COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE

Reference: Workplace Relations Amendment (Work Choices) Bill 2005

MONDAY, 14 NOVEMBER 2005

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to:
http://parlinfoweb.aph.gov.au

SENATE

EMPLOYMENT, WORKPLACE RELATIONS, AND

EDUCATION LEGISLATION COMMITTEE

Monday, 14 November 2005

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

Substitute members: Senator Santoro to replace Senator Barnett

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

Senators in attendance: Senators George Campbell, Johnston, Joyce, Marshall, Murray, Nash, Santoro, Siewert, Troeth and Wong

Terms of reference for the inquiry:

Workplace Relations Amendment (Work Choices) Bill 2005

WITNESSES

Committee met at 9.01 am

CHAIR (Senator Troeth)—Welcome. I open this public hearing of the Senate Employment, Workplace Relations and Education Legislation committee. On 12 October 2005 the Senate referred to this committee an inquiry into the provisions of the Workplace Relations Amendment (Work Choices) Bill 2005. The terms of the resolution authorising the inquiry provided that the inquiry should commence with the introduction of the bill into the House of Representatives. That occurred on 2 November. Since then, the committee has received close to 5,000 submissions, far more than it can deal with in the time available. However, all of these submissions are part of the record of the inquiry and will be tabled, along with the report, on 22 November. The committee thanks those thousands of people who have participated in the committee's inquiry.

The committee's program over the next 4½ days has been planned so as to canvass the widest possible spectrum of views on most aspects of the legislation. Those people appearing before the committee will include legal and academic commentators, representatives of employer organisations, trade unions, church organisations and other interest groups. Many of the issues to be canvassed over the next 4½ days have been subject to wide discussion over many months. The recent inquiry of the Senate Employment, Workplace Relations and Education References Committee into workplace agreements attracted many submissions dealing comprehensively with most elements of the bill now before us. In selecting witnesses for this inquiry the committee was conscious of the need to extend the range of consultation beyond that recent inquiry.

Witnesses appearing before the committee are protected by parliamentary privilege. This gives them special rights and immunities, because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given before the Senate or any of its committees is treated as a breach of privilege.

[9.03 am]

ANDREWS, Mr Les, Acting Assistant Secretary, Wages and Conditions Policy Branch, Department of Employment and Workplace Relations

BOHN, Mr David, Assistant Secretary, Legislation Reform Branch, Department of Employment and Workplace Relations

CULLY, Mr Peter James, Assistant Secretary, Legislation Reform Branch, Workplace Relations Legal Group, Department of Employment and Workplace Relations

De SILVA, Mr David, Assistant Secretary, Legislation Policy Branch, Department of Employment and Workplace Relations

JAMES, Ms Natalie, Assistant Secretary, Legislation Reform Branch, Department of Employment and Workplace Relations

KOVACIC, Mr John, Group Manager, Workplace Relations Policy Group, Department of Employment and Workplace Relations

McDONOUGH, Ms Louise, Assistant Secretary, Wages and Conditions Policy Branch, Department of Employment and Workplace Relations

MERRYFULL, Ms Dianne Cheryl, Assistant Secretary, Legislation Reform Branch, Workplace Relations Legal Group, Department of Employment and Workplace Relations

PRATT, Mr Finn, Deputy Secretary, Department of Employment and Workplace Relations

SMYTHE, Mr James, Chief Counsel, Workplace Relations Legal Group, Department of Employment and Workplace Relations

CHAIR—I welcome our first witnesses from the Department of Employment and Workplace Relations. Thank you for the departmental submission before us. I now invite Mr Pratt to make a brief opening statement before we begin our questions.

Mr Pratt—I would like to thank the committee for inviting the department to appear at the hearing today and for the opportunity to make an opening statement. On behalf of the Minister for Employment and Workplace Relations, I would also like to thank all parties who have taken the time to make a submission to this inquiry. Consistent with the requirements of the Senate's resolution, those aspects of the bill that have previously been considered by the committee have been excluded from the department's submission. As you will see in our submission, a central objective of the Workplace Relations Amendment (Work Choices) Bill 2005 is to encourage the further spread of workplace agreements in order to lift productivity and, through that, the living standards of working Australians.

As to the specifics, the bill will do a number of things. There are seven of those that I would like to draw to the committee's attention. One, the bill will move towards a national workplace relations system, based primarily on the corporations power of the Constitution. Two, the bill will establish the Fair Pay Commission. Three, the bill will introduce the Australian fair pay and conditions standard, a set of legislated wages and conditions that will

form the benchmark for new agreements. Four, the bill will simplify workplace agreement making by moving to a lodgment based process. This will reduce procedural barriers to agreement making. Five, the bill will provide award protection for those employees not covered by agreements. Six, the bill will ensure an ongoing role for the Australian Industrial Relations Commission. Seven, the bill will improve and extend compliance and enforcement mechanisms.

Since the bill was introduced in the House of Representatives on 2 November, various parties have raised a number of issues relating to the effect of particular provisions of the bill. Indeed, a number of issues were raised during the debate on the bill in the House of Representatives and in recent Senate estimates hearings. In this regard, I will highlight comments made last week by the Minister for Employment and Workplace Relations when asked whether the government would move amendments to the bill in the Senate. The minister said:

> ... if there are technical matters which arise in the examination of the bills then obviously we would look at any technical matters. It's quite common for governments to dot any I's or cross any T's, so to speak, on legislation if scrutiny of it indicates something like that.

It is premature at this stage to speculate on what, if any, amendments the government may move; however, consideration is being given to some of the issues that have already been raised—for instance, at the recent Senate estimates hearings Senator Campbell raised concerns about the effect of averaging provisions for maximum ordinary hours of work. The government has indicated that it will consider that aspect of the legislation to determine whether the provision will lead to unintended consequences and, if so, it will address those appropriately.

The bill foreshadows a range of issues being dealt with by way of regulation. On this point, I can advise the committee that many of the regulations will be available by the time the legislation takes effect. Regulations dealing with matters that are more of a machinery nature will be available shortly after that. Finally, in respect of part-heard matters affecting constitutional corporations, the government's expectation is that such matters will lapse when the legislation commences. This is consistent with the High Court's decision in Darwalla. That decision supported the view that, in the absence of specific legislative provision to the contrary, there is no accrued right to have part-heard arbitration claims determined on the basis of pre-existing legislation. I understand that the government will ensure there is no doubt surrounding this issue.

That concludes my opening statement. I flag that there are a number of aspects of the joint state submission that the department would like the opportunity to clarify if possible. We will try to pick up those issues during the course of the discussion this morning but, if it is appropriate at the end of the session, we might just flag a few things then.

CHAIR—I, myself, had noticed that in the reading of their submission. I would be grateful if you could do that. I understand that the department will return on Friday morning for follow-up questions by senators. If we do miss anything today, it should be possible to pick those up on the Friday morning.

Mr Pratt—We will do that.

CHAIR—There are a couple of issues that I would like to ask about, mainly to bring out the salient points of this legislation in respect of issues that have been flagged in the public arena. One of the issues I would ask you to speak to is the way in which the interaction will occur between AWAs, award rates of pay and the Fair Pay Commission in order to determine that no worker will be worse off—also, that by accepting an AWA offered by an employer, an employee will not be subject to a lower rate of pay than the award covering that. Perhaps someone would like to speak to the interaction between those ways of determining salary and wages.

Mr Bohn—The standard provides that any agreement made under the legislation cannot fall below that set in the fair pay and conditions standard which, in respect of wages, means that over the life of an agreement at no point can the wages in an AWA or a certified agreement fall below the wages to which that employee would be entitled under the fair pay and conditions standard. That is a continuous test. So, at any point during the life of that agreement, wages have to be at least equivalent to the rate of pay that that employee would be entitled to under the fair pay and conditions standard.

CHAIR—So in this legislation no employee will have a lower rate of pay than he or she has at present?

Mr Bohn—No employee will have a rate of pay that is lower than a rate they currently have an entitlement to under an award. In addition, the legislation ensures that those employees whose awards have not yet been adjusted for the 2005 safety net review decision will, as part of the Fair Pay Commission's first decision, be brought up to at least that level. The adjustment will be made as part of that first decision. That rate will then form the benchmark below which no employee can fall.

Mr Pratt—It is important to emphasise that the fair pay and conditions standard is not only the federal minimum wage; it incorporates the some 30,000 to 40,000 classification wages covered by awards. So there is a rather substantial range of minimum wages, going from those which are at the minimum right through to award wages—for example, C1 of the metal awards—which are relatively well renumerated compared with the minimum wage.

Senator GEORGE CAMPBELL—Are you suggesting, Mr Pratt, that somewhere along the line the relativities between the minimum wage and those classification structures will be broken?

Mr Pratt—No, I am not suggesting that. That will be something for the Fair Pay Commission to determine, much as the Australian Industrial Relations Commission does presently.

Senator GEORGE CAMPBELL—Yes, that is true. But those relativities are there and they all feed off the one rate, so if you lower the minimum the rest will lower with it.

Mr Pratt—The government has made it pretty clear that there is no intention to ever lower the minimum. In fact the legislation will preclude that possibility. It is possible that the various classification wages may increase at different rates, which is currently the case and which has, as I understand it, occurred in the past.

Senator GEORGE CAMPBELL—So they could increase at greater rates than the relativity that exists at the moment?

Mr Pratt—Potentially. That would be up to the Fair Pay Commission to determine.

CHAIR—I notice that you talk about the protection of vulnerable workers in your submission. I would particularly like to focus on younger workers, those under 20 years of age, and the way in which they will be protected under the legislation, and also the position of outworkers.

Ms McDonough—There are clear protections provided in the bill for junior employees, in a similar way to that which Mr Bohn and Mr Pratt have just outlined. Minimum wages for trainees will be kept at the level at which they are currently in awards, and they will translate into the new Australian fair pay and conditions scale for determination or adjustment by the Australian Fair Pay Commission. There are instances currently where awards do not contain wage rates for younger workers, and there is scope for the AFPC to determine rates for juniors that will essentially provide that, so there will be more opportunities for juniors to find employment.

Outworkers are being treated in a way that retains the unique features currently in the system. As you are aware, they currently receive special protection in section 89A. They will remain as an allowable matter. Where they earn piece rates, the treatment of piece rates will go the Australian Fair Pay Commission unless it is an incentive based pay. But the unique protections that are currently awarded to outworkers will be retained.

Mr Kovacic—I will just add a couple of points to what Ms McDonough has mentioned. With respect to employees who are under 18 years of age who might be offered an AWA, there is some additional protection there in the sense that that AWA for that employee would need to be countersigned by an appropriate adult to ensure that that employee is not disadvantaged. Similarly, both the individual and parents of young employees could access information from the Office of the Employee Advocate in terms of an explanation of the content of the agreement and a check of the agreement to ensure that it complies with the Australian fair pay and conditions standard. There is also the capacity for young people, as there is for all employees, to appoint a bargaining agent to provide advice and assistance in the context of negotiating an agreement, whether that be an individual or a collective agreement.

Senator MURRAY—Mr Pratt, I want to deal with this new pay commission. The appointment has been made but will not be formally made until the legislation is passed. Is that correct?

Mr Pratt—Yes, we have a chair designate who cannot be confirmed until the legislation takes effect.

Senator MURRAY—No criteria were published with respect to how that person was appointed—that is true, isn't it?

Mr Pratt—The bill outlines the criteria that members of the Fair Pay Commission would have to satisfy for appointment—the sort of expertise the government is looking for from a commissioner on the Fair Pay Commission.

Senator MURRAY—The appointment was made before the bill was published.

Mr Pratt—That is true. However, those criteria were the ones which were used for the selection process.

Senator MURRAY—How do we know that the best person for the job has been found? Was there a short list? The criteria were not published. How do we know that?

Mr Pratt—The government considered a range of candidates, as it does through the normal course of events when making appointments of this sort. It went through the usual process in terms of going to cabinet.

Senator MURRAY—The chair has made a number of statements so far. How independent is the chair? Is the chair subject to ministerial direction?

Mr Pratt—No. The chair is completely independent. I will just confirm that with my colleagues.

Senator MURRAY—The chair—or designate chair, to use the right term—has indicated that he is what is colloquially known as a 'kneebender'. If that person is independent but subject to a higher calling, and his archbishop or the leader of his church tells him they want him to carry out a particular social agenda or have a particular view on how the fair pay situation should operate, what are you going to do about that?

Mr Pratt—I will make the point that the chair designate will not be the only member of the commission—there will be five members—but it is a fact that those members and the commission itself will be quite independent of government. So their decisions will be what stands on fair pay.

Senator MURRAY—I understood him to have said, and perhaps he was misreported, that he answers to God. God has many voices. What happens if he hears a voice you do not like?

Mr Pratt—I guess that is something which governments have to deal with when they have completely independent bodies making decisions on matters of this sort. There are a range of other independent bodies—for example, the Industrial Relations Commission, the courts and so forth. Each of those people is answerable to their own judgments, and I guess this is a system that has worked well in Australia for many years.

Senator MURRAY—But, if he says he answers to a different requirement and if he only has a five-year tenure, he is not independent, is he? If you have a limited tenure, you cannot be independent.

Mr Pratt—The government believes that the Fair Pay Commission will operate independently. Certainly, the bill is established to ensure that. Questions of whom the chair-designate might ultimately answer to are probably best directed to the chair-designate himself.

Senator MURRAY—I cannot do that, can I, until he is appointed, and then it is too late. You have made something this morning of a maintenance of the wage levels. It is true, isn't it, that it is not intended that the minimum wage is indexed?

Mr Pratt—It is true that the bill does not have a formula for indexing the minimum wage. That is correct.

Senator MURRAY—So the real wage can fall, can't it?

Mr Pratt—That will be a decision for the Fair Pay Commission.

Senator MURRAY—Without commenting on policy, I note that the government policy is for pensions to be indexed to MTAWE—a great innovation introduced as a result of Democrat pressure, I might remind you. Why will we index pensions but not the real wage?

Mr Pratt—That is a government decision.

Senator MURRAY—This morning we briefly discussed junior wages. It is true, isn't it, that an 18-year-old married woman doing adult work can still be paid a youth wage?

Ms McDonough—That would depend on the current award prescription.

Senator MURRAY—So it is true that she can. The answer is yes, isn't it?

Ms McDonough—Without having full knowledge of what every award provides—did you say an adult woman?

Senator MURRAY—I said an 18-year-old married woman doing an adult worker's job can be paid a youth wage. That is true, isn't it?

Ms McDonough—That is true.

Senator MURRAY—Why has there been no move to change that situation? Why are people doing adult work not paid adult wages?

Ms McDonough—This debate goes back for several years in the Industrial Relations Commission, as you may well be aware. The overriding objective, certainly from this government's perspective, is to maintain competitiveness for employees and for young people generally. The basic rationale for maintaining those wage levels and the different rates of pay depending on age is to ensure that there are opportunities given to young people to get a foothold into the market and for them to then go on and secure higher paid employment.

Senator MURRAY—I ask this question because this legislation is produced as a new template, a new approach to industrial relations, which draws on some elements of the past. The great criticism of it, as you know, is that it is designed to reduce the wages of low-income people, poor people, disadvantaged people, women and so on. The answer to that is clearly to ensure that they cannot shift below. Some of the answers today have indicated the ways in which existing wages should be preserved, but there is also the opportunity, of course, to ensure that they are enshrined. The two major characteristics, the major weaknesses, in our system presently are that people doing adult work are paid youth wages, which is a disgrace for a civilised country, and the second issue is that there is no indexing. Neither of those has been addressed, which of course then leads you to believe that the intention is in fact to slowly reduce real wages over time. How do you answer that question?

Ms McDonough—I would make a couple of observations. The maintenance of the current wage levels will include award provisions where juniors are actually paid at adult rates, and that will translate into the new system. These are agreements reflected in awards that reflect the input and agreement of the parties or the arbitration of the commission. There are junior rates that go across that do currently allow juniors to be paid as adults. It is a matter for the Fair Pay Commission, having inherited those pay rates, to determine how they then go on to treat wage rates for juniors generally. That is a matter for them, but they are certainly bound

by the guarantee that they cannot reduce the pay rates of any employees covered by the Australian fair pay and conditions agreement.

Senator MURRAY—This is my last question. Mr Pratt, I presume that when the Democrats move amendments to index the minimum wage and to get rid of youth wages for people doing adult work those will not be regarded as technical matters?

Mr Pratt—I am sure that the government will consider those proposals during the course of the Senate debate and react to them on their merits.

Senator MURRAY—Thank you.

Senator SANTORO—Mr Pratt, I note Senator Murray's interest in the possibility of ecclesiastical influences on the Fair Pay Commission and I also note your answers to his questions. Is it true that the membership of the various industrial relations tribunals across the nation is drawn from what you could—I think reasonably—define as very biased, sectionally entrenched interests within the current industrial relations system?

Mr Pratt—I think it is true to say that the typical member of a tribunal across Australia is drawn from a relatively narrow group of practitioners and stakeholders with interests in industrial relations matters.

Senator SANTORO—Could you perhaps define the types of organisations that commissioners come from?

Mr Pratt—Certainly. Largely, commissioners are ex-members of unions, ex-members of employer associations, public servants and—

Senator GEORGE CAMPBELL—And ex-members of your department.

Mr Pratt—Indeed. And there are many lawyers amongst them.

Senator SANTORO—Even with all the good intentions that they bring to the job—to discharge their duties with a commitment to impartiality and apply fairness to the mental processes that lead them to make decisions on behalf of everybody, employers and employees alike—would it be fair to say that they would be subject to the influence of their own prejudice and perhaps even the influence of advocates that come before them, with whom they may have been and still could be socially active? I am trying to see which is the worse scenario. At present the bias is very easily identifiable in terms of the appointments, but I suspect people are struggling to find where the commissioner-designate is coming from.

Mr Pratt—I think it is fair to say that most tribunal members would be, in the context of the previous discussion with Senator Murray, subject to influence from their own calling, and it is conceivable that most of their decisions might be considered in the context of their perspectives and backgrounds and so forth. In terms of biases, I am not sure I can comment on that.

Senator SANTORO—You do not want to comment on whether an ecclesiastical bias, for example, might be more benign and balanced than an employer bias or a trade union bias—both of which are so obviously possible under the current system?

Mr Pratt—With respect, I expect that all members of tribunals and the future Fair Pay Commission will make their decisions as objectively as possible. I do not see that there is any

difference between the sorts of perspectives these people might be coming from. I certainly do not apply any weighting to that; nor, I believe, has the government.

Senator SANTORO—One of the claims that disturbs me the most is the claim by the Labor opposition in this parliament that if they were returned to government they would immediately abolish Australian workplace agreements, on the basis that they are unfair mechanisms through which to arrive at remuneration arrangements between employers and employees. One of the claims made is that workers will be forced onto Australian workplace agreements. Would you be able to elaborate what protections are in place in the process leading to the striking of workplace agreements in Australian workplaces?

Mr Pratt—Certainly.

Mr Kovacic—There are a number of protections. Probably the primary protection is that, in the first instance, any new agreement, irrespective of whether it is an individual agreement or a collective agreement, would need to comply with the Australian fair pay and conditions standard at all times during which that agreement is in operation. Given that that standard may vary during the life of the agreement, it is important that the agreement also change during the life of the agreement to reflect the standard at a particular point in time.

Secondly, under the legislation there is a capacity to appoint a bargaining agent to assist the employee in the context of negotiating an agreement, whether it is an individual agreement or a collective agreement. Indeed, an individual could appoint a union official to represent them as a bargaining agent in the context of negotiation of an AWA. Thirdly, as I mentioned before, there is the advice and assistance which the Office of the Employment Advocate will provide to employees to assist them to understand the implications of an agreement and whether it complies with the fair pay and conditions standard. So there is a measure of protection there.

There is also the protection in that the legislation provides for 'protected award conditions'. They are conditions such as allowances and public holidays. If there is an intention through an agreement, be it individual or collective, to modify or to remove those award provisions, the agreement will need to explicitly provide for that modification or removal of those particular provisions. Finally, in respect of the negotiation of AWAs for existing employees, it is against the law for an employer to force an employee to sign an AWA. Those protections that are in the current legislation remain in the bill. It is also against the law for an employee to be dismissed for refusing to negotiate or to sign an AWA.

Mr Smytbe—If I could add just one further element to the list Mr Kovacic has given, there is also a prohibition on making false or misleading statements in relation to the making of an AWA.

Senator GEORGE CAMPBELL—Before I go to some questions, I want to put on the public record that I understood we were coming here this morning to hear a briefing from the department about what it sees as reasons for this legislation or an overview of those reasons. We were specifically asked not to ask questions of the department today but to keep those questions for Friday. I am wondering how we have suddenly had a change of game plan between last Thursday, when this was discussed, and this morning.

The second point I want to put on record is that I have not seen your submission. At three o'clock on Friday afternoon, I picked up the submissions that were available. Yours was not

available and the first I have seen of it was this morning. So we are severely hampered in our ability to ask detailed questions of the department. I want to put that on the record, because the understanding of the opposition was that we would be getting an hour's briefing from the department this morning—an overview of the legislation and how the department sees it working—and that our questions would be reserved for Friday. So, forgive me if some of our questions seems a bit naive, but that is the reason. I am not aware that anybody on our side was consulted about the change to the game plan. On the issue of bias that was raised by Senator Santoro, isn't it also true that, in the new Fair Pay Commission, people may be drawn from the trade union movement—highly unlikely under the current government, I would suggest—but also from business and from other areas of particular interests in the industrial relations field?

Mr Pratt—That is correct. I understand that the government does seek to have a representative on the Fair Pay Commission who has a background in looking after the interests of employees.

Senator GEORGE CAMPBELL—So the make-up of the Fair Pay Commission could be basically no different to the make-up of the current Industrial Relations Commission in terms of the avenues from which people drawn?

Mr Pratt—I think there are some differences which we might draw your attention to in relation to what the bill provides. There is some overlap, but the bill also provides that the Fair Pay Commission would look for people who have experience in the business and community sector.

Senator GEORGE CAMPBELL—There are a fair number of people on the current Industrial Relations Commission who come from the business community. I do not know about the community sector and I do not know how you define community sector in those terms.

Mr Pratt—The distinction with the typical membership of the commission from the business sector is that the Fair Pay Commission is likely to have members who are actually in business, as opposed to representatives of employers. The community sector is, to my knowledge, not represented on the tribunals. It may be, but it is a specific objective of the Fair Pay Commission to bring in expertise from the community sector.

Senator GEORGE CAMPBELL—If the Fair Pay Commission has people who are involved in business, aren't they more likely to be even more directly biased?

Mr Pratt—I think it is quite reasonable to assume that the business representatives will approach the job from their perspective in the business sector. It might be worth while reading out again for the committee's benefit the type of experience that is being sought here.

Mr Smythe—The criteria are found in proposed section 7Y of the bill.

Senator GEORGE CAMPBELL—What page is that on?

Mr Smythe—That is page 34. You will see that subsection (3) says:

(3) To be appointed as an AFPC Commissioner, a person must have experience in one or more of the following areas:

(a) business;

(b) economics;

(c) community organisations;

(d) workplace relations.

Senator GEORGE CAMPBELL—Yes, and I think if you looked at the Industrial Relations Commission at the moment you would find people that come from at least some of those areas.

Mr Pratt—The distinction I was drawing before—

Senator GEORGE CAMPBELL—The point I am making is that I spent a fair bit of time in front of the Industrial Relations Commission, and some of the people who you would assume would have been biased towards us were probably more biased against us in matters dealt with there. But in all the time I was there I never experienced any real bias across the spectrum of people who sat on that commission. In the main, they tried to be fair, and I would expect that people involved in the Fair Pay Commission would tend to operate essentially in the same way.

Mr Pratt—I agree. Our expectation is that, as with the Industrial Relations Commission, people will approach their jobs as objectively as possible. The difference between how the Fair Pay Commission will work and how the Industrial Relations Commission works currently is quite significant. The Fair Pay Commission's operations will be largely inquiry based, and our expectation is that it will be very much a consultative body, but ultimately this will be determined by the Fair Pay Commission itself. It will work out how it will operate. The Industrial Relations Commission operates in a very well prescribed manner, as set out by the Workplace Relations Act, and is quite different in the nature of its operations.

Senator GEORGE CAMPBELL—But at the end of the day both bodies would be drawing information from across a spectrum of the community in order to make their judgments about what they believe the pay rate should be.

Mr Pratt—I think that is a fair point.

Senator GEORGE CAMPBELL—The structures and the way in which they operate may be different, but at the end of the day the information they draw will be from across a spectrum of the community, in the same way that the Industrial Relations Commission does it now. I assume the Fair Pay Commission would do the same thing. It would draw from a range of community organisations, businesses, unions, individual workers—whatever.

Mr Kovacic—That is true. One thing I would add is that there will be the capacity for the Fair Pay Commission to commission research around a range of issues related to its legislative obligations, which may assist the commission. I think there are limitations, if I can put it that way, on the existing Industrial Relations Commission doing that, or there has not been a capacity to do that.

Senator GEORGE CAMPBELL—Unless, Mr Kovacic, things have radically changed in recent years, they certainly did it in the past. It has always been available to them in the past to seek independent economic analysis.

Mr Kovacic—I am not aware of them having done it in recent years, though, Senator.

Senator GEORGE CAMPBELL—There may be a number of significant academics and economists amongst them, so they don't think they need external economic information. Can I come to some of the—as I said, we are limited because we have not had a chance to read this in detail—reasons for reforms that are set out on page 6 and 7 of your submission. You say:

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

What economic modelling, or what modelling of any form, have you carried out to underpin that claim?

Mr Kovacic—As mentioned at the recent estimates hearings, we have commissioned some research in this area. At this stage, the question of whether that report is publicly available is still being considered. It is a question we took on notice at the recent estimates hearing. We received that report only several weeks ago.

Senator GEORGE CAMPBELL—You received the reports several weeks ago. I presume this bill was not written several weeks ago. You said this bill was written well in advance of your receiving that report, and it underpins the central theme of it?

Mr Kovacic—I was going to go on to say—and it might go to the sorts of issues you are asking the question about—that there are a number of other studies; for instance reports by the OECD and the International Monetary Fund, as well as work done earlier this year by the Business Council of Australia, which all collectively indicate the benefits of further workplace reform and which support the thrust of the sorts of reforms that the government is proposing in this legislation. That sort of research work has been available for some period of time, and indeed has influenced the government's view in terms of the need for further reform. There are some additional studies which also go to highlight the productivity benefits that flow from workplace reform at the workplace level.

Senator GEORGE CAMPBELL—Without going to the detail of the research that you had conducted, and which you had a couple of weeks ago, who carried out the research?

Mr Kovacic—It was conducted by Monash University.

Senator GEORGE CAMPBELL—What particular group at Monash University? It is a big place, Monash University.

McDonough—The Centre for Policy Studies at Monash University.

Senator GEORGE CAMPBELL—Did you take into account in putting this legislation together the research that was done for the Western Australian government on the experience there of the AWAs?

Mr Pratt—At a general level, certainly anything which is of interest or of use in terms of workplace relations reform—whether they are studies or discussions or consultations—anything that has been brought out in that context we have factored into our thinking about the reforms.

Senator GEORGE CAMPBELL—So are you saying you did take it into account or you did not?

Mr Pratt—We are aware of that study; we are aware of many studies. Those things have informed our advice to government.

Senator GEORGE CAMPBELL—You say in the second sentence of that first paragraph:

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

If the government believes that, why is so much of this bill focused on regulating what occurs in the workplace between employers and employees?

Mr Pratt—The bill has many aspects. They are largely aimed at attempting to remove barriers to agreement making in the workplace and to prevent practice which will actually act to discourage agreement making in the workplace.

Senator GEORGE CAMPBELL—Of the two fundamental arguments in your reasons for the reforms, the first is the productivity issue, which you have not proven, and the second is to ensure that employees and employers can enter whatever arrangements best suit them in the workplace. Yet when you look through this bill, it is peppered on every other page with restrictions and constraints upon what employers and employees can agree to in the workplace. If your whole focus is that the players in the workplace should be able to determine the relationship between themselves, why do you focus so much on preventing or prohibiting them in a whole range of areas from reaching agreement on particular aspects of the relationship? I understand the keep the unions out stuff—you do not have to try to explain that to me.

Mr Pratt—There are three points. Firstly, I do not think I would agree with the proposition that this is aimed at keeping the unions out. Secondly, as to your first point, I think it is reasonable—

Senator WONG—Is that a policy opinion?

Mr Pratt—No, it is not a policy opinion. As you know, it is not my job to make policy statements.

Senator WONG—Exactly.

Mr Pratt—On the first point you made, Senator Campbell, I think it is true to say that there is strong evidence that productivity improvements come from workplace relations reform and deregulation. Mr Kovacic has pointed out a number of areas where there is that sort of evidence. The third point that I make is to reiterate what I said before: much of the bill in fact aims to reduce the sort of regulation which will act to discourage employers and employees from agreement making at the workplace level.

Senator GEORGE CAMPBELL—I can understand that it seeks to—

CHAIR—Senator Campbell, I think we might leave it there.

Senator GEORGE CAMPBELL—I beg your pardon, but can I finish my line of questioning with the department? I did not come along here this morning to ask questions, because I was told we were not doing that. But given that we are, I think I am entitled to ask the questions that I want to ask.

CHAIR—You have had a good run including more time—

Senator GEORGE CAMPBELL—You set it up that way. I am sorry but—

CHAIR—This will be your last question. Several Wong has a couple, I understand, and then it is Senator Johnston's turn, so I would like this to be your last question for the moment. You will have ample opportunity on Friday.

Senator GEORGE CAMPBELL—I want to come back to averaging on the 38-hour week, which I asked about at estimates. Can anyone here explain to me how that averaging is going to operate in respect of the determination of annual leave for an employee for whom there is averaging over a 12-month period?

Mr Bohn—Annual leave accrues on a four-weekly basis based essentially on the number of ordinary hours worked during that period. The sum of those over the course of a year constitutes the annual leave entitlement for that year.

Senator GEORGE CAMPBELL—What happens if, for some reason or other, over that 12-month period I do not work an average of 38 hours per week?

Mr Bohn—If you do not work an average of 38 hours, then the amount of leave accrued would be adjusted to reflect that. So if you worked part time, for example, for a period—

Senator GEORGE CAMPBELL—No, I am talking about a full-time employee, so forget about confusing it with a part-time employee. I am talking about a full-time employee who is on a 38-hour week averaged over a 12-month period. If, for some reason or other, I work less than a 38-hour week in the first half of the year and the employer is not able to provide me with additional hours over the second half of the year, do I or do I not accrue less than four weeks annual leave for that year?

Mr Bohn—You would accrue an amount equivalent in hours. It would be less than four weeks—it would be less than four times 38.

Senator GEORGE CAMPBELL—So despite the fact that I am a full-time employee employed with a company—to suit the needs of the company—if the company cannot provide me with the annual average of 38 hours per week, I am penalised at the end of the year because I do not get my full four weeks annual leave.

Mr Bohn—I have answered the question. It is based on a sort of ordinary average hours worked in each four-weekly period.

Senator GEORGE CAMPBELL—But you are saying that, if they are less, I get less annual leave.

Mr Bohn—Yes.

CHAIR—We will leave it there for the moment.

Mr Pratt—It is worth pointing out that you would still be paid for 38 hours per week during that period that you worked.

Senator GEORGE CAMPBELL—If he was paid for 38 hours per week for that period of work, why doesn't he accrue annual leave at the same rate?

CHAIR—We might pursue that on Friday.

Senator GEORGE CAMPBELL—An argument is that you are guaranteed four weeks annual leave. You are now saying that you are not.

Senator WONG—Mr De Silva or Mr Bohn, in the estimates hearings one of the issues we were discussing was the reasonable additional hours provision of the act. I think we got to the point where my suggestion to you was that, if you averaged over 52 weeks, the protection would not necessarily arise until the 53rd week. Is that particular provision the subject of consideration by government for alteration?

Mr Bohn—At the committee hearing, as you are aware, Senator Abetz indicated that the minister had asked the department to look at that issue and the department is looking at that issue.

Senator WONG—So would we envisage that the bill will be amended by the government in the Senate in respect of that issue or does the government think that not having any protections for additional hours until the 53rd week is a reasonable position?

Mr Bohn—As Mr Pratt has already indicated, we cannot comment on what amendments the government might end up moving.

Senator WONG—Briefly, on the unitary system issue, your proposition in the submission, I think, is an 85 per cent coverage. The ABS statistics do not necessarily correlate to the legal structure or constitutional position of the employer. Has the government or the department undertaken any studies to determine what proportion of Australia's work force could actually be covered by the proposed ambit of the legislation?

Mr Kovacic—Your reference to 85 per cent has been a figure that has been around for some time in the sense that it was also referred to in a series of discussion papers that were released, I think, in 2000 by the then minister for workplace relations, Mr Reith, so it is a longstanding figure.

Senator WONG—It is longstanding in terms of the government reiterating it. I am asking the basis of the figure.

Mr Kovacic—I am about to go on to that.

Senator WONG—Thank you.

Mr Kovacic—In relation to one of the points that you made in your question, there are some practical difficulties in terms of data being available which would provide some precisely accurate figures, if I can put it that way. There is more recent data that we have been examining which suggests that the figure of 85 per cent is a reasonable figure with respect to coverage but, indeed, it cannot be precise in the sense of being able to break it down in relation to the various state jurisdictions because one of the practical difficulties in this area is being precise about what bodies may be determined to be constitutional corporations.

Senator WONG—Correct. So where is the additional data that you say you are relying on for the 85 per cent figure? Can you provide it to the committee?

Mr Andrews—The additional information is derived by taking an estimate of the number of workers in constitutional corporations from ABS data. We also took account of the number of workers in Victoria—clearly all Victorian workers are covered by this act—and made some

estimates of the number of workers remaining in the CA stream who are currently in the federal system.

