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SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE

Reference: Building and construction industry inquiry

TUESDAY, 6 APRIL 2004

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SENATE
EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE

Tuesday, 6 April 2004

Members: Senator George Campbell (*Chair*), Senator Tierney (*Deputy Chair*), Senators Barnett, Carr, Crossin and Stott Despoja

Substitute members: Senator Collins and Senator Cook for Senator Carr and Senator Crossin, Senator Johnston for Senator Barnett, and Senator Murray for Senator Stott Despoja

Participating members: Senators Abetz, Bartlett, Boswell, Brown, Buckland, Chapman, Cherry, Jacinta Collins, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Humphries, Hutchins, Johnston, Knowles, Lees, Lightfoot, Ludwig, Mackay, Marshall, Mason, McGauran, McLucas, Moore, Murphy, Nettle, O'Brien, Payne, Santoro, Sherry, Stephens, Watson and Webber

Senators in attendance: Senator George Campbell, Senator Collins, Senator Cook, Senator Murray, Senator Tierney

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the provisions of the draft Building and Construction Industry Improvement Bill 2003 or any version thereof that the Government might subsequently introduce into Parliament;
- (b) whether the draft bill or any subsequent bill is consistent with Australia's obligations under international labour law;
- (c) the findings and recommendations of the Cole Royal Commission into the Building and Construction Commission, including an assessment of:
 - (i) whether the building and construction industry is so unique that it requires industry-specific legislation, processes and procedures,
 - (ii) the Government's response to the Cole Royal Commission, particularly with respect to occupational health and safety and the National Industry Building Code of Practice, and
 - (iii) other relevant and related matters, including measures that would address:
 - (A) the use of sham corporate structures to avoid legal obligations,
 - (B) underpayment or non-payment of workers' entitlements, including superannuation,
 - (C) security of payments issues, particularly for subcontractors,
 - (D) evasion or underpayment of workers' compensation premiums, and
 - (E) the evasion or underpayment of taxation;
- (d) regulatory needs in workplace relations in Australia, including:
 - (i) whether there is regulatory failure and is therefore a need for a new regulatory body, either industry-specific such as the proposed Australian Building and Construction Commissioner, or covering all industries,
 - (ii) whether the function of any regulator could be added as a division to the Australian Industrial Relations Commission (AIRC), or should be a separate independent regulator along the lines of the Australian Competition and Consumer Commission or Australian Securities and Investments Commission, and
 - (iii) whether workplace relations regulatory needs should be supported by additional AIRC conciliation and arbitration powers;
- (e) the potential consequences and influence of political donations from registered organisations, corporations and individuals within the building and construction industry;
- (f) mechanisms to address any organised or individual lawlessness or criminality in the building and construction industry, including any need for public disclosure (whistleblowing) provisions and enhanced criminal conspiracy provisions; and
- (g) employment-related matters in the building and construction industry, including:
 - (i) skill shortages and the adequacy of support for the apprenticeship system,

- (ii) the relevance, if any, of differences between wages and conditions of awards, individual agreements and enterprise bargaining agreements and their impact on labour practices, bargaining and labour relations in the industry, and
- (iii) the nature of independent contractors and labour hire in the industry and whether the definition of employee in workplace relations legislation is adequate to address reported illegal labour practices.

WITNESSES

CRIDLAND, Mr Vernon Grant, Owner, Vern Cridland Masonry and Concrete36

GALLAGHER, Mr Joseph Hugh, Organiser, Construction, Forestry, Mining and Energy Union.....1

**NOONAN, Mr David, Assistant National Secretary, Construction, Forestry, Mining and Energy
Union.....1**

**PATON, Mr Alan Charles Stuart, Organiser, Electrical Division, Communications, Electrical
and Plumbing Union.....20**

Committee met at 9.02 a.m.**GALLAGHER, Mr Joseph Hugh, Organiser, Construction, Forestry, Mining and Energy Union****NOONAN, Mr David, Assistant National Secretary, Construction, Forestry, Mining and Energy Union**

CHAIR—I declare open this public hearing of the Senate Employment, Workplace Relations and Education References Committee. On 16 October 2003 the Senate referred to the committee an inquiry into the provisions of the exposure draft of the Building and Construction Industry Improvement Bill 2003 or any subsequent version of the bill which might be introduced into parliament. The committee will consider, amongst other matters, whether the bill is consistent with international labour law; whether the circumstances of the building and construction industry are such that specific legislation is required for its regulation; the government's response to the Cole royal commission recommendations on occupational health and safety in the industry and the national industry building code of practice; the regulatory needs of workplace relations in the industry; the potential consequence and influence of political donations; mechanisms to address organised or individual lawlessness or criminality; and a number of employment related matters. The committee has invited submissions from all stakeholders in the industry and is conducting hearings in all states.

Before we commence taking evidence today, I wish to state for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to the evidence they give. Parliamentary privilege refers to special rights and immunities attached to the parliament or its members and those who appear before its committees. Parliament must discharge its functions without obstruction and people must be able to give evidence to its committees without fear of prosecution. Any act by any person which operates to the disadvantage of a witness resulting from evidence given before the Senate or any of its committees is treated as a breach of privilege. I welcome observers to this public hearing and I welcome our first witnesses. The committee prefers to take evidence in public. However, it will consider any request for all or part of the evidence to be given in camera. The committee has before it submission No. 88. Are there any changes or additions you wish to make to your submission?

Mr Gallagher—Yes, there are. There are minor changes. Paragraph 11, halfway down, says:

He has only received superannuation since the union took up his case.

The next sentence should begin 'His then employer' and the sentence after that should begin 'He, his former employer'. Then in paragraph 18, after the quote beginning 'The building and construction industry', the next sentence should read, 'He also estimated the number of workers in the NT to be 30 per cent "independent contractors".' I think you would have a blank space there.

CHAIR—Those changes are noted. I now invite you to make a brief opening statement before we begin questions.

Mr Gallagher—Firstly, I would like to thank you for the opportunity to appear here this morning to give my views on the construction industry in the Northern Territory. I understand the committee visited a construction site at Wickham Point yesterday—the Bechtel construction site. I would suggest that that site is not typical of the normal situation in the Territory. What is typical, as outlined in my written submission, is the abuse of the ABN tax system which I believe prevails on most, if not all, Northern Territory construction sites. The consequence of this is that a typical construction worker in the Northern Territory misses out on most community standards that are accepted in the workplace, such as workers compensation, paid annual leave, public holidays, sick leave and superannuation. There are very few apprentices trained in the Northern Territory in the construction industry.

We have become aware in the last couple of weeks that many apprentices are being forced to sign AWAs as a condition of commencing an apprenticeship. Currently I am representing a 17-year-old worker, a first-year apprentice, who was required to sign an AWA which disqualified him from all paid leave and allowed his employer to deduct his workers compensation costs and his superannuation contributions from his hourly rate. When his mother indicated to the company that she would like a meeting with the company with the union present, the kid's employment was terminated. The rate that this apprentice had signed for was \$8 per hour. His wage slips indicate that he was receiving \$7 per hour. Since the CFMEU set up shop in the Territory approximately 10 years ago there have been visible improvements in safety standards. We are now recognised as an integral part of the construction industry in the Territory.

Senator COOK—Thank you for your submission, Mr Gallagher. What you are describing is the situation in which the award, if I read your submission correctly, covering this industry is flouted and disregarded by employers. Is that a fair understanding of what applies here?

Mr Gallagher—The award in most parts would be disregarded. It is used by some people who have people working on a flat hourly rate, and the only time they pay any attention to the award is when, if they decide to make a superannuation contribution, they base the contribution on what the award says.

Senator COOK—Do you have EBAs for any projects here?

Mr Gallagher—We have EBAs with some national companies, such as Barclay Mowlem and Multiplex. We had one with John Holland, which expired. We had EBAs with Bechtel. We had EBAs with Barclay Mowlem on the ADrail project and with John Holland on the ADrail project.

Mr Noonan—Thiess, I think.

Mr Gallagher—Thiess civil, at the East Arm Wharf. I think that is probably it.

Senator COOK—Are we to understand that workers on those EBAs were not paid an all-in hourly rate but were paid as workers? They were not required to have an ABN, and all the other complaints that you make were not applicable in those circumstances. Is that right?

Mr Gallagher—All the people who are covered by those EBAs receive workers compensation, superannuation, holidays, public holidays, rostered days off—what is accepted, if you like, as the norm in the industry generally in Australia.

Senator COOK—Are there any jobs in what I might classify as commercial construction, rather than housing and housing development construction, in the Territory that do not have EBAs?

Mr Gallagher—Yes. There are many jobs—most jobs do not.

Senator COOK—It is to those jobs that this all-in hourly rate that you have referred to in your submission applies?

Mr Gallagher—Yes, that is correct.

Senator COOK—Workers do not receive long service leave?

Mr Gallagher—That is correct.

Senator COOK—Do they receive superannuation payments?

Mr Gallagher—Very few of them. To our knowledge the only people who receive superannuation are those people who are covered by some sort of EBA.

Senator COOK—I am focusing now on the non-EBA sites. On those sites do they receive superannuation?

Mr Gallagher—No.

Senator COOK—Do they receive the other payments that might come with an EBA—things like holiday pay?

Mr Gallagher—No.

Senator COOK—Sick leave?

Mr Gallagher—No.

Senator COOK—Do they have provision for inclement weather?

Mr Gallagher—No.

Senator COOK—All those conditions of work that typify an EBA are disregarded on those other sites?

Mr Gallagher—Yes. They do not prevail in the Northern Territory.

Mr Noonan—I will just comment on inclement weather. I think it is well known that the Northern Territory has a four-month wet season. As I understand it, the fact that people are not entitled to or do not receive inclement weather pay causes some hardship for people who are

unable to work due to the extreme climatic conditions during the wet season, because they effectively do not get income.

CHAIR—In those periods they would substantially be receiving no income at all.

Mr Gallagher—It is not uncommon for steel fixers and scaffolders working in the Northern Territory to struggle to get 20 hours paid work per week. They are only paid for their presence on the job. I will just go back a wee bit to Senator Cook's question. When we talk about EBA sites I should point out that, although the contractors on those sites pay their guys a flat hourly rate, some of them do pay superannuation based on nine per cent of the worker's gross income. However, talking generally, some people find that, when they cost superannuation and other on-costs into their prices, they are not competitive in the market, so they do not win contracts. It is a frustrating thing for them because they have tried to do what they think is the right thing and by doing the right thing they have disadvantaged themselves from winning work.

Senator COOK—What I think you are describing, Mr Gallagher, is a race to the bottom. Can I go for the sake of completeness to workers compensation. This is an industry of considerable concern from an occupational health and safety point of view. My line of questioning is now on where most of the workers are employed—that is, on non-EBA sites. Are they covered by workers compensation by their employers?

Mr Gallagher—Under the Work Health Act in the Northern Territory, those people who are working with an ABN—which most are—cannot be covered by workers compensation. The best they can do is get some sort of income protection insurance. However, the old catch-22 cuts in: when they do not have enough income, they cannot afford to get income protection. I would submit that there are a lot of people working out there at the moment who do not have any type of income protection insurance, because they cannot afford it.

Senator COOK—If these people become injured, what happens?

Mr Gallagher—I guess they fall back on the taxpayer; they get into the social security system and get what benefits they can. If there is a serious injury, you will find that a lot of people might put their hat around to try and help them get a couple of quid. There is no fall-back for them.

Senator COOK—Can I be clear on what you are saying to me? This is what I understand you are saying to me: this sector of the building industry in the Territory, by not providing workers compensation cover to its employees, outsources the cost of workers compensation cover to the Australian taxpayer, to be picked up by the welfare and social security safety net. Is that what you are saying?

Mr Gallagher—Yes.

Senator COOK—In the debate on industrial relations in Australia, we hear a lot these days about the word 'choice'; we hear that workers should be free to choose. What is the choice workers have in these employment circumstances?

Mr Gallagher—They have a choice: if you do not work under the terms offered, you do not have a job. That is the choice.

Senator COOK—But the theory is that a worker can freely negotiate with their employer to settle circumstances that suit both of them. That is not the circumstance you are describing.

Mr Gallagher—That may be the theory. One of the things that happens up here is that, if they give people that choice and people decide that they want to work under a system where they can get a wage and the things that go with it—like superannuation and workers compensation—the employer in the Northern Territory faces the risk of being identified as an employer and therefore open to paying things like payroll tax, workers compensation and all the rest of it. They cannot afford that. Some say they would like to do it, but it would be uncompetitive. I have not heard it before but your description is quite apt; it seems to be a race to the bottom.

Senator COOK—Correct any of this if it is wrong or if I have misunderstood it. You are saying that, in the classic circumstance where a worker presents for employment and is engaged, there is no meaningful negotiation between that worker and the employer about wages and conditions. This is what I am seeking confirmation on. They are told: ‘These are the terms; take it or leave it. It’s my way or the highway.’ Is that what you are saying?

Mr Gallagher—Yes.

Senator COOK—You have described in your submission the situation that occurs despite these people having an ABN. In paragraph 6 you say:

In these cases the employer exercises direction and control over the performance of work and is responsible for rectification of defects.

