that. All I can say to you is the historic experience—

CHAIR—Senator Carr, you have about two minutes left.

Senator CARR—I am touched by people's concern, but I come back to this point: is it not the case that economics overrides morality when it comes to the question of making profits?

Mr McDonald—I am not sure that every employer would hold that view. We certainly do not hold that view. We have come here today to make it very clear that the social and economic objectives of any legislative reform of this nature should bring those two together. That is what we do not see enough of in this proposed bill.

Senator CARR—I appreciate the point you are making. I am not suggesting that you hold that view; I am just saying to you that is it not the harsh reality of modern capitalism, as it has been of historic capitalism, that if enough people want to make a quid, they can force conditions down for all others that are competing against them? Is it not the fact that cheap products blow away all Chinese walls?

Mr McDonald—What we have said is that we have concerns about the fair pay and conditions standard. What we do know is that since 1996 the Australian Industrial Relations Commission has continually reviewed the safety net. We believe that the standard that has been built up since 1996 should remain. We see that the proposed standard is lower than the existing standard built up over that time. This government has made a contribution to the hearings regarding the safety net. An important element of what we need to be taking forward out of this is a proper fair pay and conditions standard. We do not see that in the proposal that exists. What we would also like to see in regard to the Fair Pay Commission is a clear understanding in the legislation that we are going to have a Fair Pay Commission that will operate on the basis of natural justice and be transparent in the way that it comes to its decisions. It will enhance the Fair Pay Commission rather than be a problem for the Fair Pay Commission if it does operate on that basis.

Mr Ryan—I think you are also possibly referring to the bargaining arrangements with a narrower no disadvantage test, allowing an employer to engage a new employee on a lesser standard and, in turn, undermining the standard not only in that workplace but subsequently down the line.

Senator CARR—Yes.

Mr Ryan—That is a concern we have. I have actually worked in maintenance contracting for a private sector company. I am aware of the commercial realities of tendering for work. It does come down to the bottom line. You look at what your competitors are tendering on and commercial reality will intrude. If you wish to stay in the marketplace, you have to make a

judgment about maintaining the standards of employment and other conditions that you have as a company or winning that work.

CHAIR—Thank you, Mr Ryan. The government did not take its full allocation of time. I will allow Senator Johnston one minute to make a particular point and then I will pass to Senator Murray for his seven minutes of questions.

Senator JOHNSTON—Mr Ryan and Mr McDonald, thank you for your submission. With respect to Senator Carr's statement about sweatshops, I want to reiterate what the chair has said to you. In section 101B of the bill you will see that where you have a workplace agreement, it is incorporating protected award conditions. Those protected award conditions include a number of things, such as rest breaks, but also outworker conditions, which are defined. It may not be the entire answer, but I think it goes a long way towards satisfying your, and indeed our, concerns in that regard.

Mr Ryan—Perhaps there is a little confusion or misunderstanding here. When I hear the word 'sweatshop', I think of outworkers.

Senator CARR—There are a whole lot of sweatshops, believe me!

Mr Ryan—Our concern goes beyond sweatshops. We are talking more generally about some employers taking the opportunity through the reduced bargaining and no disadvantage test to undermine existing arrangements.

Senator JOHNSTON—Have a look at that section. I think it might go a long way towards reassuring you.

Senator MURRAY—Mr Ryan, thank you for sending me your tax paper. In return, I sent you my tax-free thresholds paper—

Mr Ryan—Thank you, Senator.

Senator MURRAY—which I think makes some very important comparative points from the OECD. I hope you will give consideration to that. I want to focus in this discussion on item 43 of your submission: 'Proposed changes to section 7J'. I will start with 43(c) where you say with respect to 7J—that is the wage-setting parameters clause—that a new subclause should be inserted that the Fair Pay Commission must have regard to 'relevant taxation and government transfer payments'. If I may say so, that is a very wise recommendation because you can pay a lower wage if you have higher welfare benefits; you might have to pay a higher wage if you have lower welfare benefits. That is your general concept, isn't it? The two have to work in concert?

Mr Ryan—Yes. As we have been learning over recent years through the wage case, there is an interaction. We have been told by various parties that an increase in wages may be eroded by the way in which effective marginal tax rates work. We have to look at that.

Senator MURRAY—You would recall the remark consistently made by the Prime Minister that you cannot look at people's income levels without regard to the benefits they receive or to their taxation levels. Very frequently, they take a holistic response to people's income. So surely that should be in the low-paid sector as well.

Mr Ryan—That also comes from our Catholic social teaching. In looking at the minimum wage, we not only look at the wage coming from an employer but also recognise the modern reality of family support systems, a new era of taxation and so forth.

Senator MURRAY—With respect to 43(b), you say:

Insert a new subclause: "providing for the needs of employees and their families."

That goes back to the Harvester case principle, doesn't it?

Mr Ryan—In one sense, but we are mindful, as I said before, that when Harvester was established we did not have the taxation and family support systems that we do now. So we would see those systems being in conjunction with that.

Senator MURRAY—I must put my bias on the table right now. Where families with children have two breadwinners, I have a strong belief that, for as long as there is no maternity paid system applying, the breadwinner should be able to pay for a partner to stay at home, at least during the formative months of that child's upbringing.

Mr McDonald—We would agree with the importance of family and a balance between work and family. The government's creation of a framework in which that can happen and the suggestion that you are making go some way towards that.

Senator MURRAY—That is why I support your 43(b). I have a bias towards families and I have a bias towards the proper nurturing of small children, and I am unashamed of that. I think there has to be both a social wage through the public purse and a private wage that accommodate that need in society. I thoroughly agree with you. The third area that I want to pick up is that 43(a) says that you wish to provide 'a fair safety net for the low paid in the context of living standards generally prevailing in the Australian community'. Do I read that to be a kind of social objective—that the mark of a First World, civilised, liberal democracy should be to have advanced living standards? Is that what you are saying?

Mr McDonald—Yes. We would say that, in a country that is as blessed as this one, all our citizens are entitled as the product of reward for work to be able to have a good minimum wage and a good set of conditions of employment that go along with that. The role of the Fair Pay Commission and the setting of a fair pay and conditions standard should be such that it takes into account the considerable work that has been done now since 1996 on the development of a fair safety net. We would see it as an integral component of moving forward in terms of this legislation that that be in place.

Senator MURRAY—If the government did not have its majority, you can be sure that, if I still retained the balance of power, these would have been in. My last question is about constitutional corporation. We had an interesting interchange with the Uniting Church people. My memory is that in previous committees the Catholic Church has indicated to us that there are about 2,000 independent, autonomously operating bodies—I do not mean autonomously operating spiritually; I mean autonomously operating administratively. Is it the case that large numbers of your community—I do not know how you describe it—will not know whether they fall under the new federal act or state acts and so on?

Mr McDonald—In basic terms, we have employers who operate in the territories, so they are going to come under this legislation. We have employers who operate in Victoria, so they

are going to come under the legislation. So you are left with the states. How the corporations power falls in terms of the Catholic Church is no straight line. We do have—

Senator MURRAY—Just to interrupt you: have you had advice on that yet?

Mr McDonald—We are in the process of obtaining advice on this question.

Senator MURRAY—So you cannot advise us in time for writing our report?

Mr McDonald—We can say to you that we do have in the states some incorporated bodies and some unincorporated bodies. In some of those situations where you have incorporation, the question that needs to be resolved is whether they are trading corporations. There would be an argument that we would be interested in working through, and that is that our organisations are largely not for profit, so the question in our mind is whether or not they really do fall within a corporations power aimed at trading organisations.

Senator MURRAY—My belief is that the bill needs to be much more specific so that it is much clearer to you in those areas of uncertainty. It is very unclear to me.

Mr McDonald—We need to obtain legal advice, but some of the clarity around this is clearly only going to come through High Court challenges as to the extent of the corporations power and how it might operate for different types of organisations.

