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SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE

Reference: Workplace Relations Amendment (Work Choices) Bill 2005

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SENATE

EMPLOYMENT, WORKPLACE RELATIONS, AND

EDUCATION LEGISLATION COMMITTEE

Tuesday, 15 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 Allison, Barnett, Brandis, 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 9.02 am

HART, Mr John, Chief Executive Officer, Restaurant and Catering Australia

CHAIR (Senator Troeth)—I have pleasure in opening the second day of public hearings on the provisions of the Workplace Relations Amendment (Work Choices) Bill 2005. I welcome our first witness today, from Restaurant and Catering Australia. Thank you for your submission. I invite you to make a brief opening statement before we begin our questions.

Mr Hart—Thank you. Restaurant and Catering Australia is the peak national organisation representing the interests of Australia's restaurants. There are 28,900 restaurants across the country; 15,000 of those are employing business units in about 13,000 business entities. Through our state associations we have 6,000 business members that represent some 70 per cent of turnover and 75 per cent of employment in the industry.

The explanatory memorandum for the work choices bill clearly shows that workers in the accommodation, cafe and restaurant industry are the most award reliant within the system. Some 44 per cent of businesses are not incorporated and 29 per cent are likely to be left out of the new system. There are aspects of the work choices legislation that we have not commented on in the submission because they are beyond the scope of this inquiry or because they are not issues of priority for our industry. Others have escaped comment because the association has yet to form a view on those particular issues.

Restaurant and Catering Australia supports the work choices package, in particular the establishment of the Australian Fair Pay Commission which will provide the basis for a productive minimum wage system that may be more workable for our industry. It is estimated by our workplace relations working group for the restaurant and catering industry action agenda that, without changes to the safety net wage case process that we currently have, our industry could cease to be viable by 2015 when wages reach 52 per cent of turnover for the average business. We could not sustain that sort of growth in that direction.

The simplification of agreement making is also a positive change from our perspective. With 85,000 employees needed to move to agreements to reach the 85 per cent target in the system there are many agreements to be made in the next few years. The 18,000 that we have signed in the last nine months, through a project with the Office of the Employment Advocate, is a great start, but there is a long way to go.

The views I put today are those agreed by our associations in a federated structure. We do not pretend to be expert in legislative drafting but do understand the way that some of the proposed changes will impact on our industry. Thank you.

CHAIR—Thank you.

Senator JOHNSTON—Thank you for your submission, Mr Hart, which I was very interested to read. On page 14, at the end of your submission, you make the comment:

Restaurant & Catering Australia believes that the reforms proposed in the WorkChoices package represent the most constructive and well thought out suite of reforms ever proposed in the area of workplace relations. They represent a careful and clear balance of interests whilst providing for a steam-lined and more efficient system.

R&CA considers that without the reforms proposed the restaurant and catering industry would not be sustainable past 2010.

Firstly, in terms of your unique business and its hours of operation, which are often late into the night, what is it about these proposed reforms that you see as most advantageous? Your industry is one that is the classic response to service. If the service is no good, you go broke. Why do you think these changes are so good for your industry?

Mr Hart—We have had an overriding trend over the last five years, according to the ABS, of a growth of about 11 per cent in wage cost. That 11 per cent growth in wage cost has also come with some reductions in the number of hours being worked. With that growth in wage cost, the ABS reports also an eight per cent growth in turnover in the same period. That is, our underpinning wage cost is growing much more quickly than the revenue we receive. The ABS also reports a continual undermining of the net profit base of our industry. In short, unless we can be more efficient in the way we manage our labour force at an individual enterprise level, we will not survive. This package of reforms will give us the ability to be more flexible and to better manage our labour resources. In an industry like ours, where we have at least 40 per cent wages to turnover, that is the only way we will be able to sustain our business.

Senator JOHNSTON—I want to give you the opportunity to tell government about the challenges mentioned in your submission. The first one I see is that you want workshops on the transition and introduction of the work choices program. Would you take us through what you envisage and what you would like to see from an industry perspective in that regard, and why.

Mr Hart—To start with, around 70 per cent of our work force have no post-secondary qualifications. So we are dealing with a range of operators who do not have significant business skills, and a number of them do not have significant human resource management skills. Therefore anything beyond their core business of serving food and booze to people in the general public requires significant upskilling.

There is no doubt that, over the last 12 months, in doing a lot of work in the promotion of AWAs we have managed to upskill our restaurateurs, but there is a long way to go. We really need to have a thorough understanding of the new arrangements under Work Choices for them to be able to make informed choices for their businesses on how they will take advantage of the agreement-making provisions and others. We see groups of restaurateurs and people working with individual restaurateurs, one-on-one, to inform them about what types of agreement making and processes in their businesses they will be able to use under the new system and where there are changes that will impact on them. For instance, new agreement making requiring that, each time the Fair Pay Commission hands down a rate, those pay rates will need to be revised. Those new characteristics of the proposed system will need to be part of an education campaign for our small business operators.

Senator JOHNSTON—You also mention in your submission:

That the AFPC consider, in its scope to examine the capacity for the unemployed and the low paid to obtain and remain in employment, the capacity of industries, in which employment growth is significant, to sustain the levels of wage increases proposed.

What are you suggesting is missing, and what would you like to see the AFPC address in that respect?

Mr Hart—I think what has been missing is a consideration of the projected growth in various industry sectors and an understanding of what a revision in the minimum wage rates is going to mean for those businesses. For instance, we can see quite clearly that as wage rates have increased in our industry we have seen a winding back of the number of hours people are working. If we are going to have industries like ours, which has the third highest projected growth rate, if we are going to be able to manage that growth we need to have a consideration of the mix of wages paid, how those wages are paid across full-timers, part-timers and casuals, and what the likely impact of an increase is going to be on an industry like ours that is labour-intensive and fairly critical in terms of growth.

Senator MARSHALL—I want to take you to page 10 of your submission where, in talking about the Australian Fair Pay Commission, you say:

In short restaurants, cafes and caterers could not afford to continue to sustain increases of the magnitude awarded by the Australian Industrial Relations Commission (AIRC) in the Safety Net Wage Case of 2003, 2004 and 2005. This lack of capacity to pay has been presented, to no avail, before the AIRC.

You also say that the present system of setting the minimum wage is a fundamentally flawed one. Do you have an expectation that the Australian fair pay and conditions standard will not be as high as the minimum rates that are presently adjusted by the Australian Industrial Relations Commission?

Mr Hart—No. I think we understand that there will be no dropping of the standard under the new system. We are suggesting in that part of the submission that an industry like ours is pegged to grow at a significant rate and will involve a significant portion of the jobs growth in this country. We are hoping for a consideration of the issues and conditions in our industry and the impact that increases in minimum wages will have on an industry like ours. I can provide an example of a percentage increase for our industry and what that does to the bottom line. If you have an increase of some, say, four per cent across the board, that increase is likely to show up in our industry as an increase of some five to six per cent because the increase is magnified by penalty rates for casuals. Because we have a much larger base of our industry that is award reliant, we get a greater percentage increase across the industry than other industries get. It is those sorts of characteristics that need to be taken account of in the decision to raise the minimum wage and that is what we are hoping for out of the Australian Fair Pay Commission.

Senator MARSHALL—To what end, though?

Mr Hart—To what end?

Senator MARSHALL—You are not saying that the only advantage of changing from the Australian Industrial Relations Commission to the Australian Fair Pay Commission is that they will listen to you. There must be an end to that, surely?

Mr Hart—We are saying that we are hoping that we will be listened to, and we will be hoping that the consideration is a package of increases that better reflect the needs of an industry like ours that is labour-intensive and casualised.

Senator MARSHALL—You are hoping for less of an increase, are you not?

Mr Hart—No. We are hoping for an increase that acknowledges that our industry is a casualised industry and is labour-intensive, and that may be—

Senator MARSHALL—Mr Hart, you say, as I have read out for you, that:

... restaurants, cafes and caterers could not afford to continue to sustain increases of the magnitude awarded by the Australian Industrial Relations Commission.

Surely, can I not assume from that that you are hoping for a lesser increase than that awarded by the Australian Industrial Relations Commission?

Mr Hart—We are hoping for an increase, for example, whereby the Australian Fair Pay Commission as it is envisaged, as I understand it, will not only award one single rate increase but also will look at a number of different wage classifications and the casual loading. It is the mix of increases in each of those areas that will create a package that, whilst it may be similar in magnitude, will reflect differently in our industry because of the mix of casualisation and labour-intensive structures within the industry. It means that because there are multiple levers that the Fair Pay Commission can adjust, it does not need to adjust simply in one rate that then impacts negatively on our industry but less negatively on other industries.

Senator MARSHALL—It does not matter how you package it; you are after less growth in wages, are you not? That is what your submission says to us.

Mr Hart—For our industry, as opposed to other industries, we are looking at less growth overall in wages. That does not mean that the decision, though, will be a lesser overall decision. What we are hoping for is a package that is more palatable to our industry and more equitable across other industries.

Senator MARSHALL—You are hoping for a lesser increase. I think that is what your submission says.

Mr Hart—We are hoping for a lesser increase for our industry—

Senator MARSHALL—You are only representing your industry.

Mr Hart—but that does not necessarily mean, as you suggested, a lesser increase across the board.

Senator MARSHALL—I am only asking about your industry. You are hoping for a lesser increase in your industry. You go on to say in your submission:

The WorkChoices package establishes a clear, simple safety net of conditions, which is important to the harmonious operation of the workplace relations system.

You then say that you support the use of this standard as the basis for agreements, as opposed to the relevant award. So are you actually looking at measuring AWAs negotiated in your industry against the five basic minimum conditions and the minimum standard set by the Fair Pay Commission, as opposed to the award minimum?

Mr Hart—Yes.

Senator MARSHALL—That will be a lesser outcome again, will it not?

Mr Hart—It may be. It depends on the individual circumstance and workplace.

Senator MARSHALL—It cannot be 'maybe'. It will be, will it not? If you are actually measuring it against the lesser standard and that is what you want to apply as the minimum it will be less than it is now, will it not?

Mr Hart—It is possible that it will be less. It depends on what happens in that individual workplace. The benchmark is lower. It does not necessarily mean that that individual agreement struck in that individual workplace will be set at a lower rate than it otherwise would have been.

Senator MARSHALL—But the tenor of your submission is that wages are too high.

Mr Hart—The overall wage rate experienced by a business is too high.

Senator MARSHALL—Yes.

Mr Hart—The individual wage rates for individuals are not necessarily too high but may be able to be packaged differently and more flexibly.

Senator MARSHALL—Overall it is too high.

Mr Hart—For individual businesses, yes.

Senator MARSHALL—Let us clarify that. Did you not say that for your industry overall wages are too high?

Mr Hart—The total amount expended on wages across the industry is too high.

Senator MARSHALL—Yes, that is what I thought you said.

Mr Hart—That does not mean that the wages of individuals are too high.

Senator MARSHALL—On that basis, there will be some winners and some losers, we can assume.

Mr Hart—On that basis we will have a mix of conditions—

Senator Johnston interjecting—

Senator MARSHALL—Senator Johnston, I am actually questioning the witness, not you. You and I can have a discussion in the chamber any time.

CHAIR—Go ahead, Senator Marshall.

Senator MARSHALL—You go on to say in your submission that the association believes that the industry will welcome the opportunity to be able to eliminate some loadings. Can you explain that?

Mr Hart—That means a loading as per the example that I gave in the submission, I believe, for loadings that apply after 7 pm. Fifty-seven per cent of our business is done after seven o'clock at night, as 57 to 60 per cent of business is done at dinnertime. The majority of our staff are working after that time. Therefore, those sorts of penalties are pretty impractical for our industry. As currently happens, we roll those penalties up within workplace agreements so that we get an hourly rate that can be applied to our staff on those AWAs. It is those sorts of impractical penalties that we are looking to get rid of.

Senator MARSHALL—Rolling them up under the current legislation means that you still have to apply the global no disadvantage test against the relevant award. So if you roll up the

penalties they have to be compensated in the hourly rate. The new legislation makes no such requirement of you. Again, given what we talked about before, you support using the minimum standard—the five minimum conditions and the minimum rate of pay—as the benchmark for AWAs. Do you expect that in your industry people will simply lose penalty rates, given that there is no global no disadvantage test to be applied now?

Mr Hart—I do not expect that will happen at all. What I expect will happen is that there will be negotiations above that minimum for individual workers in individual workplaces and arrangements will reflect the needs of that particular workplace. I do not expect that penalty rates will be removed.

Senator MARSHALL—You indicated in your oral submission to us that most people in your industry do not have significant people management skills. How do you think they will go in negotiating?

Mr Hart—As I also said, I think there is a need for a considerable amount of upskilling and facilitating a better understanding of what is possible within the arrangements, should they commence, just as it is necessary today. We need to do a lot of work with small business operators to have them understand how they can better negotiate an agreement that is mutually beneficial. What is important is that we acknowledge that the labour market is such that we need to get people to be able to work in restaurants, and that will require paying a rate that will attract workers. That is the basis for the setting of rates in a number of our businesses. It is what they need to pay. Just because the minimum changes, that does not mean that we will immediately gravitate to the minimum. That is not the way it will play out in reality.

Senator MARSHALL—That is what you say, but you have also said that wage rates across the industry are too high. You say that you welcome the opportunity to be able to eliminate some loadings, such as the example of penalty rates. Does it not follow that, if the minimum is now less, agreements will be able to be targeted at the bottom rate?

Mr Hart—It follows that they will be able to, as you rightly say, but it does not say that it will. I do not believe that the reality is that we will gravitate to the minimum simply because it is there, because at the end of the day we still need to be able to attract staff to work in our businesses.

Senator MARSHALL—Yes. Thank you, Mr Hart.

CHAIR—Senator Campbell, if you wish to take up your remaining allotment of about three to four minutes, I am happy to allow you to do that now.

Senator GEORGE CAMPBELL—How important is it in your industry to establish agreements?

Mr Hart—I would regard it as very important on the basis that we need to be able to establish more flexible arrangements with individual workers in individual workplaces.

Senator GEORGE CAMPBELL—How many employees are in your industry?

Mr Hart—Approximately 250,000.

Senator GEORGE CAMPBELL—How many of those would be on AWAs?

Mr Hart—At this stage, probably about 60,000.

Senator GEORGE CAMPBELL—So that is about 25 per cent. It is not a high strike rate for a form of agreement that has been in place for 10 years.