Senator WONG—Can you provide the committee with that particular data? The proposition that has been put to the committee in consideration of the legislation by the department is that it will cover 85 per cent of Australia's work force, which is not quite a unitary system, even by the government's own figures—it is 15 per cent short. But there is obviously some controversy about that figure. I certainly would be interested in knowing who was in and who was out and the assumptions which are utilised in coming to the 85 per cent figure.

Mr Pratt—If it would be helpful, we will return with more data on that on Friday.

Senator JOHNSTON—I have been watching these television ads that have been run by the ACTU, and I want you to clarify for me the real situation with regard to this legislation. There is an implication that workers with families can be sacked for not being able to work extra shifts on short notice. Could you comment on that for me, please?

Mr Smythe—There are presently provisions in the Workplace Relations Act which make it unlawful to terminate someone's employment on the basis of family responsibilities. Those provisions will remain in the act. They are untouched by this bill.

Senator JOHNSTON—Secondly, one advertisement seems to imply that you can be forced onto an individual contract by an employer. The way I read this legislation, that is not the case. Can you confirm that for me as to the detail?

Mr Smythe—There is a provision in the bill which reflects the existing provisions in the Workplace Relations Act which make it a civil penalty to apply duress to a person in relation to the making of an AWA. So an employer cannot apply duress to—

Senator WONG—But an employer can make it a condition of employment that you accept an AWA. Let us be clear about this: that is absolutely the case under this legislation. Do you not agree with that, Mr Smythe?

Mr Smythe—That is correct.

Senator JOHNSTON—So if I am applying for a new job, the job would be on an AWA job basis—that is, in order to have the job I must have an AWA?

Mr Smythe—That is right.

Senator JOHNSTON—If I have been with the firm for many years, is it possible for the employer to come up to me and demand that I sign an AWA?

Mr Smythe—No, the existing law would make it duress to say to an existing employee, 'You have to sign the AWA or you get the sack.'

Senator JOHNSTON—So new employees would evolve into AWAs but existing employees cannot be threatened or duressed into signing AWAs?

Mr Smythe—That is correct.

Senator GEORGE CAMPBELL—But it is open for an employer or an employee to terminate an agreement at any time on 90 days notice. Once the 90 days notice is given, at the end of that period the employee goes back onto the five minimum conditions.

Mr Smythe—I do not understand what that has to do with forcing someone to have an AWA.

Senator GEORGE CAMPBELL—That is the basis upon which they can shift them across to an AWA.

Mr Smythe—The employee does not have to sign an AWA.

Senator GEORGE CAMPBELL—He does not have to sign it but—

Mr Smythe—He does not have to make an AWA.

Senator GEORGE CAMPBELL—His other option is to go back onto the five minimum conditions—isn't that right?

Mr Pratt—I think we should clarify how that will operate. An agreement will not be able to be terminated at any time. It will only be after it has achieved its nominal expiry date that either party will be able to notify that it intends to terminate the agreement with 90 days notice.

Senator GEORGE CAMPBELL—As I understand the reading of the bill, the 90 days notice can be given before the expiry date. So the notice can be given 90 days before it is due to expire, and on the expiry date that would then become available.

Mr Pratt—The bill does not reflect in that area the policy of the government, as put out in its *WorkChoices* booklet.

Senator GEORGE CAMPBELL—What does that mean?

Senator JOHNSTON—It is not the law.

Mr Pratt—That is right.

Senator WONG—You said one thing and you put something different. Is that what that means?

Senator JOHNSTON—You have to read the act. That is the important thing.

Senator WONG—So Australians should not read the booklet. Is that right, Senator Johnston?

Senator GEORGE CAMPBELL—So ignore the booklet?

CHAIR—Senator Johnston has the floor.

Senator JOHNSTON—I just want to clarify: is the allegation that you can be forced onto a contract simply untrue?

Mr Pratt—If you are an existing employee, that is correct—as is currently the case under the Workplace Relations Act.

Senator JOHNSTON—In the nature of the advertisement that I watched on television—that is, where a person said that as an existing employee he was being forced into a contract?

Mr Pratt—That is correct.

Senator JOYCE—Apart from what has already been covered here, I have a few issues to clarify. What mechanisms are in place to protect a new employee, especially a young employee, from unwittingly and against the norm of his workplace bargaining away his conditions when he starts at a workplace—back down to his minimum conditions?

Mr Kovacic—I presume that is a person 18 years or younger?

Senator JOYCE—Yes, in the work force for the first time.

Mr Kovacic—There are a number of protections built in for that particular employee. Firstly, they can appoint a bargaining agent to assist them in the process of negotiating an agreement. That can be anyone of their choosing. For instance, it can be a union official if they choose. Alternatively, it can be a parent or friend of the family. Secondly, they can approach the Office of the Employment Advocate for assistance and advice on agreement making. That can be to get an explanation of an agreement that might be being offered by the potential employer. It can be also to provide advice as to whether the proposed agreement indeed complies with the fair pay and conditions standard. Thirdly—and this is perhaps a key protection—the agreement itself will have to comply with all of the elements of the Australian fair pay and conditions standard at any stage during which it is in operation. Fourthly, the agreement, if it is an AWA, will need to be countersigned by an appropriate adult before it can be lodged with the Employment Advocate.

Senator JOYCE—Who is an appropriate adult?

Senator SANTORO—Could you define 'appropriate'?

Mr Kovacic—It could be their parent or guardian. Those sorts of people I think would probably be the most common, but it could be others as well

Senator JOYCE—What would be the costs involved for a new 18-year-old first time into the work force employee?

Mr Kovacic—The advice and assistance they would receive from the Office of the Employment Advocate would be free of charge. What, if any, fee a bargaining agent might charge would depend on the usual fees of that bargaining agent. Sorry, I do not have a sense of what fees they may charge.

Senator JOYCE—That bargaining agent could be a union?

Mr Kovacic—That is correct.

Senator JOYCE—A gazetted holiday as it currently stands is a paid holiday, isn't it?

Mr Kovacic—In most awards it would be a paid holiday I would imagine.

Senator JOYCE—Under this legislation would Christmas Day, New Years Day and Good Friday be likely to be paid holidays?

Mr Kovacic—Under this legislation for award-reliant employees, the existing award provisions relating to public holidays would continue to operate. What applies for those employees under agreements will be obviously determined by the provisions in the agreement itself. For new agreements that are being negotiated under this legislation there is protection

for provisions such as public holidays, in the sense that if there is an intention to either modify or remove the award provisions relating to the various protected award conditions, such as public holidays, then the agreement itself needs to be quite explicit in how it modifies—or the fact that it removes those provisions from the agreement.

Senator JOYCE—I am still not clear about what you are saying there. I want to know about Christmas Day, Good Friday, Anzac Day and those iconic compass points in the calendar. I have read that they are deemed to be ordinary hours and therefore paid. Is that not the case?

Mr Bohn—That is correct—for employees who are reliant on the standard, as Mr Kovacic has said. If there are alternative and more generous arrangements in awards or agreements, then obviously those apply.

Senator JOYCE—Thank you. Is it currently possible to have two related entities both with 100 employees or less, under the control of basically the same controlling entity and both exempt from unfair dismissal laws?

Mr Smythe—Under the bill as drafted that is correct.

Senator JOYCE—The states rights issue has been raised as a concern. This bill is going to the High Court, isn't it?

Mr Pratt—Certainly there are a number of statements from state governments suggesting that they are considering mounting a High Court challenge.

Senator JOYCE—They would have a better idea about states rights issues than I would. There has been a lot of conjecture on sick leave and having to get a medical certificate. Is it correct that, if you are too sick to go to the doctor, you are exempt from having to get a medical certificate?

Mr Bohn—The provision in the standard—and, again, we are talking about standard-reliant employees here—provides that, if the employer requires a medical certificate, the certificate can be provided after the illness. In that case, it would be open to the employee to attend a medical practitioner later and obtain a certificate.

Senator JOYCE—Point 5 of the section you are referring to says that, if there are other extraneous reasons as to why you cannot get one, you are exempt. It would be a fair presumption that if there is no doctor in your town, that would be a fair explanation of why you could not get your hands on a certificate.

Mr Bohn—Where there are circumstances beyond the control of the employee—I think that is a pretty strong example.

Senator JOYCE—If there is a doctor in your town, but you cannot get in to see them because they are booked out, that would be another fair exemption, wouldn't it?

Mr Bohn—That would depend a little more on the circumstances, given that it is possible for the employee to obtain a certificate later.

Senator JOYCE—When this legislation was drawn up, what was your reference to legislation in other countries? Did you use as a basis any legislation in England or New Zealand?

Mr Pratt—It is fair to say that on an ongoing basis we consider the industrial relations system of other countries, and that feeds into our thinking about advice that we might provide to the government on Australia's system. The Workplace Relations Amendment (Work Choices) Bill 2005, though, is designed for Australian circumstances. It is not based on the system of any other country. Certainly there are some elements of it which have some similarities with legislation in other countries. For example, the Fair Pay Commission has some similarities with the Low Pay Commission that the UK has.

Senator JOYCE—The unions do have access to the workplace, don't they? It is just that you have to designate a time and a place where you talk to your members—would that be correct?

Mr Cully—Yes, unions will continue to have access to workplaces. There is a provision there that requires union officials to comply with a reasonable request from the employer about where to hold the meeting and the route to get to that meeting room.

Senator JOYCE—I know that sworn officers such as police officers are not covered, because they are under state awards at the moment, but it would be rather difficult for this to be able to handle them, wouldn't it? You would hardly have a police officer negotiating an AWA.

Mr Pratt—There is nothing in the bill that would change the circumstances of police officers and their remuneration.

Senator JOYCE—I am a sworn officer and I would not mind negotiating my AWA. Can you explain the whole concept of operational reasons for dismissal?

Mr Smythe—Essentially it refers to redundancy because of change in the operating requirements of the workplace.

Senator JOYCE—What would be an operational reason?

Mr Smythe—There is a vast array of operational reasons. You might decide to purchase some new plant that would mean you would require fewer employers because you are going to do business a different way. It is effectively a redundancy situation. By itself, no.

Senator WONG—Is that excluded—a decision by the employer to determine that they want their work force employed on an AWA?

Mr Smythe—It is not mentioned in the bill, but it is difficult to imagine that, in the normal course of events with no other factors, it would be an operational reason.

Senator SIEWERT—Senator Campbell expected that we would not be asking very many questions today, so I will be asking quite a few more on Friday, but I would particularly like to follow up on the productivity issue that Senator Campbell raised. Are you able to provide us with the names of the other studies you are referring to and where they can be obtained?

Mr Andrews—Yes, we are. I can provide you with a list next Friday.

Senator SIEWERT—It would be preferable if we could be provided with them before that so I could look at them before Friday.

Mr Andrews—Okay.

Mr Kovacic—If you go to page 6 of the current department's submission, you will see that there are a number of studies that are referred to there, and there are footnote references down the bottom of the page. That might assist.

Senator SIEWERT—Thanks. I was not able to see the submission until I walked in here this morning. Have you looked at some of the other submissions to this inquiry that are available? Apparently a couple of submissions have been particular about the impact of the legislation in Western Australia on lowly paid workers and women.

Mr Pratt—Yes, we have had a look at a number of submissions so far. Naturally we have not yet been able to do a full analysis of all of them. As to the Western Australian submission, I am not sure. I am aware that we do have a number of comments on a few of the submissions which, if time permits, we would like to put on record.

Senator SIEWERT—I would certainly like to be following up your comments on those on Friday, because I think they make some particularly relevant comments about the legislation's impact on Western Australian. I am basically putting that on notice. I would like to follow up the comment on outworkers. You said the provisions are carrying over to the new legislation. Does that mean that for contractors handing on work—my understanding is that specific provisions exist around that, they control that—those provisions carry over into this legislation?

Ms McDonough—Yes, they do.

Senator SIEWERT—The current provisions that protect outworkers, exactly as they are now, are being carried across into this legislation?

Ms McDonough—That is right. In relation to certain conditions that are specific to outworkers, as you have just outlined, they will remain a feature of the system.

Senator SIEWERT—All of them?

Mr Pratt—Senator, I draw your attention to pages 60 and 61 of our submission. I understand you have not yet had a chance to read through this. The first full paragraph on page 61 makes it quite clear that in addition relevant award provisions will also be read into all agreements covering outworkers, to ensure that outworker agreements meet the minimum standards provided by the award provisions.

Senator WONG—Unless there is an AWA removing them.

CHAIR—Senator Siewert, perhaps you could put the rest of your questions on notice.

Senator SIEWERT—Yes, as long as I am able to ask the department some more questions on Friday.

CHAIR—Yes, there will be ample time then. Senator Nash had one question.

Senator NASH—Obviously there has been some comment in opposition to moving towards this national workplace system. Could you clarify the need for that simplification and the benefits that will come from that simplification?

Mr Pratt—The major benefit for employers will be that they will not have to deal with multiple systems. If they are a constitutional corporation, they will be subject to the workplace relations act under the Commonwealth system. If they are an employer who

operates across a number of states and territories, they will not be subject to different workplace regulation in all of those statistics and territories; they will be subject to the federal workplace relations act.

Mr Kovacic—There is also the simplification that goes not only with the agreement making process but also with the introduction of the fair pay and conditions standard. At the moment, it is quite complex and often very difficult for employers and employees to assess whether a proposed agreement meets the no disadvantage test. With the introduction of the fair pay and conditions standard, we will have a very simple benchmark for employers and employees to determine whether their agreement complies with legal requirements in that regard.

CHAIR—I think you also had some comments in relation to the submissions put forward by the state ministers. Do you wish to put those forward now or on Friday?

Mr Pratt—If we can do it now, we would like to. We will attempt to be brief.

Ms James—In our quick look over the joint submission, we have seen a few issues that we would like to address, given that the ministers are appearing next. Page 25 of the submission suggests that there will be a wage freeze for employees who were previously covered by state awards—who were brought into the federal system. This is not the case. I draw the committee's attention to paragraph 3470 of the explanatory memorandum.

Senator JOHNSTON—Which submission are we talking about?

Ms James—This is the joint government submission that was—

Senator JOHNSTON—Are we talking about 3.9?

Ms James—Page 25 is where the comment is made, and I am referring the committee to paragraph 3470 of the EM, which makes it clear that the notional agreements which will contain the terms and conditions of state awards do not contain the wage classification scales: they do not derive the scales in that instrument. The wage and classification scales in state awards will become preserved Australian pay and classification scales that move to the jurisdiction of the Fair Pay Commission. So you need to read the wages part in combination with that part, which makes it quite clear that those pay classifications will be adjusted by the Fair Pay Commission, in the same way that pre-reform federal awards and their pay and classification scales will move to the Fair Pay Commission. I hope that is of some assistance to the committee.

Senator WONG—I want to clarify that point. That is clearly at the discretion of the Fair Pay Commission, though.

Ms James—The Fair Pay Commission will make decisions about the adjustment of all pay and classification scales; that is correct.

Senator WONG—And the retention or otherwise of the classifications and their current relativities is a matter for the discretion of the Fair Pay Commission.

Ms James—That is correct. The point I am making is that the submission implied some sort of differential treatment of people who were previously covered by state awards in this respect, and that is not the case. Page 8 of the submission suggests that parties may be subject to fines in relation to prohibited content when that prohibited content was prescribed after the agreement was made. That is not correct. Although prohibited content can be prescribed down the track, the effect of this will be merely to make the content void in an agreement that already exists. The penalties only exist at the time the agreement is being made or lodged, so there are no retrospective fines in this area. I think it is important for the committee to be aware of that.

Senator GEORGE CAMPBELL—But is there retrospective application of the law in the sense that items in state awards which were negotiated 12 months ago are no longer operative when they transfer over?

Ms James—If the content is prescribed as prohibited that is correct: it will be void.

Senator GEORGE CAMPBELL—So agreements entered into in good faith, under the law as it stood at that point in time, are rendered illegal retrospectively by application of your bill?

Ms James—As is the case currently with prohibited content under the act, objectionable provisions and matters that do not pertain to the employment relationship are void in agreements.

Senator GEORGE CAMPBELL—But they do not impact upon state awards at the moment, do they?

Ms James—That is correct.

Senator GEORGE CAMPBELL—So these agreements at the state level, which are entered into in good faith and which may have been arbitrated at the state level in good faith, are rendered invalid by the operations of your bill at the federal level once they transfer into the federal system. That is retrospective application.

Mr Cully—I would like to expand on that point slightly. The objection provisions in the FOA part of the Workplace Relations Act currently do operate to render some provisions in state industrial instruments void.

Senator GEORGE CAMPBELL—How do they do that?

Mr Cully—By relying on the constitutional powers in part XA.

Senator GEORGE CAMPBELL—But how do they do it now? Do they operate retrospectively?

Mr Cully—Section 298Y of the current act says that if it is a provision of an industrial instrument it is void, to the extent that it is an objectionable provision.

Senator GEORGE CAMPBELL—Yes, but that would only apply federally. That would not apply to the states.

Mr Cully—No, it applies generally.

Senator GEORGE CAMPBELL—It applies across the board?

Mr Cully—Yes, because part XA of the Workplace Relations Act currently relies on the corporations power to some extent.

Senator GEORGE CAMPBELL—But does that apply retrospectively to agreements made prior to that provision being in place?

Mr Cully—I would have to look at it.

CHAIR—Perhaps we can check that out and return to it on Friday.

Ms James—There is one other point that I think it is important to raise. On page 62 of the submission there are some concerns expressed on some lack of clarity about certain state laws and whether they will be excluded. The laws in question protect employees from dismissal or victimisation because they have made a health and safety complaint. There are a number of laws in the state jurisdictions, which are incidental to other regulatory regimes, which provide protection against dismissal for people. For example, you cannot be dismissed for making a complaint to the Ombudsman or for making an OH&S complaint. It is not the intention of this bill to exclude those laws, and we do not consider that they do. I am happy to outline why at a later date if that is necessary.

CHAIR—Thank you for that; that would be very good. Before we suspend for morning tea, which will be a 15-minute break—

Senator WONG—We are running late and we have state and territory government ministers—

CHAIR—Yes, I know we have the state ministers.

Senator WONG—some of whom have a short time frame. I would be suggesting, for the committee's consideration, a shorter morning tea break.

CHAIR—Thank you for that suggestion, Senator Wong. The committee will be taking a 15-minute break—

Senator WONG—That is very courteous!

CHAIR—We will resume at 10.35. Before we do suspend, however, I wish to point out for the public record that the department's submission was emailed to all senators—and I have the document in front of me—at 2.53 pm on Friday. All senators would have received it on the system then.

Senator GEORGE CAMPBELL—I would make a point in response to that. I did not have my system available to me, but I was in the secretariat's office at about 2.30 pm on Friday, and the submission was not available then.

CHAIR—It did become available—

Senator GEORGE CAMPBELL—It was confirmed again then that we would not be questioning the department this morning.

CHAIR—The submission did become available at 2.53.

Senator GEORGE CAMPBELL—I wish you would be consistent and stick to decisions you make about how the committee is going to run.

Senator JOHNSTON—We all got it.

CHAIR—The committee will now suspend for morning tea and resume at 10.35, when we will welcome the state ministers.

Proceedings suspended from 10.20 am to 10.35 am

BARTON, Mr Thomas, Minister for Employment, Training and Industrial Relations, Queensland Government

BURNS, Dr Chris, Minister for Public Employment, Northern Territory Government

DELLA BOSCA, Mr John, Minister for Industrial Relations, New South Wales Government

GALLAGHER, Ms Katy, Minister for Industrial Relations, Australian Capital Territory Government

HULLS, Mr Rob Justin, Minister for Industrial Relations, Victorian Government

McRAE, Mr Anthony, Parliamentary Secretary for Agriculture and Forestry, Western Australian Government

THORP, Ms Lin Estelle, Member of the Legislative Council, Tasmanian Government

WRIGHT, Mr Michael John, Minister for Industrial Relations, South Australian Government

CHAIR—Welcome. I believe we have allowed what you and I would consider a reasonable amount of time, but I would ask that you keep your introductory remarks brief so that we can spend as much time as possible on questions. I will ensure that you have sufficient time to put additional remarks on the record if some matters which you wish to cover are not covered in questioning. Thank you for your submissions. I invite each of you to make a brief opening statement before we begin our questions.

Mr Della Bosca—Firstly, let me congratulate you on enforcing good trade union conditions. A 15-minute tea-break is, I think, a very important thing—a well-respected part of Australian culture. I will address a number of issues and my colleagues will address various issues within our combined submission. The first point I make to the committee concerns the fact that my officers for industrial relations were advised about 12 months ago that the Commonwealth's new policy objective with regard to industrial relations was to achieve a unitary system. That came as somewhat of a surprise because we had not been told of that at any ministerial advisory council or ministerial council on industrial relations. It was a matter of some public speculation, which I have called a bit of sabre rattling, but that was the first occasion on which we heard of this new push.

On the basis of the current advice that is available to me—I believe similar advice is available to the Commonwealth minister and my state colleagues—the first ground on which this legislation is a failure is that it will not achieve, and cannot achieve, the Commonwealth's first objective. It will not achieve a unitary system. In terms of employment relations, at least two million employees in Australia, perhaps more, will still be outside the ambit of this bill. They will include, to the best of my advice, all crown employees of the various state governments, arguably many municipal employees and all of those people employed by partnerships and unincorporated associations and, very dangerously for the National Party's own constituency, those employed by trusts. I think that is the first problem. The legislation simply will not achieve the objective the Commonwealth has set out to achieve and, in

attempting to achieve that bridge too far, it will create a dreadful amount—a woeful amount—of further confusion in the workplace and amongst employers.

The second point I make concerns, in a sense, the mischief created by there being more than one system of industrial relations. You are all senators; we operate within a federation. I come from a jurisdiction which has taken the view from both sides of political persuasion—representing New South Wales governments for the last century since the foundation of the Commonwealth—that a federated system is our method, as limited as it may be, of preserving competition between the jurisdictions, which produces good outcomes. It is also Australia's version of a division of powers. I think that is a fundamental point in an area where individual freedom is most sensitively positioned—that is, people's relationship with the economy as employers and employees. This legislation proposes, or attempts, to have a single point of legislative power and I think that is a very dangerous policy position to pursue.

The third point I wish to make is that the New South Wales industrial relations system is not broken. When you look at the policy rationale, if you reject the concept of competitive federal industrial relations, it seems to me that the only policy rationale you are left with, if I understood the Commonwealth officers who I heard making a submission to the committee only a few minutes ago, is the rationale that the global and national employers, the global companies—those who would normally operate within more than one state's boundaries—are demanding this change for greater efficiency to allow Australia to be more competitive.

I think I am now the longest-serving industrial relations minister in the Commonwealth. I work and live in the largest city in Australia, where many of the global and national employers are located. I have never been approached—even to this day—by any senior executive of a global or national employer suggesting that this is an important reform from the point of view of their operations in Australia, or that it makes Australia a more attractive place for them to employ people. So I simply put before you that that is a furphy. As for the adventures of the unitary system: if you are operating a panel beating shop in Woy Woy or a farm in Cootamundra, I cannot understand how anybody could argue that a unitary system of itself is a good policy objective for you, unless you are operating in more than one state.

Can I give another example by way of reinforcement. The current Commonwealth system of competitive federalism has limited powers for an arbitral tribunal; in fact that is a stated policy intention of the current Commonwealth government. The New South Wales government has an opposite policy intention. We have a powerful state umpire under state legislation. The largest single direct employer of manufacturing labour in Australia, BlueScope Steel, continues to use our jurisdiction in preference to the Commonwealth's because of the nature of its operations. Those operations are very important to the Australian economy. The nature of those operations are such that it prefers the continuity and ability to resolve employment disputes quickly and effectively and in a fair way, and BlueScope Steel continues to prefer the New South Wales system. The company literally votes with its feet. Both the employers and the employees persist with the New South Wales industrial relations system.

I make that point simply to say that the fundamental policy rationale of a unitary system does not seem to stack up. I want to make one more point before I hand on to my colleagues, which is to explore what the policy rationale might be and the dangerous course that the

Commonwealth parliament may well be pursuing, in terms of the Australian lifestyle, much of Australian culture and many of the things that we value as a people. It is quite fundamental. My colleagues here will recall that we were calling on the Commonwealth minister for some time to have a workplace relations ministers' council to discuss some of the proposals which were being publicly canvassed. We were not successful. We lobbied him exhaustively and separately and finally we did achieve one and we got a commitment—Minister Wright managed to get a commitment from the federal minister—about consultation, which was not fulfilled.

What I managed to do was ask the Commonwealth minister what the policy objective really was and why he was not prepared to withdraw the bill and commence negotiating about further harmonisation measures, which remained a continuous offer of the New South Wales government. This is the view that other states also have—that we were prepared to talk about reform initiatives and about harmonising the various jurisdictions to make it simpler and more efficient for those companies that do operate across more than one state boundary.

The Commonwealth minister made it quite clear to me that the policy objective was competitiveness—that we had to keep up the pace of economic reform. When I questioned him further about that he said it was because we needed to compete with India and China. I actually agree, fundamentally, with the Commonwealth government about that. To achieve prosperity, Australia does need to compete with India and China. We need to compete in skills formation, in technology, in education and in a whole range of ways in which Australian prosperity has been achieved under various Commonwealth governments. If the fundamental policy objective behind this bill—as it appears to me to be—is to create a pool of labour prepared to work for something approximating the international base labour standard, then I think we are heading down a very dangerous course.

I repeat something I have said publicly a number of times: the Prime Minister is on the record validating his claim that this legislation is important from the point of view of Australian reform by pointing to the events in France. Senators, let me suggest you do some very serious thinking about that because it seems to me that the policy objectives currently being pursued with this legislation are identical to the policy objectives mistakenly and accidentally pursued by various French administrations which have led to a substantial underclass of people who now feel alienated from French society in a way that many Australians may in another decade or so. If you go down this path you are deliberately creating a working underclass.

I submit just one point as to the proposals you have already effectively put into place on minimum wage fixing. The Harvester decision, which frankly forms the basis of Australia's economic civilisation, sets the rate of minimum remuneration in the economy as that which a person can live on in dignity and by which they can shelter, feed and clothe their family. If you propose to abolish that standard of wage fixation, then you are setting up the opposite set of conditions. You propose to establish a standard for fixing wages, which means that people will exist below being able to live, shelter and feed their families in a dignified fashion. I think, Senators, you need to think about that very clearly, regardless of which side of politics you represent.

Mr Barton—I would like to make a few opening comments. The first is to support my colleague John Della Bosca in his assertion that the system in New South Wales is not broken—neither is Queensland's system. In fact, in Queensland, we believe that our current fair and balanced system of industrial relations, which covers over 70 per cent of the work force of the state—one of the largest state jurisdictions in IR—is a fundamental reason for our economic performance running as well as it is. We have among the top overall economic performances in the nation in terms of growth. We currently have the highest jobs growth in the nation. Last month alone we created 2,300 new jobs in Queensland, when 2,600 were lost in Australia overall. We have the lowest unemployment in the nation. We have some of the lowest dispute levels. We put that a fundamental cornerstone for our economic performance has been the very fair and balanced industrial relations system that we have, which this legislation challenges. In fact, we go so far as to say that, if the Prime Minister and the government's assertions are correct, that you have to have legislation of this nature to gain economic performance, Queensland should be a basket case, not one of the engine rooms of Australia, as it is today.

We fundamentally object to legislation that takes away fundamental fairness and conditions to working employees and working families in the state of Queensland. We totally object to the no disadvantage test being removed. We object seriously to the removal of the Australian Industrial Relations Commission from wage setting and to the removal of unfair dismissal provisions, particularly when even the test of the 100 is not a real test because businesses can simply say that it is part of organisational change and dismiss people even where they have more than 100 employees without any test against unfair dismissal.

We also make it very clear that we do not believe that this system will simplify industrial relations in this nation. The bill itself makes it very clear that it accepts and understands that there will still be state jurisdictions in terms of the period of time that there is to move from one system to the other if you are not a corporation. We also object to the fact that we will not have one system instead of six. In fact, we will have another layer with the so-called Australian Fair Pay Commission layering in on top of what we already have in the existing system. We believe, quite frankly, that the performance now shows that, had the current government had its way in national wage cases, the lowest paid employees would now be $50 a week worse off; we expect them to be worse off again if this legislation is passed and successfully put into place.

Again we would make the point that very many people do not have an understanding about what this bill does. Like New South Wales, we have large numbers of employers who choose to work under the state industrial relations jurisdiction. Many of those large companies are corporations and, if this legislation gets up, they will be forced into the federal arena, but small unincorporated businesses will not. That is most of our small businesses and most of the farmers in our state; most of them do not want to incorporate. So we will have a situation where a very large number of employees will be left under the state jurisdiction. Indeed, many people who are small businesses who currently are under federal jurisdiction because they are not incorporated will be forced back to the state jurisdiction. This runs totally contrary to the rhetoric that is being put forward about how this will simplify things for business and, in particular, for small business.

This legislation will create massive amounts of confusion for small business in the state of Queensland. Small businesses will also have additional costs put on them. They will all need to get industrial relations consultants to negotiate their AWAs, while now they have the surety of a common rule award system and can check their conditions and what they need to be paying simply by ringing Wageline. They have the surety of a level playing field, knowing that their competitors are on the same wages and conditions as they are.

We also have an argument about the seriousness of the changes. Many people have looked at this legislation—whether it is the OECD figures or Saul Eslake from the ANZ bank—and very clearly say that it will not result in improved productivity; in fact, it is likely to result in lower productivity. We have a very serious problem with the fundamentals of the argument that have been put forward to support this legislation by the government.

We have great difficulty with the legislation because it challenges the very nature of the federation we have. Like my colleague John Della Bosca, I was seeking to have negotiations around this matter. I think we had four meetings of the ministerial council cancelled before we had a meeting. At that meeting, the net discussion around this proposed legislation would have lasted about three minutes. To the simple question: 'I presume that you are not going to hand over your state systems,' we all responded, 'You are dead set right; we are not going to be handing over our state systems by agreement.' At the end of that discussion there was a guarantee that we would be briefed, we would be talked to before the legislation was introduced into the parliament. Like all of my colleagues at this table, I got hold of it by jumping on to the internet at eight o'clock on the Wednesday morning before last.

This is a real threat to the very nature of the federation that we have. We view it as the greatest single act of vandalism of the Australian Constitution in 100 years. If this goes through, it is likely to be the wedge upon which the corporations power is used to intervene in a whole range of other state powers. As demonstrated at the last COAG meeting, the premiers along with the Prime Minister could reach agreement on everything except industrial relations. We are still working productively on a whole range of other areas, including some that I am responsible for in the training area. I make the point that this bill will not assist the nation's growth; it will only create division. The state of Queensland remains implacably opposed to it.

Mr Wright—Before changing the work laws that apply in South Australia, all of us need to act in a careful, sober manner. All of us need to make sure that we give the community every opportunity to have their say on the detail as well as broad principles. All of us need to make sure that, to the greatest extent possible, the community are engaged in the change process and can feel confident that their views have been given due consideration. The fact that we have the most jobs in our state's history and the least industrial disputes of any state provides even more reason to take a careful consultative approach to the work laws that affect families, communities and the economy in many different ways.

It would be totally unrealistic for this inquiry or anyone else to conclude that our South Australian legislation has not had a positive impact on all of South Australia. Our laws promote an ethos of genuinely trying to foster the interests of both businesses and their employees. Our industrial legislation is 153 pages long. It is well recognised as being easy to understand and easy to use. Simple and straightforward legislation makes life easier for

business and everyone else. The Work Choices bill is 534 pages longer than our act in South Australia. It is nonsense to claim that 687 pages is simpler than 153 pages; it simply does not make any sense.

We know that our climate of industrial harmony is a major asset to our state in winning major contracts and attracting business investment. Our system is successful in preventing and resolving industrial disputes because the independent umpire has the ability to deal with the issues at the heart of disputes. Under Work Choices, except in the most extreme circumstances, all the commission and the court can do is deal with the symptoms of industrial unrest, not the causes. With a model like that you will not generate industrial harmony because the issues at the heart of industrial disputes will go unresolved and continue to fester. It is not necessary for powers to finally resolve the substance of disputes to be used often for them to be effective. When the parties are part of that environment, each know that they need to conduct themselves with reasonable regard to the interests of the other, rather than simply trying to grind the other party down through industrial strength. In short, everyone knows that if they do not conduct themselves with a basic level of fairness and decency there is recourse to an umpire who is interested in fairness and decency and has the ability to do something about it.

We do not want a system that says to employers and unions: 'There is no place for fairness or decency. There is no-one to meaningfully review and resolve the situation when things get out of hand.' The system proposed under Work Choices says to the industrially strong, whether they are employees or employers: 'Take everything you can get and if that is not fair on someone else it doesn't matter.' A prime example is the growth of lockouts under the Howard government and the Workplace Relations Act. Research shows that between 1999 and 2003, when we were seeing the full effect of the Workplace Relations Act, lockouts were involved in 57.5 per cent of long industrial disputes, up from 7.7 per cent from 1994 to 1998. Ninety-one per cent of lockouts Australia wide were under federal laws—all this at a time when industrial disputation has generally been reducing. The gutting of the safety net will create huge incentives for employers to lock out workers and slash their pay and conditions. This is all about moving workers without industrial strength from the Australian award safety net to the Howard government gutter. This legislation encourages industrially strong employers in particular to throw their weight around. It says to them: 'If you can't get your work force to agree, pick a fight'—and all the commission and the court can do under Work Choices is blow the whistle on the rounds of the fight and check that everyone has filled out the right forms before they enter the ring.