Whether a person is a worker or a contractor is not a matter of what they say they are; it is a matter of the circumstances in which they carry out the job. My understanding of the law—I am not a lawyer, so I might be wrong, although a lot of lawyers I have met seem to have contradictory understandings of the law—is that you are a worker if you are subject to direction and control as to how you carry out your work and if the rectification of work is the obligation of the person employing you. You are a contractor if you are given the job and you decide how to do it yourself, and if the responsibility for mistakes is yours and you have to rectify them. What you are describing here is a worker working on an ABN—a schizophrenic situation. These people—whatever they might choose to call themselves or whatever their employers choose to call them—are in fact workers, aren’t they?

Mr Gallagher—Yes, they are workers.

Senator COOK—And they are entitled to workers compensation cover.

Mr Gallagher—I believe they are entitled to workers compensation cover.

Senator COOK—And they are entitled to long service leave protection, given the follow-the-job nature of this industry.

Mr Gallagher—I believe so.

Senator COOK—And they are entitled to at least the minimum award rate if they cannot negotiate an EBA for their site.

Mr Gallagher—I think that is correct.

Mr Noonan—Can I clarify one thing? The Northern Territory does not have a portable long service leave scheme for construction workers—which makes it, I think, the only state or territory in Australia in that circumstance. So whilst they would have an entitlement to long service leave under the statutory regulation that covers all workers in the state, the introduction of portable long service leave, which has occurred in other jurisdictions due to the itinerant nature of construction work, has not happened in the Northern Territory at this time.

Senator COOK—That puts the Territory at a considerable disadvantage to the rest of Australia in attracting workers, doesn't it?

Mr Gallagher—The statement you have just made is a fairly big topical debate at the moment. Over the past year or so, obviously with the onset of the Bechtel project, there has been a big demand for workers. It is estimated that probably 70 per cent of the work force there will come from interstate. There is also a bit of a dilemma in the Territory over maintaining a work force and stopping the drift away from the Territory. We have had people coming up here from the various southern states with the intention of making a go of it in the Territory but lasting no longer than four or five weeks because the rates are lower and they do not have the conditions—the superannuation, the annual leave and the other things I have described. It is a harsh place to work. So there is no real temptation for them to stay here.

Senator COOK—Is there a problem of high labour turnover in the industry here?

Mr Gallagher—A huge problem. There is a lot of itinerancy. One of the things we are concerned about for the future is that unless the local industry can get its act together, as quite a few locals have an opportunity to sample the benefits of working under a good EBA at the Bechtel site they may be tempted to move elsewhere because they can probably see a more secure future for themselves and their families.

CHAIR—I do not want to lose this point but I read the court case that you attached to your submission, and this issue of access to workers compensation seems to me to be a strange one. It appears that in that case—and correct me if I am wrong, because I only had a cursory look at it—the appeal bench was saying that the magistrate was wrong because the actual employer-employee relationship did not determine whether or not the person got access to Work Health; it was determined on the basis of how the employer collected the tax. If he taxed them as an ABN holder or on the PPS then that was enough to rule them out from access to WorkCover, despite the fact that a lot of the employees did not even know the form in which they were being taxed—they had no say in it. In fact the case that you set out there clearly states that the employee was a worker but despite that, because of the way in which the act is written and because his tax was being collected on the basis of PPS, he was excluded from access to WorkCover. That is a pretty strange type of relationship. I am not aware whether that operates anywhere else in the Commonwealth.

Mr Gallagher—I am not a lawyer but, prior to GST, under the Work Health Act for workers compensation purposes a worker was described as a person who pays PAYE tax. That is basically what it said. When the GST came along, there was a quick change to the definition of a worker. It basically said that those who are working with an ABN and those who have applied in writing to have an ABN are not classed as workers. I do not know about anywhere else—I can only speak for the Territory nowadays; I have been up here for seven years—but here it really is a strange one because to all intents and purposes they are told when to start, when to finish and when to go to the toilet. They are under the control of the employer.

CHAIR—Does that mean that the tax office is not paying any attention to the way in which tax is being collected or not examining some of these companies to ensure that they are taxing people in a legitimate sense?

Mr Gallagher—A few years ago we encouraged the tax office to run seminars. The CFMEU contacted the tax office in Adelaide, particularly with regard to superannuation. They came up here and ran some seminars. They were not well attended, but for a few people who had never received superannuation, for instance, the tax office pointed out: ‘For the purposes of superannuation you’re actually employing these people, so you should pay them superannuation.’ However, about four or five years ago, all of a sudden they stopped coming up. They were told they did not have the budget to attend the Territory anymore, which was a big disappointment because there were some people here who had worked in the industry for 20 or 25 years and they picked up some superannuation—they got some superannuation backdated.

As for the various laws that apply in the Territory, it seems that whichever law you look at you will see four or five different definitions of a worker. Interestingly enough, there was a case here in recent months where, for payroll tax purposes, workers were defined as employees by the Treasury. The companies which employed these workers paid substantial amounts of payroll tax for them going back a few years, but we have heard nothing from the ATO that would have defined those people as workers.

Senator MURRAY—In the last four years, the alienation of the personal services income test has come into play, and the very test that Senator Cook was outlining to you—whereby a worker is established versus a contractor and one of the tests is rectification—is under that legislation. If a person self-assesses as a contractor and cannot meet that test they are taxed as an employee, regardless of whether they have an ABN. So it is not as if the tax office does not take account of it. There are many people in your industry who have had their tax status overturned and been made to pay tax as an employee.

Mr Gallagher—I will be quite frank—it is a big concern for us that that might happen up here. You have a situation with a project that finished last year where a contractor had 40 carpenters working for him and they were all under the ABN. If there is any rectification work to be done, who does it? Which one of the 40 carpenters made a mistake, if a mistake was made? The big fear for us with the ATO is that, if they do come up tomorrow and decide to classify all these ABN people as workers, what happens to the tax that they have paid or have not paid for the past five or six years? It puts them in a terrible position.

Senator MURRAY—I do not know how many of the other senators on this committee were involved in that inquiry into that legislation, but the CFMEU were strong witnesses in support of

the alienation of personal service income legislation. Essentially they believed that, by catching people as workers under the tax act, you would then prevent the kind of rorting that you are describing whereby the employers are avoiding their obligations. But what you are telling us is that there is no connect between the tax status established either through the Territory payroll tax legislation or through the alienation of personal service income legislation and the employer's obligations. Both of those would say, 'This person is a worker; therefore, as they're a worker, they're entitled to WorkCover and super and all the bits and pieces.' You are saying to me that there is no connect between those two. That is correct, isn't it?

Mr Gallagher—There is no connect. In defence of the employers, we understand the difficulties faced up here. If employers of labour want to tender for jobs based on the fact that they would like to pay their workers superannuation, give them long service leave, cover them for workers compensation et cetera, they actually make themselves uncompetitive. It is not just in that area; there are other things—without taking away from the tax issue—such as safety. If employers or subcontractors insist to a builder that they want particular safety aspects improved on the job, the response quite often is, 'If you don't like it, we'll get another contractor,' despite the fact that contractor A has started the job.

Senator MURRAY—We parliamentarians, legislators, have to find solutions to these sorts of things. The basic problem has already been identified—namely, if the employer does not pick it up and the employee is not properly looked after, the taxpayer ends up picking it up. It does not matter what government you are; that is the way it is. If industrial instruments, a collective agreement with a union or non-union EBAs, were to require that the agreement stipulate that payments were made to superannuation funds and identify those in the agreement, whoever you were as a contractor—even in the Bechtel example where they have an overall site agreement and what they call mirror agreements with all the little subcontracts, if each of those mirror agreements said, 'Here's the rate and this portion is going to that super fund,' which would be one established by the contractor or whoever, 'and it is going to this WorkCover employee'—if, in other words, it had to be identified in the agreement and could not just be generalised, would that make any difference? Would that mean that all employers would be on the same basis and would therefore have to cough up?

Mr Noonan—Those employers who were bound by such an agreement would be obliged to. Indeed a lot, if not the majority, of agreements that the CFMEU has with employers specify amounts of superannuation and funds to which the contribution should be made. But of course that leaves a large number of people who are not covered by EBAs, as Mr Gallagher has already said, around other sites.

Senator MURRAY—But in that case they are covered by an award, and the award could do the same thing, or they are covered by individual agreements. Those are either common law agreements—you know what they are—or industrial instruments like an AWA.

Mr Noonan—I think that is worth looking at. But the difficulty is that—and this is not unique to the Northern Territory; it occurs in a lot of places in Australia—what we have is an absolute mischaracterisation of people's relationship with the employer.

Senator MURRAY—I understand that, but let us stay where we are. The law at present simply says with respect to the superannuation guarantee legislation and with respect to

workplace relations legislation that superannuation must be paid, and it determines the amount—nine per cent. It does not say that in any agreement, whether common law or otherwise, you must specify to whom the superannuation is being paid. And, if a person is a genuine contractor, the contractor must specify that they are paying it themselves. If that specification were put in the law, do you think it would make any difference at all, or would people still get around it?

Mr Noonan—It would probably be a positive step, but it would depend on the form of words that were used in the legislation. Certainly we would be prepared to have a look at that issue and put some further views to the committee on notice, if it wishes.

Senator COOK—Are you aware that the other week the minister put down a report from the interim building industry task force? They have a good sense of humour in Canberra, so it is entitled *Upholding the law: a year on*.

Mr Gallagher—The only thing I heard about the task force up here—unless I have missed it in one of the pages of the *Northern Territory News*—was that it be made permanent rather than interim.

Senator COOK—All I am asking is whether you are aware of the report.

Mr Noonan—I am aware of the report.

Senator COOK—I will direct this to you, Mr Gallagher. From your experience of the industry, is there what might be called criminality in the industry in the Northern Territory?

Mr Gallagher—It depends what you want to call a crime. I think it is criminal that last week a funeral happened here for a 31-year-old worker. He died in natural circumstances, but if only he had been working as he had been previously—he worked on an organised job and he was getting superannuation. When he passed away, he had no cover. Therefore his family—and there were six kids involved here—had no redress to any of the benefits that a worker in the industry would get if they were covered by superannuation. I think that is pretty criminal.

Senator COOK—I can see why you might regard that as morally criminal, but I am talking about the statutes of the criminal law. Is there organised crime or active criminality in the industry in the Northern Territory?

Mr Gallagher—There is nothing in the Northern Territory that I have seen that would jump up and say it was criminal.

Senator COOK—Would it be fair to characterise the industry in the Northern Territory as typified by lawlessness?

Mr Gallagher—Again, I think if people do not pay superannuation, that is lawlessness. But it is not a battlefield out there, if you like. They stopped threatening me years ago. I have been threatened, but I have not been threatened in the last few years.

Senator COOK—Finally, have you had experience working on dwelling construction and commercial construction?

Mr Gallagher—Personally, as a union official or as a bricklayer?

Senator COOK—In either capacity.

Mr Gallagher—Yes.

Senator COOK—Let us say I wanted to make a comparison of the costs of both sectors—housing versus commercial construction. Would it be fair, in your judgment, if I costed the expense for laying a concrete slab for a house and then projected those costs into the commercial construction sector and if, on finding it was cheaper, said: ‘There would be a possible saving to the national economy if the commercial construction sector worked in the same way as the housing sector’? That is a somewhat contorted question, I admit.

Mr Gallagher—I do not think you can make a fair comparison between the commercial sector and the housing sector. Typically, a house is a single-level, stand-alone unit, but in the construction-commercial sector you have a multistorey building, you have scaffolding and you should have safety standards. I do not think you could actually make a dollar for dollar comparison. Yesterday you had a look at a construction site at Wickham Point, and I would submit that the standards there could not be achieved on housing costs.

Senator COOK—That concludes my questions. Would you be surprised to know that the government justifies this legislation by doing exactly what I have just described and by coming up with a figure and saying, ‘If this legislation were carried, then that would be a saving to the national economy’?

Mr Gallagher—Does that mean to say I can go out to Palmerston, grab a handful of housing subbies, take them out to Wickham Point and say, ‘Build that LNG plant’?

Senator COOK—That is the implication of what they are saying.

Mr Gallagher—If that is the implication it is absolutely ludicrous.

Senator COOK—Thank you. I have no further questions.

Senator TIERNEY—Mr Gallagher, what is the union coverage nationally of the CFMEU?

Mr Gallagher—Nationally the CFMEU are involved in obviously construction, forestry, mining and energy.

Senator TIERNEY—What about just the coverage of the building and construction industry? Let us bring it down to that.

Mr Noonan—As a national official, if you would permit, I could answer that question.

Senator TIERNEY—Go ahead.

Mr Noonan—Our coverage includes plant operators; crane drivers; builders’ labourers; steel fixers; scaffolders; riggers; building tradespeople, including carpenters, bricklayers, plasterers,

wall and floor tilers, roof tilers, painters and decorators, glaziers and a range of other trade and non-trade areas.

Senator TIERNEY—What percentage of the workers are actually members of the union in the trades that you have just covered?

Mr Noonan—It is difficult to estimate, but it would be fair to say that it would be much higher in commercial construction than in housing construction.

Senator TIERNEY—They do publish these figures. I am just asking what the figure is for your union.

Mr Noonan—I will take it on notice.

Senator TIERNEY—You do not know?

Mr Noonan—I do not know the exact percentage of union membership off the top of my head.

Senator TIERNEY—Would it be more than 50 per cent of the workers in building and construction nation wide?

Mr Noonan—I would be guessing at this stage, but I am happy to take the question on notice and attempt to supply an accurate figure.

Senator TIERNEY—How would the percentage here compare with the rest of the country?

Mr Noonan—Perhaps I can assist in this way: our membership nationally is around the 100,000 mark.

Senator TIERNEY—Out of how many people working in the industry?