Mr Hart—It is not, but since March this year we have signed 17,300, because we have had some targeted—

Senator GEORGE CAMPBELL—Was that with the assistance of the Employment Advocate?

Mr Hart—Correct.

Senator GEORGE CAMPBELL—Are those 17,000 all around the country?

Mr Hart—They are.

Senator GEORGE CAMPBELL—A common feature of your industry is cash in hand, is it not?

Mr Hart—Some of that goes on in the industry.

Senator GEORGE CAMPBELL—It is fairly significant.

Mr Hart—It is hard to say how significant it is by the nature of the fact that it is cash in hand.

Senator GEORGE CAMPBELL—Yes, that is right. Agreements would not matter to those people.

Mr Hart—Increasingly, agreements are becoming more of a feature of our business and they are becoming more of a feature across the board.

Senator GEORGE CAMPBELL—How is the cash in hand rate determined?

Mr Hart—I think it is fair to say that rates generally are determined by the rate we need to pay to get good employees working in our industry. How those salaries and wages are paid is not the question. The question is what it takes to employ a worker in our industry.

Senator GEORGE CAMPBELL—It is a state subsidy.

Mr Hart—A state subsidy?

Senator GEORGE CAMPBELL—Yes. They are not paying taxes, so the state is inadvertently subsidising part of your industry.

Mr Hart—As I said, it is very difficult to determine what proportion of wages might be paid in that way.

Senator GEORGE CAMPBELL—For those people who are paid cash in hand, this will have no relevance at all, will it?

Mr Hart—Yes, to the extent that that is a practice. But it is not a practice that I can define or even comment on because it is cash in hand, as you say.

Senator GEORGE CAMPBELL—It is pretty common. I have some friends who operate in the industry. Was the submission that you made here today discussed with the members of the association?

Mr Hart—Yes.

Senator GEORGE CAMPBELL—Broadly?

Mr Hart—The principles behind it have been discussed broadly for some time.

Senator GEORGE CAMPBELL—So it was discussed broadly within your association?

Mr Hart—Yes.

Senator GEORGE CAMPBELL—Would it surprise you that some members of your association are out promoting these issues already as if they were fact?

Mr Hart—It would not surprise me.

Senator SANTORO—Thank you for your submission. I thought it was a good submission. It clearly outlined the advantages of the legislation for your industry and the people employed in it, particularly younger people. Yesterday when I was questioning a representative from the Uniting Church, he suggested that the bill would disadvantage the majority of the work force, particularly because the work force over the last decade or two had become increasingly casualised. The inference was that that casualisation would mean that disadvantage would accrue to that class because of the legislation. Can you give us some idea of the benefits of casual employment in your industry? Can you give us some examples of the types of people that your industry employs? As I said to one other witness yesterday, I have not lined up a dorothy dixer for you because it looks as if it could be a benign question. But I want to take you through a series of questions on the casual experience of your work force and try to come to some understanding as to whether or not this legislation is a benefit. For example, I said to one of my colleagues earlier in a private moment that I held five part-time jobs while I was doing my two degrees at the University of Queensland. I could not have done that without working in casual positions. I am not trying to lead you, but I just wanted some idea of the types of people.

Mr Hart—The casual pool at this stage is about 53 per cent of the employees in our industry. That number has been increasing by about 0.5 per cent per annum over the last six years. Certainly, it is fair to say that a good number of those casuals are on their way to something else. A very good number of them are studying in various capacities, whether it is a vocational course or a course in further education. That accounts for a good number of the younger people we employ. We are, of course, a very young industry. A lot of people come into our industry work while they are doing something else and then stay with us for life. So a good number of people are studying.

There is a good number of people who are using our industry as a filler. They are generally our casuals—again, they are quite young people. There is also now a good number of older people—mature workers working in our industry who may have family commitments and the like. We are working on a number of programs to bring parenting payment recipients, for example, back into our industry and have them working with us, particularly during lunchtimes in busy CBD properties where those hours suit. There are a number of those sorts of roles and a number of people for whom casual work is what they need at a particular point in their lives. We are employing about 125,000 of people for whom casual employment is in the main their choice.

Senator SANTORO—There are obviously rare instances where the employer-employee relationship is abused, and it can be abused from either part of the relationship—there are bad apples in every barrel; you get unfortunate instances of abuse in almost any endeavour in life. Putting those aside, from your experience—perhaps you have even done some studies of this—do casual workers, particularly young people, feel comfortable in your industry, generally speaking? I realise the activities undertaken in your industry by the people employed in it are very diverse, both generally and geographically, but do they feel comfortable? Do they feel threatened by the flexibility—some people might even say 'looseness'—of the arrangements? By that I mean the changing nature of the hours they are asked to work and the sharp changes in demand. If, all of a sudden a function is booked, there is a big influx of business very quickly and you are in demand when perhaps last week you might have expected not to be in demand. Do younger people, in particular, feel threatened by arrangements in the industry?

Mr Hart—I do not think they feel threatened by it generally. That is the type of job that they want in many circumstances. They are looking for a job that can provide work for them during the times that we have peak times—Friday and Saturday nights and Sunday lunches—when they do not have study or other work commitments. It is those very peak times that they are looking for work in. They are looking for the sort of flexibility and variance that our industry provides. We have done some work looking at the X and Y generations and what it is that turns them on. There is no doubt that flexibility, variety, excitement and a dynamic workplace like we provide are the types of things they are looking for in their working lives. A lot of the characteristics of our industry are exciting to the younger generation and exciting to people who are looking for a casual experience and are on their way to doing something else. I do not think it is a threatening environment for them; I think it is a pretty positive environment for them, actually.

CHAIR—Senator Santoro, we will have to move to Senator Murray. If you have any more questions you may put them on notice.

Senator SANTORO—I might take up that opportunity, thank you.

Senator MURRAY—On page 11 you say:

> The Association contends that the relevant awards ... are outmoded and irrelevant to many of the conditions in the industry.

With the exception of Victoria and the two territories, I have the impression that most of your members are under state awards, not federal awards. Is that right?

Mr Hart—That is correct.

Senator MURRAY—That remark refers to the state system?

Mr Hart—Yes.

Senator MURRAY—As you know, I and my party supported the rationalisation and simplification of awards in the federal system—that is under 20 allowable matters and will reduce to 16. Do you have an intrinsic objection to the content of allowable matters at present? In that same quote you said that you would consider challenging the conditions

within the awards, but that would be within the state awards, which as you know are open ended and extremely complex.

Mr Hart—Our association has not spent a lot of time debating the issue of allowable matters. My understanding is that the allowable matters being removed are those that are covered by other areas of legislation. We do not have a problem with those allowable matters being removed. Other than that, it is not an issue we have spent a lot of time on in the Work Choices package. We have been focusing on other areas.

Senator MURRAY—Your submission indicates that the majority of your businesses are small businesses. My impression again is that most of those are not on collective agreements but they have common-law agreements, individual agreements, whereby they agree to pay a certain amount or run certain conditions and then use the award as the baseline provision in terms of leave and all those sorts of things. Is that correct?

Mr Hart—That is correct.

Senator MURRAY—That is unlikely to change, isn't it? Mostly in your industry it will still be a common-law agreement referenced back to the award—in this case, the federal award—won't it?

Mr Hart—Yes, though I think we will see—as we have over the last months—an increase in individual agreements simply as a means of formalising the types of arrangements that have been in place through common-law agreements for some time.

Senator MURRAY—Sorry to correct you, but when you say 'an increase in individual agreements', it is actually a switch from a common-law individual agreement to a statutory individual agreements, is it not?

Mr Hart—Correct.

Senator MURRAY—Most of your businesses are small business. Are most of them incorporated or unincorporated?

Mr Hart—Our benchmarking suggests that 44 per cent are not incorporated. Of those, some are in the territories and in Victoria, leaving about 29 per cent that are not incorporated and are not in Victoria or the territories.

Senator MURRAY—That 29 per cent are under the five-year transitional terms and are likely to stay under the state systems, aren't they?

Mr Hart—Yes.

Senator MURRAY—So the benefits you see from this package will not apply to 29 per cent of your members?

Mr Hart—That is correct.

Senator SIEWERT—At the bottom of page 14 of your submission, when you summarise, you talk about rolling up annual leave and sick leave. Could you articulate whether you agree that annual leave or sick leave should be included in those minimum conditions?

Mr Hart—We believe that they should be minimum conditions but we believe that there should be the flexibility to roll those up into a rate, as is currently happening in a number of

cases through our AWA template agreements. There are a number of those that roll up sick leave and a number that roll up annual leave.

Senator SIEWERT—Could you explain what you mean by 'roll up'? Do you mean cashing them in?

Mr Hart—Cashing them into an hourly rate.

Senator SIEWERT—So you do not believe that that should be a minimum standard—that people should not be allowed to do that because they are things that need to be protected?

Mr Hart—We believe the conditions need to be there but we also believe that there needs to be the flexibility to be able to cash those out if that is what the individual business and the individual employee want to do.

Senator SIEWERT—I have heard in the past that agreements, particularly in this industry, have been signed by employees and have not actually been lodged. I have heard that on a number of occasions. At what level do you believe that there is noncompliance at the moment within the industry?

Mr Hart—It is very difficult to put a finger on the level of noncompliance because it is noncompliance. If we knew where the noncompliance was, we would ensure that there was compliance. I acknowledge that there is noncompliance and—as I pointed out in my submission—there needs to be a significant amount of upskilling of restaurant operators and small business operators to make sure that we minimise that noncompliance.

Senator SIEWERT—I would put it to you that, in that instance, it is not actually about upskilling; it is about people knowingly not submitting agreements.

Mr Hart—I think that would be very rare.

Senator NASH—Mr Hart, from your submission, you are obviously very supportive of the changes. What do you see as the two most significant benefits for your industry from the changes in this legislation?

Mr Hart—Certainly the simplification of agreements would be the first and the second would be the Australian Fair Pay Commission and changing the way that minimum wages are set.

Senator NASH—Do you want to elaborate on the simplification of those agreements and how it will benefit you?

Mr Hart—The simplification will allow for programs—such as the program we currently have operating promoting AWAs across the country—to be run in a much more efficient fashion. It will mean that we can have a template agreement across the nation and that we can marshal resources to promote those agreements through the membership across the country. So it will give us that base standard for work agreements, and then we can go forward and promote those. It will mean that we will have more flexible arrangements at the minimum level, based on the minimum and built up to a level that employers can negotiate with their individual employees. It is a case of being able to be more flexible, being able to structure a promotional campaign nationally, being able to better coordinate the upskilling and being able

to better coordinate our efforts as regards membership across the country. It is the nationalisation and the simplification that will give us the benefits.

Senator NASH—Which will result in greater efficiency and productivity for the industry?

Mr Hart—And greater certainty and greater compliance.

Senator MARSHALL—I take it from what you indicated just then about template agreements that your plan is to have a national template agreement? Do you have a template agreement at the moment?

Mr Hart—We do.

Senator MARSHALL—Are you able to make a copy of that template agreement available to the committee?

Mr Hart—It is on the OEA web site.

Senator MARSHALL—It is an OEA template agreement?

Mr Hart—Yes.

Senator MARSHALL—It is a standard agreement?

Mr Hart—There is not only one. There is a range and there is a range in each state, and they are all available on the OEA web site.

Senator MARSHALL—Have you done any work on the proposed national template agreement that you are talking about?

Mr Hart—No, we have not.

CHAIR—Thank you for your appearance here today.

[9.42 am]

BROWN, Mrs Marie, Assistant Director, Industrial Relations and Legal Services, Housing Industry Association

GREENWOOD, Ms Elisabeth, Assistant Director, Business Taxation and Legal, Housing Industry Association

LAMBERT, Mr Scott, Executive Director, Industrial Relations and Legal Services, Housing Industry Association

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

Mr Lambert—HIA is supportive of the Work Choice reforms. While we do not make detailed comment in our submission on many aspects of the government's policy in the bill, to give employees and employers greater choice and more flexibility, HIA supports the establishment of the Fair Pay Commission, a fair pay standard and award simplification. We also support other elements of the bill but note that many of them are excluded from the terms of this inquiry. HIA is on the record, from media releases, as viewing the Work Choice reforms as the next logical evolution for industrial relations in Australia. HIA does not subscribe to the descriptions by some that Work Choices is a revolution or a radical change. Much of the bill has been the consequence of lengthy debate and review, and so many aspects of the bill have been subject to previous committee reviews. The focus of HIA's submission is on agreement making. HIA members have a depth of experience in agreement making. We also make comment in our submission on new apprentices and school based new apprentices.

As noted in our submission, the residential construction industry is dominated by small businesses and contracting. These contractors are businesses by choice and, importantly, they do not operate in a system which requires a safety net of guaranteed conditions. Residential construction sector agreement making, unregulated by industrial laws, is a principal form of contract. This normally involves a principal contractor and a trade contractor. Notwithstanding the freedom and choice allowed in the types of contracts used in the residential construction sector, it has not resulted in the exploitation or the creation of an underclass of the low paid.

In terms of average weekly earnings, the residential construction sector is in fact in the top five industry sectors. It is a highly productive industry, which has enjoyed significant growth and high incomes. It has a work force of over 350,000 persons and this is still growing. While employment under award conditions exists, it is heavily regulated and complicated. It is our experience that small businesses find it difficult to understand awards and award conditions of employees. Both small businesses and employees in the residential construction sector benefit from simplified all-in pay rates. In these cases, all parties benefit and no-one is worse off.

Where collective agreements exist, they are, by and large, union pattern-bargaining agreements. While pattern bargaining is excluded from the terms of reference of the committee, its effects and other restrictions on employment in the construction sector are well documented by the findings of the Cole royal commission. The simplification of agreement

making to remove the link to awards will assist in making agreements more accessible. Where an employer and an employee wish to enter into an AWA, there is the need for an award, which may cause confusion and uncertainty. In some cases an award will not apply to an employee. This is not only where the employer is not a respondent to the federal award but also where the employee would not have a classification under an award should the federal system be a common rule award system. This would occur, for example, in the case of a construction supervisor. Where there is no award applying to an employee, the current system requires the Office of the Employment Advocate to designate an award to apply. The outcome is that complex provisions are then often designed to apply to that employment relationship when looking to calculate the no disadvantage test. These artificially created terms have to be costed and totalled to determine the no disadvantage test. It is our experience that, in the residential construction sector, the no disadvantage test threshold will, in such cases, be considerably lower than the agreed payment rates which would apply otherwise.