That is not the South Australian way. We do not want that. Our harmonious industrial climate is founded on a basic understanding which is underpinned and reinforced by our legislation: for there to be genuine industrial harmony, industrial strength must be tempered by a concern for a fair go for others. Just as concerning as the policy message that Work Choices sends to the industrially strong—take everything you can get—is the consequential message for the industrially weak, those without industrial strength. First-time job seekers, women, migrant workers, older workers, workers in industries undergoing restructuring and shedding of jobs—the list goes on and on—they all get a very different policy message from the Howard government. The message they get is that employers can and will take everything

they can away from them. To the millions of Australian workers who wait with bated breath to hear what their pay rise will be when the national wage case is heard each year—workers who do not have the industrial strength to negotiate wage increases—this legislation gives a simple message. To millions of Australian workers this legislation says Australia cares a whole lot less about you now—and that is a national disgrace.

Until now Australia has cared enough about making sure that everyone in our community has a decent standard of living: enough to raise a family, enough to buy a home, enough to do something meaningful about it. The so-called Work Choices bill will put an end to all of that. We have had a safety net of awards to make sure that even those without industrial strength can work and have a basic level of dignity. The Work Choices bill is the end of any meaningful safety net. Under Work Choices there is every reason to expect the minimum wage to fall in real terms. Instead of an independent umpire assessing wages with independence guaranteed by tenured appointments, Work Choices creates a body under the thumb of the Howard government, because if members do not toe the line they will not be reappointed. Everyone, including all potential members of the so-called Fair Pay Commission, knows what this federal government wants: lower minimum wages. That has been this government's position before the Australian Industrial Relations Commission, and it has been confirmed in many other ways. So any Fair Pay Commission appointee who does not act accordingly will know that they can forget about being reappointed.

The rest of the proposed minimum standards are an even bigger farce. All the proposed leave minimums count for nothing when AWAs convert workers to casuals. The proposed maximum ordinary hours arrangements are nothing but a joke. Averaging over a year means that the standard is not worth the paper it is written on. So the message to millions of Australians is that this government does not care about them enough to make sure that going to work gives them a basic level of dignity or a decent standard of living. We have a meaningful safety net in South Australia, and we want to keep it. Many in our community rely on it to make ends meet. We say, 'Don't pull the rug out from underneath them.' I call on this inquiry, on behalf of all South Australians, to support our call for the scrapping of the so-called 'work choices' bill.

Mr Hulls—I want to take a different tack because, whilst families in other states are holding their breath waiting for what many would describe as an onslaught, Victorians can speak from somewhat bitter experience about the realities of living under the microscope of the coalition's industrial experiment. Over a decade ago, the Kennett regime deregulated the Victorian industrial relations system in ways that are eerily similar to the current coalition proposals. Victorian workers and their families were indeed the guinea pigs for what many would describe as a cruel and indecent industrial relations model. Their experiences are evidence of what will no doubt occur under the federal coalition's proposals. On behalf of Victorians, I can tell you that the happy ending of employers and employees sitting down together and agreeing on fair wages and conditions was nothing more than a cruel hoax.

In Victoria, in 1993, comprehensive state awards were abolished. They were replaced by similar minimums to those that the coalition now propose. Page 17 of the Victorian government's submission shows that the proposed minima that the federal government intends to impose are very similar to those that were in existence in Victoria. The Kennett

government promoted the deregulated market as a way of encouraging individual agreement making. The Kennett government wrapped the changes around the mantra that employers and employees would be free to negotiate agreements that met their individual needs but, in reality, the changes created a two-tiered system: award employees on a decent safety net and schedule 1A workers looking to the tip jar to pay the bills. The changes actually decimated workers. They created an underclass of low-paid jobs and had a particularly adverse impact on regional Victoria.

In 2000 the Bracks government set up an industrial relations task force, which was headed up by Professor Ron McCallum. That task force was able to provide a snapshot of what life was actually like for workers in Victoria under the five legislated minima. It is all well and good for us, as well-paid politicians, to sit down and to some degree navel gaze about what life might be like, but an expert report showed us what life was like in Victoria under five legislated minima. I just want to give you some idea about what occurred and what no doubt will occur if the coalition's proposals come to fruition.

Schedule 1A workers were twice as likely to be low paid compared to employees on awards. Professor McCallum showed that nearly 60 per cent of those employees were not paid a higher overtime rate. Seventy-five per cent—three quarters—were not paid penalty rates for working weekends, 65 per cent of those employees were not paid annual leave loading and only six per cent of those workplaces paid shift allowances. The odds of being a low-wage Victorian were three times as high for workplaces in the agricultural industry. In Victoria as a result we had what was really nothing more than a low-wage poverty trap, with 66 per cent of schedule 1A workers having no benefits at all beyond their meagre schedule 1A entitlements.

The figures were really quite overwhelming. But then you sit there and say, 'Well, nonetheless, did the industrial relations climate—which certainly promoted low wages—actually promote jobs growth?' because that is a claim that has been made in relation to this legislation. The answer in Victoria was a resounding no. While Victoria certainly had more workers earning lower wages than New South Wales—24 per cent in Victoria and 19 per cent in New South Wales—there was no economic improvement. During the period, New South Wales, under its much more regulated system, enjoyed a lower unemployment rate and higher jobs growth. So the outcome for Victoria under the deregulated model that is about to be inflicted upon the Australian work force was absolutely zero: zero for business, zero for workers and zero, I might say, for Victorian families.

So in Victoria we turned our backs on the low-wage, low-trust outcomes. In Victoria we certainly want an IR system that is in line with international best practice. We negotiated with the federal government to lift those 350,000 Victorian schedule 1A workers into the federal system, because we were of the view that the federal system offered at least an appropriate safety net of award minima. An agreement was finally reached with Kevin Andrews that he would accept these 350,000 Victorian workers into the federal system. Indeed, in the Workplace Relations Act at section 493A they are specifically mentioned:

> (1) The object of this section is to provide access for all employees in Victoria to the award safety net of fair and enforceable minimum wages and conditions of employment established and maintained by the Commission in accordance with Part VI.

That was the agreement. We had that specifically included in the act. What is now being proposed is, in effect, to rat on that agreement, to throw that agreement overboard and to get rid of those award minima that were agreed to with the Victorian government.

Accordingly, we have commissioned a report by Barbara Pocock, who is a research fellow from the University of Adelaide, to review the Commonwealth legislation and give us an appraisal of how the legislation will affect Victorian workers and their families. I am more than happy to provide a copy of that report to this inquiry, because it is a very important report. In summary, the report shows that these industrial relations changes fly in the face of best international practice. The report shows that, instead of helping employers and employees to promote work and family balance, the changes will actually reduce wages, increase hours and, most disturbingly, increase the unpredictability of hours worked.

The report finds that the push to AWAs is retrograde, because AWAs are anti-family. The report finds that only 12 per cent of AWAs have any work and family provisions, only 25 per cent of AWAs have family or carers leave and only eight per cent, would you believe, have paid maternity leave. We believe that is totally inappropriate. Fifty-eight per cent of workers on AWAs are denied long service leave, and the majority of AWAs lack penalty rates. It is important that you have a look at this report, because it will give you some real insight in relation to the effects of the federal legislation.

We want world's best practice. While the rest of the industrial world is moving to make workplaces more friendly to the needs of parents and those looking after older relatives, this legislation will have Australia moving in the exact opposite direction. At a time when business is demanding moves to address the skills shortage—and there is a skills shortage, particularly in certain pockets of industry here in Australia—the coalition's response seems to be a program for cheaper unskilled labour. For all its drama and hype, the Work Choices legislation fails to address the real workplace challenges—that is, the ageing work force and the skills shortage.

I want to finish by saying that, under the Commonwealth's legislation, current award allowances which provide reward for higher value or for more difficult work will be removed—again, not addressing the current skills challenges. This change will therefore remove allowances such as for higher duties and first aid and for holding a forklift licence. For no apparent reason, incentives for employees to gain and use skills have been removed as a result of this legislation. In my view, this is nothing more than short-term cost-cutting—some would say it is vindictive—and indeed sends signals to the market of an intention to deskill, rather than encourage the very skills that business are telling us they need.

So today I am asking the Senate to turn its back on an ideology that promotes division over mateship, competition over fairness and the market over families. Fundamentally, I guess, the debate today is about whether the demands of the market are modified to meet the aspirations of community or whether the needs of family have to be sacrificed at the altar of the market. That is what this legislation, this debate, is all about.

Ms Gallagher—I thank the committee for the opportunity for us to appear before you today on a very important piece of legislation. In the ACT this legislation, if passed, will come into effect straightaway. We operate under federal workplace relations law and 100 per cent of

ACT workplaces will be covered by this legislation. So for the ACT government the argument is less about one system, because we have one system in operation; it is about the type of system that is being sought to be imposed on the ACT. The system proposed by the bill sets minimum standards—that is, it lowers the benchmarks that are currently in operation under the federal workplace relations legislation. It is not about creating a fair or a balanced system; it is about creating the lowest possible benchmark. It is one where the safety net becomes so low that you probably could not lower the benchmark any lower than this bill proposes.

In the ACT we have enormous concerns about the push to use AWAs, about the potential loss of employment conditions such as penalty rates, annual leave, shift penalties and overtime, and about the loss of access to the low-cost, speedy dispute resolution processes that are currently available to working people. The bill does not recognise the recent decision of the family provision test case. Minister Hulls has talked about his concerns, which the ACT government shares. There are significant impacts of this legislation on women surrounding the use of AWAs. In our experience, women do not fare as well as men on AWAs. The impact of these changes on young people will, for the first time in our history, see the ridiculous situation where parents will become bargaining agents for their young people under the age of 18, who will be required to negotiate away their employment conditions. If you are under 18, your parents need to sign your AWA. I do not know how many parents are going to be keen to take on that role, but that is the system this bill proposes.

The protections, scrutiny and the right to remedy for working people are being removed or lowered, which is of course of enormous concern to us. The lack of consultation which we have seen, as others ministers have mentioned, is astounding. Certainly for the past two years that I have been the Minister for Industrial Relations we have been given commitments from the federal workplace relations minister that consultations will occur on legislation that has an impact in our jurisdictions. I cannot think of a piece of legislation around at the moment that has the kind of the impact that this bill proposes, and yet there has been a complete lack of consultation and discussion and a refusal to meet with the ministers from jurisdictions—until just recently for one meeting—on this legislation.

These laws if passed will come into effect straightaway. I caught the end of the DEWR officials' evidence and I note their concerns with some of the material put in our submissions. I have not had time to read their submission, but I would guess that we would have a couple of issues with some of the content of their submission. This ridiculous situation could have been avoided if discussions with DEWR and discussions with the federal government had occurred prior to this legislation being introduced and this situation now where we have five days of hearings before this legislation is to be pushed through.

I think it could have been handled differently from the start. We are prepared to talk to the Commonwealth about any matter that seeks to improve and protect the working conditions of ACT workers and genuinely collaborate and cooperate where we can. That has not been the situation we have experienced with this bill. There is no reason being given for the rushing through of this legislation—if there has, I certainly have not heard it. I would caution against rushing through such a significant piece of legislation when there is opportunity for further discussions.

To conclude, in the ACT it is less about the one system and more about the type of system that is being sought to be imposed. I have no doubt that this legislation, if passed, will have significant generational impacts—that is, the work force that my children enter will be a very different landscape from the one that I entered. It does not rest well on my conscience to hand over to my children a situation where they are going to have worse employment conditions, less protection and fewer rights to remedies than I had when I entered the work force.

Dr Burns—I thank the committee for the opportunity to appear here today on behalf of the Northern Territory. Firstly, I would like to endorse the comments and arguments put forward by my colleagues. Because time is running short, I do not propose to be all that long in my comments but rather I will focus on the issues as they relate to the Territory.

There has been a theme running through the comments that have gone forward already, and that is about a lack of consultation and a trampling on the rights of states. We in the Northern Territory certainly have bitter experience, particularly over the last few months, of that occurring in relation to the siting of a nuclear waste dump within the Northern Territory. We have bitter experience in this area.

Moving on to industrial relations, in the Territory we have very strong economic growth at present. There are some great projects occurring in the Territory, not least of all the expansion of the Gove G3 alumina plant, the LNG plant and recently the completion of the north-south railway. There are a lot of major projects occurring within the Territory with very low levels of disputation. While we do come under the federal Workplace Relations Act, we would say: why change? What is wrong with the way that everything is operating at present? It is certainly delivering a lot to the Territory.

The Territory does have very specific and, I suppose, unique demographics—and I will come to that. In terms of our businesses, I am advised that 85 per cent of our businesses have 10 employees or less. That, I would argue, would make many of those employees vulnerable as regards unfair dismissal actions. On another issue, our doctor-patient ratios compared to the rest of Australia are quite high, particularly in remote areas. So this requirement that workers get a medical certificate if they have had a day off could be quite onerous, if not impossible, in some areas of the Territory.

That brings me to Indigenous Territorians, who make up 30 per cent of our population. As members of the committee would know, these people have suffered disadvantage over many years—social and employment. I do not think it is insignificant that we are approaching the 40th anniversary of the walk-off of the Gurindji people at Wave Hill. Whilst that had a lot to do with land rights, it also had a lot to do with working conditions for those people. As a government, we are trying very hard at a regional level to increase Aboriginal employment, to get all sorts of initiatives going and to get Aborigines engaged with existing industries that are out in the regions.

Regarding this legislation, given that most of these people have English as their second, third or even fourth language, I think for them to negotiate AWAs is going to be very difficult. It is going to be difficult for people living in the regional areas if they are going to fight an unlawful dismissal. They might be given $4,000 but it might be a bit hard to find a lawyer out in Boorooloola. So I would question the benefit of the move that is going on and the hurried

nature of what is happening—the very steamroller that is being driven over the states and territories. Once again, I would emphasise: 'If ain't broke, what are we trying to fix here?

CHAIR—Mr McRae, do you have any comments to make on the capacity in which you appear?

Mr McRae—I am representing the Hon. John Kobelke, the Minister for Consumer and Employment Protection.

CHAIR—Thank you.

Mr McRae—Madam Chair, it is a delight to see three Western Australian senators on your committee. It gives me heart that there is yet a chance that we could swing the vote here if Western Australian senators would just band together and do the right thing.

Senator GEORGE CAMPBELL—Do you mean: if they followed their state parties?

Mr McRae—Any of their state parties. I just want to draw your attention to that, as I make my introductory remarks. Firstly, we appreciate the opportunity to make this presentation. We know that your time is very constrained, so I will be as quick as I possibly can. What is now being embarked upon is not a new experiment. Indeed, this is not something in which the Senate committee needs to try and guess the outcome. You have already heard that there are examples in Victoria for the very blueprint that we are seeing before the national parliament now. I bring to your attention the fact that Western Australia is also able to act as a very stark example of this failed experiment by a previous state government in Western Australia.

When the Court coalition government introduced its workplace relations changes through the 1990s and into the early part of this century, firstly, it caused a very significant amount of industrial unrest; secondly, it caused an extraordinary amount of social dislocation; and, thirdly, it began the process of intergenerational disadvantage. There is very clear research based evidence that will show and demonstrate to this committee that the process of establishing individual workplace contracts, with the removal of awards as an underpinning basis for fairness and standards across industry, creates circumstances in which there becomes a downward bidding in economic terms amongst enterprises and amongst employees. That is the inevitable and guaranteed outcome of what the national parliament is considering today, and you have Western Australia as a stark and failed example of that. You have also heard that the same experience was evidenced in Victoria.

Western Australia brings to your attention in the course of our contribution to the shared submission to this committee's inquiry the results of an independent report produced for the Commissioner of Workplace Agreements by the Australian Centre for Industrial Relations Research and Training, or ACIRRT. That centre undertook research on the impact of individual workplace agreements in industries covered by cleaning, security services, shops and warehouses, restaurants, tea rooms and catering services. The research shows that the effect of individual contracts or workplace agreements on workers in Western Australia are these: 74 per cent of all those people who were signed up to individual contracts had no weekend penalty rates of pay; 67 per cent had no overtime rates of pay; 56 per cent had ordinary rates of pay below the award rate; 49 per cent of full-time, part-time and fixed term agreements absorbed annual leave into the ordinary hourly rate of pay; and 75 per cent of all agreements analysed were without a pay increase provision.

Maybe of even greater concern to me is the fact that after a little over five years of operation the outcomes of the previous coalition government's industrial relations laws in Western Australia were that the very lowest paid people were earning more than $50 below the national minimum wage—that is, progressively over five years they had fallen further and further behind—and they had no measures available to them to redress that disadvantage and the growing gap that that disadvantage had created.

Contrary to claims by our political opponents that to change the industrial laws so that there was an element of fairness in that the award rates of pay acted as a minimum base of conditions and income, contrary to the assertion that there would be serious industrial disharmony and contrary to the assertion by some that this would cause an economic malaise, in fact the very reverse is the case. When we came to government in 2001, Western Australia was in recession. Western Australia was going backwards economically under the very industrial relations system that this parliament is now about to introduce. Western Australia, the supposed industrial and mining giant of this country, was headed into recession. So there is no evidence that this change will bring about productivity increases; in fact, there is evidence to the contrary. There is no evidence that it will maintain fairness; in fact, there is evidence to the contrary. There is no evidence that it will act as a lever for an innovative, high waged, high income, high value added economy; in fact, there is evidence to the contrary.

I refer you to the outcomes in Western Australia since we have changed the industrial relations laws, and I say to you that we can demonstrate that we have the highest measure of labour productivity growth in the country with our system of industrial relations that has an umpire and that has an award system establishing a minimum base and standard across industries. Western Australia has had growth in excess of seven per cent per annum for the last three years. We have an equal or the lowest unemployment rate in the country, and that has been the case for the last three to four years. All of these matters have evidenced themselves in the course of re-establishing a system of fairness, and I ask you to do that in the case of this reform as well.

Ms Thorp—I am a member of the Legislative Council of Tasmania and I represent the Hon. Judy Jackson, the Minister for Industrial Relations. Tasmania's state industrial relations system has been developed over many years to best serve the needs of the state and its community. The principal objective has been and is to do the right thing by employers and employees and to ensure mechanisms are in place that will deliver fair and practical outcomes that are in the public interest.

The framework of the state industrial relations jurisdiction is grounded in the Tasmanian Industrial Relations Act 1984. At the centre of this system is the Tasmanian Industrial Commission. In addition to award making, approving agreements, dealing with award breach and dispute settling, the commission may hear and determine any other matter concerning the relations between employers and employees. The commission provides a highly effective forum that operates with fairness and simplicity for employers and employees alike. The state system, the state commission and their effectiveness are undeniably major contributing factors to Tasmania's stable, productive and enviable industrial relations environment. In fact, Tasmania's industrial relations system has been developed over many years through the constructive, consultative and cooperative efforts of government, employer organisations,

employee organisations and the broader Tasmanian community, which are major contributors to its success.

We do not adopt a parochial or narrow approach to industrial relationships. We are aware that industrial relations is a dynamic environment that informs the need for adaptation and continuing development. Our legislation is reviewed regularly to ensure that it continues to meet the needs and demands of contemporary work practices and workplace relations. The advantages and benefits of this functional, effective, productive and stable industrial relations system will be removed by the Australian government's Workplace Relations Amendment (Work Choices) Bill 2005. There has been no attempt on the part of the Australian government to consult or to test the effectiveness of the Tasmanian industrial relations system or the impact of the planned federal legislation.

The Australian government says its reforms will produce a simpler, fairer, single national industrial relations system. The notion of creating a simpler system is highly contestable. The Tasmanian Industrial Relations Act 1984 has barely 100 clauses and runs to just 70 pages but the act covers every facet of industrial workplace relations, including the provision for the commission to deal with disputes relating to underpayment and award breach and long service leave disputes. The act and the Tasmanian Industrial Commission's jurisdiction could not be cast in simpler, more practicable and user-friendly terms.

The agreement-making processes under the Tasmanian legislation statutorily require the Industrial Commission to satisfy itself that agreements have been genuinely entered into, that the outcomes are fair all round, that the agreement was not made under any form of duress and that the bargaining process was both appropriate and fair. By contrast, for a great many employees workplace bargaining under the existing federal system is a complete misnomer because there is no element of genuine bargaining. Employees are essentially given a take-it-or-leave-it deal. In these situations, employees have no say, no real opportunity to bargain and no choice.

The new federal system does not address this imbalance or the inherent unfairness. On the contrary: the new federal system perpetuates and exacerbates this imbalance and unfairness. It is difficult to escape the conclusion that this is intentional. Accordingly, the Tasmanian government believes that this is one of the main reasons that the federal government is attempting to erode or to eliminate Tasmania's state industrial relations system. The federal government does not want any fair alternative for workers' employers; it wants to force them into a new federal system—a system that has been quite cynically named 'work choices'. Yet here is the first of many examples which demonstrate that work choices is not about giving choice; rather it is about taking choice away. Workers have no choice in the matter whatsoever. Whether they like it or not, their existing right to be covered by the state industrial relations system will be taken from them.

The Tasmanian government acknowledges and applauds the state workers for their contribution to the stable, harmonious and productive workplace environment in Tasmania. It is not too late for the federal government to pause, to listen and to take notice of the widespread concern and anxiety being expressed throughout the country. These changes are not needed, especially at a time when industrial disputation is at a historic low, where wage

increases are reasonable and economically sustainable and where real productivity and efficiency gains have been made and continue to be made.

Let us remember that when the current government in Tasmania came to office in 1998 the bleat was to sell up all our public assets. We now have record growth, we have population growth for the first time in 25 years and we have job growth of which we are extremely proud. We urge the committee to take whatever steps are available to you to bring to bear whatever influence you can in order to persuade the federal government to press the pause button on the process of enacting these reforms and, please, to reconsider the approach.

CHAIR—Thank you. I take it those are statements from everybody? We will now move to questions. As I am a Victorian senator, I might ask some questions about Victoria, Mr Hulls. Do you have a copy of the report by Dr Pocock that you referred to?

Mr Hulls—Yes, I do.

CHAIR—You would be happy to leave that with the committee?

Mr Hulls—Yes, more than happy.

CHAIR—Thank you for that.

Senator GEORGE CAMPBELL—Could we have that tabled?

CHAIR—Yes, could we have that tabled? Thank you for that. That has been tabled.

Mr Hulls—We have other copies here.

CHAIR—Thank you. My office in Melbourne has received considerable representation from Victorian nurses on the subject of long service leave. As their employer, does the Victorian government intend to alter the amount of long service leave that they are entitled to?

Mr Hulls—The Victorian government has already said that it will legislate in relation to the award minima that currently exist for Victorian public sector workers. We have made it quite clear that we will ensure that nurses' long service leave is protected. We believe that we have a responsibility to our own employees. We have made it clear that we will not only legislate to protect current award minima but also have, and have introduced into the parliament, legislation for a workplace rights advocate who will be able to advise private sector employees on any agreement that they are asked to sign up to and the impact of that agreement on awards. We will also be ensuring that that workplace rights advocate publicises those employers who are not doing the right thing to ensure as best we can that vulnerable workers in the Victorian workplace are not ripped off by the proposed changes under the federal legislation.

CHAIR—You would be aware that on page 13 of the *WorkChoices* booklet, which is publicly available, the specific statement is made:

In the new system long service leave—

amongst others—

… will not be included in new awards because they are provided for in other legislation. However these provisions in current awards—

that is, long service leave—

will continue to apply to existing and new employees covered by these awards.

You are aware of that?

Mr Hulls—Yes, but the difficulty you have is that some public sector employees in their current agreements have conditions that are above awards and, if those EBAs are terminated, there is a real prospect that those long service leave arrangements will be diminished. We have made it quite clear to Victorian nurses that we will do what we can to protect the current long service leave arrangements that they have. We believe that those long service leave arrangements are absolutely appropriate because of the work that nurses do. As you know, trying to get nurses to come into the system and stay in the system is hard enough without reducing their long service leave entitlements.

CHAIR—So you are protecting your own employees, basically.

Mr Hulls—We will be doing everything we can to protect our own employees, yes.

CHAIR—I take it, because you are introducing legislation, that you were not ever planning to reduce long service leave then?

Mr Hulls—For nurses? Absolutely not.

Senator TROETH—I will put to you a statement by the Secretary of the Australian Nurses Federation, Lisa Fitzpatrick, in which she says that the 1992 state act—the Victorian act—provides for only 13 weeks of long service leave for nurses. Nurses did a deal and sacrificed salaries back in the 1950s in Victoria. They currently get 26 weeks after 15 weeks, so every nurse in this state, with the new legislation, within 12 months will lose at least 13 weeks of long service leave. That statement by Ms Fitzpatrick is basically inaccurate, isn't it? I say that because you will be legislating for your employees, and I have just told you that those existing and new employees covered by the awards that I mentioned will have their long service leave guaranteed.

Mr Hulls—I think you are a bit confused, with due respect. The situation is such that it is true that nurses in the Victorian public sector receive 26 weeks long service leave, as you said, and that is in their EBA. That is above the award. We have said that we are going to legislate to protect their current long service leave entitlements. It is more difficult for us with private sector nurses, because they are not our employees. We have had discussions with Lisa Fitzpatrick about what we can do for nurses generally, but we are somewhat hamstrung when it comes non Victorian government employees. We have given a commitment that we will be protecting, as best we can, the long service leave arrangements that currently exist in the EBA for public sector nurses.

CHAIR—Are you considering a High Court challenge to this legislation?

Mr Hulls—Absolutely, and we have made it quite clear that we are in the process of getting legal advice now. We will be going to the High Court. We do not believe that the way the federal government intends to use the corporations powers to introduce this legislation was ever envisaged or is appropriate. Yes, we will be launching a High Court challenge, and I expect other states will as well.

CHAIR—Does your legal advice encompass an outlook on whether that will be successful?

Mr Hulls—Obviously, legal advice is covered by legal professional privilege. I am also the Attorney-General in Victoria. There is no way I would be disclosing to this meeting any legal advice the Victorian government has, save to say that we are firmly of the view that the federal government is acting outside its bailiwick in using the Corporations Law to embark upon a hostile takeover of state IR systems. We will be challenging the Commonwealth's moves in the High Court.

CHAIR—Who did you receive that legal advice from?

Mr Hulls—Again, that is a matter for the government. I can assure you that the advice we have received and are continuing to receive is not just from one source.

CHAIR—Have you made any estimate as to the likely cost of that High Court challenge?

Senator WONG—Madam Chair, I raise a point of order. Is the potential legal cost to a state government relevant to the legislation before us?

CHAIR—Yes, I consider it is.

Senator WONG—Is it relevant to the inquiry before the committee?

CHAIR—It is relevant to the inquiry.

Senator WONG—Is that your ruling on my point of order?

CHAIR—Yes, I am ruling on your point of order that my question is in order.

Mr Hulls—First of all, I will put a rhetorical question back to you: what cost and award safety net for workers' rights, what cost for defending the independent umpire? We believe that Victorians would want us to do everything we possibly can to protect their rights and entitlements in the workplace and to ensure that we do not end up with a working poor in Victoria. We say that whatever we spend on legal advice or High Court challenges will be money well spent if it defeats this rotten legislation.

CHAIR—I take it from your remarks that you have spent money so far on legal advice?

Senator WONG—You do not have to answer that.

Mr Hulls—Not only has the government received some legal advice; we will continue to seek legal advice. As I said, any money that the government spends on legal advice is money well spent on behalf of Victorian taxpayers.

CHAIR—The Victorian government has been running advertisements against the federal legislation—is that correct?

Mr Hulls—When you say 'advertisements'—

CHAIR—Advertising campaigns against Work Choices.

Mr Hulls—Yes, I am advised that there was one ad, which I think cost about $55,000—$55,000 not $55 million.

Senator WONG—What proportion is that of the millions, Madam Chair?

Senator GEORGE CAMPBELL—You do not have $5.2 million booklets somewhere gathering dust?

Senator WONG—Did you pulp any booklets?

CHAIR—That is taxpayers' money being spent on blatantly partisan ads, I would point out. Given that, as I understand it, that particular advertisement, if not others, explicitly attacks another government, how can you justify taxpayers' money being spent on that subject?

Mr Hulls—With due respect—and I know that you are keeping a straight face when you ask this—what an outrageous question to be asking, on behalf of Victorians, about spending $55,000, attempting to advise them about the impact of the federal government's legislation, when millions and millions of taxpayers' money—and we are talking about Victorian taxpayers as well—has been spent on this rotten legislation. I think, with due respect, Senator, it is an absolute cheek for you to be asking this question. I wonder whether I should even be giving it any credence. I am happy to, because I am sitting here and I am your guest. But that is a ludicrous question, particularly in light of what the federal government has done.

CHAIR—Are you aware also that affiliated trade unions have donated $11,545,440 to the state branch of the ALP since 1996?

Senator GEORGE CAMPBELL—What does that have to do with this inquiry?

CHAIR—It has a lot to do with this inquiry.

Senator WONG—And how much has been donated by companies to the Liberal Party? What does that have to do with this legislation?

Senator GEORGE CAMPBELL—Point of order, Madam Chairman: what does that have to do with the terms of reference of this inquiry? Absolutely nothing.

CHAIR—I have asked Mr Hulls the question. It is up to him whether or not he answers it.

Mr Hulls—Perhaps you could also advise us what the Cormack Foundation has donated to the Liberal Party, particularly in Victoria. Perhaps you could also advise us of the amount of money that Ron Walker was able to collect for the Liberal Party when he was its Treasurer. I just do not get the point of your question.

CHAIR—I am asking whether you are aware of it.

Mr Hulls—If you are saying that you are prepared to join those hundreds of thousands of hardworking Victorians, including union members, in a rally in Melbourne tomorrow to protest against this outrageous legislation, I am more than happy to accompany you to the rally.

CHAIR—No, thank you. I will be involved in chairing this committee. Senator Campbell, I point out that probably the state ministers are on some sort of time line. We will be running until 12.35 pm, which will be the two hours allotted for this. Senator Campbell, you would have between 10 and 15 minutes for your questions.

Senator GEORGE CAMPBELL—I might give Senator Wong first call because she has some constitutional issues. The call then can come back to me.

Senator WONG—Thank you, Senator Campbell. Minister Della Bosca, I think you referred to the potential coverage of the legislation and the disputed coverage in respect of state employees, potentially municipal employees. Could you expand on the jurisdictional confusion that this legislation will bring?

Mr Della Bosca—Certainly. The first and most obvious point concerns Crown employees in New South Wales. The best advice I have is that they will not be covered by this legislation, unless the New South Wales government specifically rescinds its powers—and we have no intention of doing that. Secondly, as I think most senators would be aware—I think the situation is similar in other states—the employment of local government employees is carried out through a specific act; in our case, it is a specific act of the New South Wales parliament. There are conflicting views as to whether or not those employees would be 'protected' from the scope of the Work Choices legislation.

The best of my advice is that those employed by trusts, which means a substantial number of farmers in New South Wales who use trusts to conduct their business, would be excluded from the scope of the legislation, as would people employed by individual practitioners in any calling at all and in partnerships. My estimate is that that leaves approximately one million New South Wales employees or thereabouts outside of the ambit of the Work Choices legislation. Given the complexities of the current economy, given that obviously there are chains of employment, that will lead to a lot more confusion and many more difficulties not only for employees but also for small business—and we regard small business as the engine room of Australia's prosperity.

The difficulties I have with this legislation are not only about fairness issues for employees; these legal complications will lead to potentially masses of red tape for small business, which already feel under the gun when it comes to compliance measures and various undertakings.

Senator WONG—Minister, you may have heard the proposition from the department that the legislation will cover 85 per cent of Australian employees. Is that a matter New South Wales would agree with?

Mr Della Bosca—No, we would not. The best of my advice is that it will be much less than that.

Senator WONG—Minister Barton, I think you referred to 70 per cent.

Mr Barton—Currently in excess of 70 per cent of the Queensland work force is covered by state jurisdiction. Our estimates indicate that somewhere between 37 per cent and 43½ per cent of the figures would remain under our state jurisdiction, even if the federal government were successful in roping in all corporations under this so-called Work Choices legislation. We say very clearly that this legislation cannot achieve a single jurisdiction, and in fact it will create an enormous amount of confusion. Queensland has the highest percentage of small business of any state. We are also a big agricultural state, with a large number of agricultural employers who are not corporations. I am advised that the bulk of our small business community and agricultural community do not wish to become incorporated.

In round figures, we expect that about 40 per cent of employees in Queensland would remain covered by the state jurisdiction, even if this legislation were successfully implemented. That will create huge confusion for the small business community because many in the small business community have an expectation, because of the mischievous advertisements at the cost of tens of millions of dollars that the federal government has been running, that they will not be covered by awards, that they will not covered by the state jurisdiction and that they will not be covered by unfair dismissal provisions, when clearly the

great bulk of the small business and farming communities that have employees will still be covered under our state industrial jurisdiction.

Senator WONG—Minister Wright, this is a bit of a parochial question. What will be the impact, if any, of this legislation on major projects in South Australia?

Mr Wright—Certainly a very important point for us in South Australia, most people would agree, is that major contracts depend upon harmonious industrial relations. Employers are looking for certainty and for confidence. We do know for certain that whether it be the air warfare destroyer, for which South Australia has just been successful—a $6 billion project, the biggest project we have ever won—or any other major contract, it has to have those elements to be successful.

The feedback that we got in both the lead-up to the decision and post the decision was that our industrial relations record was a key element in the bid that South Australia put together. We had very positive feedback. In fairness, whether there has been a state Labor or a state Liberal government, we have had very good numbers with regard to industrial disputation for many a year. I think at the moment it is the lowest it has ever been, and the lowest in Australia. That was all extremely positive feedback that we received in both the bid process and post the announcement.

South Australia will continue to bid for these major projects, as other states will. A focus that will be a strong element is the great industrial record that we have had for many a year. We do not want to put that in jeopardy, but we think it will be with this legislation. What that will do for major contracts is anybody's guess.