Mr Noonan—I think it depends on the definition of the industry. I am not sure what the latest ABS statistics are. We can certainly compare those statistics and try and give you a breakdown of the percentage. It is fair to say that we are the biggest collective voice for construction workers.

Senator TIERNEY—Surely if you have that 100,000 figure, you must know that it is 100,000 out of 200,000 or 300,000 people who are working in the industry.

Mr Noonan—I think those figures are available, and I would prefer to take it on notice.

Senator TIERNEY—But you do not know what they are, and you are a national organiser.

Mr Noonan—National Assistant Secretary.

Senator TIERNEY—And you do not know the figures for your own industry.

Mr Noonan—I am going to answer your question with precision.

Senator TIERNEY—I am trying to get a comparison with the Northern Territory. Perhaps Mr Gallagher could help us. In terms of your coverage of the trades that were mentioned, what percentage of the industry are you covering up here?

Mr Gallagher—I have not done the calculations. As you know, the CFMEU have only been up here for the past few years. We have gone from zero to just over 400 members in the Northern Territory branch. We have got a few people carrying tickets from different states—from New South Wales, Queensland, Western Australia et cetera. At this point in time, if you did a head count of CFMEU ticker carriers, you would probably count about 500 in the Territory.

Senator TIERNEY—Out of how many in the industry?

Mr Gallagher—It would be a guess but there would be 3,000 construction workers in the industry in the Northern Territory.

Senator TIERNEY—So that is about one-sixth, or 17 per cent coverage.

Mr Gallagher—We are only beginning.

Senator TIERNEY—I am frustrated we cannot get the national figure but I assume that that is way under the national figure.

Mr Noonan—I think that would be lower than the national figure.

Senator TIERNEY—It would be considerably lower than the national figure, wouldn't it?

Mr Noonan—I think that would be right. That would be a fair assumption.

Senator TIERNEY—When the Cole royal commission looked at this industry in the Northern Territory, it said:

The building and construction industry in the Northern Territory is, generally speaking, conducted in a manner which conforms to the requirements of the Workplace Relations Act ... and the general law. In particular, the principle of freedom of association is respected, bargaining between employers and employees adheres to the norms established by the Act ...

It found that the Northern Territory was fairly different from the rest of the country. From what you have said this morning and our limited experience at Bechtel yesterday, there does not seem to be any thuggery or the sorts of things that the Cole royal commission found in the south. I just wonder if there is any correlation here between the fact that in this area there is not very much coverage from your union and the fact that there do not seem to be any problems.

Mr Gallagher—One of the advantages that you guys have got, compared with Cole, is that you have time to visit a construction site in the Northern Territory. Commissioner Cole obviously did not do that. 'Thuggery' is your word.

Senator TIERNEY—It was also a Cole royal commission word in terms of the building and construction industry in many areas of Australia.

Mr Gallagher—I am a wee bit cagey with this word because my definition of ‘thuggery’ might be different from Cole’s definition. I would think it is criminal the way some construction workers here are not given any choices.

Senator TIERNEY—That is not the definition of ‘criminal’. ‘Criminal’ means breaking the law. It has a very clear meaning.

Mr Gallagher—I think these people are breaking the law. If the appropriate authorities were aware of it—

Senator TIERNEY—You are drifting from the question.

Mr Gallagher—I am not drifting from the question.

Senator TIERNEY—The question related to what was found by the Cole royal commission in the states but not found up here. There is relatively high coverage and involvement of your union on site in the south but not much up here. As a social researcher it seems to me that there is a bit of a correlation there.

Mr Noonan—It might be that that is why in some of the southern states people are able to obtain basic community standards such as holiday pay, sick leave, superannuation and some of the things which hopefully most Australian workers are commonly entitled to.

Senator TIERNEY—What we saw here yesterday is pretty common. Admittedly, we only went to one site.

Mr Noonan—You went to one site.

Senator TIERNEY—I want to get back to discussing that site a bit later.

Mr Noonan—You would be well rewarded to have a look around some of the other sites. Mr Cole spent two days in the Territory, from Friday to Monday.

Senator TIERNEY—He seemed to find that broadly across the Territory they adhere to the norms established by the Workplace Relations Act.

Mr Noonan—Clearly the evidence we are putting here today is that there are massive breaches of superannuation and workers compensation and there is false pseudo subcontracting going on in the Northern Territory. For reasons best known to himself, Commissioner Cole did not see fit to turn his attention to those issues.

Senator TIERNEY—Let us come to that now. Mr Gallagher, the only example you mentioned was one person who was being paid \$8 an hour. Admittedly that is pretty disgraceful, but that is the only example you mentioned. How widespread is that? As you give the example, you seem to be indicating that this may be typical. But how typical is it really?

Mr Gallagher—What I said was that in recent weeks that particular case has come to our attention. But, sure, we have done quite a few. We are involved at the moment in doing some wage claims for people who have worked for years without being paid any penalty rates. That is ongoing. As we grow in the Territory, more and more people are coming to us for advice. They have queries about wages and all the rest of it. Not all the people who come to us are union members either, but most of them end up becoming part of our organisation.

Senator TIERNEY—I have been coming to the Territory for about 12 years. What I see as I come each time, and particularly now, is an incredibly prosperous place, quite frankly. It does not look as though people are being very poorly treated in terms of employment or wages, given the money they are spending and the way in which the city has developed, from what I have experienced. Obviously you are going to find anecdotal evidence like someone being paid \$8— but is this really widespread? I am also going from the findings of the royal commission on this.

Mr Noonan—Perhaps we could assist in this way so that it is not purely anecdotal. We have a copy of the AWA which that individual had to sign to gain employment. It has been provided to us and I understand that the individual and his parents have been made aware that we would seek to table it. We seek to table that agreement so that it goes beyond the anecdotal.

Senator TIERNEY—How many examples of that sort of thing have you got?

Senator JACINTA COLLINS—While we are on this agreement, can you clarify whether it has been through the Office of the Employment Advocate?

Mr Gallagher—There is a letter of approval on the front of it.

Senator JACINTA COLLINS—So it is completely through the process.

Senator TIERNEY—How many examples of these have you got?

Mr Gallagher—I could be smart and say, ‘How many do you want?’ but with me at the moment I have that. That only just came into our possession.

Senator TIERNEY—That is what I mean. You can quote these things, but we are trying to see how typical it is of what is happening.

CHAIR—Is it agreed that the document be tabled? There being no objection, it is so ordered.

Senator TIERNEY—The issue of occupational health and safety has come up this morning. The broad finding of the royal commission was that, apart from isolated examples of unlawful practice:

... the safety records ... in the Northern Territory compare favourably with those in other parts of Australia.

I think there were only two examples which Cole brought up and investigated.

Mr Noonan—They were the only two breaches of safety that Commissioner Cole found anywhere in Australia in over a year of hearings.

Senator TIERNEY—But you seem to be indicating that there are problems with occupational health and safety.

Mr Gallagher—I have not got a big book of documentation with me, but we have seen scaffold collapses in this town as recently as 12 months ago. The problem with documentation and statistics, by the way, is that there are statistics for workers compensation but for workers who are not covered by workers compensation those statistics are not necessarily recorded. Again it is anecdotal, but we know of people who went as far as going towards prosecuting employers. One kid fell off a roof. He was dropped at the door of the hospital and told, ‘When you go in there, tell them you were working on your house.’ Another kid—in fact the kid whose AWA we have tabled—was involved in an accident three weeks ago when he was carrying some glass louvres. He tripped and fell and lacerated himself, and he was taken up to the hospital. He has still not received any compensation. He never received any sick pay—nothing. If you think that is a good way for an industry to run, good on you mate.

Senator TIERNEY—What I do not think is a good thing is quoting one or two examples and trying to imply that it is the case right across the industry, because that has not been found in the royal commission.

Mr Gallagher—With respect, Senator Tierney, we were allocated an hour to try to put our point across.

Senator TIERNEY—The Bechtel site that we visited yesterday has a site agreement that sets out a project base for the awards system. I wonder what reaction the union would have to some of the rates. The hourly rate for riggers is \$24.82; doggers, \$24.82; and scaffolders, \$24.82. Surely there is some variation in skill in these trades. I was wondering what the union movements feels, because you do establish different award rates and you do establish relativities between those, and these are common rates. Does the union movement have a view on that?

Mr Gallagher—Absolutely. If you read the agreement you will find that that is a base rate. And if you read the next page of the agreement, you will find that there are certain allowances that reward for those people who have gained trade certificates and for advanced regulars; they are all paid differently. So what you are reading is a base rate for group A. It is a bit higher than that now, by the way, because we have had two increases.

Senator TIERNEY—But my question relates to the base rate, apart from different skill levels above that. You have three different types of jobs with exactly the same base rate. So I was wondering what the union view on that is, given that there are usually different rates for different jobs because of the different skill levels.

Mr Noonan—Typically, on a construction site such as those, many of those people might be carrying out some rigging work, some scaffolding work and some dogging work in the course of their day’s employment. They are particular skills that might be carried out interchangeably and it is common that there is a fairly close nexus of those classifications in these sorts of agreements. As Mr Gallagher said, the certification goes beyond the basic up to intermediate and advanced. There are relativities established, as you have correctly indicated, for those sorts of extra skills, as well as—and I am speaking commonly in these sorts of agreements—rates for tradespeople in excess of those.

Mr Gallagher—Senator, you asked what the unions think of it. The unions were part of the negotiations, so obviously we would be supporting it.

Senator TIERNEY—I realise that. The broad question is on relativities.

Mr Gallagher—You can see that the relativities are picked up in the differentials if you read further through the agreement.

CHAIR—This is your final question, Senator Tierney.

Senator TIERNEY—I have two other areas I want to cover briefly, and I have not had anywhere near the time the other side has had.

CHAIR—You have had your 16 minutes, which is what you were allocated.

Senator TIERNEY—That is right, and the Labor Party has had a lot more time.

CHAIR—You have had your percentage time on the committee.

Senator TIERNEY—The Labor Party has had a lot more time.

CHAIR—I am not going to have an argument with you, Senator Tierney. This is your last question.

Senator TIERNEY—On a point of order, Chair—

CHAIR—Senator Murray has been sitting patiently waiting for his turn, and you have three minutes left.

Senator TIERNEY—I have another two questions I want to ask.

CHAIR—You have been going since 20 minutes to 10.

Senator TIERNEY—There have been a lot of questions about claims of ABN scams involving not only federal taxes but also state taxes such as payroll tax. I think you claimed earlier that there was action by the union on this matter, but in terms of payroll tax, wasn't there action by the Territory government? Hasn't the Territory government brought in a moratorium in this area? My point is: isn't it the government that is acting on this?

Mr Gallagher—In about 2000, the CLP government started hitting up on some of the companies. Under that administration a couple of companies hit up for payroll tax, and the Treasury in the last few months have continued down that road. I think I commented on it in 2000.

Senator TIERNEY—Finally, with the ABN scam claims—and that is through your submission but, again, it is all anecdotal—are we talking about one per cent of the industry, 10 per cent of the industry, 100 per cent of the industry, and do you have any hard evidence that

establishes that? I do not doubt that the practice occurs but I doubt necessarily how widespread the problem is.

Mr Gallagher—If you have the time, we should down pens and walk through—you can pick any buildings you want to. Let's go and have a look and then go and ask the people. You pick the site.

Senator TIERNEY—But you do not have any—

Mr Gallagher—I was there.

Senator TIERNEY—That is just anecdotal—turning up to a spot. I am asking: have you actually done a more systematic study of this? Can you say it is a certain percentage, for example, or is it based on pub talk?

Mr Gallagher—It is a bit presumptuous to assume I go to pubs.

Senator TIERNEY—Well, assuming you are working.

Mr Gallagher—It is well known in the industry and, as I say, it is there to see. Let's go for a walk.

Senator TIERNEY—But it is all anecdotal.

Mr Gallagher—It is not anecdotal at all. Let's go down the road and talk. I will take—

Senator TIERNEY—I do not think it happened on the site we were at yesterday.

Mr Gallagher—No, because the union helped negotiate that good agreement.

Senator TIERNEY—You are saying, 'There's a site.' I have picked a site but it does not happen there.

Mr Gallagher—I am letting you pick a site.

Senator TIERNEY—I did—

Mr Gallagher—You pick any site.

Senator TIERNEY—and I visited it yesterday, and it was not happening there.

Mr Gallagher—Let's go to a site down the road. You are a bit overdressed because all you need are thongs and a singlet.

Senator TIERNEY—All right; I will put some thongs on.

Senator MURRAY—Returning to the AWA, I notice Mr Casey is an apprentice. What is his age?

Mr Gallagher—He is now 17. He was 16 when we saw him.

Senator MURRAY—Is the \$8 a youth rate wage under the award?

Mr Gallagher—Under the award, the rate for a glazier, which is what he was, is approximately \$6.40 for a first-year apprentice—40 per cent of a tradesman's rate.

Mr Noonan—The difference is that under this agreement all of his award entitlements are subsumed into an hourly rate. The fact that the hourly rate is slightly higher is presumably supposed to compensate for the loss of holiday pay, sick pay and other entitlements—and, it appears in this case also, superannuation.

Senator MURRAY—Just remind me what the minimum wage is in this country.

Mr Noonan—Can I take that on notice?

Senator MURRAY—I will tell you why I asked the question: 40 hours by eight bucks is \$320. I am absolutely certain that is below the minimum wage—

Mr Noonan—That is below the minimum wage, yes.