We have also made comment on the issue of training and apprentices. The Work Choices reforms will assist in the skilling of young Australians. HIA is strongly supportive of the shift for setting trainee and apprentice wages and wages in the awards from the Australian Industrial Relations Commission to the Fair Pay Commission. Training should be unshackled from the industrial relations laws. It should suit the needs of those who are to be trained and those who are seeking to employ the trained worker. Training should not be blocked or impeded by industrial disputation through the AIRC to prevent the setting of appropriate classifications. The opposition of the CFMEU in relation to school based apprentices is a clear example. This opposition continued notwithstanding the AIRC making a general decision several years earlier.

Training should not be based on industrial considerations; it should be based on training considerations. The residential construction sector has a skills shortage and retaining apprentices is proving difficult. Apprentices are not retained as the training they do is not relevant to the jobs they do. An apprentice does not want to be bound to training for a fixed four-year period irrespective of the level of competency that they have achieved. The need for shorter, more flexible, more accessible training has been recognised by the Western Australian state government. The Queensland state government has also recognised the need to move to more flexible competency based training. There is also currently a COAG review of the training system on a national basis. It is the HIA's view that industrial forums should not be used as a barrier against the delivery and roll out of new training.

CHAIR—Thank you.

Senator JOHNSTON—Thank you for your submission, Mr Lambert. The most important part of your submission, I think, is your attitude towards the changes to training. I note that in your executive summary you talk about the regulatory environment. I want you to take us through precisely and practically what that converts to on the ground in each of the states and what you anticipate the amendments and the ability of the Fair Pay Commission to establish wages and apprenticeship wages mean to your industry. I think this is the most crucial aspect from your point of view and indeed one of the vital parts of the legislation. If you can I would like you to explain to me how you see the benefit in this whole thing.

Mr Lambert—Some parts of this question I may have to take on notice because it is a rather complex question which is under review, as I mentioned, with COAG at the moment. There are several elements to training. Of course, the state training systems will have to agree to more flexibility. That is why I mentioned Western Australia, for example—

Senator JOHNSTON—Could you tell us what is happening, in your understanding, in Western Australia, which is my state?

Mr Lambert—In Western Australia they have just agreed to a series of new short-term residential apprenticeships. The difficulties, though, in implementing these apprenticeships is that an award classification and payment has to be set. That has to be set through an application to an Industrial Relations Commission. If, for example, a union does not agree to a shorter apprenticeship being offered then they will oppose—

Senator JOHNSTON—A period of qualification you mean—a shorter apprenticeship?

Mr Lambert—A shorter apprenticeship.

Senator JOHNSTON—So a skills based training regime?

Mr Lambert—Yes. So if a union do not agree to this, they will oppose that application for the setting of appropriate classification and payment rates which will delay the roll-out or even frustrate the roll-out of the new training system.

Senator JOHNSTON—So they will not allow the apprentices to train under that regime?

Mr Lambert—That is correct.

Senator JOHNSTON—What are we doing in Western Australia—are we changing that?

Mr Lambert—The Western Australian government has supported more flexible training and the creation of a range of new short residential apprenticeships. However, that is still contingent upon appropriate classifications being set in the commission and applications having to be made for those classifications. I understand that any application will be opposed by the unions, even though supported by the Western Australian government.

Senator JOHNSTON—How do these changes in the legislation we are looking at here today affect that situation?

Mr Lambert—With regard to employers who are subject to the federal system, the Fair Pay Commission will be able to set the trainee and apprentice rates where there is no current classification under an award. Effectively, it fills in the gaps without the need to apply to an Industrial Relations Commission to have that rate set or established. It removes the need to have any opposed application before the commission, which means that training and skills can proceed faster and we can get people working.

Senator JOHNSTON—Which union is standing on the hose in Western Australia?

Mr Lambert—The CFMEU.

Senator JOHNSTON—Thank you, Mr Lambert. I appreciate your answers to those questions.

Senator GEORGE CAMPBELL—Just on that, Mr Lambert, the issue of wages and training represents two separate issues, surely to goodness—don't they?

Mr Lambert—We believe they should be.

Senator GEORGE CAMPBELL—If you want to create a new trade or a new classification, don't you have to, in most states—if not in all states—get approval from the state training board?

Mr Lambert—That is part of the training mechanism in each state: new apprentices or training courses have to be approved by a training board. That is my understanding.

Senator GEORGE CAMPBELL—So, if you want to create a new classification in your industry, you would have to go to the state training board in order to do it.

Mr Lambert—You would have to get approval for the training course. To create the classification, currently you have to go to an Industrial Relations Commission.

Senator GEORGE CAMPBELL—They create the classification but, to actually create the training or an apprenticeship in a new area, you would require approval of the state training board.

Mr Lambert—Yes.

Senator GEORGE CAMPBELL—Have you sought approval of the state training board for new classifications in your industry?

Mr Lambert—Yes, we have. We have been advocating for more flexible skilling for some time. As we can see, the result in Western Australia is a direct outcome of discussions with the government and industry as to the needs for training.

Senator GEORGE CAMPBELL—But in Western Australia, as I understand it, you are not seeking to create a new classification; you are seeking to break up some of the classifications into shorter term training, aren't you?

Mr Lambert—They are new classifications. It is not breaking up; it is creating relevant skills and accessible skills.

Senator GEORGE CAMPBELL—Aren't you seeking to break up the bricklaying trade, for example?

Mr Lambert—No, we are not seeking to break up a trade; we are seeking to create training which is more relevant to the industry.

Senator GEORGE CAMPBELL—What are you seeking to do with bricklayers in Western Australia?

Mr Lambert—As to the exact details of each particular apprenticeship or traineeship, I would have to take that on notice. But the outcome is that currently apprentices do not wish to be going through a four-year course to be learning skills that are not relevant to the business or job that they do at the end of the day.

Senator GEORGE CAMPBELL—Isn't that deskilling?

Mr Lambert—No, it is not deskilling; it is creating skills, because currently apprentices are not completing their training and are not being attracted to the industry. They are being forced to go through four-year apprenticeships to learn skills that are not relevant to them. They are after skills that are relevant to the employment which they wish to carry out.

Senator GEORGE CAMPBELL—But you want to create a paver, for example, don't you? That is someone who has got the skills just to pave pathways and driveways. Isn't that one of the objectives in Western Australia?

Mr Lambert—There would be no difficulty with having a paving apprenticeship. That is a job in its own right.

Senator GEORGE CAMPBELL—But it is currently regarded as part—

Mr Lambert—There is no difficulty with apprenticeships or skills being broken into courses or apprenticeships that are relevant to those who seek to do the work. If they desire to have further skills, they can always continue and do further training afterwards.

Senator GEORGE CAMPBELL—But it is currently part of the bricklaying trade, isn't it?

Mr Lambert—Yes, that is my understanding. I think pavers find it somewhat difficult that they have to endure a four-year apprenticeship to do paving work, to learn about block laying and bricklaying which—

Senator GEORGE CAMPBELL—But they do not just learn about doing paving work; they learn about the range of skills that a bricklayer is required to carry, which gives them flexibility in the job market.

Mr Lambert—They have flexibility in the jobs in the residential housing sector already.

Senator GEORGE CAMPBELL—Aren't wages for trainees currently set by an independent body?

Mr Lambert—They are set by an independent body—the commission. However, that body is not free to just set the wages; that requires an application to be made, which is inevitably opposed. Proceedings are lengthy and sometimes delayed, which just ends up being frustrating, slowing down the roll-out of training and preventing young Australians from receiving the training that they are seeking.

Senator GEORGE CAMPBELL—Is it your argument here that the wages for apprentices are currently too high?

Mr Lambert—I have made no comment with regard to wage rates for apprentices. I have been commenting about the barriers which the current system has for the creation of new apprentices.

Senator GEORGE CAMPBELL—I am asking you what your view is. Is it your view, as expressed here, that wages for apprentices are too high?

Mr Lambert—I would have to take that on notice. I have no view on that at this time.

Senator GEORGE CAMPBELL—You have no view on that? Your association has no view on it?

Mr Lambert—I would have to take that on notice. I am not prepared to make a comment on that issue. It is not part of our submission. Our submission is in respect of the creation of new opportunities and new apprentices; it is not about, for example, the application that the CFMEU has before the AIRC at the moment to increase wage rates for apprentices.

CHAIR—If you want to provide a considered statement to the committee on notice we would be happy to take it later in the week.

Senator GEORGE CAMPBELL—Mr Lambert, I was not even aware that the CFMEU had an application before the Industrial Relations Commission. You have just enlightened me. I was really referring to your executive summary where you said that the setting of wages for apprentices and trainees by an independent body will be a major step forward in providing your industry with more skilled contractors. I was asking: what does that mean? Does that mean that you believe current wages are too high?

Mr Lambert—I will be taking some aspects of the question on notice, but currently wages are time based and not necessarily competency based. There is a desire to move to a competency based system as opposed to a time based system. That would require reconsideration as to how wages are set.

Senator GEORGE CAMPBELL—It certainly would, but we have had a competency based system in operation for some considerable time, haven't we?

Mr Lambert—Not in relation to apprenticeships. The payment rates are time based.

Senator GEORGE CAMPBELL—The payment rates or wages are currently time based but under ANTA we had a competency based training system.

Mr Lambert—I can only speak from my experience in the residential construction sector. In the residential construction sector it is time based.

Senator GEORGE CAMPBELL—So your industry did not do much about actually implementing the competency based training system?

Mr Lambert—I would suggest that our industry has been frustrated in endeavours to move to a competency based system by opposition from the trade union movement.

Senator GEORGE CAMPBELL—But your sector is essentially not unionised.

Mr Lambert—With regard to training there is effectively a veto. The award classifications are before the commission, which is where any applications made are opposed by the union—for flexibility or changes as regards more relevant training.

Senator GEORGE CAMPBELL—I refer to your comments about the Econtech modelling that was done in 2003. Is that the modelling that was done for the Cole royal commission? It is on page 3 of your submission.

Mr Lambert—I would have to take it on notice as to whether it was done for the Cole royal commission.

Senator GEORGE CAMPBELL—There is a table on page 4, where you set out the award rate and the contractor prices. Were you not able to make the effective comparison by rolling in the costs that a contractor would bear as opposed to the costs that are borne under the award structure?

Mr Lambert—Excuse me, Senator; I am not sure that I understand your question.

Senator GEORGE CAMPBELL—You give the contractors' prices per hour for those classifications and then you give the award rate. I would be very surprised if there were any

tradespeople working in your industry or any other building industry on award rates, but nevertheless there may be some somewhere. Weren't you able to make the calculation of the costs that the contractor would bear, such as annual leave, sick leave et cetera, and to add those into the award rate to give a more effective comparison?

Mr Lambert—I could ask our economists to assist me with that. The indication that they have given is that the contractor rate would exceed the award rate, even if rolled in. That is our experience with Australian workplace agreements, having compared them to the no disadvantage test, because the rates in AWAs in our industry are closely aligned to contracting rates. The no disadvantage test is normally not highly relevant when you compare it to the rate contained in the AWA—in a practical sense, that is.

Senator GEORGE CAMPBELL—Can you take that on notice and provide that to us?

Mr Lambert—I will endeavour to have that calculation done.

Senator GEORGE CAMPBELL—If the contractor rate is as significant as you have set out, what does it really matter to you whether you use the fair pay standard or the award as a base?

Mr Lambert—The fair pay standard provides greater certainty. Currently, there is some uncertainty—it was alluded to in the opening remarks—as to which award applies. Then, when an award does apply, there has to be a calculation made to cash or to give a quantifiable amount to the non-monetary benefits in the award. Frequently, the award is not an award which would apply in the event that the AWA was not entered into. That is because these people do not have award classifications; they are just seeking to have an Australian workplace agreement. So artificiality and complexity are being created, which then has to be explained to both the employer and the employee. That is cumbersome. It creates additional cost and inefficiencies. The simpler it is made, the easier it will be for the small businesses in our sector and their employees to be able to enter into these types of agreements.

Senator GEORGE CAMPBELL—But, under this proposed bill, there will not be any no disadvantage test.

Mr Lambert—That is correct. There is a comparison directly against the fair pay and conditions standard.

Senator GEORGE CAMPBELL—Why is it relevant?

Mr Lambert—I am not sure what you mean.

Senator GEORGE CAMPBELL—I am trying to understand why, if contractors are being paid so significantly over the award in your industry, you say that the use of the fair pay standard as a measure for an agreement will significantly improve agreement making. Why is it relevant, given that the no disadvantage test will be abolished as a result of this bill being implemented?

Mr Lambert—It will be relevant because small businesses will no longer have to be put through the task of understanding which award is going to be nominated for the purposes of calculating a no disadvantage test.

Senator GEORGE CAMPBELL—But there is no no disadvantage test.

Mr Lambert—That is my point. I am saying that they will no longer have to be going through this exercise, which is inefficient and creates confusion. They will have a much simpler process to go through in order to have their AWA completed.

Senator GEORGE CAMPBELL—But how is it relevant to the AWA? Are you saying that they will only have to meet the five minima standards?

Mr Lambert—They will no longer have to go through a complicated process where they have an award designated to them, where a calculation as to what the non-monetary elements of the award is made, and where those elements are then given a monetary value for the purposes of calculating a no disadvantage test which is somewhat remote from the actual employment relationship. That is as opposed to a far simpler test where you go to the fair pay and conditions standard. It will be more easily understood by employees and employers in small businesses so that the task of going to an AWA will not be as confronting as it currently is with the no disadvantage test.

Senator GEORGE CAMPBELL—How many contractors are operating in your industry nationally?

Mr Lambert—We estimate around 310,000.

Senator GEORGE CAMPBELL—How many of those go bankrupt every year? What is the bankruptcy rate?

Mr Lambert—I am sorry, in my submission the number is estimated at 315,000 not 310,000.

Senator GEORGE CAMPBELL—We will not quibble over 5,000. What is the average bankruptcy rate?

Mr Lambert—I do not have any statistics on that.

CHAIR—I am sorry, Senator Campbell, you are out of time now.

Senator GEORGE CAMPBELL—Can you take that on notice: what is the bankruptcy rate of small businesses in the housing sector?

CHAIR—If the witness is able to provide it.

Mr Lambert—I would have thought the best point of reference for that would be the insolvency service.