Senator WONG—Ms Gallagher, I want to ask you a question about the impact on women. In its submission I notice that the ACT put a position that, because of the large proportion of women in the work force, there were concerns about the impact on women, particularly in the family friendly provisions of the legislation.

Ms Gallagher—In the ACT, 48 per cent of our work force are women, and we have the highest female participation rate in the country, which we are very proud of and would like to keep. There is a range of issues under the legislation which we believe will impact unfairly on women—for example, the push to AWAs. History since 1996 shows that women do not receive the same outcomes that men do under AWAs. The amount of family friendly conditions contained in AWAs is an area of concern. I think nine per cent of AWAs have paid maternity leave provisions. In the bill, transfers from one type of employment to another become a non-allowable award matter, which means situations where women would like to change from casual to permanent employment, or from permanent to part time, will be removed from award protection.

Recent gains won under the family provisions test case are not reflected in the legislation. That is a particular issue for us here in the ACT where the percentage of women with children under the age of four is 10 per cent higher than the national average. We know the push away from collective bargaining and the award based system will impact disproportionately on women and, as a result, on their families. There are a range of areas that we have concerns about in relation the legislation's significant impact on women.

Senator WONG—Minister Hulls, does Barbara Pocock's paper that you provided reflect the same concerns that Ms Gallagher has raised about the impact on women of this sort of system.

Mr Hulls—Yes, it certainly does. Even if you read just the executive summary, it is pretty clear that AWAs are less family friendly—workers have less access to annual leave, long-service leave and sick leave. As we know, these are fundamental requirements of working carers. Only 12 per cent of AWAs registered between 1995 and 2000 had any work and family provisions. Women fare especially badly, as do part-timers and casuals. Women on AWAs are paid 11 per cent less than women on collective agreements, and 49 per cent of them have no entitlement at all to annual leave. At a time when we are trying to upskill our work force and increase women's participation rates—to get women and their expertise back into the work force—what is being proposed will have the adverse effect.

Senator WONG—Thank you.

Senator GEORGE CAMPBELL—The opening paragraph of the department's submission says, in relation to reasons for reforms:

A central objective of this Bill is to encourage the further spread of workplace agreements in order to lift productivity and hence the living standards of working Australians. The Government believes that the best workplace arrangements are those developed between employees and employers at the workplace.

My question is specifically to Mr Hulls and Mr McRae. What were your experiences in Western Australia under the AWA regime and in Victoria? What happened to productivity over that period of time?

Mr McRae—The ACCIRT assessment of wage and conditions outcomes also went to the use of performance based pay and hours of work arrangements. Whilst ACCIRT has not yet established a critically accepted analysis of the impact, if you are doing a raw productivity measure, the implications of the ACCIRT report into the Western Australian experience are that there is either a net zero sum gain—that is, what you lose you get on the roundabout and there is no gain for the enterprise—or, on an individual basis, there is no gain at an enterprise level nor, importantly, at an industry level.

The evidence of that can be borne out by the fact that there is now a reversion to an increased use of collective agreements. We are seeing an aversion to workplace agreements as a tool for driving workplace reform or as a tool for the introduction of technological change or as a tool for the development of workplace skills. Those are the three critical ingredients for driving workplace productivity and industry productivity. There is no evidence that individual contracts are a better measure or a better lever for doing that in complex workplaces or involving complex processes.

Senator GEORGE CAMPBELL—Is that borne out by the statistics?

Mr McRae—Yes, the ACCIRT agreement does touch on it, but I am able to get you some further detail on that, if you like. I will undertake to try and get that to the committee before the end of this week.

Mr Hulls—I could answer your question this way. When you consider that only 12 per cent of AWAs have work and family provisions, only 25 per cent have family or carer's leave, only eight per cent have maternity leave, only five per cent have paternity leave, and only 59 per cent have access to annual leave, the No. 1 conclusion is that women are going to fare a lot worse in AWAs. All these things impact on productivity. The other argument that the federal government raises is that the choice of industrial relations instruments is not vast enough to meet the needs of individual workplaces. You will see from the Victorian government's submission that at page 28 we say that the federal government's proposal to replace the current industrial relations system is based on the premise that encouraging workplace level bargaining over conditions of employment will better suit the needs of the workplace. We argue that that situation in Victoria is available now. Our submission demonstrates that considerable diversity already exists in industrial instrument coverage. This diversity is preferred by employers because the diversity that exists in Victoria now is actually a preference by employers because they believe that current arrangements increase productivity. That is why there is such a low take-up rate of AWAs now. So we do not believe that AWAs increase productivity; we believe that reducing the choice of instruments available contradicts the objective to encourage workplaces to adopt forms of industrial coverage that best reflect their business needs. It is certainly not what employers want in Victoria.

CHAIR—Last question, Senator Campbell.

Senator GEORGE CAMPBELL—I have not had my time yet.

CHAIR—I said 10 to 15 minutes.

Senator GEORGE CAMPBELL—What—for both of us?

CHAIR—Senator Campbell, to allow a spread of questions on this committee, I have to be fair. There are other senators from other parties.

Senator GEORGE CAMPBELL—Was the 15 minutes for both of us?

CHAIR—That is what I said at the start.

Senator GEORGE CAMPBELL—No, you didn't.

Senator WONG—You, as chair, had 15 minutes to start with. Surely the opposition—

Senator GEORGE CAMPBELL—You said five minutes for me. I gave Senator Wong the first go.

Senator WONG—gets a go before you throw it open to another government member.

CHAIR—And you said part of that will go to Senator Campbell. I am sorry, but with the spread of senators from different parties, not only yours and mine—

Senator GEORGE CAMPBELL—I take a point of order, Madam Chair. I am sorry too, but you are helping to make this whole process more and more farcical. We have been limited to five days to talk about one of the major shifts in industrial relations in this country that has occurred in 50 years. You have limited the contents of the inquiry. You have limited the inquiry to Canberra, so that we cannot go and talk to real people in the real world about these issues. Now you want to limit me to three minutes to ask questions of eight state and territory industrial relations ministers about what is proposed fundamental change. This is an absolute

nonsense. You wasted 10 minutes from the chair asking irrelevant questions of the minister from Victoria about the cost of their legal representation.

CHAIR—Nevertheless, Senator, this will be your last question.

Senator GEORGE CAMPBELL—As long as the ministers are prepared to sit here, we are prepared to question them.

CHAIR—I am asking you to make this your last question.

Senator JOYCE—Senator Campbell, they look like real people to me. You just said we failed to talk to real people.

Senator SANTORO—They are representatives of real people, too.

CHAIR—Order! Senator Campbell, proceed with your question, please.

Senator GEORGE CAMPBELL—My question was to Minister Della Bosca. The second part of the opening statement by the department this morning was that the government believes that the best workplace arrangements are those developed between employers and employers at the workplace. Why do you think that, given that statement, the government has found it necessary to impose upon this new industrial relations system provisions in the act that will severely restrict the ability of employers and employees at the workplace to negotiate over a whole range of issues? Are you concerned about the fact that, with respect to your own state systems, this will have retrospective application on many of the awards that currently exist in the state?

Mr Della Bosca—I am deeply concerned about the question of principle that opens your question, Senator Campbell. It is obvious that, while the rhetoric of the Commonwealth—both the Prime Minister and the Minister for Employment and Workplace Relations—has been around the issue of taking third parties out of industrial relations and out of the workplace, they have in fact inserted a third party with almost fascistic powers, and that will be the way in which a Commonwealth, as a state, will operate within the system—by dictating what employers and employees cannot and will not be able to make agreements about. The well-canvassed and fairly scandalous provisions which seek to limit the ability of employees to discuss elements of their own working conditions with colleagues—and, for that matter, someone outside the workplace—seem to me to insert a totally obnoxious and fundamental attack on basic freedoms into the workplace agreements. So, if we are worried about third parties intervening in industrial relations, intervening in the economy between employer and employee, I think the first thing we ought to start worrying about is what the Commonwealth is trying to do in terms of inserting itself into the employment relationship.

In regard to the specifics, from what I could hear of the advice you received from your officers earlier, it is wrong. I think, in response to one of your questions, one of the Commonwealth officers said that the current and future provisions in regard to prohibited content would operate in a similar way. That is not correct. The best of my advice and the best of my understanding is, as you know, the current provisions apply only to freedom of association independent contractor provisions. They can be subject to determinations by the Industrial Relations Commission and the Federal Court. They do not apply and cannot be made to apply retrospectively. They are contained in the act.

On the proposals that the Commonwealth officers were urging on the committee today, I understand that the prohibited content is not yet disclosed in the act, as far as I can see. That means it will be one of these Henry VIII provisions, which means a future Commonwealth minister can simply insert it by regulation, which is really quite scandalous. I refer to my friend from Queensland's comments that this is an incredible act of constitutional vandalism. There will be no assessment by an independent umpire—in fact, there will be no assessment by the parliament—because it will be done by regulation. It will apply respectively. That is unquestionable. That means agreements fairly entered into, indeed arbitrated in New South Wales between parties, or voluntarily agreed to between employer parties—such as my example of BlueScope Steel and its work force—will be negated by the prohibited content provisions as I understand them and that will be by regulation, which I think is a scandal.

Senator JOYCE—Mr Della Bosca, you just said fascistic powers. You honestly believe that there is a comparison between this and fascism. I think that is an emotive statement and ridiculous.

Mr Della Bosca—I think this is emotional territory, Senator, and I hope you apply your emotions and sense of decency to the way you consider this in the immediate future. I am saying that the Commonwealth is attempting to insert itself into the employment relationship in a way which has not been seen in this country before. We have always taken the approach that there is free bargaining between employers and employees, either collectively or individually, and we have always taken the approach that the state, whether it be at a state level or at a Commonwealth level, provides a judicial or arbitral umpire. The Commonwealth is now completely rejecting that approach. It is one that has stood us in very good stead for 105 years, and yes, Senator, it is very close to fascism.

Senator JOYCE—No, you said it was fascistic, and it inspires a belief in an emotive statement, which was the whole point of this.

Senator GEORGE CAMPBELL—Can I ask one final question of all of you.

CHAIR—No, Senator Campbell.

Senator GEORGE CAMPBELL—In 2004-05—

CHAIR—Senator Campbell,—

Senator GEORGE CAMPBELL—the figures were done—

CHAIR—Senator Campbell,—

Senator GEORGE CAMPBELL—on the—

CHAIR—Senator Campbell, I am calling you to order.

Senator GEORGE CAMPBELL—cost of running the federal system which—

CHAIR—Senator Campbell, I am calling you to order.

Senator GEORGE CAMPBELL—was $35 per worker and $17 per worker in the New South Wales system—half the cost to run the New South Wales system as opposed to the federal system—

CHAIR—Witnesses, I am asking you to disregard that question because it is out of order.

Senator GEORGE CAMPBELL—and that the cost per worker for 2004-05 to run each of the state systems and the—

CHAIR—I am calling the committee to order. I am directing you not to answer that question because it is out of order.

Senator GEORGE CAMPBELL—Witnesses, I am asking you to take it on notice. I do not expect you to have the figures with you.

Mr Barton—I will just quickly tell you—

CHAIR—I am directing you not to answer that question. Senator Johnston has some questions.

Senator MURRAY—On a point of order, Madam Chair: I think that question was put on notice and I think it should stand on notice.

CHAIR—Nevertheless—

Mr Hulls—Senator Troeth, unfortunately I have to leave to get a plane. If there are any other questions to me, I am more than happy for them to be put to me.

CHAIR—The committee secretariat will put them in order and direct them to you, Mr Hulls. Thank you for your attendance.

Mr Hulls—Thanks very much.

CHAIR—I call Senator Johnston.

Senator WONG—Madam Chair, before you throw questions over to Senator Johnston, can I clarify the rules of operation here. As I recall, we commenced with 15 minutes for the chair, who is a government senator. Opposition members were then told they had 15 minutes—

CHAIR—Ten—

Senator WONG—10 minutes in total—

CHAIR—Ten to 15 minutes, I said.

Senator WONG—So does that mean that government senators only have 10 minutes in total, which they have already used up? How does this work?

CHAIR—No, government senators will be able to, and then I propose to ask Senator Murray, who is a Democrat, and then others.

Senator WONG—But my point is that all opposition senators were told, 'You are to do it within 10 minutes,' that you have already had 15 minutes as a government senator, Chair, and that now you are throwing to Senator Johnston.

CHAIR—Senator Marshall was not present at the time that I said that. I assumed that only you and Senator Campbell were here.

Senator WONG—That is not the point.

Senator MARSHALL—Normal and longstanding practice is that the time for questions is divvied up between the parties on the committee.

CHAIR—That is right.

Senator MARSHALL—I do not think it is appropriate, simply because there are participating members present, that full-time members of the committee then only have shorter periods of time in which to ask questions.

CHAIR—It was Senator Campbell's decision to devote part of his time to Senator Wong. I am now asking Senator Johnston, who is a permanent member of the committee—

Senator GEORGE CAMPBELL—On the point of order, Madam Chair: I did not concede part of my time to Senator Wong. I assumed that you were allocating me 10 minutes. I gave Senator Wong the right to go first because she had some constitutional questions which she wanted to ask the ministers and which might have impacted upon my questions. I was not conceding any part of my time to Senator Wong. I presumed you would be allocating the time equally to each of the senators, with particular preference to people who are members of the committee.

CHAIR—I have already explained that and now I am asking Senator Johnston to ask his questions.

Senator JOHNSTON—Thank you, Madam Chair. Thank you all for attending today. I will put my first question to Minister Wright from South Australia. I congratulate him for the awarding of what is probably Australia's most significant defence contract ever: the construction of the air warfare destroyers. I also acknowledge the Australian Submarine Corporation's performance with respect to its submarine construction facilities and record. Also, I note that South Australia's economy is very largely underpinned by motor vehicle manufacture particularly by Holden and Mitsubishi. Is it not the case that all of these industries have their employment and workplace relations governed under the Commonwealth system?

Mr Wright—I thank you for the question. I think it would be fairer to say that there is a mix: there are elements that are in the federal system and there are other elements that are in the state system. So it would not be correct to label it, as you have done, and simply say that all of those—and the motor vehicle manufacturing subcore ones were the ones that you cited—were simply under the federal system. Some are, but there are also elements in the state system as well.

Senator JOHNSTON—I am instructed that the three, which are the largest employers and potentially the largest industrial base contributors to South Australia, are all under the Commonwealth system and are subject to AWAs.

Mr Wright—We, as you would be aware—

Senator JOHNSTON—Are you not sure of that?

Mr Wright—I was just about to answer your question before you interrupted me. I did not know you were so rude.

Senator JOHNSTON—I am sorry. I do not mean to be rude. I apologise to you.

Mr Wright—Thank you. What I was about to point out was that in motor vehicle manufacturing, as you and other members would be aware, there is the component element. So you have to take that into account as well.

Senator JOHNSTON—I mentioned Holden, Mitsubishi and the Australian Submarine Corporation. As I understand it, they are the three iconic employers in South Australia. I simply put to you—and I am not sure whether you actually know this—that they have their workplace relations under the Commonwealth system.

Mr Wright—That may well be correct in relation to those ones you referred to.

Senator JOHNSTON—Thank you.

Mr Wright—But it is also important, of course, to remember that those particular areas are fed by many others as well. That is why it is important to look at the industry as a whole—not simply those three.

Senator JOHNSTON—You said that this legislation is gutting the safety net. Have you read part 5A and section 7 of the bill?

Mr Wright—I have read a large part of the bill and every part I have read leaves me in no doubt that the award system and the safety net have been gutted. I think that is a draconian element of this legislation that we should all be very concerned about.

Senator JOHNSTON—With reference to the bill, why do you say that, given the provisions I have directed you to?

Mr Wright—Quite obviously I say it because elements of the legislation mean that if you are going to be negotiating for either a collective agreement or an individual enterprise agreement—an AWA or whatever the case may be—the award safety net will disappear, and it will disappear forever.

Senator JOHNSTON—Aren't they prescribed in the bill though? They are not adjudicated upon; they are actually prescribed in the bill.

Mr Wright—As I said, if you are negotiating either a collective agreement or an AWA, as a result of doing so you will lose the safety net.

Senator JOHNSTON—I will go to Mr Della Bosca. Mr Della Bosca, you have acknowledged that state government employees—state public servants—will be outside the purview of the Commonwealth system. I note that there has been a lot of commentary, particularly from your premier and your former premier, with respect to the loss of penalty rates, overtime and reasonable workload provisions of state government employees. Can I draw your attention to Mr Iemma's interview with Mike Carlton on 11 October, where he was saying that state employees—and he particularly highlighted nurses—stand to lose penalty rates, overtime and reasonable workload provisions. Given what you have said about the fact that state government employees are outside the system, that cannot possibly be true, can it?

Mr Della Bosca—I will answer the question this way, if I may. The overall sense of the Commonwealth's policy approach here is a race to the bottom. To put it simply, all employers will be placed in a situation where, whether they are fair and decent or not, because there will be no platform—no safety net—in the economy and no decent award conditions and wage

levels determined, there will be this element of competition for exploitation. That will apply to state governments as well.

Let me be hypothetical with you for a second, basing this on something that actually happened in our jurisdiction. Our state industrial tribunal made a determination in relation to some of the lowest paid public workers—these are our own SACS employees, who are workers who perform a very valuable public service, providing in-home care and the like for the disabled and the ageing. A determination was made to raise their quite modest salaries and wages a little. The Commonwealth did not agree with that determination. The Commonwealth to this day has refused to fund that component of the SACS award. In fact, some part of it was eventually funded when the Prime Minister directly intervened. I think the writing on the wall, so to speak, in the case of health employment would be that, if private sector nurses find themselves subject to significant changes in wages and conditions, sooner or later a future Commonwealth government—I hope it is not the Howard government—will make a determination that state public hospitals are not competitive and some funding penalties will start to apply. If I can put it to you very simply, while of course we intend to maintain our employees' living standards as best we can, under the prevailing circumstance the combination of your tax policies, your funding policies and your industrial relations policies make that a very difficult task, and it is one I hope future governments will be up to.

Senator JOHNSTON—I thank you for that very political answer. As I understand it, former Premier Bob Carr wrote to each member of your state public service on 6 July of this year, advising them that there was an important threat to their conditions in this legislation. As I understand it, that cannot possibly be the case, because, as you have said, they are not employees relevant to Commonwealth legislation, since you are the employer. Isn't that the case?

Mr Della Bosca—Let me give another hypothetical and, regrettably, it is again political.

Senator JOHNSTON—I am sure it is.

Mr Della Bosca—If the New South Wales Iemma government is not re-elected next election and the Debenham government are elected, as I understand it, they are the only opposition at a state level committed to giving their powers over to the Commonwealth, which means that in 18 months time all New South Wales public sector employees could indeed be handed over to the Work Choices system. That is a very bad hypothetical I do not want to contemplate, but it is possible.

Senator JOHNSTON—What I am concerned about is that on two separate occasions your former Premier and your current Premier have announced that the terms and conditions directly relating to state public servants are affected by this legislation. That is just untrue—is it not?

Mr Della Bosca—I just explained to you how it is very true. There is no question about it. Everybody here is opposed—

Senator JOHNSTON—Funding is not relevant to workplace relations. That is in fact a prohibited matter.

Mr Della Bosca—You are one of the best comedians I have ever come across!

Senator WONG—Perhaps you might consider the higher education funding, the Auslink funding and various other methods of funding which have been linked to workplace relations.

CHAIR—Order! Senator Johnston will be allowed to proceed.

Senator JOHNSTON—Is it not the case that you as the employer, the state government of New South Wales, set the terms and conditions for your employees?

Mr Della Bosca—I understand your point. I have explained to you about the race to the bottom and I have explained to you about the SACS award case, which, like the Victorian and Western Australian examples, is an actual example of what happened when a wages determination was made: the Commonwealth simply refused to fund their part of the wage increase. I have explained to you that there is such a thing in New South Wales—and we still have elections—and in March, a year and a half hence, all of this will be up for grabs. As I have indicated to you, it is possible that the coalition parties at a state level could win government, and they have agreed to hand over their powers—site unseen—to your government.

Senator JOHNSTON—Neither Mr Iemma nor the former Premier mentioned anything about funding or future elections or anything. They made a direct allegation that the terms and conditions of your state government employees would diminish because of this legislation.

Mr Della Bosca—The final answer to your point is that we got this legislation a little under a week ago and we are still seeking advice about the very point you make and the impact of the legislation on some of the provisions that are contained in our awards such as reasonable hours for nurses in the New South Wales state awards. If you want to take the argument that my constitutional advice is wrong, those nurses could in fact make a very immediate discovery that reasonable hours will not exist, because they are employed effectively by a public corporation—that is, our health services corporation.

Senator MURRAY—Firstly, to ministers and representatives of ministers, I want to thank you for the courtesy of appearing before the committee. I have sat on several hundred inquiries in my time and this is the first occasion on which I have experienced ministers of this rank before our committee. As the longest holder of this committee portfolio, probably in the country now, I have never had a federal workplace relations minister from the lower house before this committee, so your appearance is an honour and I am grateful for it. Thank you very much. Secondly, I want to put on the record my prejudices. I am a strong supporter of the idea of a unitary system, but I am also extremely sympathetic to the Victorian position, which is that it should be a negotiated outcome and on a fair and balanced basis. Since I was involved in the 1996 act and the negotiations on most of its changes, I am afraid I am of the strong belief that the federal act does not need that much change. I expose those prejudices to you, which mean I am instinctively opposed to what is before the committee.

My question will be on notice to Mr Hulls, with a response hopefully from Mr McRae, and it is to those jurisdictions which have experienced the equivalent of what we are facing—that is, significantly reduced standard conditions for workers. The Victorian submission clearly indicated there was no effect on jobs growth as regards the schedule 1A conditions; nor was there an effect on productivity. However, the price of labour fell and good employers were

forced down, to pay the wage rates of those employers who wanted to just pay the minimum conditions.

From an economic perspective, you would therefore look to whether there was any effect on prices. The whole motivation of the government's proposal is that it will make Australia more competitive. But I have no knowledge that prices fell in Victoria or Western Australia under cheaper labour conditions. In other words, prices shifted into profits. Have the states done any research in that area? If I can give you a simple example, all of you politicians, like all of us politicians, eat meals all around the country. I have never found the meals cheaper in Victoria or Western Australia to the rest of the country just because the hospitality workers were paid less. It is an easy measure for me but it is a sign. Do you have any comments, Mr McRae?

Mr McRae—There is no specific research that I am aware of. I know there was debate about the relationship between the changes to the industrial relations system shaped by the Court government and the CPI in Western Australia, but that was a discussion and I am not aware of specific research that attempts to see whether there is a correlation—inverse or otherwise.

Senator MURRAY—Would you take it on notice and make inquiries?

Mr McRae—I am happy to.

Senator MURRAY—I think it is important that the committee is advised whether there was an effect on prices because that seems to be the fundamental argument we are faced with.

Mr McRae—I am happy to do that.

Senator MURRAY—I would also like to hear from any other ministers who may have information on that basis. My next set of questions is to Mr Della Bosca. You may choose not to answer these, because they might affect the legal advice you have got. I am familiar in the Constitution with compensation on just terms. It seems to me that what is proposed in a hostile takeover of the state systems might, in ordinary circumstances, be considered to justify compensation under the just terms principle. Have you had any advice in that respect and would you like to acquaint the committee concerning that?

Mr Della Bosca—I am not in a position to share advice but that issue has been specifically canvassed, particularly in relation to a range of provisions in our state act which protect independent contractors—described in our act as deemed workers—where arrangements such as goodwill for trucks and equipment in the case of the transport industry and the like may well be subject to changes which might trigger a legal entitlement to compensation. But I cannot really take it any further than that. I am happy to get more details and provide them on notice to the committee as quickly as I can.

Senator MURRAY—There are three categories that are in my mind. The first would be whether any compensation regarding the just terms provision is triggered in relation to the state governments. The second would concern registered organisations and entities that may be party to agreements and would incur costs in shifting to new agreements and new situations. The third would be employees specifically and perhaps employers—but I cannot think of the situation—who may, as a result of a loss of wages and conditions, have some kind

of claim. Those are the three categories. My last question to you, Minister, concerns this: I would be deeply concerned if the law were to pass and be introduced with all the consequent changes and then were to be overturned by the High Court. This would create a great difficulty, as you would see. Is there a possibility that in pursuing a High Court claim the state governments could ask for an injunction so that the law does not apply until the High Court case is held?

Mr Della Bosca—Again, it is a matter that we are seeking advice on, but I am not in a position to disclose anything to the committee.

Senator SANTORO—At the risk of stymieing your political careers, I will go on the record as saying that I regard you as real people and, certainly in the case of Queensland, representing—not always that well—real people; and all the other witnesses who will appear before this committee are also real people. Ministers, you have told us today in your opening statements, in answers to questions and in all sorts of different ways that you support the retention of the current industrial relations system within your various states because it is user-friendly and basically simple. How do you reconcile that attitude with what has been expressed very much to the contrary by people such as Bob Carr in 1990—I am going to take you through a couple of years—Simon Crean when he was ACTU secretary in 1984 and, more recently, when governments right across the states and territories objected to the implementation of reforms by the current government, Bill Shorten, who said, on 20 February 2002:

Variations in state laws are also time-consuming and frustrating for employers. It is ridiculous there are more than—

I am referring to 'simplicity' here as being one of your objectives—

130 pieces of state and federal legislation pertaining to industrial law.

How do you reconcile your attitude today against a unitary system supported by the ACTU president or secretary on 20 February 2002?

Mr Della Bosca—Can I have the first crack at that. With regard to Bill Shorten, Bob Carr and other people, if you wanted to call them before the committee, I am sure they would be happy to talk with you. In terms of the New South Wales position, it is quite clear and unequivocal. We have submitted to the public. I think we have been quite active in the debate. I go back to my previous comments that, if a unitary system were to have a constituency, it would be the global and national employers. In my view, that is because—your question is about simplicity—if you run a hairdressing shop, you know that there is one award relevant to you and that there might be some pieces of legislation relevant to you. In New South Wales, it is the New South Wales hairdressers award. That is what you base your arrangements on with your employees. Because there are a lot of arrangements, I do not necessarily think that inherently means that there are a lot of awards and different state acts or that they affect people doing business in one state or in one town or another.

The second point is that the policy objective you are seeking is to create 13 million different industrial agreements. It seems to me an absurd position for the Commonwealth to argue: 'Our scheme will simplify and get rid of all these complicated awards and documents.'

It means that you will create 13 million of them. That is what you are your policy objective apparently is.

Last but not least is the point that needs to be made again in response to the idea that this legislation is inherently going to be simpler for business. In the case of New South Wales, the vast majority of small to medium sized businesses have voted with their feet. They have had the option to go federal and they have stayed in the New South Wales system.

Mr Barton—Could I add to that, because I am a Queenslander and the senator and I have been sparring with each other for about 25 years that I recall. The senator is well aware of the state legislation, as one of my predecessors. He is well aware that, in having more than 70 per cent of the work force covered by the state jurisdiction, we have a very simple system that has stood the test of time. When we talk about, for argument's sake, unfair dismissal provisions, there is certainly a fast, quick and easy system in place in the state of Queensland that will be lost to employees should this legislation be successful.

Alternatively, I would stress the point I made earlier that most of the small businesses in Queensland are covered by state common rule awards. They have a level playing field. They know what their competitors are paying, which is the same as them in terms of the minimum—unless they want to reward better employees or long-serving employees with an overaward payment, which many do. When they need to know what the conditions are, they simply ring up Wageline or they get onto the internet site for my department.

We have a system, again like that in New South Wales, where the bulk of employers in the state vote with their feet. When they have had choices to go federal, they have not; they have chosen to stay within the state system. Apart from one vocal employer organisation, which the senator used to work for many years ago in the early eighties, the great bulk of employer organisations in Queensland have indicated that they do not see any fundamental problems with the Queensland system. We have a position here where I think the senator is drawing a long bow when he makes comments about what Simon Crean said about a need for unitary systems in 1989.

Senator SANTORO—Bill Shorten in 2002.

Mr Barton—Let me finish, Senator; I did not interrupt you. Of course, 1989 was still the end of a previous coalition period for 32 years. That is ancient history in terms of Queensland now. There are Bob Carr's comments in 1990. I think you said there are Bill Shorten's comments in 2002. In terms of those 130 pieces of legislation, the senator is very familiar with one, but I would just remind him. Our businesses do not want to move away, for argument's sake, from our state WorkCover regime because we currently have the lowest charges to them at $1.43 per thousand and it is going down. So it is in a business's interests in many cases to have that individual state piece of legislation there. Given a choice, the great bulk of employers—not just employees—in the state of Queensland will choose to stay with the state industrial jurisdiction rather than be dragged kicking and screaming, as you are proposing to do, into an outrageously unfair federal system.

Senator SANTORO—Madam Chair, I would like to follow up with one last question.

CHAIR—One last question.

Senator SANTORO—I remind the minister that the AiG, the Chamber of Commerce and the vast majority of employer organisations, representing hundreds of thousands of businesses, are in favour of this legislation. They have stated that within their publications and within public statements. So I think, with respect, Minister, you are misleading the committee when you say that.

CHAIR—Is that a question?

Senator SANTORO—You extol the virtues of your unfair dismissal system—the Queensland Labor Party's unfair dismissal system. You obviously are aware of recent reports of a teacher in a state school in Queensland who was moved—

Senator WONG—Madam Chair, I have a point of order. The government determined to exclude unfair dismissal from the terms of reference of this committee. The government cannot have it both ways and have the senator ask questions about unfair dismissals.

CHAIR—I take your point of order. We are not discussing unfair dismissals.

Senator SANTORO—Madam Chair, let me follow up then with a question—

CHAIR—No, I am sorry, Senator.

Senator SANTORO—It is not in relation to unfair dismissals.

CHAIR—No, I am sorry, Senator. I need to allow other senators to ask a question. I ask Senator Siewert, Senator Joyce and Senator Nash to ask one question each in the time we have remaining.

Senator SIEWERT—In that case, I want to put a question on notice. It is specifically to Western Australia. You have referred to bidding down of contracts and I have not had a chance to go through your submission in detail. It you could provide any examples of bidding down that occurred in Western Australia, it would be appreciated. My question comes back to the issue of who is covered under these provisions. What do you consider would happen where state services have been corporatised? I am thinking of where, in Western Australia, the Water Corporation is a corporatised body. Would those workers be covered by state provisions or would they be covered under this?

Mr McRae—Western Power Corporation in Western Australia is the state's energy corporation. That operates primarily under a federal award. There are some commercial contracts and individual workplace agreements within the corporation in some technical areas also, as I understand it, but the bulk of the work force already operates under a federal award.

Senator SIEWERT—What about other state corporations or statutory bodies?

Mr McRae—I gave you that one because I know precisely about it. I am pretty sure, although I cannot be 100 per cent certain, that the Water Corporation operates under a state award and the various transport companies who are engaged in delivering public transport services also operate under state awards.

Senator SIEWERT—Could I ask the other states on notice for examples of where there are statutory bodies or corporations that would in fact switch over under this to the federal system?

Mr Barton—We will provide you with an answer.

Mr Della Bosca—We would be happy to provide an answer.

Senator SIEWERT—Thank you—and the number of workers involved.

Senator JOYCE—I have one question, so I had better try and make it work. Obviously there is a clear understanding that the final arbiter on this is the Australian people. If, when it all comes into play, they think that it is a shocking decision, then I suppose everybody will vote with their feet and, if it is not, we will still be here next time. I am interested to ask this question of Mr Barton: given your partisan position and the fact that you are sponsoring a High Court case, your government has been particularly quiet on its position on any further referrals down to the federal system. Are you giving a categorical guarantee here today that you will not be referring any further IR powers, apart from those covered by this legislation, to the federal government? Have you in the past on other issues, such as health, tried to refer further powers down to the federal government, regardless of your statement here today?

Mr Barton—Let me try and be clear. The comment on health is that the nurses in our state health system are currently covered by the federal jurisdiction. That was not a decision of the Queensland state government; that was a decision of their union a number of years ago—to seek federal jurisdiction. You would have to ask the nurses union themselves as to what their view is now. I do know what it is, but I will just say that they are certainly concerned about what will happen to the nurses if this legislation goes through. At this point in time they are covered by the federal jurisdiction, but that was a decision made by them at that point in time—in the circumstances of that time. I do not think you are referring to comments that were made. There has been a little political exchange between my Premier, Peter Beattie, and the current federal health minister about whether or not the federal government would be prepared to take over Queensland Health. I think that is a little bit of the political argy-bargy that goes on. There is certainly not a view that we want to hand over our state industrial jurisdiction on health to the federal jurisdiction.

In terms of the fundamental question about whether we would cede any powers to the federal government, both the Premier at the last COAG meeting and I at the last Workplace Relations Ministerial Council meeting have said, 'No, we're not prepared to hand over our state industrial jurisdiction to the federal government, particularly in a set of circumstances where it is "take it or leave it".' That is the way it has been put to us, I might say—politely, but as bluntly as that: 'Hand it over or we'll take it off you.' It was not a question for discussion.

I have been around in industrial relations for a long, long time, and I have certainly been part of discussions—going back to the accord periods, before I was even in the parliament, when I was involved with other organisations—where the state of Queensland has been prepared to work in a complementary way with the federal government of the day, particularly the Hawke and Keating governments, about referral of powers and about ensuring that we had complementary systems. Much of the legislation that we have today still complements the current federal Workplace Relations Act, which is intended to be put in the wastepaper bin as part of this exercise.