Senator MURRAY—But with respect to the churches—on notice—could you indicate to the committee, if possible before the end of the weekend, if there is any change which might increase certainty for you?

Mr McDonald—Yes. We would be happy to do that.

Senator SIEWERT—We heard earlier this morning about the working poor and where these changes will lead to working poor in Australia. Is it your opinion that, if changes are not made, that will happen?

Mr Ryan—We are worried about that in the setting of the minimum wage if changes are not made, if there is not a proper integration of wages and taxation and family support policies. Some of our welfare agencies are already telling us that they are seeing people come to them now who are in work. We have stories of schoolchildren who do not tell their parents that there is a school camp on or some school excursion because they know their parents cannot afford it. So we are concerned about that.

Senator SIEWERT—We heard from Professor Peetz earlier about the potential to drive unemployment benefits down. Have you looked at that and the potential impact that would have as well?

Mr Ryan—One of our other welfare organisations, Catholic Welfare Australia, would be better placed to speak to that, and I dare say they will next week.

Senator SIEWERT—I will ask them that question next week.

Mr Ryan—I will advise them of that question.

Senator SIEWERT—That would be appreciated. Thank you.

CHAIR—Thank you very much for your appearance here today. That concludes questioning.

[3.53 pm]

CALVER, Mr Richard Maurice, National Director Industrial Relations, and Legal Counsel, Master Builders Australia

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia

CHAIR—Welcome. Thank you for your submission. I invite you to make a brief opening statement before we go to questions.

Mr Harnisch—Thank you for the opportunity to speak to the Master Builders Association of Australia's submission on the Work Choices legislation. In our written submission we analysed a number of areas where Work Choices will supplement the large number of building and construction industry workplace law reforms that have been introduced recently, most with effect from 1 October 2005. Many of the provisions of the bill will enhance those industry specific reforms.

We support the passage of the bill because it will underpin genuine workplace bargaining. Genuine workplace bargaining has rarely been adopted in the commercial building sector to date. We view the bill as a means by which bargaining will be promoted. Why does genuine bargaining need to be promoted? Firstly, because it will enhance productivity. In 2004-05 Australia's labour productivity as measured by output per person employed fell by close to one per cent. In the construction industry, it fell by nearly four per cent. Over the long term—that is, from the mid-1980s—labour productivity average annual growth for the economy was 1.5 per cent whereas for the construction industry it was a mere 0.6 per cent. This position, we believe, must be addressed. The construction industry must at least reach the levels achieved by the rest of the economy.

In the building and construction industry, labour cost increases have been running well ahead of inflation at around five per cent for wages. The response must be not to drive down wages but to increase productivity by getting rid of restrictive labour practices. Productivity will come from removal of those practices and the introduction of greater flexibility. If there is a lockdown day and no-one is working because of some imposed third-party calendar, then no productivity occurs. For example, at present in Queensland there are 23 weekdays where no work at all may be undertaken—23 weekdays. There appears to be fear, particularly amongst the building unions, that all non-traditional work arrangements such as outsourcing, temporary work and even part-time work are a threat to the work force. This is not the case given the increased leverage that skills shortages provide to skilled workers, especially in the face of very large projected skills shortages for the industry.

Secondly, productivity will flow from adherence to agreements once reached. We have to change the picture painted by the Cole royal commission of the sector where disregard of the rule of law is widespread and criminality is often present. The law of the jungle is not acceptable in any part of Australian society, not only for moral reasons, which should not be underestimated, but because it destroys the efficiency of private sector investment decisions. We cannot simply dismiss the Cole royal commission report by demonising it, as the CFMEU would wish. While the vast majority of the building industry operates ethically, applying world's best practice technical standards, the potential uncertainty generated by rogue actions,

particularly in the CBD, stops money from flowing. The principal reforms that have been introduced by the industry specific reforms will increase certainty and productivity, therefore boosting investment and employment. That is why Master Builders supports the Building and Construction Industry Improvement Act 2005 and the provisions of the Work Choices bill that will make the agreement-making processes focused on genuine bargaining.

We have highlighted the need for anti-pattern-bargaining provisions in our written submission. We support the need for simplified bargaining arrangements and for provisions where the vulnerable builders are protected from the effects of protected industrial action. These issues have a real cogency for the building and construction industry where pattern agreements in Victoria and Queensland and a large number in New South Wales expired on 31 October 2005. The federal government has provided added impetus to the need to renegotiate those pattern agreements and a large number of other agreements that are in operation in the industry. From 1 November 2005, in order to qualify for Commonwealth work, builders must comply with the new implementation guidelines made to complement the national code of practice for the building and construction industry.

The guidelines require builders and subcontractors to be compliant on all new private work after 1 November 2005, as well as in respect of projects funded directly or indirectly by the Commonwealth, and hence there is a bargaining prerogative at present. Unions, in turn, want to complete new enterprise agreements to lock in conditions before Work Choices kicks in. They are promoting the adoption of pattern bargains that are state and territory specific but are clearly of the nature of pattern bargaining. Builders are therefore currently subject to a great deal of pressure to get new agreements in place that comply with the code and do not trigger union-protected industrial action to force their hands to sign a pattern agreement. The written submission we have made deals, especially in paragraphs 6.1 and 6.2, with the issue of the commercial vulnerability of builders to industrial action.

There is also a great deal of concern about the current competing pressures on builders to bargain in an environment where the protections that are set out in Work Choices against the abuse of protected action provisions are some way from being passed. The nervousness arises from the considerations that we have articulated in section 6 of our submission. That is why we are strongly advocating that the provisions of Work Choices related to pattern bargaining and which constrain protected industrial action are introduced as soon as possible, or the provisions of the better bargaining bill are separately introduced urgently as an interim measure. This will enable action taken to obtain a pattern agreement to be unenforceable and will promote the adoption of genuine workplace bargains.

The bill is seen by Master Builders as an appropriate measure to take Australia a step closer to a unitary industrial relations system based once again upon genuine bargaining. It is that process that will enable the elimination of a large number of unproductive work practices that hinder the industry's current productivity. For us it is not about driving wages down or taking away rights; it is about a sensible system based upon the use of genuine bargaining to obtain productive workplace outcomes.

Senator BARNETT—Thank you for your submission. I want to go first to a submission that was put to us today by a representative group of academics who said that the legislation will lead to lower wages, that it will drive wages down and indeed lower productivity. You

have a hands-on involvement in the building and construction industry, or your members at least do. Can you give us your view as to whether this is the case or whether you see a different outcome?

Mr Harnisch—The current conditions within the construction industry are such that we have a skills shortage. The skills shortage which our industry suffers from is of a structural nature and not a cyclical nature. What we have is an ageing work force very similar to the rest of the work force and we simply cannot get enough young people, for industrial relations reasons, into our industry. So certainly for the immediate future and for the long term we do not foresee a situation, in pure economic terms, where there is going to be an oversupply of labour, which would then enable employers to drive wages down. As I said in our submission, what we are looking for is increased productivity. Our support for the bill is in terms of allowing increased productivity and increased flexibility rather than a focus on lowering wages, which is unlikely to be the case in our industry.

Senator BARNETT—You mentioned in your opening statement that there are 23 weekdays in Queensland where there is no work. Can you outline exactly what has happened there and describe the circumstances in which that has occurred?

Mr Harnisch—That has occurred because of an agreement that the unions have imposed upon employers. The impact is quite obvious—when you have 23 days when no-one works, that is 23 days when a building is not constructed. It is made worse by the fact that it is not a matter of simply picking up the following day, because the construction process requires a phasing down of the work and a phasing of it back up. So it is the loss of productivity in the adjoining days, particularly when it coincides with weekends, which tends to happen; the productivity losses are much greater than simply the one day of not working. But perhaps Mr Calver can elaborate on some of the other aspects of that.