CHAIR—Thanks very much. I will hand over to Senator Murray.

Senator MURRAY—Mr Lambert, you have indicated that your industry is mostly contractors and therefore independent, family operated, small businesses. With the exception of those in Victoria and the two territories, do they mostly fall under state IR systems rather than federal?

Mr Lambert—I do not have figures on the exact break-up between state and federal. We do have a significant portion of members who are respondents to federal awards as well as a significant portion who are under the state system.

Senator MURRAY—You would be unable to get those figures for us?

Mr Lambert—I doubt that we would actually have a break-up of the respondency. It depends sometimes on whether they are also members of other associations which are respondents to federal awards as well. We do not keep figures as to which award a member is a respondent to.

Senator MURRAY—A contractor, by definition, is mostly unincorporated. That is correct, isn't it?

Mr Lambert—I would not necessarily agree with that. There is a large number of unincorporated contractors who are members of our association, whether they be sole traders or in partnerships, but we have a significant number of incorporated contractors as well.

Senator MURRAY—Let me tell you where I am trying to go with this. Unincorporated small businesses who are under state systems have a five-year transitional period in which they can consider whether they should become incorporated and fall under the new system, and those who do not will remain under the state systems. The previous witness was very helpful in enabling me to get a figure of 29 per cent of employers in the restaurant and catering business that will remain under state systems. That is really what I want to know from you. So perhaps you could take those comments on notice and come back to us, even if you able to look just at one state and give us a snapshot of that state. I just want to see how many people will end up falling outside the new arrangements.

Mr Lambert—I will endeavour to see if we have that information.

Senator MURRAY—Thank you. Ms Greenwood, it occurs to me that it is difficult to read this legislation for your industry without having a look at the proposed independent contractors act, because that will have the effect, I understand, of finally defining who is an employee and who is a genuine small business person, which, as you know, is an issue in your industry. Do you agree with that view?

Ms Greenwood—Yes, I do.

Senator MURRAY—It is true at the moment that some people who are classified as an employer, because in tax terms the tax office accepts they are an employer, are classified as an employee under some state systems, because they are deemed to be an employee. That is true, isn't it?

Ms Greenwood—That is true, yes.

Senator MURRAY—And vice versa.

Ms Greenwood—Vice versa?

Senator MURRAY—Some people who are employees under the tax system are accepted as employers under some state systems.

Ms Greenwood—Could you give me an example?

Senator MURRAY—As you know, the alienation of personal services income test is adjudicated by the tax office, and the tax office may decide you are an employee for tax purposes, but under the particular state legislation or federal legislation you may be accepted as an employer under IR legislation. In other words, the lack of definition affects both sides of the coin.

Ms Greenwood—I would not necessarily agree with that. In our experience it has been more that where someone is an employer according to the common law tests and according to the test supplied by the tax office then the state system has a tendency to deem contractors to be employees.

Senator MURRAY—So that is the more common situation.

Ms Greenwood—Definitely. I have not come across a situation where someone who is, in essence, a contractor and therefore an employer is deemed to be an employee.

Senator JOHNSTON—It is managed for payroll tax purposes, if I am correct.

Mr Lambert—Payroll tax and workers compensation. The APSI rules do not change the status of someone if they are a contractor. They are still a contractor. Their income tax deductions and entitlements are affected, not their status as a contractor, whereas state laws go directly to changing someone's status from being a contractor to an employee.

Senator MURRAY—To conclude this line of questioning, what I want to establish is whether you agree that the benefits you see from this new act will be most apparent once the independent contractor act is also passed, which makes clear the precise definition of an employee.

Mr Lambert—It is uncertain. I would suggest that we cannot really answer that question at this point in time because we do not know what the independent contractor legislation looks like, but there are certainly a lot of benefits under the Work Choices bill which will be accessible to our members.

Senator MURRAY—Turning to agreement making and the nature of individual agreements in your industry at present, are they mostly common law agreements?

Mr Lambert—We do not have a set understanding as to the nature and type of agreement. We do know that our members demand from us a service in assisting them with Australian workplace agreements. By and large they would be situations where they are formalising established agreements already in place. But we don't have any figures.

Senator MURRAY—The figure for the country as a whole is that common law agreements are about 12 or 14 times the number of statutory agreements. I assume that would not be any different in your industry.

Mr Lambert—As I have mentioned, we do not have any data on that. We would have to rely on other data. Other people have collected statistics. We have not collected those statistics.

Senator MURRAY—Are awards important to your industry?

Mr Lambert—Awards are important to whether there is employment in the industry.

Senator MURRAY—Is that because people use the award as the baseline and then verbally or in a written form provide an additional set of arrangements which constitute the agreement between the worker and the employer?

Mr Lambert—The awards are important because they are legally required to be important. They are not necessarily part of what you would call the baseline with agreements above. The fact is that, no matter what the circumstances are, if a common rule state award applies, for

example, it will apply unless you are paying an over-award payment in regard to that particular element for which you are making an over-award payment. You cannot get away from it. Members turn to AWAs in order to get a simpler and more understandable system, because they find awards overly complex and difficult.

Senator MURRAY—State awards?

Mr Lambert—State awards or federal awards—whichever award applies. Small businesses prefer to have simpler agreements which both the employee and employer understand and are able to adhere to.

Senator SIEWERT—If we are going to reduce the number of years of training for people for a specific job, does that mean that there will be different levels of award, or that the rates of pay for those will go down to the levels of training they have had? So if you have done two years for a specific job within the industry, that is counted as your training and you are different from somebody who has been training for another job for three or four years?

Mr Lambert—There has been no setting of any rates in that regard. Currently, if you look at contracting rates for people who are actually doing the work, you see that they are based on what the market is setting in the independent contracting system in the residential construction sector for that type of work. I do not believe that it will be a system which has classifications structured in the formal way which you currently have in awards, with set pay rates according to the number of years served. It is more to do with the nature of the work. The people who have the shorter term apprenticeships will come out skilled for the work that they are doing just the same as if they had done a four-year apprenticeship. They will be skilled for the same work. However, they will have done a lot of training which they will not use and which is not relevant to them.

Senator SIEWERT—What would happen if there were a reduced demand for the particular skill that they trained for and they then needed skills for another job? Would the industry support people retraining?

Mr Lambert—The industry supports having that flexibility and, hopefully, accessible courses to enable them to do that training.

Senator NASH—Mr Lambert, in your submission you say:

HIA supports the change in the Bill which will see the Fair Pay Commission set minimum wages for all apprenticeships and traineeships, regardless of whether a current award classification exists. This, along with the removal of award provisions regulating the duration of apprenticeships and traineeships, will allow the development of the new training packages needed by industry.

Obviously, training and apprenticeships are very important. Can you outline any of the current restrictions, as you see them, on opportunities for apprenticeships?

Mr Lambert—I previously mentioned that this is subject to quite a complex review at COAG and there is a paper which I understand is due early next year, or maybe December this year, which will outline what those impediments are and hopefully solutions to them. The impediments include having the appropriate apprenticeships or traineeships recognised at state level and supported at state level. There is also the barrier to having the appropriate pay rates or classification established for these trainees and apprentices. That currently has to be

done through an application and a disputed hearing before an industrial relations commission, which can take a considerable period of time. The Work Choices bill allows the roll-out of training which the training sector agrees to and agrees is needed, and the industry agrees is needed, and it removes the delay, time, cost and inefficiency of having to go through a commission hearing in order to have these rates set. In other words, people are able to have accessible training and flexible training now, not at some indefinite time in the future.

Senator NASH—That is obviously a significant benefit for the industry. How does productivity in the domestic housing sector compare with productivity in the commercial construction sector?

Mr Lambert—Independent research has shown time and again that the residential construction sector is far more productive with its independent contracting system than the commercial construction sector. I have given some examples in the submission of some of the differences in efficiency—around 19 per cent, according to the Econtech report. The commercial construction sector is of course dominated by pattern bargaining agreements and not the freedom of choice of the independent contracting system in the residential construction sector.

Senator NASH—So would you see the implementation of the Work Choices legislation as directly benefiting that commercial construction sector and lifting that productivity?

Mr Lambert—We would hope that there would be some flow-on benefits that combined with the Building and Construction Industry Improvement Act, which started on 1 October.

Senator NASH—Thank you.

CHAIR—If there are no more questions—

Senator MARSHALL—I have a couple of questions, if that is all right—or have we used our allocated time?

CHAIR—You have used your allocated time, yes. You did have your full 16 minutes.

Senator GEORGE CAMPBELL—There is still time to go. The next witnesses are due at 10.30 am.

CHAIR—We agreed that in a 40-minute time span that was what it was to be.

Thank you very much for your appearance here today. As to the questions that you took on notice, if you do not mind, can you get those to the committee perhaps by the end of the week? That would be very helpful.

Mr Lambert—I will try to do so.

CHAIR—Thank you.

Proceedings suspended from 10.20 am to 10.38 am

EDWARDS, Mr Eric, Workplace Representative, Association of Professional Engineers, Scientists and Managers, Australia

FARY, Mr Geoff, Acting Chief Executive, Association of Professional Engineers, Scientists and Managers, Australia

NOUD, Mr Russell, Director, Association of Professional Engineers, Scientists and Managers, Canberra

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

Mr Fary—We very much appreciate the opportunity to be here. By way of background, I have had some 30-years experience in industrial relations and human resource management, working for industry, government and employee organisations. I have been in my current role for approximately two years. Mr Edwards is our workplace representative at CASA and he will take the opportunity to briefly give you a real life perspective, as it were, on negotiations in which he is currently involved.

Like you and your staff, we were very strapped for time in getting the submission to you to meet your deadline. I have to apologise for the uncharacteristic—even unprofessional—typographical errors that have crept into part of it. We do apologise for that. It is not our normal form but unfortunately I did not have time to proofread the submission before it was shot off to meet your deadline. Please bear with us when you see those glitches in the text.

Briefly, APESMA is an organisation which has in excess of 25,000 members. We have been in existence for more than 50 years. We are the organisation that represents exclusively the employment and career interests of professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, IT professionals, private sector managers and transport industry professionals in general. The organisation is a progressive and forward-thinking employee association. It is not adversarial in nature. By the nature of our membership, and also by their placement in industry, we rely almost exclusively upon conciliation, negotiation and the institutions of industrial relations to achieve the objectives of our members.

The association recognises the need for changes in the industrial landscape. No society or nation can stand still. We recognise and support the need for Australia to be competitive. We recognise, for example, that there is a requirement for the harmonisation and rationalisation of the state and federal systems of industrial relations. There is a case that can be made for the modernisation of awards. Indeed, there is a case to be made for removal of some of the less desirable aspects of the unfair dismissals regime.

Having said that, I would like to very briefly summarise some of our key concerns regarding the draft bill which is the subject of your consideration. Firstly, we have a concern about a key assumption that underpins the legislation: that more labour market deregulation will result in more employment. We believe that is not supported by an examination of the international statistics, particularly material that has been put out by the OECD. We are concerned that a radical stripping and rationalisation of awards could damage the career structure of professionals and exacerbate the current shortage of professionals—in particular,

by the further attraction for Australian professionals to move offshore and by there being a disincentive for young people to enter technology based professions. We are concerned that an increasing of the threshold for unfair dismals to firms of 100 employees goes too far. It will remove the one tangible piece of regulatory leverage that is available when dealing with employers who are not wilfully ignoring their obligations and responsibilities but simply unaware of them. The fact that the unfair dismissals regime exists has enabled us to discuss and reach satisfactory outcomes with employers. What I would like to do before concluding my opening remarks is invite Mr Edwards—who, as I said, is one of our workplace representatives at CASA—to share with you his real life experiences in a negotiation which he is currently involved in about an enterprise agreement.

Mr Edwards—I am a professional working within the Civil Aviation Safety Authority. I have been there approximately 17 years and I have been active as a professional workplace representative for the best part of 10 or 12 years. I would like to outline our current situation. Our current certified agreement nominally expired in March of this year. Due to problems negotiating agreements over the past several iterations, we attempted to start negotiations on this particular one prior to Christmas. We are still negotiating. There seems to be no particular urgency on behalf of the organisation that runs CASA to conclude an agreement. We are at the point where we are concerned that they are deliberately prolonging the agony, so to speak, until the new legislation arrives so that they can take some of the unpalatable options that will be available to them as a result of those changes.

Our members are particularly concerned about the potential for the 90-day strike down, if you like, of a certified agreement, given that ours has been nominally expired for some eight or nine months anyway. We wonder what motivation there will be for any employer, given that ours has been at the table for 12 months, to actually conclude an agreement. At the end of the day, we have not actually made a pay claim; we are just looking for a continuation of the conditions we enjoy and a more robust workplace-management interaction that leads to efficiencies within the organisation. We are not out for extra holidays and we are not out for extra money; we would just like a stable workplace where there is some industrial democracy and we can move forward.

CHAIR—Thank you.

Mr Fary—I would like to conclude very briefly by making a couple of points. The predecessor legislation to the bill before you for consideration is the 1905 Conciliation and Arbitration Act, one of the most significant and historic pieces of legislation ever enacted by an Australian parliament. The effects of that act and its subsequent amended versions have resonated through generations in Australia. The underpinning of that act has made a substantial contribution not only to the Australian economy but to the very fabric and nature of what it is to be an Australian.

It is our submission to you that the bill before you could have similar magnitude both in the impact and in the longevity of its influence on our national economy and on the very nature and character of the Australian community. For that reason we suggest in our submission that the passage of the legislation, given its significance, should be delayed pending a broad-ranging public inquiry, which we believe could be a vehicle for a genuine attempt to engage all the parties in an intelligent and frank dialogue and, if I could use an old Australian

colloquialism, in a fair dinkum attempt to chart a path forward which is not perceived to be divisive and lacking in balance but one which could enjoy the buy-in by all of the key players both in our national economy and in our community. Senators, thank you for your forbearance, and we are happy to respond to any questions that you might have of us.

Senator BRANDIS—I have one area of questions, arising, Mr Fary, from those observations you made at the very end about the 1905 Conciliation and Arbitration Act. Your point, if I may say so, Sir, was well made that that act not only created a legal regime; that legal regime in turn created a culture of industrial relations in this country. That was 100 years ago. I am not sure whether you are familiar with the journalist Paul Kelly's book, *The End of Certainty*. In that book Mr Kelly talks about the Federation settlement as being based on four pillars: one of them was industrial arbitration as reflected in the act that you have mentioned; another was tariff protection; the third was immigration restriction and, in particular, white Australia; and the fourth was what he calls the 'instrumentalist' view of the state.