In fact, as recently as several weeks ago Kevin Andrews, the current workplace relations minister, and I were still updating dual appointments where there had been some changes of

personnel—both Queensland based members of the Australian Industrial Relations Commission and several members of the Queensland Industrial Relations Commission. We still have dual appointments between both of those organisations, so Queensland's position is not one of fundamentally not wanting to cooperate with the federal government—we do. But, I stress again, we have been given absolutely no opportunity, right through this exercise, other than by being asked the blunt question: 'Will you hand over your powers?'—to which the answer has to be no. It is quite different to sit down and have a proper negotiation about the circumstances in which we could have a greater degree of cooperation, and that may in fact require some exchanges of powers if we are to get the best outcomes.

Senator JOYCE—So what you are saying there is that, even after this has been through, you may refer further powers to the federal government, beyond what is in this package?

Mr Barton—No, I am not saying that at all, if I have given that impression. I am simply saying that we have always been prepared to negotiate with the federal government of the day on the appropriate sharing of powers on industrial relations between the federal jurisdiction and the state jurisdiction. On this occasion, we have been given absolutely no opportunity to even discuss what is best. I am saying there are some existing complementary provisions which we have been keeping alive as recently as recent weeks. I would think that if this legislation goes through in its present form we are certainly in for a rough passage for a period of years, because it is certainly the stated position of the Queensland government, as expressed publicly by my Premier and me, that we will not be referring our powers and we certainly will not be referring any further powers. If this legislation goes through—

Senator JOYCE—So you will not be referring any further powers?

Mr Barton—We will not be.

Senator JOYCE—That is a guarantee?

Mr Barton—I would not say it is a guarantee.

Senator JOYCE—It is not a guarantee? I am just trying to work out whether or not it is a guarantee.

Mr Barton—Let us be clear: the position of the Queensland government is that we will not be handing over those powers.

Senator JOYCE—Any further powers?

Mr Barton—Any further powers. I cannot guarantee that forever, because governments and people change and people have different views—

Senator JOYCE—Then that is not a guarantee. Which one is it?

Mr Barton—Let me make it very clear—

Senator JOYCE—I am just trying to get an answer to the first one.

Mr Barton—Senator, I am not going to be verballed anymore.

Senator JOYCE—Are you going to refer any further powers?

CHAIR—Order! Senator Joyce, you have asked your question, Mr Barton has attempted to answer it and we will leave it there.

Mr Barton—We will not be handing over any powers, full stop.

CHAIR—Senator Nash has a question before we wind up this session.

Senator NASH—I have a question for Minister Della Bosca. Certainly, the New South Wales government seems to be rather less than objective in forming its view on this issue and seems to be driven by the unions. Can I bring to your attention comments recently made by Australian Business Ltd, which is obviously the main employer organisation in New South Wales. When talking about the current system, Australian Business Ltd said:

It is cumbersome and inefficient and its weaknesses are compounded by the current unfair dismissal regime.

A survey of Australian Business Limited members early this year found that over 92% of members supported the establishment of a single, national workplace relations system.

Given that, aren't you, in opposing the move towards a national workplace relations system, completely ignoring the strongly held views of business in New South Wales that they would support a move towards this system?

Mr Della Bosca—People can be very perverse. In the 1920s, Western Australians voted to secede in the same election they elected a Labor government whose only platform was opposed to secession. The fact of the matter is that 70 per cent of those people you describe are small to medium sized businesses who continue to use the New South Wales system, as they have for a very long time. I detect no movement out of the New South Wales system. The only movement that will occur, as Tom Barton has already said, will be when they are dragged kicking and screaming by the Work Choices legislation. I cannot answer about the way in which the ABL conducts its surveys, but I can say that businesses in New South Wales actually do their business in the state system because it is fairer, faster and more efficient, to a factor of three times.

Senator NASH—It would still seem that you are completely ignoring it.

Mr Della Bosca—So are you.

CHAIR—Thank you for your attendance here today.

Proceedings suspended from 12.48 pm to 1.49 pm

BARAGRY, Mr Ronald Joseph, Legal Counsel, Workplace Relations, Australian Industry Group

RIDOUT, Mrs Heather Mary, Chief Executive, Australian Industry Group

SMITH, Mr Stephen Thomas, Director, National Industrial Relations, Australian Industry Group

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

Mrs Ridout—It is a pleasure for us to have the opportunity to appear before this very important Senate inquiry on what is a very important piece of legislation: the Workplace Relations Amendment (Work Choices) Bill 2005. In our view, the bill delivers a framework for a far-reaching and important structural reform of Australia's workplace relations system. Ai Group believe that changes are necessary to align the workplace relations system with the circumstances of modern industry. We believe that the changes will boost productivity, as a key part of a wider economic reform agenda.

The reasons workplace relations reform is necessary have been widely canvassed, but they centre around, firstly, Australia's existing overly prescriptive regulatory framework for workplace relations; the impacts of globalisation and the rapid rise of China and India; demographic changes, including Australia's ageing population and inadequate fertility rate, which require that participation in the work force be increased; changes taking place within Australia's workplaces, including increased diversity and growing demands from employees to accommodate their individual requirements and preferences; and, finally, Australia's inadequate and worsening productivity performance. Over the past 12 months, both labour and multifaceted productivity in Australia actually fell. Between 2000 and 2006 labour productivity, in trend terms, grew by 1.1 per cent, compared to 2.3 per cent throughout the nineties. So we certainly have a productivity issue in Australia that needs addressing. Those figures were obtained from ABS data released last week.

Australia's workplace relations systems need to be productive, efficient and flexible, but they also need to be fair. Ai Group have been in this business for 136 years, and we are strongly supportive of fairness being a major pillar of the workplace relations system. But fairness of course has many aspects: minimum wages and conditions need to be fair and, at the same time, fairness requires consideration of those employees who risk losing their jobs if companies fail to survive in what is a fiercely competitive global economy. Fairness also requires that the needs of the unemployed be taken into account. Fairness does not require complexity. In fact, it is impeded by complexity. Fairness is best promoted by a system which is easily understood so that both employers and employees know what they need to do. Also, fairness is best protected by the preservation of a strong economy and high levels of employment.

We have examined the legislation and set out our views in the submission. Whilst supporting the objectives, the direction and most of the provisions of the bill, Ai Group have proposed some amendments to address various problems that we have identified. For example, with regard to the legislative minimum conditions contained within the Australian

fair pay and conditions standard, Ai Group are concerned about the substantial additional costs which will be imposed on many employers, due to the quantum of sick leave, carers leave and annual leave for shift workers. Ai Group are also very concerned about the substantial additional costs which are likely to arise due to the bill's approach to dealing with the very common circumstance where more than one Australian pay and classification scale will apply to the same employee. The bill requires that the employer apply the more generous APCS.

The provisions of the bill relating to enterprise bargaining are very important. Enterprise bargaining has been very beneficial for Australian companies and has led to greater efficiency, better workplace relations and improved productivity and performance. We speak with some experience because 70 per cent of certified agreements cover industries that we represent—that is, manufacturing and construction industries. Undoubtedly, enterprise bargaining has contributed to productivity improvement which has been a feature of Australia up until recent times. For employees, enterprise bargaining has also been very important. In fact, it has delivered significant and real wage increases far in excess of inflation.

Unfortunately, despite the indisputable success of enterprise bargaining in raising productivity levels and delivering substantial real wage increases, Australia's enterprise bargaining system is now in need of an overhaul. Faced with the refusal of the unions to focus on enterprise issues and the union's pursuit of increasingly costly and damaging bargaining claims, many employers have grown disillusioned with the bargaining process and have stopped seeking to use enterprise agreements as a tool to drive productivity improvements. This in turn has led to enterprise bargaining negotiations in many workplaces, focusing exclusively on union claims to the detriment of the employers concerned.

In mid-2005 the Australian Industry Group conducted a survey about workplace relations reform. More than 700 companies responded. The results highlight the need for change. Sixty-eight per cent of employers said that the existing workplace relations system had a neutral impact on their ability to improve productivity. Thirteen per cent of employers said the existing system had a negative impact on their ability to improve productivity and only 19 per cent said that it had a positive impact.

The survey highlights that changes need to be made to the workplace relations system to restore the role of enterprise bargaining as the significant driver of productivity improvements. The Work Choices bill contains a series of measures which are likely to reinvigorate Australia's workplace agreement making system, including simplified processes for making workplace agreements, the removal of barriers to agreement making, enabling agreements to be entered into for longer periods and, finally, requiring that parties focus upon the needs of the employer and employees in the relevant enterprise when negotiating agreements.

One significant concern that we have about the workplace agreement provisions of the bill relates to the High Court's Electrolux decision. We submit that the bill needs to include an equivalent provision to section 170 LI of the Workplace Relations Act, to preserve the outcome of the Electrolux decision in which the High Court found that only matters pertaining to the relationship between a particular employer and its employees can be included in agreements and be the subject of protected industrial action.

Ai Group funded the Electrolux case to protect the integrity of Australia's enterprise bargaining system. We welcome the government's decision to set out a list of prohibited matters for workplace agreements within the regulations, but it is vital that the general requirements arising from the High Court's Electrolux decision continue to apply through the retention of a provision along the lines of section 170 LI—no list of prohibited matters could ever be exhausted—codifying those matters which do not form part of the employment relationship. It is essential in our view also that the bill be passed by the parliament and be operational prior to 31 March 2006. On this date, hundreds of enterprise bargaining agreements in the manufacturing industry expire. The newer laws will assist employers and their employees to negotiate agreements which will improve productivity and competitiveness. Workplace relations, in our view, need to be complemented by tax and welfare reform and investment in skills. This will ensure a positive impact on productivity, and we firmly believe that needs to be very much understood as a cornerstone of our position. We urge the Senate to pass the bill without delay with the amendments set out in our submission.

CHAIR—Thank you, Mrs Ridout. We will proceed to questions. For a start, I would like to ask you about your strong view about enterprise bargaining. You stated today and in several other public statements that it is vitally important that the enterprise bargaining system be reinvigorated. Do you see either the AWA system or the enterprise bargaining system in conflict, or do you think they can be meshed to form a suitable background for Australian industrial relations?

Mrs Ridout—In this legislation—and in the direction of the reforms in recent times—we have been impressed by the fact that we are trying to introduce into the system choice: choice which can meet the needs of employers and employees who want to negotiate collectively and choice which can meet the needs of some industries, individuals and companies that want to do more individual based bargaining through AWAs. So we do not see any conflict between them at all. The big issue is that one should not necessarily be preferred over the other. In some of our industries we have a high incidence of AWAs: the IT industry, the telecommunications industry. In a lot of mainstream manufacturing we have certified enterprise bargaining agreements which are collectively bargained. My colleagues might like to comment, but we do not see any conflict.

Mr Smith—Essentially we have a view that there should be choice in agreement making, whether the agreement is a collective one, an individual one, a union agreement or a non-union agreement. All of those options should be available to employers and their employees to pursue.

Mr Baragry—From a legal point of view, the two can operate together. There can be reliance on one or the other, or both. Legally, it works quite well in practice.

CHAIR—So, in spite of what you have just said, you don't see either enterprise bargaining agreements or AWAs as particularly suited to one type of industry more than to another? Do you see them as applicable at the individual worker level?

Mrs Ridout—I think our perspective is that it should be a matter of whatever suits that particular company and their employees. In our experience, in manufacturing about 2½ per

cent have AWAs, the majority are on collective agreements, either registered or unregistered, and some are on the award system. We do not push either type of arrangement. It is very much up to the company and their employees. Other industries have a different approach. The HR strategies of particular firms might take them down that route. I know there are a number of companies in our membership who like that. Also, in smaller companies that have a smaller work force that want a lot of flexibilities, the AWA system works very well, whereas companies with big numbers of a class of employee find collective bargaining arrangements and EBAs more appropriate.

So it is a matter of choice, and this is a very important point because our members do not want to be pushed one way or the other on what type of agreement they have for any reason. We have made that pretty clear on a number of occasions in relation to other things. Companies are in very competitive conditions and they have to be able to work with their employees to work out what is best for the competitive circumstances of their companies.

CHAIR—When you say that a large number of enterprise bargaining agreements expire next March, you would not see a rush to either system but simply a continuance of the line that employees and employers will use the agreement that best suits their business?

Mrs Ridout—Indeed. It is very important that we get this legislation through in time for the bargaining round. Otherwise companies will have one foot in the old system, with a new system about to be introduced, or not, and in what form. The uncertainty is not really very helpful. At the moment in the construction industry 4,000 enterprise agreements expire at the end of October. So there is quite a lot of uncertainty around in industry. We have had 2½ thousand companies through briefing sessions, and they are still going on at the moment. There is a lot of interest in this legislation so we would be very keen for them to have the advantage of it, and I think it would be better for the government—otherwise they will have to wait for the next bargaining round in three years time. I would suggest that would be an opportunity lost.

CHAIR—Would you see costs associated for industry if the legislation does not get through by that stage?

Mrs Ridout—I think companies will bargain under the old legislation, as we have pointed out in our submission and at other times in this place. There are a lot of drawbacks in the current bargaining system which make it difficult for employers to get productivity improvements in their companies. They would be bargaining with their hands behind their backs. Most of the changes that we have put forward to the bargaining process are based on the experience of Campaign 2000 and Campaign 2003. Ai Group is an organisation, as Senator Campbell knows well, where the rubber hits the road. We do deal with the nitty-gritty of workplace relations. We will be negotiating agreements for our members, and if we are going to have this legislation we should have it sooner rather than later, because these are the major bargaining rounds that the economy will go through collectively over the next few years.

CHAIR—There have been many public statements about the position of young workers under the industrial relations system. Do you see any pitfalls for younger workers coming into a system like this?

Mrs Ridout—Stephen and Ron might like to comment, but young people who are 18 years and under are given some protections in AWAs in that an adult has to sign off on their agreement. In our industry most of the employees of that age are employed under training arrangements such as apprenticeships. We have made a couple of comments in our submission in relation to that. It is not related to their vulnerability but to a technical issue. We hope those sorts of issues are well and truly preserved, because we are strong believers in workplace training and we want those arrangements put in place. But we do not see any particular issues for youth.

As a general point in relation to the employment effects, the unfair termination issue will be quite positive for employment in one area—that is, reducing casual employment. More employers are telling me that they will take on more permanent people as a result of the changes. That would be positive because a lot of them are younger people. But I should hope that most of the young people who come into our industry are on training contracts. That is what they should be on, and that is what I hope they are on. Some good news is that our members are going to double their spending on training over the next couple of years, so they are not reducing their investment in people, which is a very positive thing.

Senator MARSHALL—I have not had an opportunity to read all of your submission, because I received it only this morning. Did you finish it only today?

Mrs Ridout—Yes, we got an extension from the committee; we literally finished it last night. It was quite a complex exercise—getting a 700-page bill of amendments, having to relate that back to the former act and getting a consolidated bill. We do not have a skyscraper full of lawyers—we have a few—and it was a big job. We did it, but we would rather give it to you late than half done. There are a number of quite important technical issues which we brought out. On the whole, we apologise for being late but, in our view, it is a rigorous submission which will be of assistance to the committee.

Senator MARSHALL—If I ask you some questions that you may have already comprehensively covered in your submission, please excuse me. You indicated in your verbal presentation to us that the form of negotiating agreement should be what best suits the company and their employees. Can you explain to me or point to me the provisions of the act which give employees a choice in what form of agreement they can enter into?

Mr Smith—Employees have the same choice as employers. The system is not a compulsory bargaining system; it is a voluntary bargaining system. Employees have the right to pursue their form of agreement and the right to invite a representative to assist them in that process, as do employers. Employers have the right to lock out, even though that is very rare. Employees have the right to take industrial action in pursuit of their form of agreement. So it is an entirely fair and appropriate process, as we see it.

Senator MARSHALL—So, if the employer determines that the form of agreement they want is AWAs across the workplace, what is open to employees to sue a collective agreement?

Mr Smith—What is open to employees is the right to seek a collective agreement and to take industrial action in pursuit of that goal in the same way that the employer has no right to force people to have AWAs. So employees can choose whether or not to enter into AWAs. It is an entirely voluntary bargaining system, and we very much support that.

Senator MARSHALL—But, at the end of the day, one assumes that both parties want an agreement.

Mr Smith—Yes.

Mrs Ridout—That is one of the issues we have been quite concerned about. Collective bargaining rights do not exist in the system at the moment. You cannot force a company to collectively bargain. We took the Asahi case, which really went to that issue. To suggest that, in a sense, we are going backwards on that issue is not correct. People have the right to take industrial action, as Stephen said, either way, but you cannot force a company to bargain collectively and you should not be able to force an individual to bargain individually.

Mr Baragry—That is a very powerful weapon.

Senator MARSHALL—Yes. We have limited time, so I would rather not have three answers to the same question. I just thought you might answer this part of it.

Mrs Ridout—We have a lot to say on it.

Senator MARSHALL—I just want to be clear, because, again, the difficulty you had in preparing the submission is the same difficulty the senators are having. I have not been through every clause of the bill and explanatory memorandum yet. With some of it, I am using you to give me the answers to some of the questions I have in my mind about the bill. I am just interested. Apart from what you have said, practically the only remedy for an employee to pursue a collective agreement if the employer refuses, is to pursue that through industrial action. Are there any other provisions in the bill that might assist an employee who would pursue a collective agreement?

Mr Smith—In the Asahi case there are two things that the five-member full bench pointed to in rejecting the assertions that were being put that we should have a compulsory bargaining system in Australia. The two things that were pointed to were the right to take industrial action and the safety net.

Senator MARSHALL—I understand that. I was just asking specifically about the new legislation before us, if there is any other remedy. I do not want to go back over philosophical grounds. I do not have time. Mrs Ridout, you also indicated earlier that productivity has fallen—and recent ABS data has shown that. Why has productivity fallen, in your view?

Mrs Ridout—I think it is that we have had a very long cycle. We have made a lot of reforms along the way. We made a lot up fairly early in the cycle and I think in a sense we need to recharge the tank. We have said in our submission that the enterprise bargaining process needs to be reinvigorated. Our survey showed that our members are not getting the benefits from it that they were getting some time ago; it has started to fall away—so that is a major issue. Also, we need to do more in the skills area. We have to put a lot of new technology into our industries and we need the people with the skills to work it. I think we really need to lift the participation issue—and that is a tax/welfare to work one—and what are the other things that are on the agenda at the moment? So it is really a range of things. But we are running out of gas and we are having much more pressure put on us, because productivity growth is really the extent of your competitive gains against other economies—it is your bottom line—and other countries are moving very fast. They are taking a lot of ground. We

have done some work on OECD analysis that shows Australia has lost three times as much market share in global markets in goods and services than other OECD countries, than the OECD average. So we do have a fairly marked challenge on our hands given the high currency, the region that we are in and the competition we face.

Senator MARSHALL—Late in your presentation you indicated that the unions 'refuse to negotiate' productivity improvements. Were they the words you used? Is that a factor?

Mrs Ridout—What we have said is that the unions come along with a pattern claim, they send that claim to X number of companies and a part of that is no trade-offs. So they have a list of national demands which are settled and it does not bear enough or any relationship, in our view, to the particular circumstances of the company, so if a company has an agenda—whether it is as to a change in hours or whether it is as to more use of labour hire or whatever—it does not get looked at. If it does not fit into the national pattern claim, it does not get the attention that it deserves through enterprise bargaining. That is a frustration that has been aired over and over again and what we put in our submission—and the government has accepted it—is that you cannot take industrial action in relation to pattern bargaining.

Senator MARSHALL—Is there a difference in productivity between union workplaces and non-union workplaces?

Mrs Ridout—I do not know the answer to that.

Senator MARSHALL—If there were a significant difference, would you know?

Mrs Ridout—In terms of our enterprise bargaining, the majority of them are in our industries and we can speak for the experience of those companies. Certainly our survey work shows that.

Senator MARSHALL—You indicated that you saw some problems with the legislation in terms of—I think you used these words—'extra leave provisions for shift workers'. Can you explain that?

Mr Smith—Yes. The legislation provides for an additional week of annual leave for certain shift workers, those that are operating under arrangements that continue for 24 hours a day, seven days a week and where the individual works either on Sundays or on public holidays or both. The metal industry award, for example, contains a more restricted fifth additional week, but it is not a common standard in our view. There are major industries, even in manufacturing—like graphic arts and so on—that do not have an additional week. The thing that is of concern to us also is there has been a series of significant cases over recent time in the call centre sector about this issue and two full benches of the commission have rejected the idea that an additional week of annual leave should apply to people in that industry, which is a very common one where people work 24 hours a day, seven days a week or the rosters go around. So we are concerned that a large number of employers are going to end up losing five days per year of production time per employee.

Senator MARSHALL—Doesn't the definition say that, to be considered a shift worker in the first place, the premises in which they work has to be a 24/7 operation, including public holidays?

Mr Smith—It talks about a 24 hour a day, seven day a week operation, but that is consistent with, for example, the metal industry award provision. But the metal industry award provision requires that the individual work on Sundays and public holidays, not Sundays or public holidays like this bill requires.

CHAIR—Can I clear this up. Are we doing in blocks your allocated questions?

Senator GEORGE CAMPBELL—Yes.

CHAIR—The time is the same, I assure you. In that case I will call Senator Johnston.

Senator JOHNSTON—Mrs Ridout, you said that patent bargaining across companies was not considered in the broad perspective of the parties—namely, the unions. Does that also extend across state boundaries so that you get a national pattern?

Mrs Ridout—Indeed; you have national unions pursuing national claims. They pursue those across boundaries, and that is one of the problems with the system.

Senator JOHNSTON—So there is no account of the differentiation between the price of energy in one state and all of the fluctuations in the infrastructure?

Mrs Ridout—No, it is very much the same.

Senator GEORGE CAMPBELL—Thank you for your submission. An AiG submission is always of high quality. It is a pity we did not get a chance to read it this time. I cannot really go to a lot of the detail in your submission or to some of the detail in the bill, but I want to ask you specifically about a couple of issues regarding the argument that was put to us this morning by the department about the reasons for the reforms. In the first paragraph, they say:

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

the argument being Australian workplace agreements. From the answers you gave to Senator Marshall, I took the view that you were expressing an agnostic view about what types of agreements are negotiated in your enterprises—in other words, you were not particularly concerned whether it was an AWA, a collective agreement, union or non-union, or what have you, provided it suited the needs of the company. It seems that the focus in this legislation is not to do that but to push the pendulum very much in favour of Australian workplace agreements. Is that your understanding of the legislation?

Mrs Ridout—I will comment and Stephen might like to comment as well. We are not pushing any particular type of agreement. What we are pushing is for workplace relations to be very much focused at the enterprise level so that employers and their employees, whether it is collectively or individually, can work out what is best for their enterprise. The choice of agreement is really very much captive of that process. As I said, some will prefer AWAs and others will prefer collective agreements. But the primacy of the enterprise bargaining relationship and giving that to the workplace level is really what we are about—which started with your government in 1993—and I think that is the important thing.

Senator GEORGE CAMPBELL—I accept that that was the view you were expressing. That was not what I was asking you. I am asking whether it is your view that the focus of this legislation is about very much swinging the pendulum in favour of Australian workplace agreements.

Mr Smith—We do not see it that way. The legislation allows for a range of options for agreement making, and it does not particularly favour one over the other. Of course there are rules about what agreement overrides what other type of agreement where you have two in the one workplace, but they are logical rules. At the moment there are barriers within the Workplace Relations Act. For example, we see the barrier that prevents an employer and an employee entering into an AWA where there is a collective agreement in place as an artificial barrier on agreement making. This legislation removes that barrier so that you could have a collective agreement in place and an individual employee who may wish to have move flexibility on hours of work, or something like that, could enter into an agreement with their employer. Of course that agreement would need to override the collective agreement or it would not have any force.

Senator GEORGE CAMPBELL—Mr Smith, with all due respect to you, you are probably the only organisation in the country that does not believe that the focus of this legislation is about giving primacy to individual agreements over collective agreements or other forms of agreements in the work place. The government itself has not hidden that fact.

Mr Smith—We would be happy to address any particular provisions of the legislation, but that is not how we read the legislation. We see a range of options.

Mrs Ridout—I do not think our members will see it like that either.

Senator GEORGE CAMPBELL—I hope they do not. I am more concerned about how the government sees it and what the government is promoting at the moment than about what your members are saying. There are two issues. The argument here is that this is about productivity. In Western Australia the productivity results under a similar system were 3.81 per cent productivity growth over the period 1993 to 2001. Since that individual agreement-making form has been made redundant in Western Australia, productivity has increased to 6.29 per cent. It is also true New Zealand where we have had a similar form of agreement-making exercise. Productivity output was flat during the period of enterprise contracts. Why do you have greater confidence now that this will boost productivity, given the results of both the Western Australian experience and the New Zealand experience?

Mrs Ridout—If you look at the Western Australian experience the two periods you are talking about are very different periods economically. You have gone into a massive resources boom. The investment in the mining industry has taken some time to catch up with the increased production and I think that is well known. In New Zealand I think one of the reasons that they have not done as well there as I hope we will do here is in matching the more flexible workplace relations system with the work force and the other agendas which can actually make this thing work. If we have a highly skilled work force who can also take their position in the knowledge economy backed by a flexible labour market, we will get the best of all worlds. With New Zealand investment in some of those other areas failed to keep up with—to my knowledge—the freeing up of their workplace relations system.

Senator GEORGE CAMPBELL—I have seen some figures recently, Mrs Ridout, that your organisation puts out saying that growth in the manufacturing sector was dropping off dramatically.

Mrs Ridout—It is at the moment.

Senator GEORGE CAMPBELL—And that there is a downturn in the industry at the moment.

Mrs Ridout—I think the industry is really suffering under the combination of China and its enormous impact on world industry and world prices for manufacturing products. They are falling every year. The terms of trade might be good for Australia but that is because manufacturing goods are falling in price in the market and because of the effects of the currency. The combination has been extremely difficult. That is why we need higher productivity and we are hoping that this reform, as part of the broader reforms, can do that.

Senator GEORGE CAMPBELL—Or alternatively, which is the suspicion of a lot of people, forcing down the price of labour.

Mrs Ridout—Do you know, Senator Campbell, that one of our members can employ a production worker in China for the cost of workers compensation premium for one worker in Victoria, so we would have to reduce wages an awful lot to try and do that. It would be the same as if we said we want higher tariffs back on manufacturing; we would have to have very high tariffs. What we have to do is deploy our people smarter, use better technology, get more into product development and R&D. We need to be able to make sure the investments we make can be used optimally and that is why you need flexible labour markets.

Senator GEORGE CAMPBELL—I hear your argument but the reality is if there is a push to the bottom by one, the pressure is going to be on others to push to the bottom as well. Whether or not, at the end of the day, it solves the problem or fixes it is not the argument. There will be pressures there to reduce the price of labour in order to become more competitive.

Mrs Ridout—There are three billion low-paid workers that have been injected into the world economy with Russia, China—

Senator GEORGE CAMPBELL—Five thousand of them from India work in Sydney in the IT industry.

Mrs Ridout—And it is a huge supply-side shock, but our members are not going down that route and at the moment enterprise bargaining is delivering reasonably high real wage increases.

Senator GEORGE CAMPBELL—At the moment you are not going down that route. It does not mean to say that, if the system is made more favourable for it in the future, you will not go down that route. Senator Marshall asked the question about productivity and union versus non-union workplaces—is it not true that Mark Wooden, in his recently released report, indicated that the research he had done showed that productivity was higher in unionised workplaces than non-unionised workplaces.

Mrs Ridout—Yes, I do recall that is correct.

Senator GEORGE CAMPBELL—And he has never been an academic that has been known to—

Mrs Ridout—He has never been friendly to that side of the argument but I am not that familiar with the research.

Senator GEORGE CAMPBELL—I have not read the paper, but I did note the comment in relation to productivity.

Mrs Ridout—I have heard it vaguely.

Senator SANTORO—I have one question, possibly two, relating to some evidence that was given this morning to the committee. The Queensland Minister for Employment, Training and Industrial Relations suggested that many Queensland businesses, if not the majority, were opposed to the introduction of this legislation. I put it to him—and I do not think I got a response—that the major employer groups within Queensland were most strongly in support of this legislation. Have you polled your members throughout Australia and in particular in Queensland? What level of support do you sense amongst your membership, which I know is quite substantial in Queensland? What reasons are they giving to you for expressing support for the legislation, if in fact they are expressing support? Finally, does your organisation, particularly in Queensland, support what the federal government is doing in this area of vital reform?

Ms Ridout—As part of preparing our submission we had a number of meetings of our councils around Australia, including in Queensland. There was strong support for a nationally consistent workplace relations system, including in Queensland. It was overwhelming. With that view in mind, it gave us the confidence to push ahead with our submission. In Queensland I do not think there was one company on those councils or at those meetings and subsequent meetings that expressed any concern about the change. There will always be murmurings, and there will always be issues around transition and how it might work, but larger companies that operate across national boundaries, and even small companies that have people operating in sales offices et cetera in other states, can see advantages from it. I do not think that is a major issue. The survey I was referring to on enterprise bargaining did go to other areas of reform and gave solid support to the need for a national system. So we also took comfort from that.

Senator SANTORO—We also heard from the New South Wales Minister for Industrial Relations. I hope I am not doing him a disservice by misrepresenting what I think he told the committee. He made what I thought was an extraordinary claim—that is, that he had not received feedback or support from New South Wales businesses in relation to these laws. I thought that he led the committee to believe that there was monolithic support for New South Wales business to remain within the state-based New South Wales industrial relations system. You also have a subsidiary organisation in New South Wales, the AiG. What is the membership of that organisation?

Ms Ridout—Our membership nationally is approaching 10,000, over 4,000 of which are in New South Wales, over 4,000 are in Victoria and about 1,500 are in Queensland.

Senator SANTORO—Could you give the committee some indication of the level of support that AiG members would provide to this legislation if they had been balloted? Do you see similar strong support amongst your members for this legislation?

Ms Ridout—Indeed. Through our council structures, we went through quite a lot of meetings with our members regionally. Our submission was prepared over a number of months. A task force of our national executive was made up of people from every state and

across different sectors. It was a very rigorous process, and that is where we got to. The curiosity of business in relation to the changes was marked by the fact that we held briefings. We have 2½ thousand companies attending, so literally it is huge—there are 300 or 400 people in a room who want to understand. So, at the moment, one of the tasks for the government and for everyone is to start to educate business more about the opportunities, because there is quite a lot of uncertainty: 'What does this mean for me? How will I operate?' They can see the big picture but they have to see it translated. In the course of this exercise that we have gone through—and we are still going through it—there were 34 meetings. There would have been about 15 in New South Wales, 12 in Victoria and eight up in Queensland. So they were all over the place.

CHAIR—So that was a survey as well as the actual meetings?

Ms Ridout—We did a survey in the preparation of our submission, and then we have had the meetings recently, subsequent to the legislation's release, to start to inform companies about it. Companies are very interested in it. We asked them through a show of hands whether they were getting a lot of shop floor concern. Interestingly, it was not widespread at all.

CHAIR—Would you be able to provide the results of the survey to the committee?

Ms Ridout—Of course. We would be very happy to do that.

Senator SANTORO—What is the average size of your membership in New South Wales? You say you have 4,000 members.

Ms Ridout—The bulk of them would have fewer than 50 employees but we would also have included in that the very biggest of manufacturers—IT companies and construction companies.

Senator SANTORO—I was particularly interested to draw you out, because the suggestion is sometimes put that the AIG represents the big end of manufacturing, but I am grateful for your information that the bulk of your members are in fact—

Mrs Ridout—Eighty per cent of our members would employ fewer than 50 people. It is consistent with the structure of Australian industry; that is the way it is.

Senator SANTORO—Obviously, you would agree that I have not set up any dorothy dixers with you. My next question perhaps will suggest that that is the case. Were there any concerns expressed about the legislation within surveys or meetings that you have had with your members? You have mentioned the necessity for more explanation of what are fairly complex amendments, but that is the nature of industrial relations when you are trying to bring in a set of national laws that seek to embrace the provisions of other jurisdictions. What sorts of concerns have arisen?

Mrs Ridout—The meetings we have had have been about getting to understand it, so there has been more questioning than voicing of issues of concern. We are going to go through a round of normal council meetings over the next few weeks, so we will be getting much more interrogative types of feedback. At the moment, I think companies are more curious about how it is all going to operate and what it means for them. It is a very big piece of legislation, a very big piece of reform. There is some disquiet with the bargaining round coming up. They

are concerned that there could be increased disputation on this occasion. We are in a bit of a volatile position, and that is one of the things that are going through their minds.

Senator SANTORO—The suggestion has also been made that there has been a lack of adequate consultation about the reforms that are now before us. How would business regard that claim? Without in any way wanting to verbal you or put words in your mouth, when I was interviewed this morning at a doorstop, I suggested that this is the most debated area of reform that this government has introduced—not just this year but over many years and in many manifestations, including and in particular in the Senate. How would you view a claim that there has not been sufficient consultation about this reform before us?

Mrs Ridout—Consultation between us and the government has been very constructive. It has been a very useful process. We have been informed. We have had the opportunity to put our position. This submission we have put in today goes through a number of amendments, whether they are inadvertent issues that need to be dealt with. I do not think AI Group could have any criticism of the way the government has consulted with us about the process and given us the opportunity to make our views heard.

Senator SANTORO—Could you give the committee some indication of how many times your organisation, as an employer organisation, and organisations representing employee interests have been invited by government, over the last three, four or five years, to make submissions about provisions that are contained within the amending bills?

Mrs Ridout—I think we have just about worn the carpet out. Stephen Smith particularly has, as Senator Murray well knows.

Mr Smith—There have been a very large number of submissions, even before this committee. A lot of these reform proposals—

Senator MURRAY—Scores, I would say.

Mrs Ridout—Yes, there would have to have been scores. If we go back to all the unfair termination issues, the better bargaining bill and the construction bills, there are many submissions we have put before this committee, the government and the opposition.