Senator MURRAY—and that is the point I make. The point I also want to pursue is that the legislation requires the global no disadvantage test to be met, and you are saying that in theory it has because \$6.20 plus allowances comes to an amount of \$8. Is that right?

Mr Noonan—We, of course, are not involved in the calculation of the no disadvantage test. We would be seriously concerned as to how the Employment Advocate could reach the view that \$1.60 an hour extra meets the no disadvantage test. Assuming a casual gets a 25 per cent loading for the loss of some of these entitlements—

Senator MURRAY—Mr Noonan, because we are short of time I will ask the chair if he would not mind asking the secretary to put some questions to the Employment Advocate and establish, since this is now a tabled, public document, exactly how this is seen to have met the global no disadvantage test. That way we will get right to the nub of it. I have a final, quick question: who from the employee side has been involved in the negotiation of the Northern Territory building and construction industry award? You cannot just have an award established by the commission; there has to be evidence from unions and employers.

Mr Gallagher—The Northern Territory building and construction award was an established award when the CFMEU came to Darwin.

Senator MURRAY—But who was party to it originally?

Mr Gallagher—The Miscellaneous Workers Union was party to it originally.

Senator MURRAY—If they are responsible for \$6.20 an hour, they did not do a very good job.

Mr Gallagher—I emphasise that that is an apprentice rate.

Senator MURRAY—Even so, it is very low.

Mr Noonan—It is very low and we would like to see it higher. However, it is an apprentice rate.

Senator JACINTA COLLINS—Is that 50 per cent?

Mr Gallagher—Forty per cent.

Mr Noonan—Forty per cent for the first year.

Senator MURRAY—Senator Tierney has already made the point that this is way lower than we would expect to see.

Mr Gallagher—Can I also just add that, as far as the Northern Territory award is concerned, again it is interesting to note that when the cat is away the mice will play. Since the CFMEU arrived in the Territory, we have had additions to the award like superannuation and redundancy. However, some aspects of the award still fall below what would be acceptable and what is in national awards. We have just started out on a path, and we are going to keep going and keep playing.

CHAIR—Thank you, Mr Gallagher and Mr Noonan.

[10.06 am.]

PATON, Mr Alan Charles Stuart, Organiser, Electrical Division, Communications, Electrical and Plumbing Union

CHAIR—Welcome, Mr Paton. The committee prefers all evidence to be given in public but will consider any request for all or parts of evidence to be given in camera. The committee has before it submission No. 112. Are there any changes or additions you wish to make to the submission?

Mr Paton—No, Senator.

CHAIR—I now invite you to make a brief opening statement.

Mr Paton—I have been an organiser with the union since February 2000. Before that, I worked as an electrician in construction and mining industries and also in the housing sector. I have worked on a myriad of jobs around Australia over a 20-year period. From that, I have become a union organiser and have tried to get safety improved in the Territory. At this point in time, the safety aspect in the Territory with the electrical licensing and the electrical act is not being followed at all on building sites. Most of my job at the moment is going onto building sites and making sure that the electrical safety is up to standard and then asking WorkSafe and, before that, the Work Health Authority if they would visit those sites, because we do not have any jurisdiction. I am trying to look after our workers. We have had a couple of electrocutions up here in the last couple of years, and there have also been a number of instances where apprentices have been working on live gear and had electric shocks.

Senator MURRAY—I was interested in your remarks about project agreements, Mr Paton. I have wide experience in many countries and in many different kinds of enterprises, including manufacturing. When I visit a site like the Bechtel site I find it very hard to visualise it as anything other than an enterprise. It is one huge enterprise building something to a particular effect. I have had great difficulty always, particularly given the consistent evidence over a number of years of the Australian Industry Group, who have supported project agreements, in seeing that there is actually a problem with pattern bargaining. You can see circumstances where there are individual enterprises and pattern bargaining could be occurring, and that might go against the purpose of the law, but it seems to me that an EBA on a major site like that is entirely consistent with the original intention of the law and you get certainty arising from it. That is your fundamental point, isn't it—or have I misread your evidence?

Mr Paton—No, that is pretty much correct.

Senator MURRAY—Just recount for us your experience, both personal and as a union official. Is it mostly on large construction sites?

Mr Paton—I did my apprenticeship with a major electrical company, and we did a lot of commercial industrial work. When I finished my time, I travelled around the country and worked in the housing sector quite a lot. My father was a builder so I have worked in the housing

industry as well. I then moved up into the mines—underground mining, above ground mining, setting up mines out in the Kimberleys for diamond companies. I have been lucky: I have very broad experience in the electrical industry.

Senator MURRAY—Think of a housing estate where a single-project builder is building 20 or 30 houses—they have bought the land, they are building on spec and so on. Do you consider that a project and think that it would be appropriate for one agreement to cover that sort of enterprise?

Mr Paton—To cover the 20 houses, if you had one contractor on-site and one electrical contractor on-site who had done all the electrical work, you would probably have to have another one doing communications and another one doing the plumbing, because they are different trades altogether. If they did have an agreement for a site of that size then it would be a lot more transparent. The blokes working on each house would know how much money they were all making. What we have found in places like that—where you have 20 houses being built, because the contractors are so small one would probably get a section of four houses, another guy would get a section of two houses or three houses and it would be broken down—is that, once the guys find out that on each of these houses they are being paid differently for doing the same work, all of a sudden productivity goes down. With the guys who are on the higher rates, obviously the company can pick and choose the tradesmen—because not all tradesmen work at the same level, the same pace et cetera.

Senator MURRAY—Some people say that that is an advantage—that they should be able to pick and choose. My attitude is that it is one enterprise. Somebody building 20 houses is no different, to me, to somebody building an apartment block with 20 apartments in it, or to a site like the Bechtel site. To me it is one enterprise. I cannot understand why pattern bargaining is attached as a slur to those sorts of situations. As an employer—and I stress that I have been in enterprises where we have employed many thousands of people—you do not want excessive variation, because it creates tensions and aggravations in your work force.

Mr Paton—Totally.

Senator MURRAY—The evidence you are recounting to me is that you get greater stability if you have a common EBA in those circumstances.

Mr Paton—It creates a level playing field to start with, even for the employers. They know how to quote and what to quote on the job. We have a range from award rates to EBA rates here, and now with the Bechtel site as well there is another rate of pay.

Senator MURRAY—In the Northern Territory there are a range of industrial agreements being used by employers, aren't there? There are common law individual agreements, there are AWAs, there are union and non-union collective agreements, and there are awards. So you have the choice and the flexibility available.

Mr Paton—That is true.

Senator MURRAY—Do you as a union subscribe to the view that the choice should be more limited—in other words, that AWAs should be got rid of and only common law individual agreements should remain?

Mr Paton—From the AWAs that I have seen, I am on the same lines as CFMEU. With the ones that I have in my office I cannot see how they meet the no disadvantage test. Some of these guys are on \$20 an hour flat with no entitlements at all—no sick pay, no holiday pay and no 7½ per cent loading if they do get holidays. Some get holidays; some do not get holidays. Some get sick pay; some do not get sick pay. It is just all over the shop.

Senator MURRAY—I will repeat to you a question that Senator Tierney put to the earlier witnesses. Committees like this need factual evidence. If you were able to supply the committee with copies of any of those AWAs it would be up to the committee and the chair to decide whether they would be kept confidential—in other words, we would white out the name of the worker—or whether they would be public documents; it is not up to me to say. But if you were able to provide a set of AWAs with a stat dec that they are the genuine article, that would assist us in assessing your point.

Mr Paton—I can do that.

Senator TIERNEY—Mr Paton, I assume from what you have said that you have moved around the country a bit. How long have you been in the Territory?

Mr Paton—Twelve years now.

Senator TIERNEY—How would you compare the industrial relations climate up here to that of the rest of Australia? What is different about the Territory?

Mr Paton—When I first arrived in the Territory, I got thrown straight off the first half-a-dozen sites that I walked onto because I was a union member and I complained about the rubbish lying around on the ground and about people not wearing hard hats, safety boots or other safety apparel. People were walking around in thongs. There were nails upturned on the ground. People were getting hurt. There were lots of hand injuries and foot injuries. I learnt that I had to keep my mouth shut or I would not have a job. I loved the Territory and I wanted to stay here—I loved the weather and the people—so I had to keep my mouth shut for a long time to stay in work.

Senator MURRAY—It is much better in Western Australia!

Senator TIERNEY—Mr Paton, comments like that seem to be at odds with what the royal commission found. I will quote two sections on two of the points you have just raised. The first reads:

The building and construction industry in the Northern Territory is, generally speaking, conducted in a manner which conforms to the requirements of the Workplace Relations Act 1996 (C'wth) and the general law.

In particular, it says that freedom of association in respect of bargaining adheres to norms established by the Workplace Relations Act. The second section says with respect to safety that, apart from isolated examples of unlawful practice:

... the safety records in the industry in the Northern Territory compare favourably with those in other parts of Australia.

I find what you are saying to be at odds with what the royal commission found.

Mr Paton—You would not have to walk 10 feet through the gate of a site on Mitchell Street right now to see breaches of that act. It is amazing.

Senator TIERNEY—One thing that frustrates us in hearings like this, because we sort of descend into an area and then leave again, is that we get a lot of anecdotal evidence. We do not know if that occurs on one per cent of sites, 10 per cent of sites or 100 per cent of sites. No-one ever gives us the scale. We do not doubt those things happen, but what we have difficulty establishing is the scale of the problem. Then we see that the evidence from the royal commission is at odds with what you are saying.

Mr Paton—The safest site in the Darwin area would be the Bechtel site. I do not know of one other site in Darwin, not one, that would meet all the OH&S requirements. We would deem to be unsafe—and the act would deem to be unsafe—probably 98 per cent of the sites.

Senator TIERNEY—You do not have occupational health and safety inspectors in the Northern Territory?

Mr Paton—Yes, we do.

Senator TIERNEY—Do they just turn a blind eye to all of this?

Mr Paton—There are only two of them to cover the whole of the Territory. They find it very hard to get to the smaller sites, especially those in the housing sector. They do site visits on the major sites, and when they do the major sites pick up their act for a couple of days. Then the Work Health officer leaves and it goes back to the norm, where guys walk around in thongs, operate cranes in thongs and operate cutters in thongs, singlets, no hard hats et cetera.

Senator TIERNEY—Apart from Bechtel, the construction industry is really not all that large in the Northern Territory. Most of the construction is focused here in Darwin because that is where most of the action is occurring, and you can cross Darwin in a fairly short period of time. I would have thought two inspectors would be able to cover the area, given that there would not be many sites in comparison to somewhere like Sydney.

Mr Paton—Of course not. But there is a lot of building going on in Darwin at the moment. There is a lot of smaller work. There are a lot of houses being built at the moment. On Mitchell Street itself there are three jobs at the moment. We now have the most construction going on in the Territory that there has been for a long time. Previous to these jobs and the Mitchell Street job, there was very little work in Darwin in the construction industry; you are right.

Senator TIERNEY—I am curious about what you are saying. The Northern Territory was not the same as other parts of Australia when the royal commission visited. The commission singled out the Northern Territory as an area where things were working fairly well compared to other areas of the country. I am curious about what you said about safety in your own trade. I would have thought that, of all work, it is important that electrical work be inspected to check that it is right. Compared to any other sorts of trades, electricians should be a little more spot on because of the implications if they are not. I am curious about why this is such a problem here.

Mr Paton—The main reason is that the CLP government here deregulated the electrical industry. They got rid of all the electrical inspectors and so now it is a system of self-inspection. Since the self-inspections came in, we have been having more and more accidents on sites. Just before Christmas, a fourth-year apprentice got an electric shock from a switchboard because he was told to go and work on it while it was live. The main reason given was: ‘You’re in the Territory now. Grow up. We work on this stuff live.’ That does not happen anywhere else in the country, and I know that for a fact. Everywhere I have worked—Western Australia, Victoria and Queensland—you do not work on live switchboards. But up here they think that is the norm. So it has an education process for us when we go to these places.

Senator TIERNEY—How long has that been going on for? What is the time span of this new arrangement?

Mr Paton—I was working at the Power and Water Corporation when it came in. It would have been roughly 1997 when they got rid of all the inspectors.

Senator TIERNEY—So it has been going on for seven years. What sorts of accident rates have occurred?

Mr Paton—It is the highest in the country per capita. We had an electrical death two weeks ago where a guy was servicing a pump. There is still a report to come out about that. WorkSafe are still working on that report; they are waiting for the department’s electrical safety unit to finish their report first. But, knowing a few electricians in town because I have been here for quite some time, it seems to me that the report will say that an unlicensed electrician went out to check a digital current device, which is an earth link circuit-breaker, tested it and said it was faulty. The next week a person went to change the pump and the switching device did not work. He is now dead.

Senator TIERNEY—So has your union approached the Territory government to revise this system?

Mr Paton—There is a review going on of the electrical safety act at the moment, and we are very involved in that. The electrical reform act is also being reviewed, and we are very involved in that too.

Senator TIERNEY—So is it your view that this is likely to be changed and fixed?

Mr Paton—We would hope so.

Senator COOK—Senator Murray raised a question earlier about AWAs which we might receive into evidence, and I might say that I agree with him about that. On a scale of one to 10, how would you rate safety in your industry in the Northern Territory? What sort of mark would you assign it?

Mr Paton—Because the mining sectors are under a different act and the work is a lot heavier and involves a greater current—for example, there are 11,000 volts running around these places compared to 240 volts and 415 volts outside—their safety records are a lot better than those of the housing sector.