Mr Calver—They are lock-down days, where the union agreement proscribes work on that particular day. In Queensland, reversion unfortunately is to a nine-day fortnight. So the bargaining prerogative that Mr Harnisch was talking about in his opening address is amplified in Queensland because, if there is no agreed calendar under the current pattern agreement that operates in that state, builders will have to revert to a nine-day fortnight, which will oppress productivity even further than is currently the case.

Senator BARNETT—It is deeply disturbing to hear that, Mr Calver. Mr Harnisch, in your earlier submission you referred to comments about the vulnerability of those in the industry, particularly as a result of the pattern bargaining and the impact of pattern bargaining. In chapter 6 of your submission you talked about industrial action and in chapter 7 you talked about pattern bargaining. You are keen to have the Work Choice bill enacted as soon as possible to have those provisions introduced. Can you explain to us in further detail why that is required?

Mr Harnisch—I will kick it off. The real reason is that at the moment, because the current agreements expired on 31 October, there is an urgency and a cogency for employers, the union and the work force—the employees—to enter into new agreements. For the major companies and mid-size companies where they have union involvement—or where they choose to have union involvement—the unions are using the current uncertainty and the delay

in the passing of the better bargaining bill to try and enforce a pattern bargaining deal agreement which is consistent with—but still undesirable overall—the requirements of the national codes and guidelines. So our members are really being intimidated and rushed into signing agreements that they would not be comfortable with and perhaps would not sign had those provisions being passed.

Senator BARNETT—You referred to criminality before and the law of the jungle. Is this type of threatening behaviour happening as we speak?

Mr Harnisch—The behaviours of criminality and intimidation were well documented in the Cole royal commission. We have been hearing—but you would have to classify it as hearsay because no-one is prepared to give evidence—that those sorts of tactics of pressuring builders to accede to the new agreement are evident.

Senator BARNETT—Can you tell us why they do not wish to give evidence?

Mr Harnisch—For the very fact that they are still fearful. They believe they have no power. They fear retribution. Those feelings and concerns were well documented in the Cole royal commission.

Senator BARNETT—You mentioned earlier, in your response to my first question, that the work force is getting older and that there is a supply shortage in the building and construction industry. You referred to the industrial relations reasons why it was harder to get young people into the industry. Can you outline what you meant by the industrial relations reasons and what impediments there are to attracting young people into your industry?

Mr Harnisch—The industrial relations inflexibility that our builders constantly complain about is the inability to get school based apprenticeships established—apart from in Queensland and the ACT—and the inability to get women into the building industry through part-time work provisions. We are the only industry where the unions actively work against women coming into the industry. I think it is disgraceful that in 2005 we have a union that simply discriminates against women.

Senator BARNETT—Is that obvious to you, in your association?

Mr Harnisch—Yes. The other one is the inability to get safety net wages established for adult apprenticeships. So there are a whole lot of industrial relations impediments that simply make it very difficult to attract more young people into our industry. And the continual push by the unions to ratchet up the award provisions, particularly for apprentices, act against attracting more young people into this industry. We have more people wishing to enter this industry than we have places to put them.

Senator BARNETT—You mentioned that the construction industry unions were an impediment to encouraging some of these young people and women into the industry. I understand that last year the federal construction industry award was amended to allow school based apprenticeships and that the CFMEU opposed that change. Can you clarify if that was the case?

Mr Harnisch—I will pass that on to Richard Calver.

Mr Calver—Yes, we appeared in commission proceedings. There was an arbitration of the basis upon which school based apprentices would be recognised in the National Building and

Construction Industry Award. There was an extended arbitration. After 11 months, Commissioner Smith handed down a judgment which permitted school based apprentices to be engaged, and a safety net wage was prescribed for them. However, the CFMEU communicate to us that they still remain opposed to school based apprenticeships being introduced in the industry.

Senator BARNETT—What do you think is the reason for the unions to oppose such a proposal?

Mr Calver—They argue that it is based upon occupational health and safety grounds, in the main.

Senator Marshall interjecting—

CHAIR—Order, Senator Marshall!

Senator BARNETT—Or you could ask them directly.

Senator NASH—Thanks, Mr Harnisch, for your submission. You mentioned in your opening comments that currently your industry is hindered by restrictive labour practices. Could you just outline what you see in the bill before us here that will give benefit in the light of those restrictive labour practices?

Mr Harnisch—In terms of the overarching principles, we believe the new bill will introduce flexibility, something that we do not have at the moment. It will help remove restrictive work practices as a result of that. In terms of increased productivity, the whole issue of providing greater certainty will be there. We will have genuine bargaining, which is the ability for employers and employees to come to arrangements that best suit the particular project or the site, rather than the issue of having to apply a pattern agreement that is not suitable for the particular business or the site. So there are a whole lot of provisions in the Work Choices bill that we believe will support the BCII Act, which will help to rid the industry of inflexibilities and allow it to increase its productivity and, through that, create more jobs.

Senator NASH—Certainly we hear a lot of concern, perhaps about the possibility of employers behaving in a way that is going to be negative for their employees. In your industry, do you believe that your employers, under this new bill, will behave in a way that is to the benefit of their employees?

Mr Harnisch—There is no incentive for responsible employers to behave in the way that I think you are alluding to. We are already in a situation of acute skill shortages; therefore labour can be and will be highly mobile. Because of those shortages, if people were to work for a rogue employer with bad workplace practices, they would simply walk off and, as they do now, look for higher wages and better conditions. There would be no shortage of other, responsible employers who would take them on. So the possibility of that occurring, I believe, is low. I am not suggesting that there are not rogue employers. That is something that we simply do not support.

Senator NASH—I would put it to you that, where there are currently rogue employers, the implementation of this bill will not necessarily increase that. It is an issue we deal with anyway.

Mr Harnisch—No, we do not see that at all, because of the competitive reality of our industry.

Senator CARR—Could I take you to paragraph 5.2 of your submission, Mr Harnisch. It goes to the question of greenfields agreements. It says there:

We understand that the Government is considering a change to this provision so that the nominal expiry date of Greenfields agreements will be a maximum of 5 years.

That is what it says, does it not?

Mr Harnisch—Yes, it does.

Senator CARR—Can you explain to us what you mean by that?

Mr Harnisch—We picked that up in a newspaper article in a response given by the government to concerns expressed by others on that particular provision and the 12 months.

Senator CARR—Have you had any discussions with the government about that?

Mr Harnisch—It is a position that we have made to the government, yes.

Senator CARR—Have you had a response from the government directly rather than relying on a newspaper report?

Mr Harnisch—No, we have not had a formal response back.

Senator CARR—What about an informal response?

Mr Harnisch—No.

Mr Calver—No.

Senator CARR—So you do not know whether or not that is true?

Mr Calver—It has been reported in the newspaper, as Mr Harnisch has said.

Senator CARR—And you take it to be true?

Mr Calver—We take it as an indication that it may be true. We do not know yet.

Senator CARR—It is your intention to secure that outcome?

Mr Calver—It is the policy position of the Master Builders.

Senator CARR—Would it be fair to say that greenfields agreements are not in fact agreements at all—that under the terms of this bill they are a mechanism whereby the employer determines the nature of the conditions that will apply on those sites?

Mr Harnisch—I might get Mr Calver to talk about the technical parts of it first, and then I will add to that.

Senator CARR—I can refer you to section 96D.

Mr Calver—Section 96D would enable project agreements to be completed for new projects that are greenfields agreements, yes. The conditions are set out there. Section 96D(b) makes it quite clear:

(b) the agreement is made before the employment of any of the persons

To that extent there is an agreement which applies for those who wish to be employed on that project.

Senator CARR—Mr Calver, is it not the case that under section 96D the agreement is with yourselves—the employers are negotiating with themselves and there are no employees?

Mr Calver—You might express it in that way. It is an agreement that will apply for those who wish to be employed on a particular greenfields site.