His thesis, which I think is broadly true, is that those four pillars were the basis of the Australian economy, and indeed Australian society, for most of the 20th century, certainly until the 1960s. But, Sir, tariff protection is largely gone; immigration restriction, and in particular white Australia, is largely gone; and the instrumentalist view of the state is largely gone. My question to you, Sir, is: is it not time that that last of the four pillars of the old Australia, industrial arbitration, went the way of the other three so that we can complete the modernisation of our economy and change the culture correspondingly?

Mr Fary—In response to the first part of your question: yes, I am familiar with Paul Kelly's book and have read it and I am familiar with the propositions that he puts forward in that book. Indeed, at the outset of my opening remarks, I think I said that the association recognises that a case can be made for change in terms of harmonisation of the state and federal systems, that a case can be made for change for rationalisation and modernisation of awards and that a case can even be made for change to remove some of the less desirable aspects of the unfair dismissals regime.

I think our concern would be that the proposition which is before the parliament threatens to throw the baby out with the bathwater. The Australian conciliation and arbitration model is internationally recognised and a number of other nations, including nations which have emerged only relatively recently from years of colonial rule or years of white domination, such as South Africa, have based their system on the Australian model. The International Labour Organisation talks about and recognises the Australian model. We are not for one moment arguing that it should be set in concrete, stuck in stone and should never be reviewed. What we are arguing is—

Senator BRANDIS—But you are saying that it should not be fundamentally changed, are you not?

Mr Fary—I think we are saying that it should change by evolution, by dialogue and by constructive engagement between the parties. What we are seeing at the moment is a process—if I may say so—whereby a significant stakeholder is being marginalised from the process, that its input is not being genuinely sought and there is not an attempt to gain

dialogue and input for the way that the system can evolve and move forward. What I am saying, Senator, is: don't throw the baby out with the bathwater.

Senator BRANDIS—I take it that when you speak about a major stakeholder, you are talking about the trade union movement.

Mr Fary—Primarily, my organisation is a part of the trade union movement in all of its forms and variations. But I think you will find that, in private moments, there are significant bodies of opinion within the employer community who have reservations and apprehensions about where aspects of this legislation are going. They are perhaps not terribly vocal in terms of the public commentary that they make but, certainly, they are privately expressing those views to organisations such as mine. I believe those organisations would also welcome an opportunity to participate in an independent public inquiry and review.

Senator BRANDIS—The natural human fear of the consequences of change is part of the way we human beings are built. Can you point me to one instance when the same sorts of arguments were not run against the proponents of freeing up various areas of the Australian economy, whether it was against Sir John McEwen when he was minister for industry, against Mr Keating when he was treasurer or against Mr Howard and Mr Costello today? Whenever an area of the economy which is highly regulated and rigidified is freed up, we always hear these arguments. May I put it to you that, if historical experience in this country is any guide, the arguments have always turned out to be wrong.

Mr Fary—You are a keen student of history—and I appreciate that.

Senator BRANDIS—That is why I make the observation: the fears have always turned out to be wrong.

Mr Fary—The crucible of the development of the unique system of industrial relations which we have in Australia goes back to the 1850s. In fact, it goes back to the achievement, for the first time in the Western industrial world, of an eight-hour working day in the 1850s—an achievement that was brought about by a combination of factors, including prosperity, the isolation and the shortage of alternative labour.

People at that time railed against that change and said it would mean the end of civilisation as we know it, not only damaging our prosperity. Senator, I am sure you have read the *Hansard* of debates that occurred around the introduction by Alfred Deakin and others of the Conciliation and Arbitration Act and of people who railed against those changes. I think one even went so far as to suggest it was against God's will to interfere in the sacred right of employers and employees to individually negotiate contracts without the intervention of third parties.

Senator BRANDIS—Yes, but one of the Labor Party opponents of that view also said that the parliament of the Commonwealth of Australia is jurisdictionally competent to repeal the laws of supply and demand.

Mr Fary—I am not sure I follow your line of argument, Senator, but those misgivings about the legislation at the time it was introduced more than a hundred years ago proved to be incorrect. I reiterate what I have said earlier on: this organisation does not take a position of blind opposition to change and to progress. In fact, we have been at the forefront of

advocating change and progress in industrial relations. Some of the things that our organisation has done—for instance, the establishment of our own management education program, the establishment of our own employment agency—are indicators of the sorts of leading roles that we have taken in the advocacy of change.

We have currently, we believe, in excess of 30 per cent of our members on individual employment arrangements of one form or another, be they common-law contracts, be they self-employed or be they Australian workplace agreements, and we support the right of those members to enter into those arrangements. We provide assistance and support for them. What we are saying is that we believe that there should be a consultative way of moving forward with change. As I said at the outset of my remarks, I practised in human resource management for most of my adult life, and much of that has had to do with the introduction of change. You successfully introduce change by bringing people with you, not by forcing it upon them.

Senator BRANDIS—I am sure that is true, but is not the very thing we are doing here today a consultative process? Surely it does not make it an any less consultative a process if there are stakeholders whose interests are threatened who protest volubly, hysterically and on occasions violently against it. It does not mean it is not consultative.

Mr Fary—It is a consultative process, albeit an abbreviated one, as I indicated at the outset of my remarks. The discussion that you and I have been having talks about the impact of legislation that has resonated for a hundred years or more. It is our belief that the impact of this legislation could be similar. We believe that there is no compelling argument to say that it needs to be rammed through an abbreviated process in a matter of weeks. This is something which should be the subject of not weeks but months of discussion and dialogue with the interested parties in the community.

Senator BRANDIS—I am sure it could be the subject of years of discussion, but I would point out to you that there have been years of discussion, particularly in the Senate, since the election of this government in 1996, when various aspects of this package have been debated in the Senate and knocked back.

Mr Fary—Indeed.

Senator MARSHALL—Mr Fary, you are here representing your members. Could you indicate how many members you have?

Mr Fary—Yes, we have got 25,000 full members of the organisation and an additional 15,000 or so associate members. Our organisation is very active on campuses where we offer membership to people who are completing their studies in preparation for entering the professions that we represent. There are 25,000 full members and about 40,000 members in total.

Senator MARSHALL—Are you confident that you are presenting the views that are generally held by your members?

Mr Fary—We are. At times we have been accused of polling and canvassing the views of our members to within an inch of their lives. I am sure Eric will attest to the fact that frequently there are polls that come from APESMA seeking their members' views on various

aspects which are before the association. We have indeed polled our members on their attitudes towards workplace changes over the years.

Senator MARSHALL—Have you done some polling on the present bill and, if you have, could you explain to us the results?

Mr Fary—We did some polling earlier this year when the bill was in its embryonic form, and I can share that with the members of the committee. People indicated their concern about various aspects of the then proposed industrial relations changes which were before the parliament. Generally speaking, the response regarding it as negative was running in the high 60s. These were the bills that Senator Brandis mentioned before. They were various bills in seriatim before the Senate, before the total package was announced.

However, that result—which I am happy to share with the committee—dates from April of this year. We are currently undertaking a further survey of our members and should have the results in the next week or so of their attitudes towards the current Work Choices legislation. We expect the results of that to be available to us by early next week, and I would be happy to share those results with the members of the committee.

Senator MARSHALL—Thank you for that. Some of the concerns I have had about the impact of this legislation have gone to low-paid, low-skilled workers. The members you cover are at the other end of that: they are professionals; they are highly educated. One would think they have plenty of confidence and a lot of additional skills that would make their ability to negotiate individual contracts much easier than people at the unskilled end. I am a little bit surprised that there is such major concern from your members about the impact of the bill. Could you explain some of the reasoning behind their concerns?

Mr Fary—We would not pretend for one moment that our members were amongst the lowest paid in the community. In fact, our members will often say to us, 'The levels of remuneration that we have been able to achieve over the period of time that the association has been in existence are meritorious.' What they also say to us, though, is that, whilst they welcome the reasonable remuneration levels that they are on, they have grave concerns about the culture of long hours and the lack of work-family balance in their lives. In a recent survey that we did, in excess of 50 per cent of our members reported coming home exhausted at the end of the day as a result of their endeavours.

We are finding from surveys that a number of those members are being attracted to positions offshore. Not our surveys but KPMG's—and I think this is mentioned in our submission—show that something like 74,000 Australian professionals have moved offshore in recent decades. The community is generally aware that there is a skills shortage at the moment. They are perhaps not as aware that there is a grave shortage of professionals, particularly technology based professionals, and that it is only going to get worse in the period immediately ahead. What is happening is that a number of professionals are leaving Australia, attracted by the greater work-life balance which is available to them, particularly in Western Europe.

Senator BRANDIS—You don't think that might have something to do with tax rates, too, Mr Fary?

CHAIR—Order, Senator Brandis.

Mr Fary—Some of them admittedly leave with the intention of returning in a few years but many of them elect not to return for most or all of their working life. At the other end of the scale, an enormous amount of churn is going on: firstly, people are not being attracted to technology based industries—and that is of grave concern to us and to the employers with whom with deal—and, secondly, people are moving in and out of the professions very rapidly. A lot of people obtain professional qualifications to work in the professions that we represent and then spend only a relatively short time before being attracted to another profession or calling. One of the reasons is to obtain a better work-life balance.

Frankly, one of the concerns that we have is that, unless there is some sort of regulatory level playing field, it is unreasonable to expect, with the best will in the world, that individual employers will take the initiative to introduce work-life, family balance initiatives in isolation.

Senator MARSHALL—Let me ask you specifically about that. Given what you have just said, I would have thought that the skills shortage gives your members an improved bargaining position. Secondly, supporters of the bill actually argue that this would be the opportunity for your members to actually negotiate that work-family balance. As Senator Campbell has indicated, it is bandied around the place that it is a worker's market at the present point in time. Explain to me why your members believe they will not be able to take advantage of the Work Choices legislation in that respect.

Mr Fary—It is patchy. Some of the professions that we represent—for instance, the architectural and surveyors professions, in the industrial jargon, very much rely upon minimum rates. For other professions, such as project engineers, environmental engineers and the like, market rates are moving ahead at something like eight per cent per annum whereas actual enterprise agreement rates and award rates are moving at figures much lower than that. One of the outcomes of that is a tendency towards what we call deprofessionalisation—that is, because there is a shortage of people to fill these professional roles, pressure comes on to actually bring people in who do not have the qualifications or the formal training to take over the roles that the professionals are unavailable or unwilling to fill. That leads to a diminution in the quality of the professions over a period of time. The concern that we have is that, without the comprehensive award and classification structure in place, that process will accelerate.

Senator MARSHALL—I am interested in hearing from you about why you feel that your members will not be able to negotiate an appropriate work-family balance.

Mr Fary—They simply report to us that they have frequently been able to negotiate better remuneration outcomes, but employers have been unwilling to agree to better work-life-family balance initiatives because, in agreeing to it for their professional cadre of employees, they agree to it across the board.

Senator MARSHALL—Mr Edwards, your agreement has been expired for 12 months. You indicated that nine months of negotiation have not led anywhere. Do you believe that CASA will put everyone onto an AWA once the bill is passed?

Mr Edwards—The numbers are not quite right there. The agreement has been nominally expired for nine months and we have been trying to negotiate for 12 months. I am not sure that they will try and put everybody on AWAs straight away. Certainly, that has not been

suggested. What has been talked about is that all new employees certainly will be on AWAs. Again, that is not a formal position that has been put as part of negotiations. We have actually moved a long way from where we started. It is just an incredibly slow process.

I would just take up on the point that Geoff and you were discussing a moment ago. We are not out pushing for wages and conditions in this agreement. We are looking for a professional relationship. We are currently at 92 per cent staffing levels in our place. The work-life balance is a joke. How can you establish a work-life balance when you are running eight per cent to 10 per cent below staffing levels? All of our professionals are flat chat. There is just no time. For many years CASA has been below establishment in staffing.

Senator GEORGE CAMPBELL—Mr Edwards, do you work for CASA?

Mr Edwards—I do.

Senator GEORGE CAMPBELL—Is the approach of CASA in offering AWAs to new employees now becoming a common practice across the public sector?

Mr Edwards—I could not speak for the rest of the public sector.

Senator GEORGE CAMPBELL—Mr Fary, is this approach of CASA of offering all new employees AWAs now becoming a common approach across the whole of the public sector in respect of your membership?

Mr Fary—I would not say that it is a common practice yet. There are certainly instances of where that is happening. Perhaps one of the most celebrated instances—and it is still part of the public sector for the time being—is Telstra, where any new graduate recruit is required, as a condition of engagement, to enter into an Australian workplace agreement. It is literally 'take it or leave it'. Telstra has indicated an unpreparedness to negotiate any aspect of the template Australian workplace agreement which is offered to new entrants. That is not yet a common practice. I think Telstra is even finding that they are encountering some resistance of new graduates who have said, 'Well, if that's a condition of engagement, thanks very much, but I'd prefer not to work for the organisation.' We have seen indications of that elsewhere.

Senator GEORGE CAMPBELL—Your organisation, as well as being a registered industrial organisation representing the industrial interests of your membership, in many respects is a semiprofessional organisation representing some of the other issues of your various professions. I understand that a lot of the professions that you represent actually work as individual contractors for a variety of companies—the auto industry is a classic example of that, with engineers. What is the impact of this bill, particularly in relation to the contracting side of employment? What impact will that have on your organisation and on the individuals who are currently working as contractors?

Mr Fary—Probably the largest single impact that this bill will have on those people is the removal of access. We calculate that some 95 per cent of them will be removed from access to the commission for remedy in the event of unfair dismissal. Whilst they are on contract at the moment, in many cases they still have access to the unfair dismissal remedies of the commission for harsh, unjust or unfair termination of their employment. That remedy and the attendant ability it gives us to engage in intelligent dialogue with their employers will no longer be available to those people. That is probably the most fundamental impact. The other,

of course, is the variation of the no disadvantage test, which currently applies to Australian workplace agreements, which is no less advantageous when taken as a whole than in the underpinning award. That will no longer be the case, as I understand the bill. In fact, it will be the standard for minimum conditions. They are the key issues that, as we see them, will impact upon our members who are contractors.

Senator GEORGE CAMPBELL—What about their membership of your organisation?