Senator SANTORO—Would it be fair for me to put to you that a lot of the issues that you have previously submitted to government and that you have wanted to see addressed in legislation—perhaps you may want to put a figure on it—have been significantly addressed by the amendments that are before the parliament at the moment?

Mrs Ridout—We would particularly note the issues on the bargaining process, the better bargaining bill. That is one of the issues that arose from our experience in enterprise bargaining, and we are very pleased that it has been picked up here. The theme of many of the other submissions—a less regulatory approach; all those issues—is certainly consistent with this bill.

Senator SANTORO—How far have the provisions in the legislation on union representation, particularly in terms of allowing unions to represent the legitimate interests of the employees on the shop floor, gone in satisfying you? Has the government totally met your representations on union representation or was some middle ground reached there?

Mrs Ridout—I will make a quick comment and then Stephen would probably like to comment. I think the right of entry provisions are very fair and are quite adequate. Many of our members quite like to deal with unions. We do not regard the union movement as some kind of class enemy that you do not want ever through the door. Our members are used to dealing with unions and they deal constructively in many cases with them. We are not about making it impossible for unions to properly enter workplaces to represent their members—nor to recruit, as that is part of the business of representation.

Mr Smith—This bill—indeed, the current act—does still preserve a very important representative role for unions. I have just come back from the US in recent days. Systems like that and in some European countries are such that unless a union gains a particular level of support they have virtually no rights in the workplace. Unions have very significant rights in the workplace under this legislation, even if they have only one member. We do not see that this legislation is unbalanced in that area. Those right of entry provisions that were mentioned really just tidy up a number of practical problems that were there. They still preserve very significant rights to enter.

Senator SANTORO—Thank you.

Senator WONG—Mrs Ridout, can I first turn to the assertion in your submission that Australia needs a simple national workplace relations system. You are referring to the inconsistencies between federal and state jurisdictions. The submission today from the state governments makes it very clear that this will not be a unitary system. Queensland in particular indicated a figure of up to 40 per cent of their employer base which would not be covered, while New South Wales indicated the well-known constitutional limitations of the Commonwealth's power to legislate with respect of crown employees and arguably municipal employees. First, do you agree with that? Second, if you do, doesn't that fly in the face of the assertion that this will deliver a simple unitary national system?

Mrs Ridout—It will not deliver it because the states will not let it be delivered. The state governments will not deliver the last 15 per cent or whatever it is. It will be 80 per cent or 85 per cent of employees. That is the whole issue.

Senator WONG—Queensland said 40 per cent.

Mrs Ridout—That is a lot higher than we have ever heard and have ever put on it. We do see, clearly, that this moves a long way down the track. The organisations that will be left out of it are essentially going to be sole traders and pretty small operations that really require from our experience a very simple understanding of their rights and obligations as employers. They are largely non-unionised. Ultimately the federal system will become the standard. It may take some time, but these are strategic reforms—they will have to prove themselves in the marketplace. But they will cover the vast majority of our members. More than 60 per cent of our members will be covered by this.

Senator WONG—60 per cent?

Mrs Ridout—More than that. I cannot imagine more than 10 per cent of our members not being incorporated enterprises.

Senator WONG—But you would acknowledge that there are partnerships and other forms.

Mrs Ridout—Yes, but they are in the minority and they are non-unionised and they will basically use—

Senator WONG—What is the relevance of that, Mrs Ridout? If the assertion is that a simple, unitary national system is the best, all I am putting to you is that the Commonwealth is actually not capable of delivering it unless it gets the agreement of the states, which it has not placed as a high priority.

Mrs Ridout—Those small companies might fall back onto state awards, they might still be part of the federal award system in another way. I do not think it is going to be a major issue for our industries. It will be for some parts of the housing industry and it might be for some parts of the agricultural industry, but it is not going to be a major issue for our members. We are very pleased, because we will be largely drawn into a more nationally consistent system.

Senator WONG—I may have misheard you, but I think you made a suggestion that the proposed changes would have a positive effect on employment. I refer you to your comments in the September *Four Corners* program, in which you stated that you were not going to go around putting on more people just because the unfair termination laws had changed. I presume you do not resile from that? Similarly, you were quoted in terms of the estimates of job creation as stating, 'I'm very sceptical of economic modelling; it is as good as the assumptions that go in, and they come out whatever figure you want to make, so I really never accepted those figures.' Is that still your position?

Mrs Ridout—It is. That was a 45-minute interview, which was cut down to three minutes on a program.

Senator WONG—We are familiar with that situation.

Mrs Ridout—Indeed, I thought you would be.

Senator WONG—If you got three minutes, you are doing better than most politicians, so I would not complain.

Mrs Ridout—No. But the first comment you refer to—the one that relates to the impact on jobs—goes to the point I made about casual versus permanent jobs. I firmly believe—after all the discussions I have had with employers over the years—that the unfair dismissal regime has been negative for permanent employment. Going to the modelling, I have seen all the modelling that has been done. I could have been dishonest and said that I thought that that modelling was absolutely watertight and that I would walk across the highwire with it in my hand. I decided not to do that, but I feel on balance, from discussions with industry and from research we have done with our members over the years, that the unfair dismissal regime, which is what I was referring to, was negative for employment—and negative for permanent employment. That is the point I was making when I said that. I think that aspect will be dealt with in the legislation. Generally, because it will allow a more flexible labour market, I think that over time and overall it will be positive for employment.

Senator WONG—I want to move on, but I thought I put to you that your quote was that you were not going to go around putting on more people just because the unfair termination laws have changed.

Mrs Ridout—No. But I think a lot of people, when other commercial issues might have suggested that they should put a person on, were making the decision to put on a casual person rather than a permanent person, and that was the point I was making.

Senator WONG—Now I would like to turn to the issue of participation, which you do refer to in your submission, essentially encouraging more participation in the labour market and making a reference at 2.4 to, I suppose, family responsibilities. Are you aware of the DEWR figures on the prevalence in Australian workplace agreements of family friendly work provisions—or their lack of prevalence?

Mrs Ridout—My colleague here has more data on this, but from my understanding the figures do indicate that Australian workplace agreements have more family friendly provisions in them than certified agreements—and the wage outcomes for AWAs are also quite propitious. So I am a bit confused by assertions that AWAs do not have as many family friendly provisions in them as enterprise bargaining agreements.

Senator WONG—Of AWAs registered between 1995 and 2000, 12 per cent had any work and family provisions, while eight per cent had paid maternity leave. In light of that evidence, do you continue with an assertion that a move to an AWA preferential system is going to advantage women in particular to participate in the work force? That is what I am querying.

Mrs Ridout—I have never made that assertion.

Senator WONG—If those figures are correct, would it be a concern to you in terms of encouraging women's participation?

Mrs Ridout—One of the reasons for the reforms is to create a system that has more flexibility to deal with the circumstances of everyone. In some of our member companies, if a woman wanted to have a more flexible work arrangement, there would have to be a vote from the shop floor through the facilitative clauses for her issue to be considered. That is not a very family friendly arrangement.

Senator WONG—No, but nor is having only eight per cent of AWAs containing paid maternity leave and only 12 per cent containing family friendly arrangements.

Mrs Ridout—But the incidence of paid maternity leave, as you and I are both aware, is not as high as it should be, right through the system. Our organisation was a very strong supporter of paid maternity leave—it was the only employer organisation that nailed its colours to the mast on that issue for two years. I might say, with the support of the Democrats and the ACTU, we had some success in getting a system introduced by the federal government. That was, I think, a very important issue, but we do not see family friendly workplaces being compromised one way or the other by these changes.

Senator WONG—So you do not have any concern about the fact that DEWR indicates that only 12 per cent of AWAs had family friendly provisions, as at 2002?

Mr Smith—I am not sure what those figures are; but, in the recent agreement-making inquiry, this issue was part of the terms of reference and we did provide DEWR statistics that were counter to that.

Senator WONG—I am going to move on because I have a number of other questions, if that is all right with you.

Mr Smith—Yes.

Senator WONG—I have two very brief issues. The first is the prohibited content provisions in the legislation. Does the AiG have any concerns regarding section 101D of the act, which essentially enables regulations to determine what would be prohibited content for the purpose of agreements and the like—in other words, this will not be a matter before the parliament; it will not be known to your members until the minister determines what that regulation should be?

Mr Smith—One very significant issue here goes to the issue that was mentioned in the introduction about the Electrolux case. We believe that the legislation needs to include a provision that makes it clear that protected action can be taken only over matters that pertain to the employment relationship and that agreements can only include that. The prohibited content provisions, as we read them, largely seek to codify the Electrolux exclusions, but we would prefer to be aware at this stage of what those provisions are going to be. The 67-page document that was released in October does contain a list, and we will look with great interest at what those provisions are. But our biggest concern goes to the broader issue. The legislation should include a very clear statement like 170LI, because you cannot come up with an exclusive list of what does not pertain. You can always find something else. It needs to be very clear that agreements can only contain provisions that pertain to the employment relationship.

Senator WONG—Do I understand, therefore, that you believe it would be preferable for section 101D to list what the prohibited content would relate to rather than it have a discretionary regulation-making power?

Mr Smith—If it were set out in the legislation, we would certainly have no objection to that. The way that some of the other legislation has been—

Senator WONG—Hang on. What are you saying? You do not have a problem with it just being something that the minister determines, or do you think there is merit—

Ms Ridout—We have submitted that it should be in legislation; that is part of our submission.

Senator WONG—I do not know what your submission says, because I got it when I walked in. The final issue is apprenticeships. I do not know whether anyone has asked you about this, but I did note in your submission your concern about the potential overriding of federal award apprenticeships by the legislation. Could you expand on that and on any consequences for training that might flow from that?

Mr Smith—It may be a drafting oversight, but it clearly disturbs some of the federal apprenticeship clauses like those in the metals award, the graphic arts award and our new technology cadetship award, which all contain provisions that say that these federal awards

override state laws. The provisions of the legislation do provide that an award cannot contain provisions that override state training laws. We do have a concern about that and it is set out in some detail in our submission.

Ms Ridout—We believe in the national system in relation to that. We would like national consistency for training purposes.

Senator WONG—What is the risk of the regime that is envisaged in this aspect? What risk is there to apprenticeship take-up and nationally consistent training regimes?

Mr Smith—It is more an issue about consistency and an opportunity to come up with national provisions that are contemporary and so on rather than about necessarily having to weave through all the state provisions, which are quite inconsistent.

Ms Ridout—We think they are impediments. It is hard enough as it is to get national consistency on training areas. We do not need to have any more impediments put in the way of it.

Senator GEORGE CAMPBELL—Ms Ridout, does it concern you that, in respect of the provisions of the bill, apprentices who enter into AWAs will be able to trade off and cash out provisions in the award, such as tool allowance, travelling time for training et cetera—issues that go directly to facilitating their training as a tradesperson?

Mrs Ridout—It does concern me. I think young people who are training need to be given the tools to train and the capacity to learn and they need to have some system built around them. I think those sorts of issues are quite important.

Senator GEORGE CAMPBELL—Have you made any representations about this issue to the government since the draft detail of the bill has come out?

Mrs Ridout—No, we have not. We have reserved our position there.

Senator GEORGE CAMPBELL—It may be worth your while doing it, because it is of real concern, I think, just in the context of ensuring that the integrity of the infrastructure built around apprentices and developing future tradespeople is not allowed to be diminished as a result of—

Mrs Ridout—We have put to the government a whole revamp of the traditional apprenticeship, which is a very exciting proposition, which takes it up to higher skill levels. It is a whole new approach. Currently, apprenticeship finishes at level III and this would take up it to level V. It would have flexible exit and entry points. It will be a whole new structure. We have been negotiating that industrially and it is quite well advanced. That is quite an exciting proposition and we think this is the traditional apprenticeship system for the 21st century. All these arrangements should be consistent with that.

Senator MURRAY—Ms Ridout, you would be aware that your organisation is one of a handful that all parties rely on for an experienced and reflective view. I appreciate the effort you put into getting across this in time to give us an intelligent and intelligible submission, because I can assure you that I am amongst those who have not got across every detail yet. Apparently, we have some 5,000 submissions, a few of which will be very useful with recommended changes. My attention has been drawn to Professor Stewart's submission, where he says that there are a number of technical areas that need clearing up and probably

amending. I confess that I have not read it yet; my attention has been drawn to it. Would your organisation be able to assist the committee by glancing through a number of key submissions, particularly from those who are experienced in this field, and just letting us know whether there are any other technical areas others have picked up that you agree with?

Mrs Ridout—We would be very happy to do that. Ron Baragry might like to give you a view just generally on the issue, but we would be very happy to give you further support on that.

Senator MURRAY—I am not looking for a view; I would just like some greater assistance for the committee.

Mrs Ridout—We would be very happy to do so. We are very conscious that, with the High Court challenge from the states et cetera, this legislation will not be settled law for some time and we really want to get it as good as it possibly can be. We had two challenges ourselves: the Electrolux and M West cases. Arguably, both of them were just about clauses that could have been the subject of bad drafting. So I think it very much is in all our interests to get this issue right so that we get settled law as soon as we can.

Senator MURRAY—The second issue is one of principle. This act—and I must take some blame for it—now has about 850 pages. The changes make up an approximate 700 pages. When you put the two together, delete some provisions and put in others—who knows?—it may end up as 1,300 or 1,500 pages long. This morning, the South Australian Minister for Industrial Relations contrasted that with his own act, which he said was 150 pages long and very easy for people to use. You have members in South Australia. In the last 10 years, the Commonwealth has produced more legislation than in the previous 90 years and we are overwhelmed with prescriptive legislation. Regardless of the merits of what is proposed, does this strike you as contributing to greater complexity, greater prescription and more regulation?

Mrs Ridout—My colleagues might like to supplement what I say, but I think a lot of the complexity is in the transitional arrangements. I would hope that, once we get through those, we can move to a simpler version of the Work Choices act and a lot of that complexity can be removed—because it is quite a complex piece of legislation at the present time.

Senator MURRAY—Mr Baragry?

Mr Baragry—I think a large amount of the complexity springs from the transitional period. This is a huge change, from a constitutional point of view, and it has been necessary to make very complex changes as a result of that. Once we get over the transitional period, I think the act will certainly be a much simpler document and probably a simple document.

Senator MURRAY—Do you mean simpler than it is now?

Mr Baragry—Yes, a lot simpler. There are a lot of provisions there that relate to the transitional period—preserving state awards and state agreements and many other areas that are purely transitional. The transitional period will last for a long while. It will be four or five years at least.

Senator MURRAY—I want to pick up on a point that Senator Wong was pursuing, and that relates to how we will deal with the future—the aftermath, after the act has passed. I presume, Mr Baragry, from looking at your silver hair, that you know some Latin. There is a

phrase which I will translate very generously for the committee as essentially 'after the act has passed, the sadness': post coitum tristum. You might recognise that. I think there is going to be some sadness. Will you be agitating for the government then to sit down with the workplace relations ministers of the states and try and get some rationalisation out of it? If they are claiming that anywhere between 15 and 35 per cent of Australian employees, depending on who you believe, are going to remain under state systems and if there is still going to be great conflict because it has been a hostile takeover, there will need to be a rationalisation—if they are not successful in the High Court. If they are successful in the High Court, I presume we go back to what we have now.

Mrs Ridout—Once this system is introduced we may have a High Court challenge, and we could not say whether that will succeed or not. From our advice, we are fairly confident that it is a robust piece of legislation. We would hope and we are reasonably confident that after that, depending on where the legislation settles out in the economy, there are quite a lot of protections built into it. We feel in a sense that, towards the end of its transition period, we might be able to have a more constructive discussion in Australia between the states and the federal government about the remainder of the system. It will be in that transition period that the legislation will have to prove itself, and hopefully community opinion will also be made more certain about the impact of the changes and we can be more confident and can put pressure on the states to cede the powers.

Senator MURRAY—From a practical perspective, there is a legal transitional period, which for some aspects of the bill goes as far as five years, but, for most of the participants, how long do you think it will take to bed down the new system?

Mrs Ridout—I would think for companies affected by enterprise bargaining it will take a couple of rounds. If we can absorb it on this occasion, I do not know whether we will have the benefit of it fully for the next bargaining round, but obviously it will be very new and very fresh. I think it will take us three to five years to feel the impact. It will not be felt in isolation. In all my experience—25 years with the Australian Industry Group—industrial relations does not lead change. It is the global economy, it is the competitive pressures on the economy, it is the impact of new technology and it is the impact of all these demographic changes. They are going to force the envelope, and the workplace relations system has to be aligned with that. That is our whole point: it cannot lead change of itself.

Senator MURRAY—Would you agree with my assessment that most of the effects of this legislation will only be practically felt by employees and employers in around 2007-08? You have three-year certified agreements already in play and you have transitional arrangements coming in. People are going to be in existing contractual arrangements which do not change until after the next election.

Mrs Ridout—There are many aspects of the legislation. There is the Fair Pay Commission and the setting of the safety net. That is going to be felt sooner rather than later. Hopefully, that will complement a lot of the other issues on Welfare to Work and tax. In relation to enterprise bargaining, depending on what happens in the current round, certainly companies will have a look at it and they might make some changes. Hopefully, they will get some productivity gains if they can get access to the better bargaining provisions. I think that will be very helpful. But it will take some time for them to fully digest changes.

Senator MURRAY—I want to return, if I can, Mr Smith, to section 170LI. Essentially, your recommendation at page 47 of your bound submission is:

Parties should be unable to take protected industrial action in pursuit of matters which do not pertain to the employment relationship; and

Matters which do not pertain to the employment relationship should not be able to be included in workplace agreements.

Your recommendation is: the inclusion of a provision along the lines of section 170LI of the present Workplace Relations Act. Your view is that that works effectively.

Mr Smith—It does. It is a longstanding—

Senator MURRAY—You have been involved with the government whilst this bill was being developed. Why haven't they retained it?

Mr Smith—We would hope that it is a drafting oversight, because this is an extremely important and fundamental part of the system—that enterprise agreements should not be able to contain matters that go beyond the employment relationship. The High Court was very clear on it. There is a provision in the legislation that makes that statement for awards, but it does not have a provision like 170LI, which was the clause that was looked at by the High Court. It needs to be there. As I said—

Senator MURRAY—They did not say to you that they were going to change this area?

Mr Smith—Not specifically, no. As I mentioned to Senator Wong, we are supportive of the idea of prohibited matters, which seems to draw from the Electrolux concepts. But you need the general statement because, as we have pointed out on page 47, there are a whole range of things, including payroll deduction of union dues, which was the central issue surrounding the Porter's case and the Alcans case. They were looked at in the Electrolux case but are not on the list set out in the *WorkChoices* document—and there is a whole range of other things. It does need to be there—and we will be pressing this issue very strongly with the government, as we are with this committee. Hopefully, it is just an oversight and it will be addressed.

CHAIR—Senator Murray, could you put further questions on notice?

Senator MURRAY—I will do that. I must say, the comment just on ending does strike me as odd, given the amount of attention they paid to it in policy terms in the statements.

Mrs Ridout—And the amount of effort we made.

Mr Baragry—I think that in the 65-page document that was issued, they did say that they were going to insert that on page 23, I think it is, of the explanatory document that was issued a month before the legislation.

CHAIR—Perhaps, Senator Murray, you could put anything else on notice.

Senator SIEWERT—I would like to follow up on the productivity issue that you raised. On page 11 of your submission, you say that we need these changes because of 'the impacts of globalisation and the rapid rise of India and China', but you do not then go on to say why this legislation is required to produce productivity gains. What productivity gains will be gained by this legislation if it is not about lowering wages? I notice that, when you have been answering comments from other members of the committee, that, to me, has not been

articulated. You talk about the need for innovation and those sorts of things, but your submission does not highlight how these changes drive those changes.

Mrs Ridout—One of the key drivers will be that employers and employees at individual workplaces can work much more closely on the agenda that works for their workplace, and that can be facilitated through this. Under the former approaches, which were very much based on pattern bargaining, that kind of opportunity was restricted. That came through very strongly in our surveys with our members to the extent that 68 per cent of them said that they were getting, 'The enterprise bargaining system that currently operates is only neutral.' That means they are getting no productivity benefits. That is because, in the last campaign, there were no tradeoffs in most of the agreements at the enterprise level, so they paid a wage increase without any tradeoffs. That is the most grassroots example I can give you.

Senator SIEWERT—How does that individual negotiation drive innovation and the sort of technological change we need? I still do not get it; I am sorry.

Mrs Ridout—If a company wants to invest in very expensive technology, they might want to change the spread of hours; they might want to do a range of things to facilitate the fact that they can work that machinery, that capital, in a manner that suits their particular circumstances. A national agenda from a national union official may not allow for that, and that is exactly what it is all about. That is the essence of it. When we had the first round of enterprise bargaining, if there was a lot of low-hanging fruit, it was very much based around employers and employees sitting down for the first time and understanding what the enterprise needs.

Senator SIEWERT—Why do you use the specific references to China and India?

Mrs Ridout—Only because they are so much on our doorstep. China is having the most profound effect on Australian industry, in two ways. First, they are in our market and they are taking away our market share directly. They are in our export markets. Also, half of manufacturing in Australia is made up of multinational corporations. They are also restructuring their businesses in relation to China. That is having second round effects on Australia. So we are caught in a very tough spot. As I said right at the start, if you look at OECD market share figures you see the OECD has one figure but we are three times as badly off in terms of market share loss because of China and because of the overlaying impact of our currency. It is a very important issue. It is very much on our agenda.

Senator NASH—I want to follow up something that Senator Santoro brought up with regard to Minister Della Bosca. I am trying to reconcile the differing views here. Obviously you say there is support within New South Wales from business for these changes. Mr Della Bosca is saying that he has had no representation, as I understand it, and that he does not believe there is any support. Do you have any data or reporting that would substantiate your views that the committee could be given?

Mrs Ridout—Resolutions from our own council meetings? We are a national organisation; we are not a state organisation. But we do have state councils that report to our national executive. They have been unanimous. There will always be dissenters to these issues, but it is not widespread. The overwhelming view of industry is that our national system is a good system. People like to preserve jurisdiction hopping and all sorts of things but that is what it

is. Companies operating across boundaries do favour a national system, given our experience and our discussions with our members.

Senator NASH—Also there seems to be an assumption from some quarters that all employers are going to turn into these terrible ogres and be dreadful to their employees under this new system. Sorry to be extreme but it seems to come forward like that at some point. Have you had any feedback from your members on their perception of that view being put forward, that they will intentionally disadvantage employees under the new system? Do they have a view on this sort of assumption that is out there?

Mrs Ridout—I do have feedback. We had discussions in Victoria in our council meeting and this very issue came up. They take objection to it, frankly, because they want settled industrial relations, they want harmonious workplaces, they want to be able to deal with their employees honestly and with some integrity. There is a shortage of skilled people—a whole host of issues. They do not intend to go in the day after this legislation is passed and start rearranging their workplaces. It is a matter of acknowledging the relationship; it is not a matter of employers all of a sudden turning into ogres. They do not want to do that. They do not want disharmony. They want to work with their employees, and they know they will not get productivity improvements from disenchanted, unhappy, disgruntled, negative, hostile employees. It will not happen—quite the opposite.

Senator JOYCE—Thank you very much. Eighty per cent of your members have fewer than 50 employees. What number of members would have greater than 50 employees? What makes up that other 20 per cent?

Mrs Ridout—In terms of the actual number?

Senator JOYCE—Yes, the size of the organisations.

Mrs Ridout—They vary from small to very large corporations with between five and 10,000 employees. Our membership in Queensland, for example, is mainly smaller companies and offices of the larger corporations, but we have 10,000 members and the split is roughly that. There are some very large companies and very tiny ones.

Senator JOYCE—Would you say that you have a strong participation rate in the top level of business?

Mrs Ridout—Indeed, yes. Approximately 60 per cent of Business Council members, for example, would be members of ours. We do not have miners or bankers and not many retailers, but we do have most of the other types of companies.

Senator JOYCE—And you have a number of multinationals within that group?

Mrs Ridout—Yes, we do.

Senator JOYCE—I was listening to Senator Murray. As he ducked out he mentioned a quote. I can remember it from school: 'indica arachnius post coitus diaboli' is what he was referring to but he did not say it.

CHAIR—He said it in English, I think.

Mrs Ridout—My colleagues told me I was going to have to understand Latin today!

Senator JOYCE—It basically means you can end up with a bit of a mess at the end. One of the state members before threw out the conjecture that we will have 13 million AWAs and that that could cause a problem. Has your membership had any discussion about how it will handle that volume of a multiplicity of AWAs?

Mrs Ridout—This goes to the point you made at the start, that our members want choice about whether they want AWAs, collective agreements, common law contracts or whatever. They are into choice and they will exercise their choice in discussion with their employees. There are some issues: if everyone in the economy all of a sudden went to AWAs it would be quite hard to process them all, I suspect. But I think generally some of our members prefer to deal with their people collectively. They always have and for the foreseeable future they will probably continue to do so. Others, certainly in some of the newer sectors, have HR strategies that are quite different. They like AWAs; they can work with people differently and better in that way. It is very much a matter of choice and we want to preserve that choice.

Senator JOYCE—Who does your organisation believe should be exempt from unfair dismissal laws?

Mrs Ridout—In our view, the biggest problem with the unfair dismissal laws—

CHAIR—I am sorry; that is actually not contained in the list of issues that we are looking at. Thank you very much to the Australian Industry Group for appearing before us today.

Proceedings suspended from 3.12 pm to 3.22 pm

THOMPSON, Mr Robert Norman, Director, Enterprise Initiatives Pty Ltd

CHAIR—I welcome our next witness, Mr Thompson, from Enterprise Initiatives. Thank you for your submission and I invite you to make a brief opening statement.

Mr Thompson—I would like to introduce my organisation so the committee has an opportunity to understand the purpose and scope of our submission. Enterprise Initiatives is a small business, and we have advised and assisted over 2,000 mainly small businesses to make agreements since 1991. The Employment Advocate has credited Enterprise Initiatives with lodging a significant proportion of small business AWAs—somewhere between 12,000 and 15,000. We have also lodged the majority of non-union certified agreements approved by the AIRC for small business over the last three years.

Enterprise Initiatives were responsible for the first Australian small business enterprise agreement under the Greiner government legislation back in 1992. We have led the campaign for greater flexibility under the existing no disadvantage test and have pioneered penalty-free AWAs and non-union agreements approved by both the OEA and the AIRC respectively. We are intimately aware of the needs and concerns of our small business clients. Enterprise Initiatives have worked with seven previous pieces of state and federal industrial reforms and witnessed their ultimate success or failure. We are well qualified to anticipate the likely effects of the bill on small business. Enterprise Initiatives are a passionate advocate for those who want to enjoy workplace freedom by making their own legal and appropriate arrangements.

Our philosophy is that we favour, firstly, employment arrangements made directly at the enterprise level without unwanted third-party interference and unnecessary procedural requirements and, secondly, people in business who want self-control, responsibility, choice and compliance and who reward for individual merit. We do not act as a negotiator in making agreements between small business employers and their employees. We believe the economy, and society as a whole, benefits in proportion to accessibility and uptake of such agreements.

Common-law contracts underpinned by legislated minimums and other statutes and industrial instruments are the optimum mechanism for effective agreement making and compliance. We strongly believe collective agreements made at the enterprise level are and will remain the most effective and efficient catalyst for increasing productivity, meeting legal rights and obligations and adding value to a business asset, as well as satisfying individual needs.

The purpose and scope of this presentation is to give submissions in a non-partisan, non-political and constructive way to assist the Senate in improving the efficacy of the Workplace Relations Amendment (Work Choices) Bill 2005 in achieving its objectives. Our comments are limited to agreement making, with regard to the proposed changes and their likely effect on small business, drawing from relevant cases, data and anecdotal evidence.

The background to our submission is that there is broad agreement that deregulation of Australia's labour market in recent years by various governments is necessary and beneficial. All improvements have been characterised by an opting out from traditional industrial

instruments, such as awards and award-type collective agreements, in favour of improved collective and individual instruments made at the enterprise level or by independent contract.

Endemic to this process is the increasing declaration of independence of enterprises and individuals from employer and employee registered bodies who claim, legitimately or otherwise, to represent them and their interests. At each new phase of deregulation, legislators confront the task of balancing and eliminating the risk of unintended loss of entitlement and remuneration for those who choose to opt out against improving and protecting their ambit of choice in doing so.

It cannot be denied that the success of the bill will turn largely on increasing the uptake of individual and collective agreements by employers, especially in small business. Employers are and will increasingly be the initiators of approved agreements.

It is correctly observed that, under the operation of the current act, individual agreements, AWAs, are a failure and that the department responsible for their promotion and approval, the OEA, has chronically failed to meet the government's expectations and its own standards. According to the bill, this same department is charged with similar responsibilities—say, for inspection, enforcement and approval—for both individual and collective agreements. Non-union agreements are in a minority due to their risk, cost and uncertainty.

Access to the agreement-making process is now critical. It is not limited by union interference nor by employer apathy. The parties of small business can be encouraged by new legislated minimums and stronger enforcement regimes. Conversely, the traditional and increasingly irrelevant employer and employee bodies and processes cast a long shadow over this bill. In seeking to universalise the future workplace relations regime, significant and unnecessary procedural requirements have been added to agreement making. Uncertainty is increased due to an opaque and interminable procedure for the investigation of agreements, which can lead to their voiding. This alone might far outweigh the apparent advantage of all agreements being approved on lodgment.

Under the bill it is unlikely an agreement can be made without knowledge of a relevant award or without recourse to government bureaucracy or an independent service provider. This brings into question the efficacy of the bill in achieving its objects, its likely impact on costs of administration for the taxpayer and accessibility of its rights and freedoms to people in small business. It is this sector on which the failure of its detail falls most heavily.

I respectfully commend to the Senate our recommendations, which I will give in response to your questions, Chair, and, if appropriate, further action. With the time and resources now available, we are confident minor amendments to the bill, prior scrutiny of its procedures and/or a review of the bill after six months operation can mollify any issues that we raise here.

CHAIR—Thank you, Mr Thompson. Just for my own information, could you clarify for me and the committee what it is exactly that your business does? I understand that you have advised and assisted over 2,000 mainly small businesses to make agreements. When you say in your philosophy that you 'do not act as a negotiator between small business employers and employees', what is it that you do? Do you draw up and lodge the agreements?

Mr Thompson—Yes. We facilitate the agreements and we provide a complete service. It is probably easier to say that we do everything except talk with the employee or the employer

on behalf of either party—we have nothing to do with that process—and of course we do not sign the documents. But apart from those two things, we provide the complete service.

CHAIR—So you take the finished agreement, whether it is an enterprise bargaining agreement or an AWA, and you lodge it with the Office of the Employment Advocate?

Mr Thompson—Yes, and negotiate if necessary and provide representation regarding it.

CHAIR—Right. I have a couple of questions for you and then I will hand over to my fellow senators. The number of AWAs approved has escalated over recent years. As an AWA agent, do you see continued further growth at the current high levels?

Mr Thompson—Of AWAs?

CHAIR—Of AWAs.

Mr Thompson—In my experience it will depend entirely on the efficacy of this bill to reduce the amount of bureaucracy and paperwork and to provide for employers, who are the initiators, confidence that the process will work effectively to achieve the approval of the agreements that they have made.

CHAIR—Where do you see the bureaucracy and red tape lying—in which area do you encounter that the most?

Mr Thompson—Under the bill or currently?

CHAIR—Both if it is possible for you to say that.

Mr Thompson—It has to be understood that individual Australian workplace agreements—AWAs—have endemic flaws. For example, there has to be a lot of paperwork. If an employer and an employee have to sign a document each time the employer employs somebody, it has to be witnessed, dated, lodged and so on. It is impossible to get away from a heavy burden of paperwork. In mentioning that, you have to understand that small business do not have in-house resources. By and large we are talking about, say, a typical retail food store or cafe where the proprietor, and perhaps his family, run it and that involves an onerous paper task. The second aspect and endemic problem of AWAs is that they create a great amount of unevenness, as it were. It is possible that, if you have 20 employees, each employee is on a separate AWA and each AWA is different. The third aspect, as I have already mentioned, is that there is a degree of uncertainty as to meeting procedural requirements, having complaints lodged, having investigations launched and so on. Of course this situation is multiplied by the number of industrial instruments which, in the case of AWAs, is many. They are endemic problems with AWAs, which will not go away.

CHAIR—Nevertheless, do you believe that AWAs do promote flexibility and productivity in the workplace?

Mr Thompson—Absolutely. I would agree with the employer industry bodies that they provide choice and hence they provide flexibility. If an AWA for a small business—say, a mum and pop business, where perhaps the husband and wife and their teenage children work and they have four or five casuals who each work 15 hours a week—were easily accessible and the bureaucracy was stripped away, it would be a perfect instrument for these people to

exit the award. That is their need—they must get off the award in order to have a profitable, viable business.

CHAIR—If the OEA is too bureaucratic and inefficient, would you agree that the lodgment-only system for agreements, which is proposed under this bill, will vastly improve the OEA's agreement-making process and reduce red tape?

Mr Thompson—Yes, but one has to look more closely than at just the lodgment-only process. If an employer is to lodge an AWA and it is to become effective on lodgment, that is an advance. But, again, one has to look more closely. The majority of AWAs under the act are lodged for new employees. They come into effect straightaway anyway. There have been chronic delays, with respect to approval of agreements, for existing employees. That delay will be removed. But a problem has arisen under the present act whereby agreements have been voided by the OEA. Under the bill, the OEA will not have this power, but there still is the likelihood for small business employers to be inspected in response to a complaint of one individual. There is no limit on the time period for such a complaint to be lodged and there is no limit on the time period for the complaint to be determined. And in all of that, you must understand a small business employer is exposed to a great deal of financial uncertainty, as well as having his best efforts to achieve a simple, effective legal arrangement undermine the good employee relations that he enjoys.