Senator CARR—Who sets those terms and conditions?

Mr Calver—I have quoted 96D(b) to you, so it is already established:

(b) the agreement is made before the employment of any of the persons

Senator CARR—That is right. It is a unilateral position?

Mr Calver—It is not unilateral; it is the agreement that will apply when those people wishing to be engaged on that project are employed.

Senator CARR—But who determines the conditions under which people will be employed?

Mr Calver—It is set out in the agreement. If you do not wish to be employed on that particular project and you do not wish to take up those conditions, you can easily get another job in the building and construction industry.

Senator CARR—Those are the terms of the conditions? That is the choice, is it? You take the job under the terms set by the MBA on this occasion—or by the employer—or you do not work on that site?

CHAIR—Or you find another job that suits you better.

Mr Calver—You find another job or you perhaps say to the employer, 'I will enter into an AWA with you to come onto the site,' which is what this Work Choices bill will enable them to do. If they have highly developed skills, they may wish to go beyond what is in the agreement.

Senator CARR—So the provision under section 96D is what you mean by genuine negotiation?

Mr Calver—It does not preclude negotiating terms and conditions which are above or different from the greenfields agreement. You have the choice to enter into an individual AWA that will override the greenfields agreement conditions.

Senator CARR—How many of your members are now compliant with the national code of practice?

Mr Calver—I do not know. We do not get a daily report on that.

Senator CARR—You would have some indication, surely? Your submission says:

The building and construction industry is at present moving apace to have workplace agreements comply with the Guidelines.

Isn't that what you said?

Mr Calver—It is not a matter that we take a census on at a particular time. I would not know that number. A lot are not because, under the latest guidelines, the National Building and Construction Industry Award is no longer code compliant. So they have to move to an agreement or we have to make an amendment to that award.

Senator CARR—Is it your view—and my reading of your submission implies to me that it is—that, where the conditions of employment specified under the national code are clear, that is important for you in terms of determining wages costs?

Mr Calver—Sorry, could you ask your question again.

Senator CARR—It is important that you know what the conditions are for employment, for the determination of wages costs—would that be a fair reading of your submission?

Mr Calver—Yes. Not just wages costs; it is also so that for the future there is certainty about which industrial relations arrangements apply on particular projects.

Senator CARR—Is it your view that by leaving matters to regulation—that is, in fact, ultimately to the whim of a minister—you will add to the level of uncertainty and it will be bad for productivity?

Mr Calver—Regulations are disallowable instruments. I cavil at the proposition 'at the whim of a minister', especially given that the task force guidelines that came with the reforms to the building and construction industry were disallowed and did not come in for 11 months after the reforms were introduced. We are asking for the prohibited matters to be disclosed as soon as possible so that we can line up those matters that are prohibited with those matters which are proscribed by the code. We are asking for early information on that.

Senator CARR—That is my point. Much of what is contained in this legislation is not revealed because it is subject to regulation. I take it that the MBA would be very concerned that these matters are at the whim of a minister.

Mr Calver—I said earlier that we do not believe that the phrase 'whim of a minister' is appropriate, but we do wish for the early disclosure of what is to be prohibited in its full content so that we have the ability to line up those provisions that are in the implementations for the national code which are proscribed with that which will be prohibited in the context of this bill. It will aid the industry. We are here for the benefit of the industry.

Senator CARR—It will not really matter because the government has a majority in the Senate and it is not likely to disallow ministerial regulations. Wouldn't you agree?

Mr Calver—That is a political question. It is speculation in its entirety, and I don't think it advances the inquiry.

CHAIR—Quite right, Mr Calver.

Senator CARR—I am just trying to get to the bottom of the nature of your submission. You are saying that you are concerned that there is not all the detail out there. You are saying that it is not really a matter for the whim of the minister because it is subject to disallowance. I put it to you that in reality that is a legal fiction. That is a legal fiction in the current parliamentary arrangements.

Mr Calver—I think I have given you my answer, Senator.

Senator CARR—How many of your members would employ fewer than 15 employees?

Mr Calver—A substantial number would employ fewer than 15—90 per cent.

Senator CARR—Ninety per cent of your members?

Mr Calver—Yes.

Senator CARR—You have put to us in section 8.1 of your submission that you support the proposed changes to section 116 of the bill, which deals with redundancy.

Mr Calver—That's it.

Senator CARR—One of the conditions contained in section 116(4) is that the determination is by an employer with 15 or more employees. Would it not be the case that the redundancy provisions currently apply to all employees irrespective of the size of the company?

Mr Calver—Clause 16 of the national building and construction industry award does not have an exemption for 15 or fewer employees.

Senator CARR—So this law will only apply to persons that are employed by companies that employ more than 15?

Mr Calver—They are redundancy provisions.

Senator CARR—So therefore with the introduction of 116(4) the overwhelming majority of your members—90 per cent of your members—who employ the majority of construction workers covered by building awards will no longer have any entitlement under law to redundancy pay as a result of this bill?

Mr Calver—That is right.

Senator CARR—And you support that?

Mr Calver—The Master Builders Association supports that.

Senator CARR—Is that one of those matters that you think should be open to proper negotiation?

Mr Calver—Everything should be underpinned by genuine bargaining—everything. The award safety net in the context of genuine bargaining is merely one of the considerations to be taken into account.

Senator CARR—Could I come back to the employer greenfields agreement. Is it not the case that, as we have already agreed, a unilaterally imposed set of conditions can apply? You say it may be up to five years in due course as a result of this legislation, but currently for at least a year, and at the end of that period there will be no revision to the award arrangements under this legislation.

Mr Calver—Let us have a look at the assumptions in your question. First, we did not agree that greenfields agreements are unilateral. What we said is that they are like a publication of the agreement that will apply in the main if you wish to be employed on a particular site. So no, we did not admit that they are a unilateral setting of conditions. Secondly, the work choices bill moves people from the award stream into an agreement making stream, so that agreements predominate. There are terms and conditions in the bill that enable protected

industrial action to be taken but enable it to be taken in a framework where there are disciplines associated with it, disciplines which the building and construction industry support. For that reason, the basis upon which agreements are made is underpinned by genuine bargaining and therefore we support that notion. The award safety net becomes increasingly less relevant in that context.

Senator CARR—That is right. In fact, it becomes irrelevant, because is it not the case, as the committee as been advised, that the result of adopting the approach taken in this legislation is that, once a worker is subject to a workplace agreement at a greenfield site such as we referred to, they can never again be covered by an award when performing that job?

Mr Calver—They can be covered by terms and conditions in an award if that is what is genuinely agreed in a bargain.

Senator CARR—Why would an employer genuinely agree to pay higher wages and conditions under those circumstances?

Mr Calver—As Mr Harnisch has indicated, we have a skills shortage in the industry which is no longer merely cyclical. We need a minimum of 80,000 new workers in the next five years in our industry merely to maintain stasis. We have labour shortages. In that sort of marketplace, workers can command higher wages and can certainly level out the bargaining situation markedly. If you have a skill, particularly in this industry at the moment, you are generating very good terms and conditions of employment, and that is not foreseen to end. As we said, these are structural matters now, not cyclical matters.

Senator CARR—You think the boom will go on forever, do you?

Mr Calver—I did not say that the boom would go on forever. That is a distortion of the proposition I have just put. There are structural conditions with the infrastructure development that this country needs, which mean that skilled workers, particularly in the building and construction industry, will be needed over the medium term.

Senator CARR—Mr Harnisch, what is the average duration of a project—say, a major building site in the CBD of Melbourne? What is the duration of a major construction site—for instance, one of the big towers in Melbourne? What does it normally run for?

Mr Harnisch—You could advance somewhere from 18 months to three years, and sometimes it can be as long as five years.

Senator CARR—How often does it go to five years? When was the last big site that you can think of in Melbourne that ran for five years?