Senator COOK—So what would you give the mining guys?

Mr Paton—Nine out of 10.

Senator COOK—What would you give the commercial construction guys?

Mr Paton—About four out of 10. I would give the housing sector about one out of 10.

Senator COOK—So they would get even one mark! What would you give for safety at Bechtel's project?

Mr Paton—I would say 10 out of 10. They actually set it down that before you touch anything you have to have a risk assessment done. This is the first time in the Territory that risk assessments are being done so, again, it has been a training process for the guys. Before they go and change anything or grab their ladders to fit off lights et cetera, they do a risk assessment. That means they actually assess what could happen and write that down on a card to make sure they do not go through any processes likely to lead to an accident. So they would be 10 out of 10 for safety.

Senator COOK—In your submission you say that they are the world's largest engineering construction company. They told us yesterday that—quite apart from their concern to ensure a safe working environment and to avoid the trauma that accidents bring to families, workers and so forth—the investment in occupational health and safety they made up-front, which was quite considerable, paid them on their bottom line in a positive way.

Mr Paton—Totally.

Senator COOK—I am editorialising—and stop me if you want, Chair—but it always amazes me that the biggest and most successful construction company holds that view and lesser, not as successful construction companies hold an alternative view. But that is another matter for the report.

Out at Bechtel, the agreement that we have been given a copy of would be illegal if the bills we are inquiring into were carried. I put a question to them yesterday: how would they then organise their AWAs? Obviously, they would comply with the law. As I understood their answer, their preference would be to organise it by negotiating a standard AWA with everyone. Their justification, or reason, for that view was that it provides predictability and stability—the word

‘stability’ kept coming through in the discussion we had—on site, and everyone knows where they stand. What is the union view of a site agreement such as that?

Mr Paton—Our view, again, is that it creates transparency. It is a level playing field. It stops the in-house fighting on site that happens if you have one subcontractor paying X dollars and another subcontractor paying Y dollars. It stops that uncertainty. When the guys sit down for a smoko, side by side, and they are doing the same work on the same level of pay it makes the job run a lot more smoothly. There are not as many hiccups in the job. The guys do not scream to the boss, ‘I want to put my rates up now because these guys are getting X amount,’ and the boss does not say, ‘Oh, I can’t do that because I quoted on this price, because that is the price I was going to pay you.’ So all of a sudden that employer is losing money as well, because he has to pay his employees to keep them, or they will jump the fence.

Senator COOK—They will jump the fence?

Mr Paton—To the company that pays more money.

Senator COOK—That means they will leave the site.

Mr Paton—If the subcontractor is on site, and there are three or four different subcontractors working under the agreement and all at different pay rates, they will be after work with the company that pays the most.

Senator COOK—Were you associated with the negotiation of the agreement out there at Bechtel?

Mr Paton—Only partly. It was negotiated by my secretary, Dick Williams, in Queensland, which is where most of the negotiations took place.

Senator COOK—Would you characterise the negotiations of that agreement, and the final settlement as a bargain which ‘bought industrial peace’? Would that be a way of characterising it and, if not, how would you characterise the nature and approach of those negotiations? The Bechtel agreement pays a little more than other sites around here. The proposition is advanced that it is a premium for ‘buying industrial peace’. In your association with the negotiations, was that the tenor of the negotiations? Was that how people approached it—you have to pay this to buy industrial peace and, if you don’t pay, you won’t get it? Was that the way it was approached, or was it approached in some other way?

Mr Paton—As I understand the way it was approached, they all sat at a round table and negotiated it and came to an agreement, and that is where the EBAs come from. I am not aware that anyone has said it is going to stop any industrial action or bring any peace.

Senator COOK—I might say for those who hold that view, the idea that if you do not strike a reasonable rate but you want to purchase industrial rest seems to me to be contradictory for a major project, or any project at any time. But what you are saying to me is that the nature of the negotiations was to reach an agreement—it wasn’t, ‘You have to pay a premium, Bechtel, otherwise you are going to have a lot of industrial grief on your plate.’

Mr Paton—No.

Senator COOK—In paragraph 15 of your submission you say:

Cole is wrong about project agreements ...

Then you enter into a long discussion over several paragraphs, which I found quite interesting, about why he is wrong and what the virtue of project agreements might be. Can you enlarge on some of those points for us?

Mr Paton—Just bear with me—

Senator COOK—Perhaps I can help—in point 16 of your submission you say:

In fact Cole noted that the majority of submissions argued in favour of project agreements. Despite this, Cole still found against the making of such agreements. This is a clear example of Cole bias.

Mr Paton—That is the way I felt when I read the report, because with a project of this size and this nature they have obligations to Japan in 2006 to get gas over there. By having an agreement such as this in place the guys on the site—and you can talk to any one of the electrical guys out there—are the happiest they have ever been while working in the Territory. They have also learnt about occupational health and safety. As you said earlier, Bechtel pride themselves on occupational health and safety. They also realise that the No. 1 people on the job are the people at the coalface doing the work and they want to look after them. By doing that, their productivity is way above what it is anywhere else in the Territory. They are a lot happier as a work force. They actually get out bed in the morning and want to go to work instead of going to see their boss who normally has a big stick hanging over them, saying, ‘You will work for this amount of money and, if you don’t like it, there’s the gate.’

Senator COOK—That is conducive to a higher productivity arrangement in your view?

Mr Paton—Yes.

Senator COOK—You have worked in various other places—in the mining industry, I suppose—where wages and working conditions are settled in that form as well. What was your experience and the approach of the work force there compared to the commercial construction industry we have been talking about?

Mr Paton—In the mining sector, I worked for Nabalco for some time out at Gove. We worked under an EBA which was negotiated by the guys on the floor—the site reps. Because they were a party to the agreement and had actually negotiated the agreement, they worked with it. I worked also at an underground mine at McArthur River where you were told what you were going to get paid and what your conditions would be with no negotiation at all. It was, ‘Sign here or get back on the plane and see you later.’

The rates of pay at McArthur River are a lot less than what the boys are on at Nabalco, which is now Alcan. The productivity at MIM—now Xstrata—compared to Alcan is, I find, totally different. The guys at McArthur River are very unhappy. When they knock off work, they go and

have a couple of beers in the wet mess and talk about their bosses and the way they are treated. They are treated like dogs compared with the people at Alcan. When you talk to them in the pub afterwards, they are happy to go to work. They are looked after.

They have a turnaround at McArthur River of between 50 per cent and 70 per cent per year. The guys go down there and work for a period of time to save some money because they are working away. But Alcan probably have a turnaround rate of 10 per cent. They put a lot of money into training as well. After being with a company like that for five years, some of the guys are worth half a million dollars—just in their training and their wages. They get pressured and feel like they are not treated as human beings, so they leave that establishment and go to another one where they feel they will be treated better. They are productivity rated straightaway. They are happy to go to work and their family life is a lot happier as well because they are not coming home and complaining, ‘The boss did this to me today but, if I leave here, it’s going to take me some time to find another job.’

Senator COOK—Are you inviting us to make a comparison between that happier work force and the type of work force in the construction industry in the Northern Territory?

Mr Paton—No, they are separate.

Senator COOK—What is the attitude of workers in the construction industry in the Territory?

Mr Paton—The attitude with most of the guys—the local guys are different because they have been brought up that way—who come from interstate in the influx during the dry season is that they cannot believe the conditions they work under, how they work under them and how they survive. That is why, and it was mentioned earlier, there is a transient work force up here. One of the major reasons why it is transient is that a lot of my boys leave here straightaway when they find out that there is no portability of long service leave. To get long service leave up here you have to work with one company for seven years and be made redundant before you can collect it; otherwise you can collect it after 10 years. As we all know in the construction industry, you are very lucky to work with one person for that amount of time. These guys miss out on all that.

Senator COOK—Are you putting to us—and correct me if this is wrong—that the lack of standard conditions, such as the portability of long service leave for construction workers in the Territory, is a deterrent to trained and skilled construction workers remaining here after they arrive?

Mr Paton—Yes, totally. We have just had an incident out at Bechtel where a guy had eight years of entitlements. He has been here three years and now he has lost all his entitlements.

Senator COOK—That is surely a brake on the Territory’s economic development, isn’t it?

Mr Paton—Totally.

Senator COOK—Comparing the Bechtel type site with the rest of the industry with respect to training, does training occur out at Bechtel’s?

Mr Paton—Yes, it does.

Senator COOK—What about the construction sector?

Mr Paton—No, it does not happen.

Senator COOK—There is no training.

Mr Paton—No.

Senator COOK—You give Bechtel 10 out of 10 on occupational health and safety, the industry here four and the housing industry one. How do you score them on training?

Mr Paton—We have only just got into discussions about training because there is a skill shortage around Australia at the moment. Again it goes back to the apprenticeship rates of pay, et cetera. My first year apprentice is on \$5.40 an hour. You cannot live on that up here. So we have a huge skill shortage. The gas project has a lot of instrumentation on it, and they are going to find it very hard to source instrumentation people. There has been a skill shutdown for instrumentation all around Australia. There are only two schools still open where you can actually do that. We have about six people doing instrumentation in their apprenticeship to get dual trades. We have had a chat with Bechtel and they see down the track that they are going to need a work force that is going to be able to look after this LNG plant as well—the first train. We are in discussions with them at the moment to get the guys on site, the electricians, trained up to be instrumentation people as well. They will finish that job with a dual trade. That is going to be a great thing for this country. The fourth train is being built now over in Western Australia. There is talk of a second train being built here and we do not have the people trained in that area at this time. Bechtel are looking into that. By the time they finish this job we will have a lot more instrument fitters come away from that job or stay there and maintain that plant.

Senator COOK—As a general statement, if the construction industry here in the Territory are not training people then they are bludging on those companies like Bechtel that do train people for the supply of necessary skilled labour to do their work, aren't they?

Mr Paton—Exactly. Alcan is probably another one that does train its people properly. They are very highly sought after when they have finished their time. My guys get phone calls as soon as they have done their time. A lot of apprentices like to move on and see something different from the place they have worked in. It does not take them very long to get on the open market and be snapped up straightaway, because none of that training is being done anywhere in Australia at the moment.

Senator COOK—If there is a shortage of skilled labour then prices go up, don't they?

Mr Paton—That is exactly right.

Senator COOK—Those companies that do not train labour are pushing prices up for consumers, aren't they?

Mr Paton—Totally.

Senator COOK—You said in your earlier oral evidence that when you first came here you went on sites and complained about safety. You were shown the door because that was not acceptable behaviour by a worker. This is of concern to us. If people speaking out enforcing safety standards or requiring the law to be observed are victimised, then that deters the observance of proper standards and the observance of proper industrial regulation. From your own experience, is there on the employers' side a concerted or organised antiunion bias in the Territory that is aimed at preventing people claiming their rights and entitlements and aimed at minimising the observance of occupational health and safety standards? Or is that putting it too high? How would you characterise it?

Mr Paton—The upper tier of electrical contractors in town are multinationals. They look after their work force and pay good rates of pay, and they are not anti-union. But below that level up here it is definitely very anti-union. I have had rocks thrown at the car when I have turned up on sites. I have had windows smashed. And, as I said, when I first arrived up here I got kicked off every site until I learned how to keep my mouth shut so that I could keep some bread and butter on the table.

CHAIR—Would you describe that as standard?

Mr Paton—Definitely.

Senator COOK—Let us conclude on a happy note. Mr Hal Thornbury, who I think is the site manager for the Darwin LNG project for Bechtel, is an international engineer who has worked in several countries. When he described the productivity and efficiency of Australian workers compared to US workers on similar sites he said that Australian workers were better than American workers. Is that any surprise to you?

Mr Paton—Not really. The main reason is that we are trained a lot better in Australia. I feel that we have a better work ethic than they do overseas. I come from a building background as well, with my father et cetera, where you were at work on time each day and did your day's work—a fair day's work for a fair day's pay. That is the way I was brought up. In America they break down the trade so that you do not have a licensed electrician who can come in and do power points, do lighting, fit off switchboards et cetera. They have broken the trade down so much over there that only one person comes in and is allowed to do the lighting, another person comes in and learns how to fit off power points and another one will come in and fit off the switchboard. That breaks down the trade tremendously. They have a lot more accidents over there than we do here. Thank God being an electrician is still a licensed trade; otherwise we would be in the same basket.

Senator COOK—I guess you can summarise it by saying that if there is proper attention to health and safety, as there is at Bechtel, and if there are site agreements whereby everyone knows where they are and that creates stability, as Bechtel say they want, with the proper training the Australian construction worker is more productive—I think this is what you were saying, so correct it if it is wrong—than the American worker.

Mr Paton—Totally, and we are sought around the world. I have some friends who have been sought over in Indonesia. They work on oil platforms over there. I have another friend who is a welder. He is now working in Africa and running a team of people over there. I have friends who

are over in England now running small electrical companies. They first turned up on site and said, 'I can do that, that and that; I can do the whole myriad of electrical jobs,' and they became the foreman straightaway on those sites. We have a good reputation overseas, and it is because of the training in the past. The skills shortage has reared its head now. The unions have been talking about this for nearly 10 years, and now it has come to fruition that we have a skills shortage. People are offering better money overseas and people are leaving to go overseas, much the same as the professionals.

CHAIR—How many apprentice electricians are in training in the Territory at the moment?

Mr Paton—Across the four years?

CHAIR—Yes.

Mr Paton—Probably about 60.