CHAIR—I will leave it at that for the moment.

Senator MARSHALL—Mr Thompson, I would like to go back to a question the chair asked about coming to grips with exactly what you do. You say you do not negotiate. At what point in time do you get involved in drawing up the AWAs?

Mr Thompson—We talk to our client, who is the employer, we get to understand his needs and if there is a relevant award, and we develop a draft. Our approach which meets the needs of our clients is that less is better—simple arrangements. So the employer is presented with that draft, he comes to understand it through our explanation and he then instructs us on the agreement that he wants that he has discussed with the individual or the group of employees.

Senator MARSHALL—So you would prepare a draft, they would go away and talk to their employees about it, and if there is agreement you would then go through the process of lodging it for them?

Mr Thompson—Correct.

Senator MARSHALL—You say here that you have led the campaign for greater flexibility under the existing no disadvantage test and have pioneered penalty free AWAs. Do you mean that you have pioneered AWAs that do not contain penalty rates of pay?

Mr Thompson—We have fought vociferously to achieve single hourly rates—which, I must inform you, Senator Marshall, are the norm in AWAs and non-union certified agreements today—and they are greatly enjoyed by both employers and employees.

Senator MARSHALL—At the moment there is a global test of no disadvantage against the award. Under the proposed act, there will be no such test. The only test will be against the five minima and the basic minimum rate, as determined by the Fair Pay Commission. You also talked about some of the difficulties with the Office of the Employment Advocate

voiding some agreements because they have not met the no disadvantage test. The floor will be significantly lowered under this test. In fact, the Office of the Employment Advocate will not even conduct a test against every agreement. Do you believe there will be even greater flexibility in this process?

Mr Thompson—I would be the last to defend the existing system, and that includes the no disadvantage test. One has to understand that the no disadvantage test is a subjective test by one individual taking into consideration a range of quantitative and qualitative elements. So the outcome really is how long is a bit of string—or it can be. Having said that, you have to understand it is a very flexible arrangement if the parties represent fully and engage in it. This system is not as flexible. This system has a range of legislated minimums, and small business wanting to make agreements are then required to negotiate—

Senator MARSHALL—Not if they opt out, though. There is the ability to opt out of those provisions above the five minima.

Mr Thompson—Of course.

Senator MARSHALL—I am just coming back to your pioneering of penalty free AWAs: there would have had to have been some compensation in some form or another under the existing act.

Mr Thompson—Yes.

Senator MARSHALL—Under the new act, there will be no necessity to compensate for penalty rates, though, will there?

Mr Thompson—No, there will not. I cannot see that the outcome of making agreements will be very much different so far as the rates are concerned from what is being achieved now.

Senator MARSHALL—Why is that? If the minimum global test is really set against what the award minimum is in a global sense and the floor is significantly lowered, won't the temptation be for some employers—and I am not saying every employer—to simply apply the lowest test possible in order to pay wages?

Mr Thompson—Yes; but that does not necessarily translate into lower rates being paid. It has to be understood that the majority of industrial instruments that we are referring to—awards, collective agreements and AWAs for that matter—are minimum rates instruments. In my experience, my very large client base regard them as nothing other than a legal minimum floor. So to report that AWAs or certified agreements pay people higher or lower than one or the other of the awards is not sustainable.

Senator MARSHALL—Are you saying that people pay above the AWA?

Mr Thompson—Of course they do.

Senator MARSHALL—Then why don't they include those rates in the AWA?

Mr Thompson—You will find, as I have said in my introduction, that increasingly industrial instruments are becoming less important and that the agreement made directly between the parties—the employer and the employee—which sits above that, is the substance of the employment arrangements that they apply. In reviewing the bill, I could not help but reflect that a motor car was not invented by a horse and buggy manufacturer and hot air

balloonists did not invent the aeroplane. As I said in my introduction, the old industrial relations players—the employer bodies and the unions—have cast a very great shadow over this bill and have put into it many of the old values and norms of the old employer versus employee industrial relations system.

Senator MARSHALL—I might be biting off more than I can chew in terms of time to go down that path, but could I bring you back to an example you gave of a small business. You said that it was imperative for them to get their employees off the award if they wanted their business to be viable and profitable. Now you have talked about AWAs. I am finding it difficult to come to grips with what you are putting to us. If there is a globalised test, which is the award, you can effectively get yourself off the award and onto an AWA as long as it meets a global test, which you admit is subjective. We have seen lots of examples where they have been approved or submitted when they should not have been. But, if we lower the test to which an AWA has to apply, you say that lower wages will not necessarily follow.

Could you build this example into what I have just said? If you negotiate AWAs for two businesses that do similar work but are in different streets in the same suburb and one employer opts to go down the path of the minima—that is, an AWA against the five minimum conditions—won't that automatically put pressure on the other business to also reduce wages to be competitive? You mentioned 'competitive', which I want to take you to in a moment.

Mr Thompson—Not in my experience. Small business people, in particular, wish to attract, retain, grow and reward good individuals for their contribution as individuals to the success of the business. Low minimum starting rates have a relevance, which is in attracting, in particular, first-time work entrants—juniors or mothers returning to the work force. It is in providing those job opportunities that the employer is taking on many more expenses and burdens—extra supervision, extra training and so on. So low rates are important, but in a very narrow area. The suggestion that small business see making agreements with lower rates as a means of putting money in their pocket is, I have to say in my experience, wrong.

Senator MARSHALL—Isn't it a subjective thing? We talk about low and lower and that really depends on where the floor is at the moment. The floor is at a certain level but, because of the global no disadvantage test, the floor is potentially lower.

Mr Thompson—Are you suggesting it is lower now than it will be or vice versa?

Senator MARSHALL—No, it is low now but we know where the low floor is because of the global no disadvantage test enshrined in the current legislation. That level is potentially significantly lower under this legislation.

Mr Thompson—Under the bill?

Senator MARSHALL—Isn't where people are paid quite relative to where the bottom actually is?

Mr Thompson—Not in my experience. In my reading of the bill, I do not see rates being lower than they are at the moment. If you want to do your own research on legal minimum rates of non-union collective agreements or AWAs, you will see the minimum ordinary hour rates are pretty much around the casual ordinary hour rate.

Senator MARSHALL—Unfortunately, I am not in a position to conduct my own research and I wish someone would conduct some research about some of these things.

Mr Thompson—I can give you some information.

Senator MARSHALL—We would be very happy to have it.

Mr Thompson—I do not see rates being dramatically reduced. The important thing is, again I go back to the retail fast food outlet or cafe, to get rid of penalty rates. Those people cannot operate that business with the penalty rates.

Senator MARSHALL—Let me take you back there and I will give you an opportunity to say why they cannot operate. But given that you do not actually conduct the negotiations but draw up effectively a model AWA depending on what is considered to be the business needs—and obviously penalty rates, as you have just indicated, are not part of the business needs—what form does the negotiation take if you are not actually involved in that? Are people confronted with the position of 'take it or leave it' with AWAs?

Mr Thompson—These are perfectly normal, intelligent, well-balanced individuals. They are quite capable of coming to their own arrangements. Now, either as new or existing employees, we find—when we make AWAs or those people move to collective agreements that are approved under the same no disadvantage test in the commission as are approved by the OEA—they have no trouble in a secret ballot achieving in excess of 90 per cent agreement of any body of employees that we are dealing with on a daily basis. So, I do not get involved but I have every confidence in their ability to make their own arrangements which they genuinely understand. I rarely, if ever, have experienced any complaints of duress.

Senator MARSHALL—Yet I thought you were complaining in your opening statement that the OEA actually has the ability to void agreements and that workplaces could still be inspected and you saw that as a difficulty. I would have thought if everyone was happy and entered into agreements willingly, there would be no need for that and people would not be concerned.

Mr Thompson—In my reading of the act the Employment Advocate does not have the power to void an agreement. The act is silent on the matter, so he goes ahead and does it. That is the point that has to be understood. You have to give confidence to employers and employees that when they make an agreement it will stand. But more importantly I notice under the bill the OEA's functions seem terribly conflicted in that section 83BB(1)(k) says that the OEA can:

> ... disclose information to workplace inspectors that the Employment Advocate considers on reasonable grounds is likely to assist the inspectors in performing their functions;

If an employer goes to a great deal of trouble making an agreement and one employee or their parent complains, will that mean that employer will have inspectors involved in the business and for how long? That would seem to me to be quite in conflict with the OEA's other functions, which are to promote the making of workplace agreements and to provide assistance to employers and employees, especially those in small business, and to provide education.

Senator JOHNSTON—What was that section again?

Mr Thompson—It was 83BB(1)(k).

Senator JOHNSTON—What is your background history and experience in industrial relations?

Mr Thompson—In terms of agreement making, I assisted small business in making the first enterprise agreement under the first law, which was introduced by the Greiner government in 1991, and I set my business up at that time.

Senator JOHNSTON—Which industry was that?

Mr Thompson—That was a small pie shop on the northern beaches of Sydney.

Senator JOHNSTON—So, predominantly, is your clientele made up of small retailers of food?

Mr Thompson—Yes, a predominant proportion is retail and hospitality. They are a large proportion, yes.

Senator JOHNSTON—I note that Enterprise Initiatives Pty Ltd is a company. I take it that you are the beneficial owner of the company. Is that correct?

Mr Thompson—Yes.

Senator JOHNSTON—I take it that your very small businesses would employ on average two or three people?

Mr Thompson—No. I would say they would employ, on average, between 20 and 40.

Senator JOHNSTON—So are these larger restaurants?

Mr Thompson—I would not call them larger restaurants. But, if you are talking about food stores and restaurants, they are the typical franchise operations that you would find.

Senator JOHNSTON—How many clientele do you have on your books? I do not want you to disclose any commercial-in-confidence information.

Mr Thompson—I did provide that information.

Senator JOHNSTON—Would you just reiterate it? I have had a little trouble working through your submission. Can you help me with that.

Mr Thompson—Yes. About 2,000.

Senator JOHNSTON—So that is what you were referring to when you said 2,000.

Mr Thompson—Yes.

Senator JOHNSTON—So currently you assist 2,000 people. They come to you and say, 'I'm taking on a new employee. Please provide me with a pro forma agreement and then submit it through the process to register it as a workplace agreement.'

Mr Thompson—Yes.

Senator JOHNSTON—And you charge a fee for that service.

Mr Thompson—Correct. The service goes beyond that.

Senator JOHNSTON—Tell me what else you do.

Mr Thompson—We provide a free service to our clients.

Senator JOHNSTON—That is always the employer.

Mr Thompson—Towards the employer, yes, to assist with any legal employment issues that he has. Of course, we provide constant updating of information on legislative changes. As well, we are available to follow his instructions according to his and his employee's wishes as to the content of their agreement.

Senator JOHNSTON—Do you act as an Employment Advocate in the commission?

Mr Thompson—Enterprise Initiatives does not, no.

Senator JOHNSTON—Looking at one part of your submission, you say:

Uncertainty is increased due to an opaque and interminable procedure of investigating agreements, which can lead to their voiding.

Is there not a reason for that, given the Electrolux case?

Mr Thompson—I am not sure. Are you talking about the Electrolux case with regard to content?

Senator JOHNSTON—Yes.

Mr Thompson—Yes. You are talking about the bill and prohibitive—

Senator JOHNSTON—I am talking about the role of the Office of the Employment Advocate in scrutinising these documents and cutting out prohibited material that may lead to a circumstance where some large sum of money is paid over time that is not the subject of the agreement. That leads to problems of either repayment or litigation. Isn't there a benefit in having the documents submitted and assessed on that basis?

Mr Thompson—I have no objection to that, nor would my clients. A regime of compliance is certainly to everyone's benefit. You have to understand that employers who go to the trouble, time and cost of making their own agreements are not the people who are cavalier about regulations and laws to do with employment—quite the opposite. What we are talking about, and what they are concerned with, is the ability to make an agreement without having to crawl through landmines and trip-wires of regulations and paperwork in order to make them.

Senator JOHNSTON—Give us an example of what you call landmines, trip-wires, regulations and paperwork?

Mr Thompson—We are being quite specific. Pardon me if this sounds banal, but it is banalities that are important to small business. We have become accustomed under the act to employers and employees being free to cash out their annual leave or to have additional annual leave paid. That would be no longer available under the bill.

Senator JOHNSTON—And your 2,000 members will have a problem with that, will they?

Mr Thompson—If I can just finish the answer, you now have two weeks paid annual leave. If you want to cash out the other two weeks, you have to have an approved agreement. In addition to that, you have to get a letter of authorisation from the employee. That is just

another bit of paperwork that, in my view, is totally unnecessary and will become an impediment to this bill achieving its objectives. I can go on—there are half a dozen I could mention.

Senator JOHNSTON—If you could take this on notice, I am interested to hear what you see as impediments to small business—in the nature of your clients from the hospitality area and the food area—and why you see this bill, which seeks to maintain entitlements, being a bit of a burden to your employers and their employees.

Mr Thompson—I have provided five areas in our written submission—

Senator JOHNSTON—Yes, I saw that.

Mr Thompson—and most of those matters are covered in the written submission.

Senator JOHNSTON—My last question: you referred to common law contracts being underpinned by legislated minimums. What do you mean by 'common law contracts'? Where would they be enforced, and what form would they take?

Mr Thompson—As I said, we have to understand that for most employees in the private sector awards, collective agreements and AWAs stipulate only the legal minimums, and they are becoming less and less relevant. The idea that employers and employees sit down and negotiate in detail the range of award matters is a nonsense. What they are concerned to do is to replace a complex instrument with a simple one in order that those legal minimums can be laid down.

Senator JOHNSTON—Orally or in writing?

Mr Thompson—In my experience, it is generally in writing. They have a common law agreement that sits comfortably on top of it to their own satisfaction.

Senator JOHNSTON—Do you assist in the drawing of that agreement?

Mr Thompson—We will. We generally provide for them a simple draft, but of course we have no more to do with it. It goes on their letterhead, and it is between them.

Senator JOHNSTON—Where is that enforceable?

Mr Thompson—In common law.

Senator JOHNSTON—So in the local magistrates or district court?

Mr Thompson—Yes.

Senator WONG—In earlier questioning from Senator Marshall, you made the comment that penalty free AWAs and non-union agreements were the norm. Do you recall indicating that?**Mr Thompson**—Yes.

Senator WONG—Would you agree, therefore, that post the passage of this legislation there are likely to be more non-union agreements and potentially more Australian workplace agreements?

Mr Thompson—I believe there will be. I think there will be a huge growth in non-union collective agreements—

Senator WONG—I will come to that issue in a minute.

Mr Thompson—and I applaud that.

Senator WONG—You would envisage such agreements as the norm, and you see those agreements as not including penalty rates, shift allowances or overtime rates?

Mr Thompson—They would include all of the legal minimums, of which I—

Senator WONG—That was not the question. Penalty rates and overtime are not legal minima.

Mr Thompson—I do not make these choices. These are for the individuals who are making the agreements—

Senator WONG—I am responding to your assertion that the norm in these types of instruments is non-penalty payment.

Mr Thompson—In the sectors with which I am familiar, yes, that is correct.

Senator WONG—All I am suggesting to you is that the correlation to those agreement types increasing in number is that more employees in Australia will not have access to penalty rates. Do you agree or disagree with that?

Mr Thompson—I agree with that, if that is what they have in their own agreements.

Senator WONG—Is there a Ben Thompson in your organisation?

Mr Thompson—Yes, there is.

Senator WONG—Did Mr Thompson write a letter to Fran Bailey on 25 October stating: 'Work Choices spells trouble for small business'?

Mr Thompson—I believe he did.

Senator WONG—Are you able to table that for the committee to consider?

Mr Thompson—I do not believe I have it.

Senator WONG—You could take it on notice.

Mr Thompson—Thank you.

Senator WONG—In that letter, and also in your submission, amongst the things you want changed—I think you use the phrase 'tripwires and mines'—is the requirement to get parental consent for a person under 18; is that right?

Mr Thompson—Yes, that is correct.

Senator WONG—You regard that as an overrestriction on the right of freedom of contract?

Mr Thompson—Yes, I do.

Senator WONG—You do not think that young Australians are entitled to speak to their parents about the work conditions under which they work?

Mr Thompson—If it were universal, one would have no problem with it, but they are not required to get their parents' consent to sign a greenfield agreement, a union collective agreement or an employer collective agreement. Again, I come back to the fact that it creates

more bureaucracy and more paperwork for small business who would want to use individual agreements.

Senator WONG—Mr Ben Thompson is paraphrased in *Workplace Express* as putting this view, and I want to confirm that this is also your view:

Employers will avoid AWAs because of the need to gain parental consent and all the other intolerable burdens and will use instead the greenfield non-union agreements and non-union collective agreements.

That is essentially your proposition?

Mr Thompson—Yes, I have already said that.

Senator WONG—They are agreements where, for example, parental consent is not required and various other supposed technical requirements are not required?

Mr Thompson—Yes.

Senator GEORGE CAMPBELL—Why do you see the obtaining of parental consent by a person under 18 as being onerous and carrying additional paperwork? Under the new act, people will be given seven days to consider the contents of any proposed AWA anyway, so why would you see this provision as being onerous? Surely, it is a protective mechanism for young people to ensure that they are not unnecessarily exploited.

Mr Thompson—The answer I gave I must repeat. I think, if it were that important, you would apply it universally to your union agreements, collective agreements and greenfield agreements. If a young person is being put at risk by not having a parent or guardian sign on the legal minimum employment arrangements under one instrument, why should it be so under the other?

Senator GEORGE CAMPBELL—But presumably the rationale—and I do not know the rationale—for not requiring it in respect of those other agreements is the fact that they are collective, so they do involve a range of individuals and are being scrutinised by people presumably who are over the age of 18. This specifically applies to AWAs and applies in respect only of AWAs and to persons under 18 years of age. It seems to me that it is a protective mechanism to ensure that they understand what is they are actually signing up to.

Mr Thompson—With respect, I cannot see your point. If employees can be employed under union or employer greenfield agreements when they are not even employees—they are agreements made by the employers with themselves or the employer with the union without any employees—and each agreement, be it the collective agreement or the individual agreement, contains only legal minimums, I can see no sense in that at all.

Senator MARSHALL—But there is a different test about understanding an agreement and having it explained. I actually think you are avoiding the question. It is either a burden or it is not; it cannot be a burden because it is not applied elsewhere. I thought you were actually indicating that it is a burden.

Mr Thompson—It is a burden.

Senator MARSHALL—Senator Campbell's question was, 'Why do you see it as a burden?'

Mr Thompson—It is a burden. You now have penalties for employers for late lodgment. Late lodgment under the bill gives them only 14 days to lodge an agreement after it is made. That is a reduction from 21 days to 14 days. Again, imagine an employer in a sandwich shop who has given employment to a 17-year-old. He has gone through all the correct procedures and has given the AWA to the employee, who says, 'I have to take it home.' 'Well, bring it in in your next shift.' They come in on the next shift and say, 'Oh, I forgot.' On the next shift the employer forgets. Six months later he finds that mum or dad or whoever has had an objection and has lodged a complaint which can cause him back payments under an award. That is the burden. It is more paperwork and more bureaucracy put between employers and employees who are perfectly capable of offering their services and agreeing one with the other on fair, legal rates and terms for that employment to take place.

Senator GEORGE CAMPBELL—I would just make the point that they have to respond in seven days. That is the requirement of the act. There is one other issue, however, that I want to raise with you to finish on—the issue of prohibited content. You are aware that there are significant penalties associated with seeking to register an agreement that contains prohibited content. Some of it is specified in the bill, while some of it is set down to be specified in regulations at any point in time by the minister. Are you or the people you represent aware that in most instances, according to the Office of the Employment Advocate, the penalty for this will rest with the employer, because he will be the one seeking to register the agreement?

Mr Thompson—To the extent that we have had the opportunity, we have brought that to their attention.

Senator GEORGE CAMPBELL—So you are aware that the onus lies with the employer in this matter?

Mr Thompson—Yes.

Senator GEORGE CAMPBELL—There is a $33,000 penalty and the only people who are going to take that up essentially are going to be employers?

Mr Thompson—We understand that.

Senator SIEWERT—I want to follow up on young people signing an agreement. Do you really think that a 17-year-old has the negotiating skills and the experience to match it with an employer? Do you honestly believe that they do not need a parent or somebody in there looking after their interests?

Mr Thompson—If you make legislation, which I understand we are looking at in the bill, that ensures legal minimums are universally applied and if that is matched with a compliance regime, I do not see the conflict.

Senator SIEWERT—So you are expecting that a 17-year-old will actually know that their contract or the agreement they are being offered complies legally.

Mr Thompson—It will only come into effect if it meets the legal minimums.

Senator SIEWERT—But OEA is not going to be checking those agreements any more.

Mr Thompson—But the OEA is bound to provide a full information statement to the employer and the employee that assures the employee that they have all of their legal minimum employment entitlements if they sign such an agreement.

Senator SIEWERT—I find it incredible that you think it is appropriate that 17-year-olds do not require some sort of advocate or somebody to check it.

Mr Thompson—Again, I can only say: if they are not required to have an advocate to work under an award, a union agreement, a collective agreement or a greenfield agreement, I cannot see where the problem lies. Do they need somebody there to tell them what their entitlements are in any of those collective agreements?

Senator SIEWERT—I can keep going, but maybe I should hand over.

Senator JOYCE—The fact is, the way this is structured, they do need a parent or guardian to look over it. That is correct, isn't it?

Mr Thompson—Correct.

Senator JOYCE—So the rest of this discussion is really just rhetoric, because it really does not matter: the law says they are going to need a parent or guardian to look over it, so we are talking about something that does not exist. I cannot quite see the point in occupying a lot of time on it. Who do you think is going to draw up the majority of these AWAs?

Mr Thompson—It looks to me that any small business employer is going to need assistance. That assistance can come from the Office of the Employment Advocate and traditionally, currently under the act, the Employment Advocate has made available framework and template agreements, or it can come from a private provider. In my opinion, I think it is a great pity that small business would require the insertion of a bureaucrat or third party. I think the true litmus test of the legislation is that these people should be able to make their own agreements without resorting to third-party help.

Senator JOYCE—Who do you think those private providers will be, though?

Mr Thompson—Hopefully Enterprise Initiatives!

Senator JOYCE—Yourself.

Mr Thompson—Yes.

CHAIR—That is all. Thank you very much, Mr Thompson.

[4.18 pm]

DRAYTON, Reverend Dr Rodney Dean, President, National Assembly, Uniting Church in Australia

WANSBROUGH, Reverend Dr Ann, Senior Policy Analyst, UnitingCare, New South Wales and the Australian Capital Territory, Uniting Church in Australia

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

Rev. Dr Drayton—As I boarded the plane to come to Canberra today, the A380 took off from Mascot. I was surprised to see the way in which just about everybody throughout the airport stood and watched what was, for them, a fairly historic event; something new was happening. It reminded me of what we are doing here today in terms of a one-week Senate inquiry. Australia is watching and I think people are standing because they know something very significant is happening with this legislation before the parliament and the Senate. Our particular submission comes with four other synods or state bodies, in fact, also submitting their own submissions.

I want to make three points briefly. Firstly, we believe that we have a mandate to be here. Part of our understanding of God is that the purposes of God are to create a shalom community, which is just and caring and where everybody can participate in society. But at the same time Jesus in his ministry came with what has been spoken about over the last 40 or 50 years, a preferential option for the poor. He did not say that the presence of God is not open to the rich, but he emphasised that he needed to be with the poor. My fear about this bill is that it is a preferential option for the rich. So I believe we need to be here and to present that understanding, which I believe is shared widely in the churches. I was with the National Council of Churches last Thursday and Friday and the concern for vulnerable people in Australia and what this bill can mean for them was endemic.

Secondly, as a church, we are actively involved in community services through most of our congregations but especially through UnitingCare. We are really concerned about the nature of family life and what we see happening to it. The Work Choices document in appendix B speaks of the impact upon the family, but I was very disturbed to see no evidence, material or research there other than what I would say are motherhood political statements. I believe that this bill, at a minimum, needs family impact statements done regarding various peoples within society. As a church, we are caught up in running day care and working with the unemployed, the homeless, broken families, those who are caught up mentally with what is happening to them and multicultural communities emerging in this country. From the reports we receive from our agencies within the Uniting Church, the Catholic Church and the Anglican Church, we know that the vulnerable are hurting, and we believe that they will hurt more.

Thirdly, in looking at the legislature when it was presented, we were interested to discover that the Uniting Church, in particular, is a large employer as well as being concerned for employees. It employs 11,000 people in New South Wales and possibly in the order of 60,000 people throughout the country. The Uniting Church is neither a commercial operation nor an incorporated body and I do not believe it will or can become a constitutional corporation—

because, in fact, it came into being through legislation in each of the states. That means that, as a church, we are left in between, not really sure of the nature of what does and does not apply to us. Will some of our bodies, which are incorporated, operate under the new AWAs? The Uniting Church has operated under awards and does not accept the assumption that AWAs necessarily are good for employers, because we have worked carefully with unions and with awards over a long period of time. Because of our unique position whereby we are not covered by the legislation in all of its detail, we believe that more time is needed to work it through. We, ourselves, are just coming to terms with it.

Rev. Dr Wansbrough—The point you need to understand about the Uniting Church as an employer is that on the one hand overall we employ a lot of people but on the other we do that through a large number of small employing bodies—in some cases through boards of agencies like UnitingCare but in other cases through church councils, boards of management of local child-care centres and so on. So we are not just one employment organisation, and that is where managing employment becomes quite demanding.

The submission we made referred to 'church as employer' principles and said they were attached in our appendix. That was not the case. There were some other relevant resolutions, but not those principles, and I would like to table those principles, if I may. I can make an electronic version available if that would be helpful.

A number of years ago we said, 'Because we are trying to work out what it is to be people of faith who believe in the God revealed in Jesus Christ, the God on the side of the poor and the vulnerable, and we are an employer, we need to work out how that all fits together.' The principles I have tabled arose out of a project that involved actually doing research with our workers in aged care and child care. We took New South Wales as the case study for that, working out what was of concern to our workers, talking to the unions and working through our faith and determining what we thought was a fair thing.

One of the things we have done in the church to try to get some reasonableness with what are often voluntary bodies who know very little about employment is to say that the default position is that you obey the law. So we have put in our code of conduct for ministers and in the 'church as employer' principles that you obey the law. Our assumption in writing that was that there was a reasonable default position within the law itself—and that was awards that were appropriate to particular types of employment. We believe that, under the Work Choices legislation, awards will over time be eroded. There is no guarantee that pay rates will increase over time, there is no mechanism for upgrading other aspects of awards, and so we believe that that places us in a difficult position over time, because we have used awards to provide particular floors in particular aspects of the work we do.

We also have a very general concern about the erosion of awards and we do not believe that is helpful to workers generally. As a church we have a commitment to human rights and we believe that the human rights instruments are crucially important and relevant in looking at workplace relations. They are, of course, benchmarks to which Australia has signed up. In the human rights instruments there is both a right to work and a right to just and favourable remuneration and conditions of employment, and those rights are spelt out in some detail in the various instruments and in the ILO conventions. We believe that the Work Choices legislation fails against those benchmarks. It claims to be doing something about rates of pay

for the unemployed but, in doing that, it is sacrificing just and favourable rates of remuneration.

That brings us to the Fair Pay Commission, which only has very limited parameters to guide its decisions—that is assuming it ever does make a decision. As we read the legislation, it is not actually required to ever increase wages. It may do so but it is not required to do so and there is certainly no time interval in there by which they must do so on a regular basis. There is no process by which workers can approach the commission and ask for a review. There is no process by which unions, workers or employers can put submissions to the Fair Pay Commission, so we believe that both the processes and the parameters are problematic.

Finally, we believe that work must provide a living wage, not create an underclass in the working poor, and that the proper task of tax transfers is to ensure equity among families with different circumstances but by topping up what is initially a reasonable wage, not by being a substitute for justice in the workplace. We believe that Work Choices shifts to a dependence on other forms of income, mainly tax transfers, if families are to survive and we do not think that is appropriate as the basic floor for people's living.

CHAIR—Thank you. We will now proceed to ask you questions. I have a couple largely about statements that you have made in the past or ones that you have indicated in your statement today. For instance, you have just said that there will be no onus on the Fair Pay Commission to ever make a decision on wages which would alter the structure of wages. Now, I refer you to the *WorkChoices* booklet on page 14 where it says:

The Government has indicated that the first decision of the Fair Pay Commission will be no later than Spring 2006.

Rev. Dr Wansbrough—We actually raised this with the minister 10 days ago and his comment was that he had an understanding with the chairperson that there would be a wage review then. Our point is that it is not in the legislation that there must actually be regular reviews. They will consider it, but they do not actually have to do it.

CHAIR—I can assure you that, if it is in this booklet—which has now gone out to a lot of people—then the Fair Pay Commission will independently determine the timing, scope and frequency of wage reviews, the manner in which wage reviews are to be conducted and the date on which wage-setting decisions are to come into effect. That, plus the minister's statement, would lead to me understand that there will be decisions and reviews regarding wages.

Rev. Dr Wansbrough—But there are no parameters within which those decisions have to be made. For example, there is nothing in the legislation to say there must be a review at least every, say, two years. There is nothing like that in the legislation. They could decide to review every five years.

CHAIR—We could go on with this discussion for a long time, but that is the exact reason the commission has been set up. It is within its scope to determine when reviews will happen. However, there are just a couple of other matters which I wanted to ask you about. You have issued a couple of fact sheets under Uniting Justice Australia. That is an organisation with which you are concerned?

Rev. Dr Wansbrough—Yes.

CHAIR—This particular one was updated on 18 October 2005. This fact sheet asserts that:

Under new proposals, there would be one minimum wage, regardless of the skills involved in the job.

Is that correct, that you have used those words?

Rev. Dr Wansbrough—I am not responsible for that fact sheet—

CHAIR—Are you, Dr Drayton?

Rev. Dr Drayton—Can you give me the context, please?

CHAIR—It is a fact sheet which says updated: 18 October 2005 issued under Uniting Justice Australia.

Senator WONG—Madam Chair, can I be so bold as to suggest that, if a witness is going to be asked to comment on a document, it would be appropriate to give the witness a copy of the document.

CHAIR—Yes. I do not have a copy of the document with me. All I am asking is: on what I read out, would you agree with the statement:

Under new proposals, there would be one minimum wage, regardless of the skills involved in the job.

Rev. Dr Wansbrough—That is not the assumption on which our submission is written. The bill was tabled more recently than that fact sheet was finalised.

CHAIR—So you would agree that that is incorrect?

Rev. Dr Wansbrough—My understanding and the understanding informing the submission is that the Fair Pay Commission is meant to adjust wages in the awards as well.

CHAIR—So you would agree that the statement as it was made at the time is incorrect?

Rev. Dr Wansbrough—Yes. But it was made on 18 October and the legislation was tabled on 2 November.

CHAIR—Do you intend to put out a disclaimer on that material?

Rev. Dr Wansbrough—I expect that we would update the material.

CHAIR—And indicate that that statement was wrong in view of the later information provided?

Rev. Dr Wansbrough—We will indicate that the later information gives a different view. We normally refer people to our submissions.

Senator MURRAY—A point of order, Madam Chair. I accord with the ruling made by Senator Brandis the other day that no witness should be questioned on a document that is not before them. It does worry me that you are asking them to guarantee something. Do you know what I mean?

CHAIR—I do. I take your point. I take issue with 'guarantee'. If there are a number of statements which I do wish to ask them about, I am prepared to put them in writing so that they may be able to refer to the document. Are you aware that, in its safety net reviews, the AIRC merely relies on information put before it?

Rev. Dr Wansbrough—Yes.

CHAIR—I think in recent safety net reviews the AIRC has made the point that the information put before it has been quite inadequate in the past in addressing the issue of the relationship between minimum wages and employment levels. What I am saying is that the AIRC has not had the scope to conduct its own research. Don't you think it is an advantage that we would now have an independent body, the Fair Pay Commission, which can undertake such investigations on an ongoing basis rather than be reliant on arguments put to it by parties with vested interests?

Rev. Dr Wansbrough—There are a couple of ways of viewing that. The way the AIRC itself viewed that was to say that it was not appropriate for it to do research directly, because that could end up giving an impression of bias, of shaping the research towards particular decisions it might want to make. It said that the research needed to be done by others in order that it then came before it as evidence for it to assess. I think there is a lot to be said for that line of argument, of separating where the research is done from those who evaluate the implications of the evidence for the decisions that they make.

Senator MARSHALL—Could you expand a little on the effect that you see this bill will have on the terms and conditions of work for outworkers in the clothing industry in particular?

Rev. Dr Wansbrough—We have for a number of years been involved with the Fair Wear Campaign, working to get some protection for outworkers. In the last couple of years, that has led to several jurisdictions enacting protection for outworkers. That has depended, firstly, on states having IR jurisdiction and, secondly, on there being certain conditions in the awards that provide for certain mechanisms by which it can be determined what is happening to outworkers, where work has been done and under what rates.

Although there is some special provision in the Work Choices bill, it is not actually clear how that operates. The concern is that outworkers could be put on AWAs and that would then override the award. It is fairly confused as to what happens to those provisions written into the awards. We would prefer that the various protections that together work to protect outworkers—including things like deeming provisions so that it is irrelevant what the name of their contract or agreement or whatever is with those who take their work—were absolutely clear. Those deeming provisions are important but it needs to be absolutely clear that the award continues to be relevant to all outworkers in the garment industry if that is to continue as an adequate protection.

Senator MARSHALL—I do not think it will be disputed by anybody, but people have the opportunity to do so, that outworkers have been among the most exploited workers in this country. With the confusion about the definition of contractors and the award protection and given that AWAs can be presented as effectively a take it or leave it approach with only five basic minima, do you see a reversion back to the terrible exploitation we have seen in this industry?