Mr Harnisch—Certainly infrastructure projects can, but if you are looking at commercial buildings—

Senator CARR—Let us say a big commercial building in Melbourne, which is where the CFMEU has most of its members.

Mr Harnisch—Five years is probably a rarity.

Senator CARR—But you want these greenfield sites to go for five years. So, in fact, what you are saying is that they will apply beyond the life of a project.

Mr Harnisch—The greenfield projects will primarily be written for major infrastructure projects rather than for CBD projects.

Senator CARR—Will they? Where does it say in the bill that they will be applied to infrastructure projects and not to major CBD development sites? Where does it say that in the bill?

Senator MARSHALL—Mr Calver mentioned project agreements.

Mr Calver—As a matter of practice, you want to tailor a project agreement on a particular site to the length of that project.

Senator CARR—Exactly.

Mr Calver—It is a practical aspect of the market.

Senator CARR—So you do not need to settle with a union if you have a greenfield agreement which you determine and which goes beyond the life of the project. Tell me where I am wrong.

Mr Calver—If the project ends, it is the greenfield agreement's nominal expire date.

Senator CARR—And the workers are out of job and do not have redundancy as a result of it. Isn't that what you have just said to us?

Mr Calver—No. I think that is linking the ideas in a way that does not necessarily follow.

Senator CARR—I bet you it does.

CHAIR—Senator Marshall has a few questions.

Senator MARSHALL—You mentioned a number of times 'genuine bargaining'. Can you point to the clause or the provisions in the bill before us that require genuine bargaining? You might want to take that on notice.

Mr Calver—Yes, we will take that on notice.

Senator MARSHALL—I could not find one. You talked about the 'unproductive days'. Is it your intention that the industry is able to work 24/7?

Mr Harnisch—That is not the intent at all.

Senator MARSHALL—What is your intent in respect of that? I thought you were complaining about restrictions on the ability to cover working days.

Mr Harnisch—It is to enable sensible arrangements in terms of the days worked and—

Senator MARSHALL—Could that be up to 24/7?

Mr Harnisch—No, that does not mean that at all.

Senator MARSHALL—Could it mean that?

Mr Harnisch—No.

Senator MARSHALL—So you are saying that no site should be open 24/7?

Mr Harnisch—It may well be, but not necessarily by the same work force.

Senator MARSHALL—If you thought I was suggesting that every employee would be working for 24 hours a day, seven days a week, you have got me wrong. I am talking about the operation of the site. In that context is it 24/7?

Mr Harnisch—Theoretically, yes. It is possible but not necessarily probable.

Senator MARSHALL—Many industry associations have talked about their wish to eliminate penalty rates. How do you see penalty rates working in the industry under the new arrangements?

Mr Calver—The penalty rate regime, I imagine, will continue if employers want to attract people to their sites. It is going to be a question largely for agreement making in the long term, but certainly during the three- to five-year transition while Work Choices is fully integrated into the industrial relations landscape they will predominate in the building and construction industry. I would make a bet on that, but it would be a matter for the market.

Senator MARSHALL—So it would be a matter for negotiation?

Mr Calver—Yes.

Senator SIEWERT—Does your association prepare standard agreements for your members?

Mr Calver—Not Master Builders Australia, but our members, which are the state and territory organisations, assist members with agreement making. Certainly that is a function of their industrial relations departments.

Senator SIEWERT—Do they provide a standard format?

Mr Calver—No. That practice is no longer extant. What is happening is that in Victoria there was an agreement that was being negotiated; a group of builders were negotiating with a union. The Master Builders Association of Victoria came in and took over those negotiations because they could negotiate improvements to what were agreements that were going to be accepted by people in that state. But certainly we do not as an association draft pattern agreements to be rolled out in the industry.

Senator SIEWERT—My understanding is that a lot of safety issues are actually negotiated through collective bargaining and through a union. What is your opinion about what is going to happen with safety when you move to more individual agreements?

Mr Calver—The master builders movement has come up with an occupational health and safety policy blueprint for 2005 to 2015 in order to enhance safety. We have given a commitment about reducing the number of injuries and fatalities, and the manner in which we want to do that is set out in a policy blueprint of 23 pages. I will table that for you. That shows one of the aspirational goals that we have and the practical means by which we want to improve safety. There has been a great movement in Australia to national consistency of occupational health and safety through the use of rules that apply across the board and through elevated safety requirements through the national standard for construction, which is going to be gradually rolled out in each state and territory. That consolidates a lot of the regulation. There is an effort to raise the standard across the board in Australia. I think it is best if I leave you with our blueprint, and if you have any questions arising from it we can answer them on notice..

Senator SIEWERT—Thank you. Do you agree that the unions and their role in collective bargaining have been a central plank of the improvement in on-site safety in this country?

Mr Harnisch—The improvement in safety in the building and construction industry has been the result of many factors. One is the industry working with governments to improve safety on building sites. Unions have had a role in that process. What we are saying in our submission and what we have said in previous submissions to and previous appearances before Senate committees is that there has to be a proper and responsible role for unions in this whole process. In our industry in the past—and, once again, this was documented in the Cole royal commission—unions have claimed as fact that if it were not for their intervention, for their marching on building sites, the number of deaths would have been worse. There is no evidence to substantiate that—and, as I said, the matters dealing with OH&S in our industry and the role of unions in the past have been well documented. Therefore, we do not agree with the proposition that the unions have singly and single-handedly dealt with safety in our industry.

CHAIR—Thank you very much for your appearance before the committee.

[4.36 pm]

BURRELL, Mr Christopher, Member, Workplace Relations Committee, Recruitment and Consulting Services Association Ltd

CAMERON, Mr Charles, Policy Adviser, Recruitment and Consulting Services Association Ltd

CHAIR—Welcome, and thank you for your submission. I now invite you to make a brief opening statement before we ask questions.

Mr Cameron—We will make it brief because we are aware of the time constraints.

CHAIR—Nevertheless, the committee has an allocated time, and I am very happy to hear your views.

Mr Cameron—Principally, Recruitment and Consulting Services Association represents a range of members providing services in what might be collectively known as employment services. They pertain to on-hired employee services, on-hired contracting services, recruitment placement services and what might otherwise be known as employment contracting services. We are very interested in the introduction of appropriate legislation that represents the interests of not only employers who are members of the RCSA but also host organisations that utilise the services of on-hired employee service providers and also on-hired employees, who are increasingly demanding of recruitment agents and other bodies appropriate flexibilities and work-life balances to meet new and emerging social and economic issues.

To that extent, our principal desire, as a result of any revision of the current legislation, is to address issues pertaining to the introduction of an appropriate unitary system. Many of our members operate across multiple jurisdictions and will, of course, engage a large number of short-term employees. Of course, with such large numbers they face many complexities and constraints in terms of both compliance and efficiencies that arise out of multiple jurisdictions.

To that extent, we also look towards improvement in the capacity to meet the needs and desires of host organisations in a responsible manner, and that might be achieved by means such as the improved flexibility that is being proposed in the bill. Furthermore, we are very aware of the need for an effective enforcement arrangement whereby many on-hired employees or other direct hire employees of our members do not have, let us say, the representation of unions or other representatives. They do have the capacity to go to an alternative party, which would be a fully government sponsored organisation or a department which can represent their interests. We are very much aware of what many would colloquially call an Achilles heel for our industry. We feel that that is appropriately addressed by appropriate enforcement methods. Furthermore, we appeal to the committee for the need to maintain and develop an appropriate Fair Pay Commission that remains free of, let us say, any influence. We feel that that is absolutely paramount to the maintenance of a sustainable fair pay minima.