CHAIR—Can you give us a breakdown of where those 60 are being trained? How many does Bechtel have, for example?

Mr Paton—Zero.

CHAIR—But they say they are taking apprentices on.

Mr Paton—They are talking to a group training organisation at the moment.

CHAIR—Where are the other 60 being trained?

Mr Paton—The Power and Water Corporation would probably have 15 or 16. A few years ago they used to put on about 20 apprentices a year; now they are putting on about five a year. Alcan would have about the same number. They are the two major trainers of apprentices in the Territory.

CHAIR—What about electrical contractors in the commercial construction industry—are they training many apprentices?

Mr Paton—No, not many at all. A lot of them cannot give the apprentice the whole myriad of work as well. Power and Water is a perfect example of that. Years ago they did all the installation work and maintenance work as well as construction work. They have outsourced all those areas now; therefore the kids there at the moment are just learning how to change oil in transformers, so they cannot finish their apprenticeship there. What we do with them is go to one of the major electrical companies and see if they can take the kids on for a while to learn how to do power, lighting et cetera. They thought when they outsourced those things to outside contractors that the contractors would then pick up apprentices. That has not happened. That is why we are in the position we are in now with skills shortages.

CHAIR—So you have had a substantial decline in the number of people in training?

Mr Paton—Yes, a very big decline. Again, it is because of the money as well. As I said earlier, in my first year of apprenticeship I was on about \$5 per hour. I have asked a couple of the smaller companies how they pay their rates and they say they get the rates straight off the award. When I ask, ‘Do you pay your tradesmen the same as the award?’ they say, ‘No we can’t pay our tradesmen the same as the award because they would not work for us.’ But the apprentice still gets a percentage of base rate of the award, which is disgusting.

CHAIR—That is another point I was coming to. Of the apprentices you have in training, are they all working under the award?

Mr Paton—They come under the award.

CHAIR—You have no apprentices on AWAs?

Mr Paton—No, because they go through group training, so they work under the award. There are possibly a couple of smaller companies that use AWAs. Because there are so many companies in town and a lot of one-man bands, I do not get to see everybody. I have a feeling that one company especially would have their apprentices on AWAs.

CHAIR—I assume there is a commitment by the employers to provide training to the bulk of apprentices here, or all of them. I assume they provide a range of training over the four years. Have you had apprentices coming out after they have completed their apprenticeship and then having difficulty getting their licence from the licensing board because they have not completed a sufficient scope of work to meet the licensing requirements?

Mr Paton—That is correct. I am on the licensing board as well. We get these people coming through all the time and a lot of them are now getting knocked back because they have not got all the requirements to get a licence. Before I was on the electrical licensing board it made a few changes to the Electricity Reform Act. One of those changes was that the boss could sign a statutory declaration to say that the apprentice had finished their time, had completed all the modules that they needed to complete and had done the on-the-job training. It was only six months down the track when one of those kids, now out of his time, had been licensed but made the simplest mistakes on switchboards. It is lucky that there have not been a lot more deaths in the Territory because of that change.

CHAIR—In the AWA that was tabled by the previous witnesses, it says:

Remuneration under this agreement will be at the all inclusive hourly rate of \$8.00/hr. payable for the ordinary hours of work ...

I will come back to that. It goes on to say:

This amount includes superannuation at the rate set by legislation (currently 9%), a leave loading of 17.5%, an allowance for overtime, sick leave and annual leave and all other allowances.

It covers everything in that ambit. If you compare that with the award rate for an apprentice electrician, presumably he would be substantially better off if all those rates were being paid individually. I might add that the hours of work include four hours compulsory overtime. It is

actually a 42-hour week paid at any ordinary time plus any other overtime, for which there is no payment.

Mr Paton—I would have to sit down and punch a few figures out but I cannot see how any of these AWAs pass any disadvantage test at all. And I do not see how the Employment Advocate can rubber-stamp these things without going through a no-disadvantage test unless they do the figures.

CHAIR—But none of the apprentice electricians would be working under those types of conditions, to your knowledge?

Mr Paton—There are a few companies in town that come under the banner of the TCA and their employees would definitely be on AWAs because they are employed directly by the company and not through a group training company.

CHAIR—And you are not familiar with the content of those AWAs?

Mr Paton—I am familiar with the tradesmen's AWA. It would scare me to look at what the apprentices get paid under those conditions.

Senator JACINTA COLLINS—I would like to go back to the application of these AWAs. For instance, the one that Senator Campbell is referring to incorporates payment for annual leave. I am curious about whether, from your experience, you have any understanding of what happens to kids under these AWAs when they take leave. Don't they take leave? What happens with their leave?

Mr Paton—More than likely they would take leave but they would not get any money for it because then the boss would say, 'You're not getting any holiday pay because it's in your hourly rate and you should have been putting some of that money away to have your holidays.' We all know what kids are like. I still do not put enough money away now to pay all my bills et cetera. It is scary. I would say they would be working straight through.

Senator JACINTA COLLINS—One of the concerns in the past—heavens, it is a long time since I last raised this one—was in respect to sick leave. Employers are cashing out their obligations in relation to sick leave. When someone then becomes sick, rather than being able to draw on their sick leave they are without pay. They then claim social security and ultimately it is basically the Commonwealth that ends up funding the period of sickness rather than the employer who was originally intended to. I would be curious about whether that might also now apply in relation to annual leave. But they are probably all matters that we can take up with the Employment Advocate also. Further to Senator Campbell's question earlier, could you give us a rough guesstimate of how prevalent you think AWAs are?

Mr Paton—How many there are in my industry?

Senator JACINTA COLLINS—Yes.

Mr Paton—I think the most in Australia, per capita, in our industry is in the Territory. They had the Employment Advocate up here for some time before the railway started. He had a

charter to run up and down the track, and that means he visited every place. He actually told places that they would not be allowed to work on the railway unless they had AWAs in place. We have had guys collect their first week's wages having never even seen the AWA before they started on site. They get their first week's wages and they say, 'Where's the rest of it? Is that half a week?' Then they leave. They had a huge turnover of people on that job.

Joe is in the same position as me. We are single operators up here. We cannot be everywhere at once. We look after all the mines and stuff as well. I go out to Groote Eylandt and Tennant Creek et cetera. I do get up and down the track. But by the time I find out about these things they have usually been in place for so much time that the guys have been and gone and have come up here to work. They come to our office to see if there is anyone in town who actually pays a good rate of pay and looks after their work force, because they really want to stay in the Territory. Again, the transient people become transient because of the disillusion when they get here and work under these sorts of conditions.

Senator JACINTA COLLINS—What this agreement shows us, which in part is not new, is the double standard that applies in relation to AWAs. You made the point that the Employment Advocate was advising people that unless they accepted an AWA they would not be able to start. That is where the rhetoric about choice very quickly disappears.

Mr Paton—Totally, yes.

Senator JACINTA COLLINS—As Senator Murray will recall, we debated this back in 1996 and it was accepted that requiring someone to go on an AWA would not be regarded as coercion under the act if it was a new start.

Senator MURRAY—The evidence, if I may say so, is that it is the Employment Advocate who said that. He has not got any power or authority to tell anybody that.

Senator JACINTA COLLINS—No.

Senator MURRAY—It is against the law for him to have done what you say he has done.

Mr Paton—Exactly.

Senator JACINTA COLLINS—But the second interesting element of this one is that, after having a look at the title of the agreement, which says the company's name and the name of the employee and, and going to the remuneration clause, which is a blank space where \$8 is handwritten onto the line, I think it is clear that this is a pattern agreement. It is an AWA pattern agreement.

Mr Paton—And the sorry part about it as well is that, if someone comes into a place and they are choosing between 10 people, they can say, 'Sharpen your pencils and give me the lowest price. That is what the AWA is going to be and the rest of you can go away because you are asking too much money.' You need to get bread and butter on the table. You have a family. They are saying now that the worst thing you can do in the Territory is actually buy a house, because once you have bought a house the boss has got you. You cannot afford to say, 'No, I do not want

to work for these rates of pay.' You have to work for those rates of pay to pay your mortgage and look after the kids. That is a fact of life up here.

CHAIR—Thank you, Mr Paton.

Proceedings suspended from 10.54 a.m. to 11.16 a.m.

CRIDLAND, Mr Vernon Grant, Owner, Vern Cridland Masonry and Concrete

CHAIR—Welcome, Mr Cridland. The committee prefers all evidence to be given in public but it will consider any request for all or part of evidence to be given in camera. The committee has before it your submission No. 113. Are there any changes or additions you wish to make to your submission?

Mr Cridland—No, none at all.

CHAIR—I invite you to make a brief opening statement.

Mr Cridland—One of the things in the industry that I am really worried about is the definition of ‘worker’ for workers compensation. The accident policies our crew get do not really cover them. You could probably say that, within the building industry in Darwin in general, 30 per cent of people would be carrying injuries throughout their lives that never get a proper chance to heal. The other thing is safety and conditions. I do not think it is about money in people’s pockets, because whether you pay our blokes \$1,000 a week or \$1,500 a week they will still spend it. They need workers compensation, some form of holiday pay and to be paying tax. This ABN system is not really working.

We have just come through a pretty bad wet season and our blokes would have lost, say, 24 full days of work, and we are covering them. We have 10 or 14 blokes on and we probably have about \$8,000 out in loans that we have to get back from them during the year. That means that when it comes to tax time they are not going to have money to pay their tax again. At least with the PPS the tax was coming out every week. I do not see it as a money thing; I see it as being about the change in the definition of ‘worker’. They have to go on getting workers compensation, having their tax taken out and getting the conditions. It is a big social problem, because when it comes to Christmas time they have no money for holidays and it is in the middle of the wet. Families go off on holidays and split up, and it is a big stress on the blokes.

There are also the injuries, as I said. I can go on about safety all day, but the easiest way to see it is just to drive around some of the new suburbs. There is no edge protection and there are no fences. A lot of the larger companies do try to comply as much as they can, but of course they are competing against the smaller companies. I believe that it all starts with the definition of ‘worker’ in legislation, because that is where the cost cutting mainly is. Although workers are on, say, \$25 an hour, it is not that much when they do not get rostered days off, sick pay, insurance, holiday pay et cetera.

CHAIR—Mr Cridland, why doesn’t your company just employ your employees as employees?

Mr Cridland—Because I am at the low end of the scale. I am just a block-laying subcontractor and do a bit of concreting. I am governed by the going price. If I put my price up to cover workers comp or whatever, I just would not get work.

CHAIR—So you are saying that to do the right thing by your employees and employ them as employees rather than on ABNs would actually disadvantage you in the marketplace in terms of being able to compete?

Mr Cridland—We would not be able to compete. It is not just me; it is the same for everyone. We are the only state or territory that has this definition of ‘worker’ whereby you can have workers on an ABN without workers compensation.

CHAIR—Are you saying, in effect, that a lot of the competition that is occurring for work in the building industry in Darwin is basically on workers’ terms and conditions of employment—sick leave, annual leave, annual leave loading, superannuation and workers compensation coverage?

Mr Cridland—Yes. For a subbie there is not a huge profit in it. We are not living in fancy houses and driving good cars. It is just a small business. We can put in what price we want, but we are governed by market forces. So we are forced to pay only what is necessary. Everyone is the same.

CHAIR—I will ask you about the flip side of the coin. Let us say you employ your subbies at \$25 an hour, which is an all-inclusive rate. If you broke that down into the amounts of money that would have to be set aside out of that to meet superannuation, annual leave loading and rostered days off, what would that pare down to in terms of an effective hourly rate? Have you done those figures?

Mr Cridland—We have done that sort of thing. I will give you an example. A few of our workers—with our blessing, by the way—have gone to Bechtel and they are getting \$25 to \$26 an hour with all the holiday rates, double time, overtime et cetera.

CHAIR—On top of that?

Mr Cridland—On top of that. We do pay some blokes more than \$25. It seems a lot but it is a case of no work, no pay, isn’t it?

CHAIR—So it would be somewhere in that region. The standard rule of thumb figure for on-costs is about 20 per cent, so it would be somewhere in the region of \$5 to \$8 out of the hourly rate to cover those conditions. That is assuming someone was prepared to put it aside.

Senator COOK—Thank you for coming forward, Mr Cridland. We sit in Canberra trying to make laws for a nation and we need to hear from people who actually work in the industries we are looking at. Not often enough do we have people come forward to offer their view, so I think I can fairly say that all the committee is appreciative of your attendance here today. How long have you been a contractor in this industry in the Northern Territory?

Mr Cridland—For 15 years, with a bit of a break before that and about another 10 years before that. I have been in Darwin since 1974.

Senator COOK—So, off and on, hands-on experience as a contractor for 15 years?

Mr Cridland—Yes.

Senator COOK—Have you worked outside the Territory in your trade?

Mr Cridland—Yes, we have had brief trips to Sydney and Perth. We have friends who work down there in the same industry and keep us informed.

Senator COOK—Is it fair for us to say that you have had experience as a bricklayer/block layer in the building and construction sector in Sydney and in Perth?

Mr Cridland—Yes.

Senator COOK—How extensive is that experience?

Mr Cridland—Six months at a time at various times.

Senator COOK—Enough to make some observations?

Mr Cridland—Yes.

Senator COOK—Before you started out as a contractor, did you work in the industry for any length of time as a worker?

Mr Cridland—Yes.

Senator COOK—How long was that?

Mr Cridland—Eight or 10 years.

Senator COOK—So you are drawing on 25 or 23 years experience in the industry when you answer the questions?