Mr Fary—Those members have remained remarkably loyal to the organisation over the years. We have many self-employed members who joined as employees. Because of the professional services that the organisation has on offer—the education, the advocacy and so forth for their profession—they have remained full fee paying members of the organisation. Our membership has remained relatively stable over the last three or four decades—sorry, I should say that over the last three or four decades it grew remarkably and for the last four or five years it has been relatively stable. We have recently noticed that there has been a pleasing increase in the number of people making application to join the association.

Senator GEORGE CAMPBELL—Thank you.

Senator WONG—The one issue that I want to raise is skills based classification. In your submission you raised concerns about the potential impact of broadbanding or the reduction in skills based career paths. You made reference to the award review task force. The proposition that has been put to this committee is that the classification structure is a matter of discretion for the Fair Pay Commission. In those circumstances, could you tell me whether you retain your concerns about the maintenance of an appropriate classification structure applicable to your members?

Mr Fary—We believe that we have not yet seen sufficient detail for us to be able to form a considered opinion on that matter. Some of the proposals that we have seen floated would suggest, for instance, that the award rationalisation process would see a single salary level in awards and that would be the graduate recruit level. For our members in particular, given their nature and placement in industry, that has the potential to have a devastating effect on career progression within the industries and within their professions.

Senator WONG—Thank you.

Senator ALLISON—I want to go back to the work and family issues that were raised a little earlier. I want to ask you about the AIRC decision in August 2005, the Family Provisions Case, and your 'profound disappointment', if I can quote your submission, that that decision is not reflected in the Australian fair pay conditions standards. Can you offer the committee a view about how far that sets back the capacity of professional women to engage in the work force whilst having children?

Mr Fary—Very considerably we believe. Unfortunately the professions that we represent are still underrepresented in terms of female participation, we think on average by around 15 per cent. Those women members tell us that they have even greater difficulty than their male counterparts in being able to negotiate individual family friendly type provisions. For that type of safety net to be removed from them, we think, will be a retrograde step.

Senator ALLISON—What is the effect on your skills shortage in the professions? If this is a discouragement of women coming into those professions, engineering, architecture, IT and so forth, is that going to exacerbate your skills shortage or not?

Mr Fary—Yes, absolutely. That is the crisis which faces the professions that we represent at the moment. If you look at the age profile of our professions, a vast majority are ageing baby boomers, like me, who will exit the professions in the next four, five to 10 years. We have recruitment companies from Europe trawling our membership constantly offering people year-long or two-year long project work based in Europe on remuneration packages and conditions, which are substantially superior to those which apply in Australia. There is a strong temptation for folk who have reached preservation age in terms of their superannuation benefits to preserve those benefits and to take the option of working in Europe for a couple of years. This is happening at a time when major infrastructure development and major mining development is coming on stream. It is also happening at a time—I think as a nation we face a crisis here—when kids are not being attracted to maths and science studies in secondary school, are not being attracted to the technology based professions in university and, consequently, are not entering the professions. The companies that we deal with tell us that at the moment they are only just managing to meet their existing work sheets let alone that which is likely to come on stream in the not too distant future. If this nation faces a challenge for its economy, a very high, close to the top, priority would be the attraction and retention of skilled professionals.

Senator ALLISON—Your submission also draws attention to the fact that 60 per cent of professional women surveyed wanted flexible work arrangements in place. What progress has been made in your sector in providing flexible workplace arrangements? What would you recommend to the committee by way of amendments to this legislation to progress that flexibility?

Mr Fary—The progress which has been made in our sector varies. Some of the larger companies have engaged with us and with other employee associations and have a range of innovative, flexible arrangements in place. The vast majority of our membership, however, are employed in situations where they are one out or work for small companies and there has been far less progress there. In response to your question, our recommendation to the committee would be to enable the Australian Industrial Relations Commission to continue to exercise the sort of test case decision making that it has done in the past, which has enabled those sorts of initiatives to be introduced across industry.

Senator ALLISON—You recommend—in fact it is your only recommendation in bold—that there be more time to look at the impact of these proposed changes on the social fabric of Australia. In, as you say, the hasty preparation of your submission, what were you not able to explore? What would be necessary for us to understand fully the impact on family and work?

Mr Fary—We were also constrained by the terms of reference of the committee. As I understand it, you were precluded from looking at a number of bills, which Senator Brandis previously referred to and which had been introduced and not passed in the Senate. If we had had the luxury of time we would have presented you with a range of views on unfair dismissal, the powers of the commission and the rationalisation and simplification of awards. We believe that the mechanism which we have been repeatedly calling for all year, which is in

our specific recommendation, is a mechanism which could enable us to move forward in those sorts of areas.

Senator JOYCE—What is the average salary or wage of your members?

Mr Fary—We cover an extraordinary range of different professions. For the pacesetters the average remuneration level would probably be in the order of $80,000. That is for people who, for instance, are experienced professional engineers and the like. There would be others who are earning in excess of that. For graduate recruits entering professions such as architecture or surveying, the entry level salary is probably in the low forties.

Senator JOYCE—So basically the average is $80,000. Is it trending up or trending down?

Mr Fary—It is currently trending up at around four per cent. We do six-monthly comprehensive remuneration surveys of most of the professions that we represent and I would be more than happy to forward you copies of those, which have the full detail in them.

Senator JOYCE—It is trending up from $80,000 a year and you say your people are flat out. They are at about 92 per cent, so you are missing about eight per cent. It sounds like the economy your members are working in is pretty vibrant. Is that correct?

Mr Fary—Many areas of the economy we work in are extremely active at the moment, particularly areas such as infrastructure and mining.

Senator JOYCE—You would have to say it was successfully managed. In point 58 you talk about a denial of political rights. Can you elaborate on that? I find it peculiar that you would be before a Senate inquiry saying that you are being denied your political rights.

Mr Fary—That relates to the intention of the act that certain matters would be prohibited matters and could not be contained in an agreement freely negotiated between a group of employees and a employer regardless of the fact that those employees and that employer may be very desirous of reaching an agreement about such matters—for instance, codifying the process that would be used in the event of it being necessary to terminate employment; and providing an ability for employees to take part in training courses run by an employee association. Even if the parties of their own free will wish to reach agreement about such matters, such matters will be prohibited in agreements under the provisions of this bill.

Senator JOYCE—You are still enfranchised aren't you? You still have a right to vote.

CHAIR—We will have to move to Senator Santoro now.

Senator SANTORO—Senator Joyce is onto a very good point but we are out of time. Unless the committee gives me three or four minutes to proceed, I will put some questions on notice.

CHAIR—Put your questions on notice.

Senator SANTORO—Mr Fary, I want to ask you a series of questions and get some indication of where you are going. You obviously negotiate AWAs on behalf of your members.

Mr Fary—Yes.

Senator SANTORO—I want you tell the committee how many AWAs you have negotiated under the current legislation. I do not want the answers now; just take them on notice. How many AWAs have you negotiated on behalf of your members since the enabling legislation came into effect? I would like you to inform the committee of your very considered opinion on how successful you have been on behalf of your members in negotiating AWAs. In other words, what benchmarks can you provide to the committee on the performance of your union as you negotiate on behalf of your members? I want you to indicate to me, by analysing those AWAs, how many family friendly provisions are in the AWAs you have negotiated. I ask that question on notice in the context that you seem to have indicated to the committee that your members were suffering in terms of their ability to balance work and family responsibilities. I would appreciate it if you are also able to provide the committee with any surveys that you have done of your membership on their satisfaction with your performance. I would also be grateful if you could indicate, from your union's perspective, what the level of skills shortages are that you perceive within the sector that you operate in and in which you represent members. In other words, what are the skills shortages which in part are obviously putting pressure on members? I would like any of your submissions that you have made to the government in relation to why you perceive that those skills shortages exist.

CHAIR—I am calling a halt here.

Senator WONG—We are on a very short time frame with this committee and if APESMA is happy to do the sort of work that Senator Santoro requests then obviously go ahead, but I think we should be amenable to their time lines given how quickly this committee has to wrap up.

CHAIR—I and not asking them to rewrite the book, Senator Wong. I am happy to call it to a halt here.

Senator SANTORO—They are real people; they are intelligent people. They do not need your advice on how to respond to a committee.

Senator WONG—It is a matter of courtesy, Senator Santoro.

CHAIR—Order! If you take those questions on notice, we would be very grateful if you could provide what information you can to us by next Friday.

Mr Fary—Thank you. Clearly, ladies and gentlemen, you are far more skilled at parliamentary procedure than I am. I am not entirely sure what the exact meaning of the phrase 'question on notice' is, but we would be more than happy to respond to the best of our ability to Senator Santoro's questions. Your deadline is Friday of next week?

CHAIR—Yes, thank you.

Mr Fary—We would be pleased to do that.

Senator SANTORO—It is Friday of this week.

Mr Fary—Sorry, is that Friday of this week or next week?

CHAIR—Friday of this week.

Mr Fary—This week? Okay. There might be even a few more typos in there, but we will make our best endeavours.

Senator SANTORO—Do your best. That is all I ask.

CHAIR—Thank you very much, and we do appreciate your attendance here today.

Mr Fary—Thank you, senators.

[11.30 am]

CORISH, Mr Peter, President, National Farmers Federation

WAWN, Mrs Denita, Workplace Relations Manager and Industrial Advocate, National Farmers Federation

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

Mr Corish—Thank you for the opportunity to present today. The National Farmers Federation is the peak farm lobby group representing producers of all major agricultural commodities in Australia. NFF have had a strong history in advocating reform of Australia's labour market and we continue to pursue that objective in supporting the work choices bill. Farmers need ongoing workplace flexibility to remain viable in a highly competitive global marketplace. We believe that this package removes the more excessive regulation while continuing to provide, very importantly, strong safeguards for employees.

The current industrial relations system in Australia is, we believe, complex and somewhat confusing. Businesses are being micromanaged by a centralised agency. The system does not provide incentives to small business, in particular to farmers, to foster strong human resource management systems at their workplaces to improve productivity. Work Choices retains the award system but also provides a simpler agreement-making process that will be conducive to farmers providing new opportunities and flexibility at the workplace.

The key point is that labour shortages are real in rural Australia. We have real shortages at both the skilled and unskilled levels. We believe the flexibility that is provided in the new legislation will go some way towards overcoming those very severe shortages. We believe that is the key positive we support in the legislation going forward and we believe that this legislation is good for rural Australia and, importantly, good for rural employees.

CHAIR—Thank you. Do you wish to say anything, Mrs Wawn?

Mrs Wawn—No, thank you; we will leave it to questions.

Senator BRANDIS—Thank you for your submission, Mr Corish. One of the features of contemporary Australia that we hear about all the time is the question of the drift of population off the land and into the cities, so I was encouraged by what you have said in relation to the likely effect on farming communities of this legislation. I wonder if you would care to elaborate about the ways in which you see this legislation assisting the arrest of the drift off the land.

Mr Corish—Thank you for your question. Eighty-five per cent of Australians now live on the coastal fringe, as it is broadly termed. The issue of population drift towards urban Australia is one that is certainly contributing to our labour shortage problems in rural Australia and to a number of other social issues that we are hoping to address to some degree in the near future. With regard to workplace relations and employment opportunities in rural Australia, many farmers now negotiate with their potential employees an employment package that is outside the current award system that we believe is overly complex and that perhaps in many cases places burdens on farmers that create difficulty for them. For example,

the provision of accommodation, the provision of access to a work vehicle for social use, the provision of electricity, the provision of farm produce in the form of meat, eggs or milk—all those things are very difficult to take into consideration while negotiating an employment package, whereas under the new system we believe there is more flexibility to incorporate those particular benefits that the employee wants and the employer wants to provide. We believe that is a very basic example of the way that the new legislation will free up the system and provide the flexibility that is required to, hopefully, promote people into working and wanting to work in rural Australia.

Senator BRANDIS—Which is the main union that farmers have to deal with? Is it the AWU?

Mr Corish—Yes.

Senator BRANDIS—One of the effects of this bill, as I understand it, is removing from the employer/employee relationship the intervention of the third party, the AWU. Do you apprehend that that may reduce the costs of employing rural labour—not the wages but other costs, such as the externalities arising from the intervention of the third party?

Mr Corish—Mrs Wawn is much closer to that issue than I am, so I might ask her to respond to that.

Mrs Wawn—It is really two third parties that impact on how we operate on the farms. It is not only the AWU but, more importantly, it is the Australian Industrial Relations Commission. Particularly through national test cases they prescribe prescriptive provisions within all awards to make employers undertake certain work practices regardless of the needs of the individual workplace. So we believe that while you are maintaining awards and maintaining union involvement in awards, the simplification of agreement making makes the process far simpler for farmers to implement agreements, thereby reflecting their needs at the workplace and reducing costs and taking away the prescription that is currently in place. A good example in shearing is the prohibition of weekend sharing.

Senator BRANDIS—Do you anticipate that the elimination or reduction of those costs—costs that the employee never sees—to the employer could result in higher wages for the farm employee?

Mrs Wawn—There are certainly huge numbers of opportunities for higher wages under the current system, particularly in relation to agreement making. We are already seeing higher wages in the bush because of labour shortages, but we believe that there are greater opportunities—as Mr Corish said earlier—to increase the packaging opportunities that farmers like to provide their workers with to encourage them onto the land.

Senator BRANDIS—So would you say, Mr Corish and Mrs Wawn, that this could be a win-win option—lower costs for farmers, but higher wages for rural workers?

Mr Corish—That is certainly a reasonable assumption to make. We hope that it also improves employment opportunities in rural Australia, particularly for people who may be considered unskilled. It may also encourage farmers to employ that additional person and provide some training opportunities for them, whereas currently, for the reasons you have outlined, that may not be possible.

Senator BRANDIS—So that is your expectation, Mr Corish?

Mr Corish—Certainly our expectation is along the lines that, because of the simplification of the negotiation and the reduction in the impact or influence of third parties, the employment relationship will become simpler and, we believe, therefore more flexible. That should be a positive.

Senator BRANDIS—Presumably there would also then be a multiplier effect through the rural economy which would have an impact on rural towns for persons not directly employed by farmers or pastoral industries.

Mr Corish—While only around 300,000 people are employed directly in agriculture, data we have at NFF provided by the Australian Farm Institute indicates that indirectly in excess of 1.2 million people are impacted directly by rural activities.

Senator BRANDIS—Is that 1.2 million including or as well as the 300,000?