I add for the record that our submission goes to supporting the proposed introduction of unpaid carers leave and parental leave for casual employees. Many of the on-hired employees whom our members engage are indeed casual employees, probably in the vicinity of 66 per cent. We feel that it is appropriate to start looking at ways and means by which we can avoid a debate; it may well just be an argument of, 'Are you a casual employee, or are you a permanent employee?' Maybe we can start looking at methods or means by which we can address the social needs of our primary assets, being on-hired employees.

To that extent we are in discussions with the ACTU. We have had discussions with Sharan Burrow to try to develop some of the central pillars of what we will call fair and sustainable on-hired employment in Australia. Having said that, we also are quite happy to address issues pertaining to increases in participation levels, which might be more appropriate for what I might call the recruitment placement side of our member services. I have nothing further to say at this point.

CHAIR—Mr Burrell do you have anything further to say?

Mr Burrell—I think I just support the comments that have been made by Mr Cameron. There is certainly a large acceptance or willingness to see in the industry a move towards a unitary system. Our company, for example, works across every state, with over 55 offices around the country. We have to work within a system that has seven different industrial relations systems and over 4,000 different awards, providing people for a range of blue-collar right through to commercial white-collar industries. That can be very time consuming and very difficult to manage. The move towards a unitary system, even though I am sure we all would have wished that the bill was not 691 pages long, will nevertheless—hopefully—create some improvements in efficiencies and in compliance and also create some opportunities in flexibility.

We also believe that the Work Choices bill will provide an opportunity to increase participation in the work force, helping people who are coming new into the work force or who may be returning from other opportunities or periods of time off—maternity leave and so forth—to actually be able to come back into the work force. We see that the Work Choices bill will further facilitate the industry as a conduit for people to access the marketplace and perhaps move on from traditional on-hired arrangements into more permanent employment arrangements, which is certainly something we are seeing as a significant trend as well. Those are just some of the additional comments I will make at this point. I will leave it to questions.

CHAIR—Thank you. You have already answered this to some extent, but could you give us an idea of the profile of your clients? You said something about it being across the board. You might give us an idea of the scope of your operations.

Mr Burrell—Our company has a very diverse range, operating in a very significant market, between blue-collar and white-collar work, if you want to call it that, to keep it simple. That may range from providing placements in the mining industry up in Northern Queensland, for example, through to providing clerical and administrative support or call centre support throughout the other states. So it is very diverse, as are many of the other labour hire or on-hired employers throughout Australia as well. We are obviously very

different because we are quite a large organisation. There are others who only operate in a particular state.

We also, like many others, operate in an environment providing Job Network facilities—so it is not just the on-hired employment. We look at ways of utilising our Job Network facility to facilitate putting people from long-term unemployment back into the work force, so there is obviously a good relationship between the provision of the Job Network service and being able to provide on-hired labour. As I say, there seems to be a trend where employers want to utilise on-hired labour as a mechanism that after a certain period moves towards perhaps engaging those people on a permanent basis, whether that is in the blue-collar industry or the white-collar industry. I think that is a positive step that the business community is certainly making. As an industry we are certainly happy to be able to support that move.

CHAIR—Regarding the sorts of people you deal with, you have clients you are trying to place into jobs and you also work for employers to find people they need?

Mr Burrell—Absolutely. Whether it is on-hired or permanent recruitment, we also do that as well.

CHAIR—How long have you both been in this business? Obviously you are both very young so you have not been in it for too long, but how long?

Mr Cameron—That is very kind of you. It just so happens that I previously worked for IPA Personnel before commencing my own industrial relations and policy consulting service. I also worked for the Australian Industry Group in what might otherwise be known as the labour hire industry, providing services there for approaching eight years. Chris is probably a slightly newer entrant into the industry.

Mr Burrell—I am a new entrant into the direct industry itself. I previously worked for Master Builders Australia, who were just here, and before that for the Chamber of Commerce in South Australia.

CHAIR—So do you see a different purpose for work, in the sense of what people are looking for, in terms of long-term work versus short-term work? When I say that I mean it in the sense of not staying in a job for a very long time—one particular job—but tending to move around?

Mr Cameron—That is a very good question. I think clearly the answer is yes. I am not saying for one minute that the whole of the Australian work force is looking for the type of employment that on-hired employment might provide, but certainly the surveys that have been conducted on our behalf by RMIT show that the principal motivations for on-hired workers pertain to diversity and, in many regards, not performing unpaid overtime work—so they feel that they will be paid for the hours that they are actually working.

Yesterday I was listening to somebody who outlined a particular report that indicated that generation Y interests were somewhat different even to ours—to the interests of generation X. It was suggesting that they want to be millionaires and masters of their own domain. They want to be able to work in the way they want. I think there is no question that there is an increasing acceptance in the younger generation of this form of engagement whereby you can indeed move into a form of work for a shorter period of time and almost try before you buy in

many regards. As I say, I am not suggesting for one moment that that is the whole Australian work force but we are certainly seeing a clear shift towards that. We feel that that is probably why there has been such a significant increase in the size of the industry over the past few years.

CHAIR—Yes—and not so much people changing jobs within the same industry even but changing careers and that sort of thing in midstream as well.

Mr Cameron—There is no question of that, and I think that the movement within an industry itself, whether it is from sector to sector or otherwise, is clearly evident in the way in which people are working. It is not uncommon for someone to have an on-hired employment assignment within one particular industry sector and then have a back-to-back assignment that commences in a slightly alternative industry sector. To that extent I think that probably illustrates the point that you are trying to make.

CHAIR—Good. So these new—and when I say new, it is the government's belief that this is evolutionary rather than revolutionary—suggestions in Work Choices, in that there is a greater sense of the ability to bargain between employer and employee, would suit many of the people you are talking about very well?

Mr Burrell—They would. But I think you have to look at the relationship that an on-hired employee has with regard to the client. A lot of times the client is coming to you saying, 'We need X number of employees,' and in most situations you are looking at giving people almost the same terms and conditions that are already being offered on the site. There might be a particular site, for example, that has an enterprise agreement in place. They are not a party to that agreement but nevertheless it is always the clear intention that there is not going to be any differentiation in wage rates. Obviously, with Work Choices the intention is to provide an opportunity for choice but there is certainly not going to be a drive to push wages down or to use on-hired employment as a form of cheaper labour. I would actually take up some of the comments that were made before by the Master Builders about the shortage of skilled labour. We are finding ourselves that it is certainly proving difficult to provide clients with the skilled labour that is available. There certainly is not any intention or push to drive down wages at all. In fact it is probably going in the opposite direction

Mr Cameron—I might just add to that. From the information that is provided back to us through RCSA members and also through my work as an industrial relations consultant, we are seeing a lot of individuals—and again I am not trying to suggest all—saying that they want to be individuals: that is, they want respect for the fact that they have particular needs that are different from those of others who might work in a similar sector or industry. I think that is a trend that is increasing and it is a result of a generation that has become a lot more focused on themselves. Whether that is appropriate in all circumstances and whether that may also be high expectations—yes and no. But I certainly see that as a shift in the younger generation.

Mr Burrell—The nature of the industry itself leads to the capacity for individuals to come and talk to you, as Mr Cameron has just suggested, and also helps them fit in their own personal circumstances and particular needs, whether because of family responsibilities or

whatever else. There is certainly a good opportunity in that sense to make those sorts of arrangements to help people meet their particular circumstances.

CHAIR—Do you think that people saving for travel within that particular age group are prepared to work very hard for a reasonable period of time to save the amount of money to do what they want to do?

Mr Burrell—University students are certainly a very good example of that. They might want to get to the end of their first or second year and work a good Christmas period and save up some money to take six months off for overseas travel.

Senator BARNETT—I have some questions on staff shortages. You commented on the MBA submission. I want to clarify your view on that. Do you think that the bill will have the effect of pushing down salaries or, if there are shortages, will have the effect of increasing real wages?