Mr Cridland—Yes.

Senator COOK—I will just ask this bald question: given that experience and background, is the way in which the industry operates in the Northern Territory a model for the rest of Australia?

Mr Cridland—No. In Sydney the safety is a lot better, the conditions are a lot better, the money is a lot better and you have a bit of choice. If you are not happy in Sydney, you can drive to Newcastle or even less distance to Wollongong or wherever. If there is no work in Darwin, there is no work. If you upset too many people in Darwin, there is no work. One of the reasons I came here today is that I saw the submission that in the Territory everything is sweet. I do not think they have actually driven out and had a look if they think everything is sweet. You find that very few young people are attracted into the industry anymore, because there is not enough money. It gets very hot up here and it is very hard. For the money they get, if they are going to

work in the building industry when they leave school they will go down south to work. We lose a lot of young people in the Territory to that sort of thing.

Senator COOK—Would you be surprised if someone said that the Territory is a model for the rest of Australia for the building industry?

Mr Cridland—I would be shocked. We had blokes who lived up here for eight or 10 years. One went to Cairns to work, and we get phone calls from him regularly. He is happier in Cairns. He earns more money with better conditions. One who had been in the Territory for about five years has gone to Sydney to work for a friend of ours, and it is the same thing: better conditions and more money, and obviously it is cooler down there. So I would not say that it is a model, mainly because of the insurance. The money in the pay packet—\$200 extra a week in the pay packet—does not make much difference, because most of the blokes do not save much. They do not realise, ‘I’ve got \$1,000 in my pay packet and I have to put so much back for tax, so much for this and so much for that.’ For one reason or another it seems to disappear, and they get caught at the end of the year or at the end of their time with no money for insurance and no money for tax, and it just compounds. It does not just affect that one person; it affects his girlfriend or wife and his friends. It is a social issue as much as it is an issue for the building trade.

Senator COOK—Are there enough apprentices being trained in the industry to meet the demand for skilled labour in the future in the Territory?

Mr Cridland—I do not think so. On the sites I work on in Darwin, it seems the average age is about 40 for the building trade. I have not looked into that, so I am just guessing; but you very rarely see younger people coming into it. We have 14 people working for us. We have tried younger people, but they go on to different jobs because it is too hot. For instance, with block laying of concrete or steel fixing and stuff like that there is no place to sit down under a tree for 10 minutes. You just have to keep going all day.

Senator COOK—Yes, it is a tough job.

Mr Cridland—When it is hot, you just have to keep going. The younger fellows can find better work elsewhere. That is fair enough. We do not begrudge them one bit. But for the industry in the long term, unless they are getting enough money to make it worth their while there is going to be a shortage sooner or later, isn’t there? The average age in the building industry in the Territory would be 40.

Senator COOK—Do you think there is a shortage of skilled labour?

Mr Cridland—I would say so, yes.

Senator COOK—We have heard evidence today that workers from other states come here, realise that they do not have an entitlement to long service leave and other entitlements that they might get elsewhere and then move on rather than risk losing or diluting the entitlements they have already stored up.

Mr Cridland—Especially in the last few years when there has been a lot of work down south. Prior to that, when there was not so much work down south—say, five years ago—especially during the dry season when it is pleasant weather up here for four to five months, we would get a huge influx of tradesmen from down south. Even if they were not getting quite the same money, it was a change, it was good weather and they were travelling, so it was all right. But in the last, say, two to three years we have hardly had that influx at all. In fact, we have had advertisements in the paper up here for tradesmen in Brisbane and Cairns—for form workers, carpenters and block layers. It has reversed a bit.

Senator COOK—I think you said earlier that there is a shortage of skilled tradesmen in the industry. Has that led to prices rising?

Mr Cridland—No. We have just taken on a job. We put in a higher price and then we were shown the other prices going in, and now we are doing it for a price less than we got two years ago. The competition is pretty hard up here; there are a lot of builders for a small town.

Senator COOK—So what do you think is operating here? The normal theory would be that, if there is a shortage of skilled labour, prices would rise to attract more skilled labour into the market. But you are saying that prices have not risen.

Mr Cridland—They have a captive audience up here. If you decide to live in the Territory, you live in the Territory. As I said before, if you live in Sydney and there is not much work, you can leave that work to a bloke in Sydney and go to Newcastle and still come home at the weekend. We have been offered work by national companies in other states, but I have a wife, a family, a home and friends here. I like the Territory. It sort of grows on you. So you are in a position where you leave the home that you like and your wife and family or you just have to cop it and try to do a bit to change it.

Senator COOK—A comment has been made—and I ask you to agree or disagree with it—that if you are a worker here and you have decided to buy a house then you are trapped. You have to take the conditions that are offered because you have a mortgage and you have to put food on the table and feed a family. Is that a fair comment?

Mr Cridland—It is a bit ambiguous. As I say, at the moment it is particularly good for workers. We have had bricklayers go across and work as labourers at Bechtel for \$25 an hour, plus they get their holidays, overtime and whatever. I suppose it is a half-truth.

Senator COOK—Let us put it this way, then: are those workers who are not employed at Bechtel—and so many workers will be—in that sort of trap? Will they have to accept the conditions in the industry, or not?

Mr Cridland—At times, yes, I believe that is true.

Senator COOK—That is true for them?

Mr Cridland—I believe it is true for me, too, if I want to work. Two years ago and last year there were several buildings with no edge protection, electricity that was a bit unsafe and whatever. You call Work Health in and have the site shut because the builder just will not listen

to you. While you are off site and the site is shut they just get another crew in and carry on with the work. You do not get paid for the work you did. In actual fact, at one place we even lost our sand and cement. There is no recourse. There is absolutely nothing we can do. I have documents to back that up; I am not just saying that.

Senator COOK—You said that you have worked in Sydney and Perth as well as here. You made some remarks about occupational health and safety in your opening statement. How would you compare the safety levels on building sites here with those on sites in Sydney and Perth?

Mr Cridland—For domestic stuff like houses and so on, I would say that they are similar because they let a fair bit go in Perth and in Sydney as well.

Senator COOK—Is that because the safety levels everywhere are abysmal?

Mr Cridland—I think they feel that, with houses and so on, it is so hard and it is such a wide thing. Because it is one or two people working in teams they are more safety conscious in the older way, where they look after themselves. But, definitely, for commercial buildings in Sydney and Perth the safety level is far higher. You would not see a block of flats in Perth or Sydney without edge protection, proper scaffolding completely around it and electrical safety. Electrical safety up here is particularly bad. It speaks for itself that we have had three people killed in the last two years.

Senator COOK—That is a fairly high incidence of death in that sector.

Mr Cridland—It is, isn't it?

Senator COOK—When you say that the level of safety is higher in Sydney and Perth, is what you are saying—I do not want to put words your mouth—that it is a lot lower here in Darwin?

Mr Cridland—It is appalling here. I have called Work Health out; they just do not come. We had an incident last year with a block of units on Wood Street. It is about having a level playing field. When we were on the Carey Street house—the multiplex—Work Health came and said, 'No-one can use this materials hoist unless they get a licence', which was fair enough. That means that you have to have a bloke downstairs full-time while the hoist is operational, at \$200 or \$300 a day. It costs you around \$1,000 by the time you have a licence because you have to pay for that as well. Of course, the hoist has to be tied into the building at every second floor, has to have gates et cetera.

After going through all that expense on Carey Street, which is just opposite Wood Street, driving into town we could see a hoist on a block of units that did not come up to standard—no cage beneath it, no fencing off and not tied into the building—and people wandering around with no hard hats on. We rang Work Health and they said, 'We're dealing with that.' That went on for three months until the builder pulled it down of their own accord. No-one was fined, no-one was stopped from using it and the hoist was never tied in. We delivered Work Health about a dozen photos. The director of Work Health, Mr Crossin, told me that you did not have to have a licence to use that hoist. Later he took that back. Nothing was done to stop it. That is what I am saying—it is about a level playing field, isn't it? On a multiplex site they force you to have it, but on the job down the road you do not have to have it. The cost to us to use that hoist was \$200

a day. They had it parked up in the air for half a day at a time, with no-one down below and no barriers to stop anything from falling off—none of that. They were not incurring that cost, and so you just cannot compete.

Senator COOK—In your experience in the industry in the Territory, have you noted any influence by criminals or criminal activity?

Mr Cridland—No, not as far as I know.

Senator COOK—Have you been subject to intimidation or threats?

Mr Cridland—The only intimidation I have had is, as I said, when we have called for edge protection scaffolding. We had a bloke fall off and we got sued for it, and we are a bit safety conscious because of that. I had a partner at that stage but I bore the brunt of it myself. In the PPS days we were working for John Holland at the barracks. We had to have everyone covered by workers' comp. But, because everyone was on PPS, when it came to claiming the workers comp, the workers comp company would not pay it. So out of our own pocket we paid the fellow for a cracked ankle.

We paid another fellow who fell off a scaffold. The union is aware of this case. It went to court, so it is documented and I can produce that. This fellow told a heap of lies. He got a cover note for his insurance, and then we gave him the money to buy the insurance; so he was all right. But on the way between getting the money from us and getting the insurance, he decided a stereo would be better. When he came to fall off the scaffold, of course he was not covered. It went to court for a long hearing. It took two days for the barristers to discuss whether our public liability covered him. It did not. Then he got a claim off us. He was only off work for about three weeks but he still got a lot of money from us.

So we are a bit safety conscious for that reason, if nothing else. We have gone to builders and said: 'You've got to have scaffold. We're up one floor and we're working on an overhang off the slab. It's pretty dangerous. You need scaffolding.' They say, 'We'll get it up.' While you are off the job—you might be off the job for only one day—they will have another gang in. What you have done they do not pay you for, and there is nothing you can do. There is intimidation in that way. They can give whatever reasons they like, but the reason is you have asked for scaffolding. Because they pay X dollars for scaffolding, they try and get three or four floors and lots of areas before they put the scaffold up.

Senator COOK—Who are 'they' in this case?

Mr Cridland—Builders.

Senator COOK—When you say that is an example of intimidation, are you saying that they are the ones visiting it on you?

Mr Cridland—Yes. It is less likely to be the national builders like Barclay Mowlem and John Holland, because they have their own standards. Apart from lesser breaches, they do try to keep the standards up; although they are still controlled by market forces. It is the smaller builders,

and that is what stops it from being a level playing field. The larger builders have to quote on things against builders who are quite unscrupulous.

Senator COOK—Are you a contractor at the Bechtel site?

Mr Cridland—No, there is no block work over there at the moment. But we know lots of people who are and we know what they do out there.

Senator COOK—Are you familiar with the project agreement they have got out there?

Mr Cridland—Yes.

Senator COOK—Which would you prefer: working under a project agreement such as that or working in the manner the rest of the industry works in?

Mr Cridland—The Bechtel project agreement, 100 per cent.

Senator COOK—But you are a contractor.

Mr Cridland—Even if you are a contractor, because you know where you stand from the start. You know you have to have these conditions—you know you have to get that—and you are covered for everything, aren't you, so you are not on the odds to a hiding like we are now.

Senator TIERNEY—Mr Cridland, you put some emphasis in your submission on ABNs and subcontractors. One of the reasons they find that so attractive is the lower tax rate they pay—a company tax rate of 30 per cent.

Mr Cridland—To me, and you will find to most subcontractors like me, it is not a question of tax money for us or whatever and it is not even a question of money in the blokes' pockets; it is a question of the definition of a worker. Until the definition of a worker says that everyone has to have workers comp, we will never be able to afford, as a contractor, to pay the money.

Senator TIERNEY—But you cannot really have it both ways, can you?

Mr Cridland—We do not want it both ways. If you talk to most contractors—

Senator TIERNEY—May I finish the question? If people are going to set up this arrangement so that they are paying—quite legally, because they are setting up on a company rate—a lower rate of tax, surely they would then have to cover those other things as well? Someone has to cover workers comp insurance. Either the employer has to or, as in this case, a subcontractor who is on an ABN is going to have to cover it himself. It has got to be covered somewhere in the system.

Mr Cridland—Because the definition of 'worker' in the Territory, most of the people on ABNs are not registered as companies; they have just got a business name or whatever.

Senator TIERNEY—But they pay that lower rate of tax.

Mr Cridland—They pay a lower rate of tax to a degree but if you worked out how much a year they are earning you would see that some of them should not be paying tax at all, because they are in and out of work all the time. They are getting what appears to be a large amount but, as I said, they have just come through a wet season—that is 25 full days and a few half days because we have had a bad wet—then there would be days when there is no work, and so it goes on through the year. At times there is no work in the building industry. Although you might say: ‘They’re on \$28 an hour for 40 hours a week, which is \$1,000 a week; therefore they’re on 50 grand a year,’ I would say that if most of them averaged 30 grand they would be lucky.

Senator TIERNEY—If you have got these varying arrangements and you are saying that it is unfair to people who are trying to make a go of it in the industry that some people are on these arrangements and others are not, surely that is a case for having the whole arrangement a bit more regulated so that at least everyone is operating in the same sort of way?

Mr Cridland—I agree. I think everyone, if they are not legitimate businesses—and I talked to the people working for me about this before I came here because I did not want to go behind their backs and have no crew—would be better off on wages, which would mean paying their tax every week. As I said earlier, come tax time, after they have gone through a wet season and by the time they have paid me back, there is no money left for tax. So then they have to make an arrangement with the tax. By the time they have paid that up for the rest of the dry, the wet season is here again and they are back in the same old cycle.