Mr Corish—Including the 300,000.

Senator BRANDIS—So we are talking about 300,000 on the land and 900,000 who indirectly derive their income from agriculture.

Mr Corish—Correct.

Senator BRANDIS—Would you expect the effect of this legislation to be beneficial for those people?

Mr Corish—Certainly, if farmers are more efficient and, hopefully, become more profitable, and the relationship with their employees is more positive and more effective then we would expect those flow-ons to occur into other parts of the rural communities.

Senator BRANDIS—Another problem that we hear about is the decline of the family farming business, particularly in the pastoral industry, and the consolidation of that part of agriculture into large holdings. Do you expect that one of the consequences of the effects you describe might be to arrest the decline of the family farm?

Mr Corish—Interestingly, 98 per cent of farming businesses in Australia, as we understand it, remain family farming operations. However, some of them are becoming quite large. The trend is towards larger farming operations but, importantly, most of those operations that are getting bigger are family farms. We expect that trend will continue. At the other end of the scale there is also an increase in lifestyle farmers, particularly around urban and regional centres. We believe that that trend will continue.

Senator BRANDIS—By 'lifestyle farmers' do you mean the sorts of people who are sometimes sarcastically called Pitt Street farmers?

Mr Corish—Exactly. Certainly there are very significant employment opportunities in that group because many of those people have very few skills with regard to farming operations. They also have other priorities—for example, being a barrister. So there are real employment opportunities in those areas. There are increasing employment opportunities at the other end of the scale in those larger farming operations. And if we can have a more efficient and effective set of workplace relations for the middle group—the smaller family farms—there will certainly be increased employment opportunities in that section as well.

Senator BRANDIS—It sounds to me that you are of the view that this legislation is going to be beneficial not just for farmers but for rural townspeople and the rural work force as well.

Mr Corish—We have supported this legislation. We had a number of issues with the potential impact on non-incorporated farmers but the five-year transition period that the government has put in place and the commitment to education programs has certainly alleviated those concerns. We do very much support this legislation.

Senator BRANDIS—There has been an argument that a lot of farms are run as partnerships rather than as trusts held by a corporate trustee. Do you anticipate great difficulties for your members in changing the structure of their entities in order to comply with the legislation?

Mr Corish—Certainly in excess of 90 per cent of farming operations are either partnerships or sole trader entities. So they would automatically be excluded from access to the reforms. However, the transition period that has been put in place, the fact that Victoria have referred their industrial relations powers to the Commonwealth, and the fact that the Commonwealth system will work automatically in the two territories will limit the negative impacts. The key thing is that those partnerships and sole traders will be protected by the transition period. That is something we pushed hard for in our discussions leading up to the legislation.

Mrs Wawn—I think the key issue about workplace relations reforms is that the NFF recently undertook a labour shortage action plan, upon which we identified that the resolution of labour shortages would need to include workplace relations reform. We can make that action plan available to the committee. I have a copy here, if you wish to peruse it.

CHAIR—If you would not mind tabling that for the committee that would be very good, thanks.

Senator MARSHALL—Can I take you to paragraph 49 of your submission, where you talk about the averaging of the 38-hour guarantee over a period of up to 12 months. You indicate that that flexibility is required in your industry. Can you make that example real for me?

Mrs Wawn—Certainly. A provision in the pastoral industry award states that a station hand can work 152 hours over a four-week period. That very much reflects the seasonal nature of the industry and obviously the animal welfare issues concerning pastoral properties, along with weather impacts. This is a seven-day-a-week industry that has a huge number of peaks and troughs. While you may provide work of around 40 hours to 45 hours one week, it might only be about 32 hours the next week, depending on what is needed on the property. So that averaging period, without the provision of overtime costs, has been particularly important for that award. We need to ensure that provision is retained; otherwise, there would be substantial negative cost impacts on the industry if that 38-hour week standard only applied to a standard week as opposed to the averaging provisions that have been critical for us.

Senator MARSHALL—And there would be other examples where the seasonal nature that you talked about would be more defined into seasons?

Mrs Wawn—That is right. For example, in horticulture, you might guarantee six months work. A lot of our agreements with cattle stations in the Top End cover a large amount of work done over a period of, say, eight months, but then they will have four months off and so on. That averaging not only within a month but over a 12-month period was quite critical for some of the agreements we currently have in place.

Senator MARSHALL—Is it your understanding that the act provides for ordinary hours within that averaging over 12 months?

Mrs Wawn—Our understanding is that the act provides for ordinary hours and that any overtime that is worked over and above that can be dealt with in the industrial instrument that relates to those employees.

Senator MARSHALL—We will assume that we are on the so-called fair pay standard. If people work more than 38 hours in a single week—as long as the average is not exceeded over the 12-month period—are any of those extra hours during any given day or given week still paid at ordinary time?

Mrs Wawn—My understanding is that it will depend on the industrial instrument concerned. If the award specifies it is only a 38-hour week that cannot be averaged and anything over and above 38 hours is overtime then that that overtime will apply. If it is in our award, for example, that the average is over four weeks then overtime does not apply until after the 152 hours are worked. So, while there is the guaranteed minimum of 38 hours that has to be averaged, that can be more prescriptive, depending on each of the instruments that relate to the particular employee's work.

Senator MARSHALL—But if we only apply the fair pay minimum so that the award provisions will not apply in this respect, how do you see ordinary time working?

Mrs Wawn—It would be 38 hours averaged over a 12-month period, unless otherwise prescribed in the instrument.

Senator MARSHALL—When will overtime actually kick in?

Mrs Wawn—It will depend on the instrument, so in the pastoral industry—

Senator MARSHALL—Let us base it on the fair pay minimum standard.

Mrs Wawn—You are putting that out of context, though, because the Fair Pay Commission does not stand alone. It stands in conjunction with an agreement or it stands in conjunction with an award. That is how we certainly operate in terms of the employees whom we are concerned with. We look at it purely in those terms.

Senator MARSHALL—Let me clarify the position. There is the ability to have an AWA which measures itself against the five minimum standards, the minimum wage and which excludes all the other provisions of the award—and I am not suggesting that will necessarily be the case in 100 per cent of cases?

Mrs Wawn—Yes.

Senator MARSHALL—In that case, the guarantee of 38 hours is set out in the Work Choices bill. Let us look at that scenario for a moment.

Mrs Wawn—Can I just clarify: with overtime specifically being prescribed as not applying, given that it is one of the preserved entitlements?

Senator MARSHALL—That is right.

Mrs Wawn—For example, most professional workers work on an annualised salary.

Senator MARSHALL—No, I am talking about your industry.

Mrs Wawn—In our industry, they have to comply with the award or with an agreement. They will have to be covered by an industrial instrument.

Senator MARSHALL—We are trying to explore the impact of the legislation. It enables a number of ways to get an agreement, but one of the ways is to have an AWA, an individual contract, that only has as its basis the minimum conditions set out in the legislation—the five minima and the minimum rate. Under those circumstances—and I am not suggesting that this will be the situation in every case—when do you know what will be in excess of ordinary hours?

Mr Corish—Perhaps I can use my own farming business as an example in an attempt to answer your question. I have a number of employees who are all on AWAs. The advantage of those AWAs is that they clearly define the terms of engagement and the conditions. The AWAs define very clearly a minimum period of work on a per fortnight basis and clearly outline the circumstances where additional hours will be paid, under what terms and at what rate. We have clear provisions where, for example, in times of planting, harvesting and shearing there will be an expectation that the employee will work those additional hours. But it is also very clear in those AWAs that there will be times when the time of work or the period for work is actually reduced. To me, that is one of the real advantages of Australian workplace agreements; that is, that they can clearly define what those conditions are.

Senator MARSHALL—When those provisions are clearly set out in an agreement there will not be a problem, but there will be many instances where people are purely relying on the Work Choices bill to determine the answer. Is it your understanding that, in the periods when people are working fewer than 38 hours a week, they still have to be paid for the 38 hours?

Mr Corish—I would defer to my colleague, but I will make one point. I would suggest that, if they were not, the chances of engaging those employees and retaining such employees in periods when there are real shortages of skilled and unskilled staff in rural Australia would prevent that circumstance from happening.

Senator MARSHALL—We are dealing with the bill as it stands at the moment—

Mr Corish—I defer to my colleague.

Senator MARSHALL—and my understanding is that the department have advised us that in weeks when people are required to work fewer than 38 hours a week they still have to be paid for 38 hours a week. I assume from their answer that you effectively bank up hours that can be worked for no wages later on.

Mrs Wawn—That is correct.

Senator MARSHALL—Is that your understanding of how the legislation works?

Mrs Wawn—We see it as no different from what currently prevails. If you work 152 hours over a four-week period and in one week you work only 30 hours, you still get paid 38 because you are guaranteed—

Senator MARSHALL—But the significant difference is that that is over a month as opposed to 12 months. How would it work if, for the first six months, you had people working for 20 hours, who were required under the legislation to be paid for 38 hours, and they resign their employment?

Mr Corish—Again, if I may comment from a practical point of view: if they are employed for 38 hours a week, they would expect to be remunerated for that minimum time. In practice, I would assure you that, from a rural Australia perspective, the chances of retaining employees and only paying them for a lesser period could not be sustainable.

Senator MARSHALL—I am just trying to explore how the legislation will work in practice in some circumstances. In the seasonal nature that you have described, there would be a number of months when someone would start employment but you would only require them for a shorter period of time. So they are being paid for 38 hours but have only worked 20 for two months and then they resign their employment. I assume that, under the act, people are going to be able to resign from employment if they so desire. How would you deal with that situation?

Mrs Wawn—I would need to double-check one of the agreements, but there is, from my recollection, an averaging provision that takes that into account. But, if you are guaranteeing them that pay then of course you have to pay them regardless that they might have worked only 25 hours—

Senator MARSHALL—I am talking about what the act guarantees, not what you might do in an agreement.

Mrs Wawn—Obviously, from a reading of the act, there is no prescription there per se. It would be over and above what was agreed to between the parties. Obviously, if there is no agreement—which is, I guess, what you are referring to—as to what happens under those circumstances, then they would be guaranteed to be paid for that 38 hours if they were employed as a full-time person.

Senator MARSHALL—Are you suggesting that in the form of an agreement you can pay people for less than 38 hours?

Mrs Wawn—If they were a part-time employee, yes.

Senator MARSHALL—We are talking about full-time employees.

Mrs Wawn—The full timer gets paid full-time wages.

Senator MARSHALL—I just want to be clear about this. If you are a full-time worker and, under the averaging arrangement, you are only required to work for 20 hours, say, for two months straight, what do you say you are required to pay that person? Would it be for 38 hours a week?

Mrs Wawn—It is a difficult example to use because if you were working someone 20 hours over two months you would not have that type of arrangement. It would be more under

a seasonal prescription guaranteeing certain hours. It is not a practical example. If you had someone on full-time averaging then you would be pretty close to the 38—

Senator MARSHALL—Let's not say 20; let's say 35.

Mrs Wawn—If it is 35 then you pay them for 38.

Senator MARSHALL—You pay them for 38 regardless. You talked about bundling up rewards. You gave some examples, such as the use of work vehicles for private use or farm produce being bundled up into an overall package. I wonder about the simplicity of that. Does it defeat the purpose? How does the tax treatment apply if we are bundling things like a dozen eggs a week into a wage package? What value is put on those things?

Mr Corish—Certainly, a value has to be put on those packages and, if applicable, fringe benefits tax has to be applied. That is something that farmers are of course very aware of because the items that I mention are often an important part of the employment package.

Senator MARSHALL—Won't the reality be, though, that those things are done outside the employment arrangement, but known about and understood such that the wage is decreased proportionately and those things are given outside of the agreement?

Mr Corish—Without sounding flippant, I can assure you that my accountant is very attuned to what is provided under those circumstances in an agreement. I would suggest that accountants who deal regularly with rural clients are very aware of those issues.

Senator WONG—Mr Corish, you were quoted in the media prior to this legislation being tabled expressing concern as to the coverage of the legislation insofar as it relates to your members. I think you have reiterated today that 90 per cent of Australia's farming entities would not, other than in the transitional period, be brought into the system.

Mr Corish—Yes.

Senator WONG—Do you recall making some public statements indicating concern about the problems that farmers would face from the requirement to incorporate in order to access the system?

Mr Corish—Yes.

Senator WONG—In your submission, you make reference to that. You talk about the five-year transition period. The difficulty is that 90 per cent of farming entities would not be incorporated entities. Correct?

Mr Corish—Correct.

Senator WONG—And there are a range of taxation and other benefits which flow to unincorporated bodies that may not, under current policy parameters, flow to incorporated bodies.

Mr Corish—Correct.

Senator WONG—So what you have in order to deal with that issue is the five-year transition period?

Mr Corish—Yes.

Senator WONG—What happens at the end of that?

Mr Corish—The short answer is that we rely to some extent on the referral of the state industrial relations powers to the Commonwealth during that time. Of course, that may not in fact happen, and that is the reality of the situation. But over that transition time farmers will have the opportunity to gain a better understanding of the legislation and consider whether in fact it is worth while incorporating part of their business for the purposes of employing people. That may mean a separate entity. Of course, there are issues associated with that. Farmers will need to be much better educated on those issues to ensure that they can make a value judgment. That is another reason why that five-year transition is just so important.

Senator WONG—So what you are essentially saying is that, over the five years, the NFF's position would be firstly to encourage the states to refer powers. But the states have made their position on this legislation very clear, so can we put that to one side for the moment. The other strategy that the NFF is undertaking is to encourage its members to incorporate at least in part in order to access this system?

Mr Corish—No, the other strategy that the NFF is undertaking is to ensure that our members, through our member organisations, have full information available to them so that they can make an assessment as to whether in fact they should incorporate part of their business to take advantage directly of the reforms or make whatever other decisions they make based on their own individual circumstances.

Senator WONG—But they will not be able to access this system. Unless the state governments have a change of heart, they will not be able to access the system in five years unless they incorporate.

Mr Corish—That is true. If they were a large employer, for example, there would be an opportunity for them to perhaps create an employment entity. That entity would obviously be incorporated. That may be part of their overall business. But, in the case of a very small farmer who may only employ on an irregular basis, they may choose not to make that decision.

Senator WONG—Have you told the 90 per cent of your members who are not incorporated that part of the NFF's support for this bill is predicated on an assumption that at least a significant proportion of them will actually incorporate?