Mr Burrell—We do not see any inclination whatsoever for it to push down wages, in a nutshell. With the skills shortage that exists, in a trade background sense—if you are talking about the building and construction industry or some of mining areas and even the commercial office administrative areas—there is still a need to find people who have the relevant skills, such as engineering and that sort of thing. There is no indication that the lack of capacity or lack of people with the relevant skills is going to force or drive wages down at all. If anything, the indication is that it is going to go the opposite way.

Senator BARNETT—We had a submission yesterday from Ms Dudley from Job Futures, who was saying that it will actually bring people who are not in the employment race at the moment into employment. So it will help to address some of the skills shortages that we have in Australia. Do you have a similar view to that? Is it the case that the flexibility that has been provided under this bill will allow people, whether they are older or sole parents or have disabilities, to come into the work force for the first time?

Mr Burrell—I would certainly say that, yes.

Mr Cameron—I would not necessarily say that it is purely as a result of changes proposed in this legislation. I think it is part of many factors that we need to address. The RCSA recently held a symposium to address work force participation issues. There is no doubt that a whole raft of factors are coming to bear on that, of which this is one. We certainly are very interested in ensuring that we have the capacity to retain the knowledge of mature age workers to ensure that that does not leave the industry sectors. Possibly, through more flexible arrangements, they will be able to re-enter at their desire. The same occurs with returning mothers and otherwise. At the same time, possibly, with greater flexibility in hours and the like, we may well find that host organisations are more willing to reopen work force positions that they would otherwise be somewhat reluctant to reopen. They may be more willing to do so with greater flexibility. It is a bit of a moot point, but I suggest that these are a raft of factors that will facilitate and certainly not hinder participation from our perspective.

Senator BARNETT—What impact will Work Choices and the greater flexibility have on jobs? Will it provide more jobs? Will there be more jobs, particularly part-time jobs, on offer as a result? Is that likely to happen? Do you have a different view on that? What do you think will be the impact on the creation of jobs?

Mr Cameron—I certainly think there will be an increase in the number of jobs. As to whether those jobs are full-time jobs, part-time jobs, casual jobs, on-hired jobs or whatever they might be, it certainly will increase the number of jobs available. I do not believe that the RCSA wishes to remove entitlements to certain things such as overtime penalties and other things. In many sectors, host organisations are given little choice if they want to continue to compete at an international level.

Having sat in on most of the presentations, I guess we come back to this issue of productivity and whether it will increase productivity. In essence, it is hard to determine what the true factors are with productivity. We feel that it will provide a capacity to engage individuals when they are required and not necessarily to have to pay individuals when they are not actually being fully utilised. In many circumstances that is probably going to result in, let us say, more short-term engagements or specific project engagements. It will possibly result in productivity and therefore possibly jobs as a total number.

Senator BARNETT—When you say 'productivity', do you mean increased productivity?

Mr Cameron—Of course we would like to think that it is going to be increased productivity. From the RMIT report that we had, the utilisation of these types of services are indicating that they are certainly facilitating productivity.

Senator MARSHALL—You talked about people in your industry moving from job to job where they will often pick up the terms and conditions that are set by that employer, for obvious reasons. How do you structure an AWA to cope with that?

Mr Cameron—An Australian workplace agreement could be entered into whereby you would simply seek to possibly mirror the principal terms and conditions of the host organisation. It will not be proposed in all circumstances of course to—

Senator MARSHALL—So you just have an AWA for the length of that employment?

Mr Cameron—It is likely that that will occur. There is a range of different options, however.

Senator MARSHALL—You also mentioned that this form of employment is attractive to some because they will actually get paid for the work that they do rather than the enormous amounts of unpaid overtime that is going on in many industries.

Mr Cameron—I see that as being the response of many people who might work in salaried positions where they are doing enormous amounts of additional time.

Senator MARSHALL—That is a bit sad, isn't it?

Mr Cameron—It is a reality, I think. It is an interesting scenario—because, in many respects when we talk about choice, is it any different from talking about salaried staff? You are simply provided with an offer—for example, it might be $60,000 and it is a take it or leave it proposition. Increasingly, employers are looking to get more out of employees and, while it might be very sad, it is something that we need to address, to be constructive.

Senator MARSHALL—You talk about some of the flexibility you already provide. Is there flexibility in the current system?

Mr Cameron—There is more flexibility in some sectors than others. Certainly there are highly regulated sectors as well and, of course, we are aware of a whole raft of other factors. It is a bit hard to generalise.

Mr Burrell—I think that one of the difficulties is that many of us operate in an environment not just under the federal system but also under the relevant state—

Senator MARSHALL—I am going to come to that. You also said that you do not see this sort of labour driving wages down in different industries; in fact you see the reverse. In my experience, I just look at contract cleaners and I see the enormous driving down of cleaning wages and conditions as a result of contract cleaning.

Mr Cameron—I think it is important to articulate the difference between contract cleaning and what we are talking about. This is part of the problem with our industry. When I talk about on-hire we do not like the term 'labour hire' because it lumps in contractors as well as employees. Although there are examples of on-hired independent contractors, we predominantly represent providers of on-hired employee services. On-hired contracting services amongst RCSA membership is generally, let us say, at an advanced trade level and above. It is somewhat unlikely to be at that unskilled or semiskilled level.

Senator MARSHALL—Have you both read the Work Choices bill?

Mr Burrell—Yes, I had the fun of reading it.

Senator MARSHALL—And you understand it?

Mr Burrell—Perhaps being a lawyer, I am able to understand it.

Senator MARSHALL—That would be a significant disadvantage, I suspect!

Mr Burrell—I have had the pleasure of reading it.

Senator MARSHALL—I know some of my colleagues have had that problem. I am sure it is only a typo—and I do not want to sound rude or anything but I want to ask a question about this subject—but you talk about your concern that the maximum term of 12 months for the union or employer greenfields agreement is too restrictive. My understanding is that there is no union greenfields agreement at all. There is simply an employer greenfields agreement.

Mr Burrell—There is capacity in the bill for there to be two forms of greenfield agreements. There is one that is made by the employer—

Senator MARSHALL—With the union.

Mr Burrell—with the union, and there is one that is made just by the employer.

Senator MARSHALL—Yes, and you would have heard the esoteric debate we had with the Master Builders Association in which they did not want to agree that an employer greenfields agreement is an agreement that employers make with themselves. But that is your understanding, isn't it? I know you are an ex-employee of the MBA and you may want to go back one day, but you are protected by privilege here.

Mr Burrell—A greenfield agreement in that sense is almost like an agreement in waiting. It is a set of terms and conditions that are developed for when a project is going to be undertaken.

Senator MARSHALL—It is developed by the employer, though, and those conditions are binding on everyone, unless there is an agreement to get out of that.

Mr Cameron—I can certainly see the point you are trying to make.

Senator MARSHALL—It is not a point. I am trying to determine your view. I can read it quite clearly: it is an agreement that the employer determines and which becomes legally binding unless—as was rightly pointed out—both parties agree to do something different. That is the case, isn't it?

Mr Cameron—I would ask the same question from a recruitment perspective. With a common law employment contract you might have a range of conditions—

Senator MARSHALL—I want to talk about the greenfield agreements, because you specifically say that the time is too short—

Mr Cameron—It is a similar arrangement, where you give an individual an opportunity to either accept or reject the offer.

Senator MARSHALL—That is right. You do not get the opportunity in this.

Mr Cameron—In this circumstance, there is a greenfield agreement and in the first instance the terms would be predominantly established by an employer, and then the candidate would be given the opportunity of either accepting or rejecting them.

Senator MARSHALL—There is no provision for that.

Mr Cameron—The simple fact of somebody not wanting to work under—

Senator MARSHALL—Of course—it is a 'take it or leave it' thing. It is like AWAs under Work Choices. There is no coercion to make it a condition—

Mr Burrell—It is like an award now. There is no difference with an award. You go onto an employment arrangement now, and award terms are offered to you. The provisions are there, and you can either accept them or not. There are really no differences between the two.