Senator TIERNEY—The royal commission found that across Australia there were special things occurring in this area in terms of workplace relations practices, safety and some of these things you have been alluding to. Of course, now you have also raised this question of the way in which people set up their tax arrangements and compensation arrangements. If we are to get the industry to work a lot more efficiently, isn’t there a need for special legislation and don’t we need an Australian Building and Construction Commission to take this industry and move it through to a much more regulated industry that operates on a level playing field?

Mr Cridland—I agree entirely.

Senator COOK—In agreeing entirely, do you realise that the legislation would impose lesser standards and rights for workers in this industry than the workers in other industries have?

Mr Cridland—No, I did not realise that. What I thought he meant was that we have to give the workers their due holiday pay and insurances, pay them their money on time et cetera as in a proper job—not like they are now, just bumming around from payday to payday. That is what seems to be happening to a lot of workers—they accept what they can get like a handout.

Senator MURRAY—I must say, Mr Cridland, that sometimes one page is worth 20 pages. Thank you very much for your submission. It is a very useful page. Do you think that one of the solutions to some of these problems on sites or projects is that the head contractor should be liable up-front for certain payments rather than all the subbies? For instance, I am thinking of insurance, WorkCover and those sorts of things.

Mr Cridland—I believe that, and I believe that licensing for all subcontractors and builders in the Territory would be a big help as well.

Senator MURRAY—In tax law, the category of withholding taxes was designed because unless somebody did that you would end up with taxes not being paid. When the Labor Party created their super scheme, they made sure that employers paid the super, not employees, because otherwise it would not happen. Some employers do not do it anyway. That is a much better system. It seems odd to me that key areas of ensuring proper conduct and proper protection are taken away from the head contractor and given to the subbies. Surely that would at least create a level playing field—if in every circumstance a head contractor had to carry the key costs—because obviously they would then pass it on and people would have to pick it up.

Mr Cridland—I agree with that in principle, but unfortunately for a head contractor in a place like Darwin it is difficult. Let us take Multiplex or Barclay Mowlem as an example, just to pluck a company out of the air. They are national companies and they try to abide by the rules, basically. But what if they are competing against some developer down the road whom the Territory government is trying to encourage and will not enforce any conditions on?

Senator MURRAY—But that developer down the road would have to carry the same costs.

Mr Cridland—Only if you have licensing, surely.

Senator MURRAY—That is right.

Mr Cridland—I believe in licensing for main contractors and subcontractors as well. As a subcontractor, if I have a licence and do not pay the superannuation or the insurance then you just take my card off me and I cease to exist. So there should be licensing.

Senator MURRAY—One of your themes, it seems to me, is that laws exist that are not being enforced.

Mr Cridland—I agree.

Senator MURRAY—In occupational health and safety it is not that the laws are not there; it is just that they are not being enforced. That is correct, isn't it?

Mr Cridland—I agree entirely.

Senator MURRAY—The inspectorate is a Territory inspectorate, isn't it?

Mr Cridland—Yes.

Senator MURRAY—That is on the occupational health and safety side.

Mr Cridland—Yes, WorkSafe.

Senator MURRAY—Is there any industrial relations inspectorate? Is there any inspectorate from the federal or Territory governments on that side?

Mr Cridland—Not that I know of.

Senator MURRAY—None at all?

Mr Cridland—No.

Senator MURRAY—So there is no regulator?

Mr Cridland—No. There may be, but I have not seen or heard of them. You would have to ask Mr Gallagher or someone like that. He would be more au fait with that. If it were not for actively pursuing WorkSafe in the Territory I would not even know that they exist, because you never see them on work sites.

Senator MURRAY—So it is a failure of government regulation essentially?

Mr Cridland—Yes.

Senator MURRAY—In your experience, would the people who are contractors prefer to be employees rather than contractors?

Mr Cridland—Do you mean the people who work for me personally?

Senator MURRAY—Yes.

Mr Cridland—I approached them before I sent the letter, as I said. I have approached a lot of other people on building sites. I would say that 80 per cent of them said that, yes, they would definitely rather have their money, pay their tax et cetera—because most of them have girlfriends, wives or whatever, or even payments. It would make their life so much better.

Senator MURRAY—I think I know the answer to this but we need it on the record: why do they become contractors rather than employees?

Mr Cridland—One reason is that in the Territory the definition of ‘worker’ allows them to do it.

Senator MURRAY—But they still have a choice.

Mr Cridland—They do not have a choice, because they do not have a job. There is not one bricklayer or concreter in Darwin unless they go to Bechtel, and there are no bricklayers at Bechtel at the moment because there is no work for them. There are no jobs. You cannot make a choice, because as a contractor we are not in a position to pay the extra money, so we do not give them a choice.

Senator MURRAY—So they become contractors because that is the lowest cost—

Mr Cridland—That is the lowest cost to the employer.

Senator MURRAY—from the perspective of the person running the job or the person who would otherwise employ them. It results in a lowest common denominator. Once they are

established as contractors—and we have discussed tax consequences—what about tools and equipment? Are they then responsible for their gloves, their work boots and their protective glasses?

Mr Cridland—In theory they are, but what do you do?

Senator MURRAY—Because they are getting so little money they are not buying the proper boots, they are not buying protective glasses and they are not buying gloves; is that what you are saying?

Mr Cridland—In some cases they do. Obviously some people buy their boots but we still supply hats, gloves, glasses and the major tools for them, because they are not getting enough money to supply that stuff.

Senator MURRAY—You are probably unaware of why I am asking this question. In the alienation of service income legislation, which puts a dividing line between those who are employees and those who are contractors, one of the criteria is tools.

Mr Cridland—I know that and I have seen it. I have an idea of what you are getting at but I am just telling you the truth. The thing is that, with all the best intentions in the world, I could not afford to pay the correct wages for a subcontractor in the Territory at the current rates and with workers comp, holiday pay, sickness pay or whatever.

Senator MURRAY—When somebody puts in a self-assessment, the ATO is able to say: 'Hang on. We don't care what your arrangement is. You're not an employee. You're not providing your own tools, you're not providing your own safety equipment and you're not responsible for rectification. In every category you're an employee.' So their tax status is capable of being overturned.

Mr Cridland—But it never seems to be, does it?

Senator MURRAY—It has never happened? Do you know if it has happened to any contractors?

Mr Cridland—It has never happened to anyone in the Territory that I know of. Before I came here, over the last year or so I have talked extensively to people on building sites and everyone is in the same boat. It is not as if what I am representing here is just my personal experience. It is across the industry in general.

Senator MURRAY—The interesting thing is that the law does not allow you to make a choice. Tax law says that if you are not doing certain things then you are an employee and you will be taxed as an employee. This idea that there is a choice—

Mr Cridland—But they go to a 15-year-old girl at Income Tax Professionals who does the tax every year, it just comes back in the normal way and everything goes on its merry way. They do not approach the tax office; they just go to one of the income tax companies which, at tax time, have an number of extra juniors that they give a week's training to. They put the papers through and they come back. That is what happens in general.

Senator MURRAY—Mr Cridland, you strike me as a practical man and a very experienced small business man. What solutions do you suggest we should look for? What we are being told is, ‘Here is legislation which addresses the Cole royal commission inquiry,’ but in the evidence to us we are picking up a whole lot of other problems. Ignore the Cole commission for a second and tell me what things you think should be done.

Mr Cridland—Immediately in the Territory we should have a redefinition of ‘worker’ so that everyone that works on a building site has to have workers compensation, like they do in other states and territories.

Senator MURRAY—Paid by who?

Mr Cridland—It does not matter who it is paid by.

Senator MURRAY—But the point you made earlier is that if you give somebody some money they go off and buy a stereo.

Mr Cridland—No—workers compensation, I am saying, has to be paid by the employer. With the contracts we are completing now we would find it tough, but from then on, if everyone has to put that 10 or 12 per cent in—whatever workers compensation rates are—then everyone has to price the same. I think that with that and by certifying subcontractors and builders, as they do in other states—changing a simple thing like the definition of a worker and making everyone pay workers compensation and have registration which can be taken away from you so that, if you do not pay the tax or pay this and that, you cannot be a contractor—the situation would sort itself out naturally in a couple of years.

Senator MURRAY—Workplace relations law in the Territory is a federal responsibility. Are you aware that the federal government have refused to accept a definition for ‘employee’? In other words, they will not legislate for an employee definition, which therefore would force the Territory government to do it, wouldn’t it?

Mr Cridland—Someone has to do it, or else it is never going to work.

Senator MURRAY—Is the Territory government discussing doing it?

Mr Cridland—From the time the Territory government first came in, we have had meetings with them. They can get through all sorts of pool laws and God knows what, but they cannot work on the definition of a worker. I do not know how long they have been in now, but in the first month they were in I went with a few other subcontractors, the union and some others to talk with them. I have given up going to meetings with them because they would just tell you, ‘Yes, it’s on the go; we’re going to do this and we’re going to improve WorkSafe,’ and nothing has happened.

Senator MURRAY—You said you were familiar enough with the alienation of personal services income tax tests. Would those tax tests translated into Territory law help enough with an employee definition? They are very basic tests.

Mr Cridland—It depends who you are going to hurt. It is no good hurting the poor bloke who is working for me and who at the end of the year has earned 25 grand and is supporting a couple of kids. That is barely enough to live on up here. If his wife was not working, he would be starving.

Senator MURRAY—But your point is that if every builder, every head contractor, everybody who is running a job has to pay those charges, then up come—

Mr Cridland—Standards.

Senator MURRAY—That is what you mean when you say ‘level playing field’, isn’t it—up come the standards?

Mr Cridland—Yes.

Senator MURRAY—So really the proposition you are putting to us is that those who run jobs, who run projects, who run sites, must be responsible for these costs.

Mr Cridland—Yes—responsible for making people like me pay. But obviously we are going to have to have enough money in the contract to be able to pay.

Senator MURRAY—What other solutions do you have?

Mr Cridland—As you say, making a worker a worker and not this ABN stuff. The PPS, in my opinion, was a much better system, because at least they got tax stopped and they never had that bill in the middle of the year that they do not save for.

Senator MURRAY—But if you define somebody as a worker, then the employer is obliged to pay his tax.

Mr Cridland—That is what I am saying. I believe that the definition of a worker is a key to it. Licensing for builders and subcontractors is the other key. Otherwise you get the same old fly-by-night people who stop all this money and disappear or go broke or whatever they do, owing, and the other bloke is back in the same boat he was in before.

Senator MURRAY—If that were changed, do you think we would have a better attitude to apprentices? Would there be more margin to employ apprentices and so on?

Mr Cridland—Yes, because if you have to be licensed and you have to come up with the money up front for various things, the bloke who turns up with a bit of hired gear and puts in the cheaper price would not get a look in—because he wouldn’t have a licence, would he? Unless he is substantial and can prove that he can pay wages even if the contract goes against him, et cetera, he would not be able to get a licence. Therefore you would cut out half the subcontractors for a start and get it on a realistic base, like it is in other states where there is licensing.

Senator MURRAY—But, listening between the sentences of the various witnesses we have had today, it appears to me that the industry, by and large, is so cutthroat that there is no margin for apprentices. People who invest in apprentices, generally speaking, have a commitment to—

Mr Cridland—I do not think that it is necessarily even a money thing with apprentices. It is the fact that, because there are so many various contractors—and they come and go, and go broke—you cannot see five years work in front of you to train that apprentice properly, so you do not take them on; you do not even look for them. The first year an apprentice basically sweeps floors, watches people and gets his body hard for the hard work up here. Building is hard work—out in the sun it is hard. You just cannot throw them into working eight hours a day in the sun, so you have to play around with them for a year. So that first year is a loss. Then, if you do not get any major contracts the next year, what are you going to do with them?

Senator MURRAY—In your 15 years as a small business man, how many apprentices have you had?

Mr Cridland—None. We have had numerous young lads that we have trained up as labourers or whatever and we have had a couple of blokes who have got on the trail without any papers, but we have had none as proper apprentices.

CHAIR—We have heard this morning from another couple of witnesses, and now from you, about the prevalence in this industry in the Northern Territory of—I will not use the term ‘rorting’—manipulating the tax system to minimise taxation requirements and all-up payments. How long have you been in the industry?

Mr Cridland—Virtually ever since I have been in Australia—since 1970.

CHAIR—Presumably this practice is widespread and well known in the Territory.

Mr Cridland—Not only in the Territory—all over Australia, virtually.

CHAIR—But particularly in the Territory.

Mr Cridland—Yes.

CHAIR—To what extent has the Taxation Office been active in looking at employers in this industry—going through their books, checking whether their employees fit the definition of PPS taxpayer, seeing whether they hold ABNs and so on?

Mr Cridland—They have been active in the field of payroll tax and they have been active in looking at a few of the larger subcontractors. I believe that it is not just a question of tax avoidance. I believe it is the ongoing things. As I say, if a person pays for private insurance it is a grand a year. It will cover him for bugger-all, but he is covered in legislation and he has made the builder happy. I believe it is probably \$130 a week to have someone for workers comp. So the ABN system has been forced by those sorts of costs more than anything else.

CHAIR—But, as Senator Murray and others have said, the tax office has a definition of a worker; to what extent are they policing that in the industry?

Mr Cridland—To my knowledge, they are not policing it at all.

CHAIR—So very little checking is being done by the tax office or through auditing of companies?

Mr Cridland—No.

CHAIR—Thank you, Mr Cridland.

Committee adjourned at 12.03 p.m.