Rev. Dr Wansbrough—It appears to us that that is likely to be the result, yes, and that it will undo the work that has been achieved. We would prefer that what has been achieved was left intact as the best way to ensure that protection.

Senator MARSHALL—I am not sure whether you were present for the last witness that appeared before us. It was an organisation that assists employers in presenting AWAs or other forms of agreements to employers. They are pioneering penalty-rate-free AWAs—that is one of their claims to fame. In your submission you talk about a 1999 study from New Zealand which showed that after the introduction of the Employment Contracts Act in New Zealand the take-home pay of low-income supermarket workers was cut by up to 44 per cent. What study was that, and do you see a correlation in the potential to remove penalty rates from AWAs and what happened in New Zealand?

Rev. Dr Wansbrough—Can you give me the page number?

Senator MARSHALL—It is on page 19. Actually, as I look further, you have actually referenced the study. I am sorry, I did not see that initially. It was the Conway *An unlucky generation?* study.

Rev. Dr Drayton—It was 'up to 44 per cent' too. It is always dangerous to put 'up to', but some people did suffer that.

Senator MARSHALL—Do you have any more to say about the correlation between the Work Choices legislation and the New Zealand experience?

Rev. Dr Wansbrough—Only to make a point that with AWAs it will be possible to have an all-in wage rate which covers ostensibly penalty rates and so on that will not have to provide compensation. We think that that suggests a direct parallel with the New Zealand situation and could lead to quite significant lowering of wages in a number of areas of industry.

Senator MARSHALL—I do not want to be unfair in asking this question but, given some of the public criticisms about churches having the audacity to comment on industrial relations, I guess I just want to put to you this: what experience do you have to actually back up your submission?

Rev. Dr Wansbrough—I am not sure what sort of experience you want. As was said in our opening statement, in New South Wales we employ something like 11,000 people. The Queensland submission points out that they employ something like 15,000 people. That is 26,000 people, without looking to other states. I would have thought that is a fair level of experience of employment. The point is that we employ people in a range of occupations. My local congregation runs the Paddington Market. That is a small business and a tourist attraction, which fosters other small businesses, and we employ people there. We employ people in a drop-in centre for those who are mentally ill or homeless. We employ people in a child-care centre. The church runs schools, Job Network agencies and aged care. Obviously, all that involves many people who are maintenance workers, cleaners, administrative staff and managers. We employ a wide range of people.

Rev. Dr Drayton—Also, as a church, when we speak, it is not individuals alone speaking. In fact, we can only speak on IR because, in 1994, the church spent a considerable amount of time in preparation and talking to all of its agencies, the people involved, and then reflecting on what the gospel calls us to do. Out of that, we spoke about justice for unemployment. That has been the particular emphasis that we have brought to this discussion. It is the vulnerable people in society. In fact, the church has the runs on the board for being caught up in the

consequences of legislation and the way it impacts upon families and individuals in a way that probably few other communities and few other bodies involved in framing this legislation do.

Senator MARSHALL—That was probably more to the point of the question. How do you think people with disabilities, mental or physical, will fare under the Work Choices legislation?

Rev. Dr Wansbrough—We have not looked specifically at that.

Senator MARSHALL—Let me put it in this context: the premise that we are asked to believe is that it is a matter of choice—that people can negotiate with an employer and that the two parties have an equal ability to come to an agreement on which they both agree.

Rev. Dr Drayton—We have had an arbitration system where the opinions and presentations of employees and employers have had to be hammered out. It seems clear from this legislation that, rather than balance, the emphasis is on it being able to be worked out by cooperation. But cooperation is between people who have resources. In many cases, the people we are concerned about are those with disabilities, those for whom English is a second language, those who absolutely need a job at this moment and those whose skills are limited by where they can move to. In all of those areas, we believe that we have with AWAs a most unlevel playing field. If one were to typify the basis of AWAs, there has to be a hammering out, an arm wrestle, and there is a person with a pretty big arm wrestling with somebody who has not yet learned to flex their muscles. Of course, in many cases, this will be an opportunity for people to work through what they want to do and how they want to work out their lives. But, for the vulnerable in our society, the balance has been tipped.

Senator JOHNSTON—Reverend Drayton, I want to come back to the circumstances that you raise, which interest me, regarding the classification of the large number of employees that the Uniting Church employs. It seems to me that the church is a corporation for the purposes of the corporations power. I stand to be corrected on that.

Rev. Dr Drayton—I would really like to find out whether that is the case.

Senator JOHNSTON—The question that interests me is this: are you not certain as to which jurisdiction your employees—I mean, you have a large number—are in now?

Rev. Dr Wansbrough—At the moment, that is clear. The problem is that this changes the whole concept of which employees are under what jurisdiction across the board. It is not a problem unique to the church. There will be grey areas elsewhere in society as well.

Senator JOHNSTON—I am sure there will be. What I want to come back to is the fact that the church has been under the Commonwealth jurisdiction for all of these employees in each state. I think you said there were 15,000 in New South Wales alone—

Rev. Dr Drayton—There are 11,000.

Senator JOHNSTON—11,000, sorry—so there would be some thousands in each of the other states, by just a guesstimate of logic and rationale. It seems to me that you have been functioning for some long time now under the Commonwealth situation. Having said that, individually, what role do each of you have in industrial relations underneath the umbrella of that organisation?

Rev. Dr Drayton—I have been involved with operating a—

Senator JOHNSTON—A parish?

Rev. Dr Drayton—Well, yes, a parish, not in New South Wales—a board within the state. Again, there it operated primarily under the conditions for payment of ministers. That was a particular situation. In many cases in our agencies, like Burnside—of which I have been on the board—where there are people who are professionally employed because of their professional skills to deal with broken families, awards have been the basis of their employment.

Senator JOHNSTON—The question I am asking goes to this: employment for an organisation of the size, the length and the breadth of the Uniting Church in Australia, which I think is its correct title—

Rev. Dr Drayton—Yes.

Senator JOHNSTON—is done by whom? Who is the person, or who are the persons, responsible for employment policy within the church? Is it you?

Rev. Dr Wansbrough—Employment policy is often at the synod level, but as I said earlier we have a large number of employing bodies. We have had to find ways of ensuring that we can apply our internal employment policies to all the employing bodies within the church, because of the way the church is structured, which means that we have various management committees and church councils—a range of bodies. The synods essentially set the basic parameters of employment policy.

Senator JOHNSTON—What is the basis for employment of employees of the Uniting Church of Australia at the moment?

Rev. Dr Wansbrough—What do you mean by the basis?

Senator JOHNSTON—Are they on AWAs? Is there a union agreed EBA?

Rev. Dr Wansbrough—A lot of them are on awards. There is a range of awards that apply to various types of positions. We would have some people in occupations where there is not a relevant award.

Senator JOHNSTON—With respect to the technical and practical aspect of employing someone for the church as, let us say, a caretaker, does that person enter an agreement or is he simply deemed to be employed under the award?

Rev. Dr Wansbrough—He is given a letter of appointment which would name the relevant award and any other conditions of employment.

Senator JOHNSTON—So there are terms and conditions for every person?

Rev. Dr Wansbrough—We do provide everyone with a letter of employment that clarifies those things for them.

Senator JOHNSTON—And that happens right across the Uniting Church?

Rev. Dr Wansbrough—It is meant to, yes.

Senator JOHNSTON—In terms of understanding things such as leave, penalty rates, holidays and superannuation, are you two people skilled and able to account for what happens in those circumstances?

Rev. Dr Wansbrough—That is not our particular responsibility.

Senator JOHNSTON—Tell us what your responsibility is.

Rev. Dr Wansbrough—My particular responsibility is as a social justice advocate in the church. We do have specialist HR people who we employ. They draw up the letters of employment and revise our human resources manuals and so on.

Senator JOHNSTON—Have you consulted your specialist HR people as to their attitude with respect to this legislation?

Rev. Dr Wansbrough—We have.

Senator WONG—Chair, what relevance does that have to this inquiry?

CHAIR—This is relevant.

Senator WONG—The Uniting Church is before us putting its view about the legislation. I understand that the senator may not agree with it, but cross-examining them about their internal HR practices and the process of their submission, I would suggest, is really not helpful to the committee's inquiry and is bordering on inappropriate.

CHAIR—I think it is relevant. This is Senator Johnston's last question and he is allowed to ask it.

Senator JOHNSTON—Have you consulted your HR people—the people who actually do the hiring and firing and the terms and conditions; those who have expertise in this area—as to their attitude with respect to the actual legislation that is now before us?

Rev. Dr Drayton—Can I raise the matter in a different context. The polity of the Uniting Church is that we operate by regional bodies, state bodies and a national body. As the President of the Uniting Church I am responsible for what happens within the assembly. The person who is responsible for the awards and the way people are paid—that is, the contact person—is the general secretary of the New South Wales synod. The HR person is employed to give advice to the general secretary. I have consulted with the general secretary, who is the appropriate person to talk to about these matters.

Senator GEORGE CAMPBELL—Is part of your argument that I understood you put earlier is that you have a concern about a conflict between the church's teachings and your responsibility as an employer under this bill?

Rev. Dr Wansbrough—We believe it will be harder to operate in accordance with our 'church as employer' principles as this legislation takes effect over time.

Senator GEORGE CAMPBELL—And those principles presumably are based upon your church teachings?

Rev. Dr Wansbrough—Yes.

Rev. Dr Drayton—They are outlined on pages 10 and 11 of the—

Senator GEORGE CAMPBELL—So you are concerned about the conflict that is created—

Rev. Dr Drayton—We could be—

Senator GEORGE CAMPBELL—or the potential conflict?

Rev. Dr Drayton—but the conflict that is important is the conflict in the wider society.

Senator GEORGE CAMPBELL—I will come to that. I just wanted to be clear that I understood what your argument was.

Rev. Dr Drayton—Part of our difficulty is this: will parts of the Uniting Church which are incorporated in some states be operating as and become constitutional corporations? The Uniting Church cannot be, because of the way in which it is constituted by state legislation in each of its synods. There are transition times for people to come and be constitutional corporations, as I understand the act. Where does that leave us if we can never become a constitutional corporation?

Senator GEORGE CAMPBELL—We cannot answer that question, but perhaps some of your subsidiary bodies may be able to. They may not be able to—I do not know. Perhaps you are part of the two million that will be out there in the field covered by state awards.

Rev. Dr Drayton—That may be the case.

Senator GEORGE CAMPBELL—I cannot answer that question for you.

Senator SANTORO—The advice that we have is that certain bodies, including bodies associated with the church, such as those providing education services, can incorporate.

Senator GEORGE CAMPBELL—Some.

Rev. Dr Drayton—But not all.

Rev. Dr Wansbrough—Yes, but we may not want to incorporate for other reasons. That then imposes a particular sort of demand on the church to operate in a different way from at present.

Senator GEORGE CAMPBELL—The reality is that you may well be forced to restructure, given whatever the consequences or outcomes of this legislation are. Presumably that is something you do not necessarily want to contemplate.

Rev. Dr Drayton—I am not sure about restructuring. What I find interesting is that the legislation does not address the question. We have one week to in fact work through all the issues, and here is an issue that I do not think is going to be unpacked in a month or two months. That is my concern. I think that is an issue for your inquiry.

Senator GEORGE CAMPBELL—We are sympathetic with you because we have a lot more issues to try and unpack in the space of a week also. There are two other issues which arise from what you have said. First is the New Zealand experience from when they introduced the Employment Contracts Act. I was over there in 1992, I think. I had a Salvation Army chaplain tell me that the fastest-growing business in New Zealand at the time was food banks. They are generally associated with organisations like you. Do you have constituent bodies in Western Australia?

Rev. Dr Drayton—Yes.

Senator GEORGE CAMPBELL—Over the period 1993 to 2001 when the individual workplace agreements were operating in that state, did you see a discernible growth in the level of individuals coming to the church for support—in other words, the working poor—as a result of that legislation, as occurred in New Zealand?

Rev. Dr Drayton—I know of congregations that began offering food at reduced prices as their ministry in their particular area, which I presume expresses that there is either a changing environment in Perth or that there were more poor people. But I cannot give a definite statement. Certainly those services have started to be offered by congregations where they were not offered before.

Senator SANTORO—I should declare my interest. I am an occasional attendee at the Uniting Church in Brisbane.

Rev. Dr Drayton—I am glad, Senator.

Senator SANTORO—Unfortunately, the demands of political life mean that I do not go as often as I want to go. I just said to one of my colleagues that I do pray every day and I am a believer. So I declare my interest. You have said some pretty dramatic things, Dr Drayton. The *Daily Telegraph* on 13 October quotes you as saying in relation to these reforms:

Christians are called to challenge ... systems and structures that breed hate, greed, oppression, poverty, injustice and fear.

Do you believe that these laws actually do that?

Rev. Dr Drayton—Again, you would need to put that in the wider context of what that release was about. The *Daily Telegraph* does have a habit of picking various sections and putting them out of context that they are in.

Senator SANTORO—So, are you saying that you were misquoted?

Rev. Dr Drayton—No. We believe, as we look at the vulnerable in this society, as the playing field tilts towards them being in a more unfavourable position, that we are. We have a million people who are classified as poor—700,000 children. The Council of Churches in Australia has wanted to get the attention of government about this issue for the last two years. We now have proposals that we believe are going to further increase the difficulty for those sorts of people in our community. The element exists for underclasses to emerge. I do not believe that is wise for our society to allow such groups to emerge.

Senator SANTORO—What you have stated is, I suppose, a position of general principle. You were invited to make a statement in the context of the legislation and the amendments the committee has before it here today. Nobody wants to go about creating conditions that breed hate, oppression, poverty, injustice and fear. Do you believe that this legislation before the committee does that?

Rev. Dr Drayton—I believe that for a significant group within our society it has the potential to do so.

Rev. Dr Wansbrough—One of the things that we suggest in our submission is that the Fair Pay Commission should have as one of its parameters paying attention to social cohesion.

There is evidence that as societies move away from reasonable equity among people towards less equity and more disparity, social cohesion breaks down and the outcome includes the sorts of things that Dr Drayton referred to. Income inequities do nothing to promote the cohesion of society.

Senator SANTORO—Do you believe that people having jobs assists the creation of social cohesion?

Rev. Dr Drayton—It depends on what sort of job and how much they are paid.

Senator SANTORO—Do you believe that the creation of 1.7 million new jobs by the private sector in particular, not by governments, since the current government came to power has contributed to social cohesion? This has occurred under industrial relations laws which I recall the Uniting Church also sought to disparage when they were introduced in 1996.

Rev. Dr Drayton—There has been an incredible casualisation of the work force in the meantime. To just say that it is the number of jobs that have been added does not in fact give the full story. I have spent time living in Texas, and I have seen people there who have three jobs and they are still poor. I think that generalised statements about the number of jobs do not give the full story. I am glad that people are able to be employed, but whether it actually answers the question that you are inferring is another matter.

Senator SANTORO—Does an increase in average real wages of 14.9 per cent since 1996 compared to 1.9 per cent under the Hawke-Keating governments—and these are ABS statistics, not mine—contribute to social cohesion?

Senator GEORGE CAMPBELL—By the way, that is for the top decile. The two bottom deciles are 1.2 per cent and—

Senator SANTORO—That is not true.

Senator GEORGE CAMPBELL—That is true.

Rev. Dr Drayton—I was going to ask that question.

Rev. Dr Wansbrough—The top group does do better than the bottom group on that. One thing that has happened, though, is that some of the things envisaged out of these industrial relations changes were not there in the past—some of the things the Church expressed concern about. There used to be some protections like the no disadvantage test. Now, we will have a situation where there will not be a no disadvantage test and where the impact of the legislation will be different.

Senator SANTORO—You actually have a fair pay commissioner these days who claims that he might even seek the sort of divine intervention that you good people, I am sure, seek.

Rev. Dr Drayton—I would actually prefer that the guidelines of the Fair Pay Commission gave him quite explicit directions. Is it appropriate that, in fact, a Christian is actually calling upon God in a multicultural and multifaith society? I think that raises more questions than it answers.

Senator SANTORO—I find that an incredible statement, coming from somebody in your position.

Rev. Dr Drayton—I state it because it is important to put in the legislation what can help the Fair Pay Commission make wise, rational decisions about how people in Australia can have a minimum wage that does not decrease but increases. And we have no guarantees of that at all.

Senator SANTORO—You have made a statement that strongly suggests that the fair pay commissioner, in expressing his religious beliefs in terms of whatever support he wants to get from his religious beliefs in relation to the job that he is going to be asked to do, displays incompatibility between the job and his Christianity. Were you correctly recorded when you said:

The new head of Australia's Fair Pay Commission should face a crisis of conscience between his faith as an evangelical Anglican and his role determining the wages of the lowest paid ...

When you come before us and you quote as support for your position what is in the scriptures and what you have learnt from the scriptures, is that really what you meant to say or were you misquoted there also?

Rev. Dr Drayton—Where was the other place I was misquoted?

Senator SANTORO—The *Telegraph*.

Rev. Dr Drayton—I did not say that.

Senator SANTORO—Taken out of context.

Rev. Dr Drayton—I never actually said those words. I think a creative columnist produced them. But there is an element of truth, isn't there?

Senator SANTORO—I do not know; I am asking you the question, Dr Drayton.

Rev. Dr Drayton—In fact, those words were not my words.

Senator WONG—I have a couple of questions. The first is in relation to the impact on families. I want to explore a couple of things there. I assume one of the issues about which the church is concerned is the removal of penalty rates and overtime payments. Is that because they have operated essentially as a disincentive for employers to employ people on weekends, public holidays and so forth or is there some other basis for your concern? Either of you can answer—I am not directing the question at anyone in particular.

Rev. Dr Wansbrough—The concept of penalty rates is that it is a penalty. There are ordinary hours of work and families and the community assume that most people have a reasonable level of shared free time, so when penalty rates are removed that removes protections of free time. We have a concern about that. Peter Jensen put that very well when he talked about the importance of shared time for families and for the community. Families have had a choice as to whether to choose overtime and penalty rates. It has been a way that they could either increase pay or have more time. At different times in their life they may choose different balances. We believe this system of work choices does not give workers any more choice, and it limits the income they derive from having fewer choices and being expected to work a wider range of hours. They lose the shared time but they also do not get recompense for having lost it, so they lose out both ways as families.

Senator WONG—The context of your submission is obviously the views of the church and your understanding of what you are called to bear witness to. I want to look particularly at the call for justice concerning employment that you refer to in your submission. I assume the church comes before us today indicating that what you are doing is continuing to advocate for a just employment system in this country. That is the basis on which you make your submission.

Rev. Dr Drayton—That is correct.

Rev. Dr Wansbrough—Yes.

Senator WONG—Is it your submission that the bill before the Senate creates a just employment system for Australia?

Rev. Dr Wansbrough—No.

Senator WONG—Finally, Dr Wansbrough, you indicated—and I might have misheard you—that you had raised with the minister the issue of the delay in the Fair Pay Commission awarding a minimum wage increase, and he indicated to you that he had an understanding with the head of the Fair Pay Commission. Did I mishear that?

Rev. Dr Wansbrough—That was what I said, yes.

Senator WONG—Could you clarify for the committee exactly what your understanding was as communicated by Minister Andrews?

Rev. Dr Wansbrough—It was along the lines that, yes, there would be a review next year. I cannot remember the date. It does not seem to me to be my role to describe undertakings of the minister and the chair. Our concern is that the fact that he relied on the concept of there being a private undertaking seemed to us to be very poor public policy. I think that is also the point that Dr Drayton is trying to make about a chairperson relying on prayer. We would endorse everyone praying. That is not a problem. The problem is when it becomes the basis for making a decision as the head of a statutory authority. Prayer cannot be a substitute for putting things in the legislation that clarify that whoever is in that position, whether a person of faith or not, has certain responsibilities. Similarly, when the reviews take place ought to be in the legislation and not a matter of private understandings, given that politics involves change and ministers come and go from particular portfolios. Public policy cannot rely on those sorts of understandings. It needs to be clear in the legislation what the public policy is.

Rev. Dr Drayton—And I believe it should be quite clear in the legislation as to who comprises the Fair Pay Commission, not just people who have certain competencies. I think it should be balanced and expressed. There should be somebody from the unions there. There should be somebody from community. There should be somebody from business.

CHAIR—There is going to be somebody with a community background. That has already been announced in Work Choices.

Rev. Dr Drayton—But is that a businessperson who is also working with Rotary? We actually need in the legislation specifically the balance that reflects the balance of Australian society.

Senator MARSHALL—Rest assured that they will be appointed by the minister to represent the community.

Senator WONG—Do you think fairness in wage setting should be a criterion in the legislation? Or should there be some reference to setting a fair wage or fairness?

Rev. Dr Wansbrough—What we have asked in our submission is that there be some reference paid to the needs of workers. The trouble is that if you do not define 'fairness' in some way, such as paying heed to the needs of workers, it can mean almost anything. We think that some reference to what would be the substantive content of 'fairness' needs to be written in. One way is to refer to the needs of workers. Another way is to be fair to the general standard of living in Australia. Another way is to refer to social cohesion. So the idea of those was to spell out a concept of 'fairness'.

Senator WONG—But the policy proposition is having something that is in the legislation to which the community can look and to which this statutory authority can look which encourages it to have regard to a reasonable quantum of wages—is that correct?

Rev. Dr Wansbrough—Absolutely, yes. We agree.

Senator MURRAY—Dr Drayton, I want to return to the organisational set-up of the Uniting Church because how churches are organised—I do not mean specifically the Uniting Church—has been an issue for other committees of the parliament, for instance tax committees and the community affairs committee. There is a temptation for people to see churches as big corporations. However, I think of you more like the Australian Industrial Group—namely, an organisation of which many autonomous units are members. I have come to this view because the Catholic Church, for instance, comprises several thousand autonomous units. If we think of this in business terms, there would perhaps be a couple of large businesses but mostly there would be medium-sized businesses and small businesses all doing the different work such as Dr Wansbrough outlined—from aged care to health to charitable enterprises to running hospitals. There is a huge variety. The point is that your interaction with the legislation from the perspective of your constituent bodies is highly complex, isn't it?

Rev. Dr Drayton—It is highly complex. Indeed, I would say there are a number of large organisations. Frontier Services, for example, provides services that cover two-thirds of Australia. Blue Nurses in Queensland is a huge organisation.

Senator MURRAY—Let me get it numerically right in my head: would you say that, like the Catholic Church, you have thousands of autonomous units running their own show?

Rev. Dr Drayton—It is a very interesting comment. It is a theological statement in itself to say that they are autonomous. We actually operate on a basis of union. We work together through interrelated councils. We have 2½ thousand congregations throughout the country and numerous organisations. We speak of interrelationship rather than of autonomous units. But it still makes your point in another way, I believe.

Senator MURRAY—But each of those 2½ thousand run their own show—they organise their own cleaning and their own work, don't they?

Rev. Dr Drayton—A congregation that organises its own cleaning has to make sure that the paperwork is okayed by the presbytery, which is the regional body.

Senator MURRAY—I am trying to get back to the employees' situation. I presume that a building that houses aged care would be run by a management organisation, with a board that effectively operates independently although it would operate to principles established by the church.

Rev. Dr Drayton—No, we operate them through a state-wide organisation, and they are each interrelated.

Senator MURRAY—Are you saying to us that you are like a corporation—for example, Coles-Myer?

Rev. Dr Drayton—The trouble is that you are coming at it from a business perspective when we are a community organisation. Business becomes one small part of what is done. We actually have a lot of trouble with people who come with business experience and try to tell us how to operate. They get a bit confused with the church being a body that is quite different.

Senator MURRAY—But that is why we are exploring this. This is one-size-fits-all legislation. Whoever you are in this community—whether you are a business, a government enterprise, a charity or a church—in some way you will be governed on a common basis. I am not being rude about it, but your answers are not very helpful. What I want to see is whether the individual enterprise operation or charity organisation—call it what you will—that is within the Uniting Church family operates independently with respect to industrial relations matters; in other words, an aged care home would relate to the aged care award structure in the system and the union which covers aged care, whereas some outfit running a sports club for disadvantaged children would run completely differently. That is what I am trying to find out. You want us to react by making a special case for your situation within this legislation. You are saying to us, 'We are different; we should not be dealt with on the same basis as everyone else in this legislation.' That is how I read your submission.

Rev. Dr Drayton—Not at all.

Rev. Dr Wansbrough—No. We were saying that we would rather that it was expressed in a way that the whole church was either included or excluded. Our worst nightmare is that some parts of us are included and other parts are excluded, which makes it hard to maintain the balance that we try to preserve between local autonomy, which is what you have been trying to get at, and some sort of overall oversight that ensures some basic quality control in our management systems.

Senator MURRAY—So you are not like the Catholic Church?

Rev. Dr Drayton—No.

Rev. Dr Wansbrough—We are also making the more general point that there has not been time to look at, investigate or talk about the issue of how it affects the whole church and community sector. We do not really want a special case of us, but we did have to refer to our own concern. Then we made a more general comment in the submission about the community sector. We have not really had time to investigate the full ramifications of the legislation across the sector.

Senator MURRAY—I do not want to get lost on this, but I have come back to it deliberately. My memory is that, in response to the committee inquiries, the Catholic Church said, 'Each of our units operates effectively autonomously. Whilst they are responsible in spiritual and obedience matters all the way through to the Pope, they operate autonomously in the practical operation of the units.' Are you telling me you are different to that?

Rev. Dr Wansbrough—I do not think we have quite the number that the Catholics do, but we have a number of autonomous units.

Senator MURRAY—The reason I have approached it like this is that there are a number of major church organisations which employ tens of thousands of people. If the committee is to react to a church sector need, it needs to find common principles and a common set of understandings. You telling me you are quite different to the Catholics makes it awkward for me to understand how to deal with you.

Rev. Dr Drayton—It would be a good opportunity for us to talk with the Catholics and find out how we could present a way in which we see ourselves that could be helpful to you, but we have not had that opportunity.

Senator MURRAY—We do not have enough time, do we?

Rev. Dr Drayton—That is the problem.

Senator MURRAY—That is a good point.

Rev. Dr Wansbrough—We would be happy to work on coming to a common set of principles, but there has been no time.

Senator MURRAY—If you are able to talk to anyone and come back to us in any way, that is always helpful. A second area I want to cover before I lose my timeslot is the low-pay situation. Some years ago I was in Perth at a meeting of this committee, I think, which was held in camera. A church employee came—I do not think they were from the Uniting Church—and complained about the way in which their employee conditions operated. Effectively, I gathered from that discourse that that particular church tended to pay at a low rate—in other words, it was not market competitive; because they were working on church business, they were expected to work on a poorer set of wages and conditions. My question is to you, Dr Wansbrough. You indicated to us how important the award was to the Uniting Church. I inferred from that—but I want you to tell us whether I got the correct inference—that you tend to pay at award level rather than above award level.

Rev. Dr Wansbrough—We make the award the default position, so that people can come to us and say, 'You have to pay at least that much.' In some parts of child care and aged care, we actually pay above award.

Senator MURRAY—I got the impression that you are very like small business, because lots and lots of small businesses pay to the award. They might pay an over award wage, but all the conditions otherwise are the award conditions. So, if you decrease or diminish the award conditions, the employee is actually going to lose out because the employer does not substitute that same range; they just stay with the award. If you had 20 allowable matters and that shrunk to 16, or whatever, you would lose four. That is what will happen with you, won't it?

Rev. Dr Wansbrough—Yes, that is our concern, particularly with—as we said—our local employers. That goes back to your point about the thousands of employers, the local management committees, that employ people. At least the award sets a floor regarding what they have to pay and a floor of conditions they have to meet. If those local employers are not able to look at a market rate above that, at least there is some protection for the worker.

Senator MURRAY—I got the impression that one reason it works like this is that frequently your management or your boards are part time and voluntary. In other words, they do not have the time to devise systems and so on, so they rely on the system which is generally available in the community. They cannot spend hours and hours working out specific wages and conditions for all the different units that operate.

Rev. Dr Drayton—Most of our state bodies have an HR person, and when people from particular congregations or particular settings have questions they are invited to have the conversation.

Senator MURRAY—So 11,000 people have one HR person?

Rev. Dr Wansbrough—No, it is more than that.

Rev. Dr Drayton—It is the congregations you are talking about.

Rev. Dr Wansbrough—I think the point you are making is right: our local employing bodies, the governance bodies, are voluntary and part time and there is a limit to what they are able to investigate and put in place.

Senator MURRAY—Like small business.

Rev. Dr Wansbrough—We offer them help from the centre but there is a limit to how much.

CHAIR—We will have to finish with that line of questioning.

Senator SIEWERT—In your submission you talk about the connections between Work Choices and welfare reform and Welfare to Work specifically. As much as I would love you to go into more detail there, I am aware of the time constraints. You talk about the need for a work force wide strategy to address this. Do you have any suggestions for how that would happen? Maybe at the same time you could address some of your chief concerns.

Rev. Dr Wansbrough—One of our concerns is epitomised by the Billie case study in the Work Choices booklet. Someone is unemployed and they are offered a job. Basically, they are asked to sign away every condition above the basic rate of pay. They can either sign it or not get the job. If they turn down the job they can lose Newstart. That epitomises this set of concerns. On the one hand there is pressure on a large number of people to move into the work force, and there are more stringent conditions being put on their Centrelink payments, and on the other hand they are likely to be offered AWAs that offer less than the full award conditions. That is a serious pressure they will encounter. We are saying that those two systems interact to make it very difficult for those people to negotiate.

We make a number of recommendations, such as that the awards continue to undergird positions rather than being wiped out by an AWA or other form of agreement. After that, you revert simply to the five basic conditions. So people can sign agreements, not realising that

they are signing away forever their award conditions. That seems to us very problematic when people are under pressure to get into the work force because of these Welfare to Work reforms. So it makes those sorts of protections particularly important.

Senator SIEWERT—Will you be making a submission to the Welfare to Work inquiry next week?

CHAIR—I think that is out of the scope of this inquiry, Senator, with due respect. Do you have any other questions?

Senator SIEWERT—In the interests of time, no.

Senator JOYCE—Earlier on, you mentioned that the Fair Pay Commission may not bring about an increase in wages. Is there any requirement for the AIRC to do that?

Rev. Dr Wansbrough—I think the difference is that unions can initiate a dispute that leads to a hearing, so it can be triggered that at least it has to be considered.

Senator JOYCE—But it does not—

Rev. Dr Wansbrough—Under this system, there is no external way of seeking a determination.

Senator JOYCE—But there is nothing in the AIRC that says they have to give an increase in wages. They can consider it, and that is about it.

Rev. Dr Wansbrough—But there is a set of parameters that includes having regard to the needs of the low paid and so on that would lead to a different sort of conclusion from the more limited parameters in the Fair Pay Commission.

Senator JOYCE—We could presume that, but we could not know that. I cannot see why there is a presumption that the AIRC would lead every time to an increase in wages, when that is not the case.

Rev. Dr Wansbrough—I do not think that was intended to be our assumption, actually. Our assumption was that people can approach it and initiate a process of considering the question.

Senator JOYCE—Surely the Fair Pay Commission will be doing the same thing.

Rev. Dr Wansbrough—The legislation does not allow people to approach it; the legislation allows the commission to consult if it so chooses. That shifts very significantly who has what power.

Senator JOYCE—Obviously it will be consulting with a wide group of people. I think it is unfair to presume that the Fair Pay Commission are going to sit under a rock somewhere and not listen to constructive arguments from throughout the economy.

Rev. Dr Wansbrough—The legislation could then be better worded to reflect that, and that would deal with that concern and make it open and obvious to everyone.

Rev. Dr Drayton—How open and transparent is it? Who will be addressed? Who will be consulted?

Senator JOYCE—You also mentioned tax offsets and said that there should be a better working of tax offsets. Are you currently aware that, with part A and part B of the family tax

benefit, you can have a family of one child and receive up to $48,000 a year without having to pay tax?

Rev. Dr Wansbrough—More or less, yes.

Senator JOYCE—So they are already in place. This government has put in place some major tax offsets. I have to be fair: I am one member of this committee who can be critical of this government from time to time but I tell you that, on the tax offset thing, no-one has ever matched them on what they have been able to do on this one.

Rev. Dr Wansbrough—I think our concern is with the way the tax system interacts with people returning to work and interacts with adjustments and the minimum wage. It is widely recognised that there are problems with that interaction, resulting in high effective marginal tax rates.

Senator JOYCE—There are really only high effective marginal tax rates because people already have a major tax offset to begin with. It is not as though they go from a base up to a high; it is a presumption of a benefit that they are already gaining that will be lost, naturally enough, because they are starting to earn more money. I will move on. I acknowledge the difficulty of coming to an inquiry, but coming to an inquiry means that you are in front of your inquisitor, I suppose. You talked about the gospel relationship to this piece of legislation. I know the AWA in the Catholic Church for the people of the clergy: poverty, chastity and obedience. I hope they are not running that out for other members! What are you grasping at? What is your gospel context of fairness?

CHAIR—Senator Joyce, I think we are straying somewhat beyond the terms of reference for this inquiry.

Senator MARSHALL—He has got the poverty right but that is about it.

CHAIR—I think we are perhaps going beyond—

Senator JOYCE—I will make one final point. This is obviously a populist issue. The numbers are on your side in this inquiry, aren't they? There is a lot of momentum. Are you going to show the same fervour for other things that might come before this house that probably will not be quite as popular?

Rev. Dr Wansbrough—We have over the years dealt with a wide range of issues that have come before the parliament, whether the government has been Labor or Liberal. We have questioned both state and Commonwealth governments on a range of issues over the years. We do not plan to stop doing that.

CHAIR—Thank you very much and thank you for your attendance today.

Committee adjourned at 5.41 pm