Senator MARSHALL—I did not really want to go into this.

CHAIR—I am sure you did not, Senator Marshall.

Senator MARSHALL—Only because of the time. But if you give me time, let us have this debate. There are enormous differences. One difference is the nature of how the awards are struck and made and the balance of negotiating power between the parties that enter into them. If you are trying to tell me that there is no difference between an individual employee—let us say a contract cleaner—negotiating with a multinational company and a union collectively bargaining, with the employees covered by that union having the power to strike, and an independent body determining the terms and conditions of awards, I say you are in fairyland. I understand the cheap political shots, because we get lots of them. Let us not try to dress it up—

Senator JOHNSTON—Have you ever asked why?

Senator MARSHALL—and say that it is not. Why would an organisation such as yours need employer greenfield agreements?

Mr Cameron—That is a very good question. It is inappropriate to focus on this too much because in all my experiences they have never been entered into other than possibly in circumstances where there are on-hired employees working within a construction environment.

Senator MARSHALL—But you would not set the terms and conditions in those circumstances.

Mr Cameron—Exactly.

Senator MARSHALL—So is it something that someone has asked you to promote?

Mr Cameron—It was raised by one of the committee members that in circumstances where you have, let us say, a contract with a host organisation, quite often in on-hired employee services the commercial contract for the provision of such services extends over a period of perhaps up to three years. The concern is that over a 12-month period you may well be locked into wage rates or rates for each hour of an on-hired employee's placement. Obviously, with a 12-month restriction you cannot predict what those rates will be beyond that 12 months.

Senator MARSHALL—And under a greenfield agreement, you can. You talked strongly about supporting a national system. Are you familiar with Professor Andrew Stewart's submission to the committee? He says:

> It will not be a national regime, because of the employers omitted from its coverage. The government has repeatedly claimed that the expanded federal system would cover at least 85% of the workforce. But it has never revealed the figures on which that estimate is based. By contrast the Queensland Government has published data that suggests total coverage of 75% at best, and less than 60% in States such as Queensland, South Australia and Western Australia ... They will still be subject to important State and Territory laws in areas such as workers compensation, occupational health and safety and discrimination. Indeed there is a great potential for confusion and disputes as unions and workers seek to find new ways of using those laws to regain ground lost through the changes to the federal legislation.

Is that the unitary system that you had in mind?

Mr Cameron—It would be fair to say that if not 100 per cent then very close to 100 per cent of RCSA members would be incorporated. As a result, unless we end up in a circumstance where we have government seeking to provide on-hired employee services or, for example, there was an increase in unincorporated providers of these services, it is not something that is of particular—

Senator MARSHALL—You would not hire labour into non-incorporated businesses then?

Mr Cameron—We would provide on-hired employee services into government organisations. In fact, I can give you some statistics on the high level of usage.

Senator MARSHALL—No. You said earlier—and this comes back to my first question—that if you actually put people into areas on the same terms and conditions as those workers for obvious reasons they may not always be incorporated and may be under different awards.

Mr Cameron—If they were, though, that would not necessarily affect, for example, our business. Being an incorporated company, we will be covered by the Work Choices

legislation. The people we are providing are our employees, so really the status of the client, as to whether they are covered the federal system, will not necessarily impact upon us. I have not really thought about what would be the relationship between a client who was not covered by the national system and our employees and the interaction between those two. I had not thought about the point that you have just raised, to be quite honest.

Senator MURRAY—You have had quite a serious discussion so far, but I want to take you to one of the main reform proposals in the bill and see what you think of it. It is towards the end of the bill and it reads as follows:

The sub-subparagraphs of each subparagraph of each paragraph of each section or subsection, or of each subparagraph of each paragraph of each definition, of the main Act are relettered so that they bear upper-case letters in alphabetical order in parentheses starting with"(A)".

Have you read that and fully understood it? Will it make a difference in your life?

Mr Burrell—What section are you referring to there?

Mr Cameron—What I will say is one category of service of RCSA members is employment consulting services and that may very well satisfy their requirements. But to that extent I think we would accept that there may be areas of the bill that we would prefer to be a bit simpler. Whether that is achieved through this process or by ongoing discussion, we would like to think so. Certainly it would be a bit rich of us to say on the one hand that we want to have a unitary system to ensure greater simplicity in compliance and then on the other hand to argue the point that no, we are quite happy with a clause or a proposed section like that.

Senator MURRAY—You know you are allowed in these circumstances to give a comic answer to a comic question. You do not have to be serious in your response. The only serious area I do want to ask you about is the area just picked up by Senator Marshall. You are practical people with a practical business and there are going to be these circumstances where people will not know whether they have shifted from state based systems to the new federal system. We were given figures by John Hart—a number of witnesses and I have spoken about it. He gave us the exact figure that in the restaurant and catering industry—that is a very large industry—29 per cent of employees would remain under the state systems. Practically, how will you find out whether somebody is under the new system or not? Will you have to go for legal advice, will you just take a punt and hope for the best or will you be using the government to advise you? What will you do?

Mr Burrell—It would not be much different from what it is now. When a client comes to you and says we would like to talk to you about the provision of on-hired labour or whatever, for example, you need to sit down with the client and say: 'Tell us who you are. Are you a proprietary limited company? Have you already been roped into any current federal awards? Are you covered by any federal agreements? If not, what are the other industries that you work in? What state are you in? What is their relevant state award?'

Senator MURRAY—Let me stop you. The situation would not be as it is now. An unincorporated association which conducts trading activities, even in only part of its entity life—I will not use the term 'corporate life'—could, but may not, fall under the new provisions. That is a problem which has been raised. For instance, some not-for-profit organisations—churches, charities—are very large users of labour. But, apparently, it is also a

problem for a number of what are called normal commercial enterprises. So I do not think it is quite the same as it was before.

Mr Burrell—I appreciate the point that you are making. As Cameron pointed out, we certainly would have liked the system to have been clearer. We hope that, maybe in the future, there will be some other changes that might make the unitary system a lot clearer regarding who it is going to apply to. It will certainly involve a lot of discussions with the clients to whom we are providing services to ascertain the nature of their business, so we can determine whether or not they fall under the federal system. That may mean that either the industry itself or particular providers will have to develop template questions and answers to try to determine whether somebody falls under the federal system. We would anticipate and hope that government services—

Senator MURRAY—Let me put a suggestion to you. Do you think the committee should make a recommendation to the government that they open up a special hotline for this area—where there may be confusion—so that people like you have an immediate body you can speak to and, if there are problems, they can then react with legislative solutions? I have heard of no mechanism which is available, which does not cost you a lot of money, to find out about it. Would that be helpful?

Mr Burrell—We certainly would have hoped that the government, in the implementation phase of the new act, would have given the relevant resources to a body—whether it be the Department of Employment and Workplace Relations or the Office of Industrial Relations, or whoever—to provide that exact service that you are talking about. It will not just be businesses like ours and our industry that will be asking; it will be a broad range of small to medium enterprises who will also be asking that same question. I certainly think there would be benefit in that sort of arrangement being available.

Senator MURRAY—It would need to be professionally staffed. It is no good taking call operators who do not understand law and the general environment, is it?

Mr Burrell—A similar situation exists now in the Office of the Employment Advocate. It fields a number of questions from employers to ascertain, for example, whether they have the relevant status to be able to enter into AWAs under the current system. Obviously, it is different in Victoria where there are referral of powers provisions, which open it up but, in other states, you have to fall within the relevant criteria to enable entry into AWAs. At times, small and medium enterprises are not quite sure whether they fall within that scope. I would have thought, given the nature of the legislation coming in, that the resources at this point would need to be improved to facilitate that.

CHAIR—Thank you for your attendance. I know you waited patiently throughout most of the afternoon, but we did find your submission and remarks very interesting.

Committee adjourned at 5.14 pm