Mr Corish—We have made it abundantly clear that the major concern that we had about the proposed legislation—and we have been on record saying this several times—was the impact or potential impact on unincorporated farm entities. That is why we support the five-year transition period—to actually give farmers time to assess how they address the issue in the longer term if the states do not refer their powers to the Commonwealth.

Senator WONG—But the situation may well remain the same after five years.

Mr Corish—That is correct. We hope that he does not—

Senator WONG—But you are supporting the legislation nevertheless?

Mr Corish—We are supporting the legislation regardless.

Senator WONG—In the reference to farm management deposits in the submission at paragraph 33, you talk about encouraging people or assisting people to incorporate. You make the statement that obviously you want to ensure that it 'does not result in a detrimental impact

on the benefits of not incorporating particularly in relation to tax benefits such as farm management deposits'. Then you say:

We seek the assistance of the Federal Government in relation to this matter.

What do you mean exactly?

Mrs Wawn—We are looking at ways in which the actual process of incorporation for farmers can be as simple as possible and at the costs associated with incorporating. We are looking at—

Senator WONG—I would ask you to refer to the farm management deposits issue. That is the sentence I wanted to draw your attention to.

Mrs Wawn—The FMDs are not available to farmers who are companies.

Senator WONG—Correct.

Mrs Wawn—As a consequence, that is the reason we are recommending the establishment of a company for employment. That ensures that the remainder of the farming business maintains its FMD coverage.

Senator WONG—So, basically, you want FMDs to be able to be accessed even if people incorporate in whole or in part?

Mrs Wawn—They would only be able to access FMDs if they were incorporated in part. If they decided to incorporate as a whole then they would not be able to access FMDs.

Senator WONG—Have you costed this? Do you know the cost implications of this?

Mrs Wawn—The cost implications of incorporating—

Senator WONG—No, of the revised regime—partial corporation and continued access to FMDs. Has that been costed?

Mrs Wawn—No.

Senator WONG—But, essentially, your position is that you will be suggesting to Australian farmers, 'We want you to partially incorporate so you can access and so you can continue to access farm management deposits.' Is that how I understand it?

Mr Corish—No. Our job is to ensure that our members are as best informed as possible so that they can make their own decision having regard to their own circumstances. You can understand that, because of the differences in the style and scope of farming activities and enterprises right across Australia, there is not a simple one-size-fits-all solution to that issue.

Senator WONG—I agree with that, Mr Corish. But, as I understand what you are saying, one of the clear avenues that you would be proposing if your members want to access the federal system post the five years when the award coverage ends, when the transitional period ends, is what I would suggest is a fairly complex arrangement of partial incorporation so that they can access the federal system, and that what you are lobbying the federal government for is continued access to the FMDs in those circumstances.

Mr Corish—As I said, what we are focusing on is to ensure that farmers can make the best decision. For example, again in my own case, we have been through that process and we did not find it cumbersome with regard to ongoing costs.

Senator WONG—Have you explained to your membership that this is what you are proposing?

Mr Corish—Certainly our member organisations are very aware of the complexities of this arrangement if at the end of five years the various states have not referred their power to the Commonwealth.

Senator WONG—So they understand that you are looking at partial incorporation?

Mr Corish—Certainly we have made our member organisations very aware of it.

Senator WONG—And you have not costed this process at all?

Mr Corish—I would suggest that there are some basic costs of incorporation that are well known. But part of the education process that we believe must be undertaken, and we have been encouraged by comments from the government with regard to their participation in this, is making farmers very aware of all these issues as a key part of that.

Senator WONG—What about any additional—

CHAIR—I will have to stop you there.

Senator WONG—It is my last question. What about any additional cost impact of the farm management deposits being accessed by incorporated bodies? Have you costed that?

Mr Corish—I do not quite understand your question.

Senator WONG—To the Commonwealth.

Mr Corish—I do not believe there would be any impact.

Senator WONG—Thank you.

Senator MURRAY—Mrs Wawn, I pricked up my ears when you were talking about weekend shearers. Will you remind me of the attitude of the National Farmers Federation to Sunday? Do you regard it as an ordinary day of the week, or do you regard it as a special day?

Mrs Wawn—There are two components to the Pastoral Industry Award. The station hands award deems it a seven-day-a-week industry, so Sunday is not deemed as a special day but an ordinary working day. In the shearing component of the award, there is a prohibition on shearing on weekends.

Senator MURRAY—So are you telling me that, at the moment, there are no penalty rates that apply to working on a Sunday in the agricultural industry as a whole?

Mrs Wawn—Station hands under the federal Pastoral Industry Award only have penalty rates or overtime once they have worked their 152 hours of the four-week period, and then only certain penalties and overtime apply. But, otherwise, it is over a seven-day week not a five-day week. We do not attract penalties on weekends unless the hours provision kicks in.

Senator MURRAY—And the state awards?

Mrs Wawn—State awards usually operate on 152 hours over four weeks, but on a five-day or 5½-day roster, and they have penalty rates on Sundays and Saturday afternoons.

Senator MURRAY—So penalty rates almost universally apply under state awards but not under federal awards.

Mrs Wawn—Predominantly under state awards and not federal awards, that is correct. In the horticulture sector there are penalty rates on weekends, but if we are looking purely at the pastoral industry, which covers the vast bulk, that is correct.

Senator MURRAY—I obviously understand that your cows have to be milked and that they cannot wait until Monday but, having said that, I have also long been a strong believer in Sunday as a family day, and that is one of the reasons I have opposed the 24/7 approach to the deregulation of trading hours, for instance. I was glad that Western Australians agreed with me and voted against massive deregulation of trading hours, because I think that sport or being with your family or attending church, or whatever turns you on, is an important thing. How do you think that approach is going to be accommodated under the new system? As I understand it, the farming community very much have that view. They are family oriented.

Mrs Wawn—The seven-day week section of the pastoral industry award has worked for decades. The pastoral industry award has been around for nearly 100 years. Certainly, from looking back on that award we have always had a seven-day week operation. That does not necessarily mean that you are rostered to work on weekends. Families are accommodated in the rostering provisions so workers can have weekends off or take turns to have weekends off. Families are a very important component of attracting people into the industry. We have operated for years and there have never been real concerns expressed, certainly not to the NFF, about the difficulties of not attracting penalty rates on weekends.

Senator MURRAY—People lose the penalty rate condition by moving from state awards to federal awards; that should be the effect of this legislation for quite a number of them. Isn't that a negative effect on work-family relationships?

Mrs Wawn—Our understanding of the transitional arrangements between state and federal is that the existing state award will be in place as an agreement for a period of up to three years. That will then play a role in determining what is at the next level. Nevertheless, the federal industry has worked on the seven-day week premise for a long time. We are aware that there are potentially higher hourly rates overall in the pastoral award—above award wages—to compensate for no penalty rates on weekends. We have never done a comparison of real wages being incurred through the state award system as opposed to the actual wages being provided by the federal pastoral award respondents. It is hard to compare when we do not have that analysis as to whether there are actual differences.

Senator MURRAY—Mrs Wawn, I have known you a long time and you are pretty good with statistics. Can you tell us what percentage of those employees who fall under your aegis will not transfer into the new system because they will remain under the state systems?

Mrs Wawn—It is going to be quite different in each state. It depends on the circumstances in each state.

Senator MURRAY—And by industry, I would think.

Mrs Wawn—To some degree. Mainly it is a state problem—a state differential as opposed to commodity group. In Queensland, for example, where there is no federal award coverage in agriculture, the incorporated businesses will go into the federal system. Many of those are large pastoral companies that have wanted to get into the federal system for some time. The remainder will stay in the state system. We think about 80 per cent in Queensland will stay

and anywhere between 10 and 20 per cent—we are not sure of definite figures—in Queensland will go into the federal system. In New South Wales, Tasmania, South Australia and Western Australia we believe about 10 to 15 per cent are incorporated. Of the 80 to 90 per cent unincorporated, around 30 per cent are currently in the state system. The vast bulk of farmers have always operated in the federal system, not the state system. That is why the transitional period was so important to us. Obviously, in the territories and Victoria there is 100 per cent coverage regardless of their legal status. So it will depend on each individual state.

Senator MURRAY—Mrs Wawn, I do not want to put you to a lot of effort but we have a short deadline. Do you think you could supply the committee with a table showing that for the states and territories?

Mrs Wawn—We already have that so I can make that available. We have used it for internal purposes.

Senator MURRAY—Thank you. It will be useful in the report. Mr Corish, you have paid attention to the aftermath—the bill passes and it is law—but you are still going to have this uncertain mix of state and federal. You have recommended that negotiations commence between the state and federal governments to resolve outstanding issues and create a truly unitary system. Is that a correct summation of your views?

Mr Corish—Yes.

Senator MURRAY—The state and territory governments have made it clear that they will challenge the legislation before the High Court. I suppose it could either succeed or fail, or maybe it will succeed or fail in part—I do not know. Assuming it fails, what mechanisms do you think there are to move from a situation of confrontation—because this is a hostile takeover—to one of negotiation and compromise?

Mr Corish—If we assume that any legal challenge failed, as you are suggesting, the key point in our view is that, by the implementation of these reforms, dare I suggest, some of the scaremongering that has gone on in the lead-up to the introduction of the legislation may in fact prove to be excessive. The world will not fall in with these reforms in place, and perhaps at that stage there will be an atmosphere more conducive to real negotiation to ensure that we do end up with one unitary, much simpler and more effective system in Australia. That will not happen overnight; it will happen over time.

Senator MURRAY—What is exercising my mind on this is that the transitional arrangements and the contractual arrangements are so great, because you have to wait for certified agreements and individual agreements to expire and you have the transitional arrangements in the bill. The real effects of this legislation, to me, may not be apparent to 2007-08. If I judged the Australian Industry Group's evidence correctly yesterday, Ms Ridout suggested it could be three to five years before we know. Would you envisage an early negotiation process or to wait and see what the effects are?

Mr Corish—That is very difficult to predict, but overall in Australia, if the new legislation works in an effective way, in the manner that we believe it will, I would like to think that there may be opportunities for those negotiations, from a rural perspective, to be sooner rather than later. But there will certainly be a whole range of things that may impact on that that I

may not be aware of. Certainly my view, and our view at NFF, is that the transition time is a positive thing. It will give the opportunity for the reforms, the new legislation, to be bedded in and for people to begin to understand what are hopefully the positive impacts of the introduction of this legislation.

Senator MURRAY—You seem to indicate satisfaction with the present system of Australian workplace agreements in your personal circumstances. Why do you think it is necessary to change the AWA process if it is already working well from your perspective?

Mr Corish—Simply because, under the Work Choices package, there will be some simplification of the AWAs as they currently exist. Please bear in mind that only a limited number of rural employers take the opportunity to use workplace agreements. The vast majority do not have that opportunity.

Senator MURRAY—Are most on common law individual agreements?

Mr Corish—Yes.

Senator MURRAY—Relating back to the award?

Mr Corish—Correct.

Senator MURRAY—Thank you.

CHAIR—The government questioners have 11 minutes left. Senator Nash, you have five minutes and Senator Joyce has six minutes.

Senator NASH—Certainly, Senator Murray is quite right in saying that the cows cannot wait until Monday to be milked. I think that is a very good example of the flexibility that is needed for regional areas. I know that NFF was keen to see a three-year transition period—and, indeed, we have put a five-year period forward—but what feedback have you had from people out in rural communities about the five-year transition period?

Mr Corish—To be frank, the first reaction has been: 'Why do we need it?' The education process over the next few months is extremely important so that people in rural Australia fully understand the importance of the transition time. The reaction that I have received has been positive in regard to the points that Senator Murray was raising and to the opportunity for farmers having time to assess the impacts of the new legislation on their individual farming businesses. They are so diverse in that regard that virtually every farm has a different reaction and a different set of circumstances. The longer the transition time is generally seen as a positive.

Senator NASH—Just following on from the comments made earlier, in your view would the ability to partially incorporate not be too onerous?

Mr Corish—Certainly my experience is that it is not too onerous. There is the cost of incorporation—in other words, the cost of forming a company. There is the ongoing cost of a separate set of financial statements and, therefore, accountancy fees. So there is some cost but it is not tens of thousands of dollars, particularly when you consider that the relationship between the two entities is of course very close. In the case of larger farmers, I would suggest that the trend will be towards incorporation. Very small farmers will have to assess it in regard to their own circumstances.

Senator NASH—There has been a lot of discussion lately about some of the very different awards that exist in the pastoral industry across the states and their variations—for example, you get paid more for looking after a bicycle than a horse. In terms of the simplification—

Senator MURRAY—They are worth more.

Mr Corish—Not necessarily.

Senator MURRAY—Have you been to a bicycle shop?

Senator NASH—You have been riding the wrong horses! In terms of the simplification being put forward under the Work Choices bill, which areas of the agricultural industry in general do you see as benefiting most from simplification?

Mrs Wawn—We are relatively lucky. It is going to predominantly relate to the horticulture sector more than to any of the other sectors because the horticulture industry award is quite complex and prescriptive. We are quite lucky with the pastoral industry award. It is probably known as one of the most flexible awards that exist—but, as one of the most flexible awards, it is around 40-odd pages long.

Comparing it to some of the other awards that are 150-200 pages long, I think puts into perspective the requirement on small businesses to follow all this regulation. We are not talking about one or two pages; we are talking about over 100 pages. At least in the pastoral industry, we have a slightly less complex system. Nonetheless, I think there are key issues on award simplification. For example, in one of our horticultural awards there is no part-time provision. We would like to put part-time into the award. We would like to streamline some of the conditions relating to weekend work and seasonal work and those sorts of things in terms of encouraging people to enter the industry. For example, we have experiences of where women cannot enter our industry at the moment because of prescriptions on times upon which work has to be undertaken. We would like to take those prescriptions out so that there is a lot more flexibility about when you can work. So there are a huge number of opportunities. In comparison to some other awards we are quite lucky. There are going to be a lot of opportunities in other awards whereas our task will not be as cumbersome as theirs.

Senator NASH—I refer you to a comment you made in your submission, which is:

The reforms will remove some of the more excessive regulation that currently exists in workplace relations law while continuing to provide strong safeguards for employees.

Can you outline what you see those strong safeguards as being?

Mrs Wawn—Certainly. No. 1 is that we are keeping awards. The award system is being retained without too many changes. The other important aspect is that there is still a strong safeguard in relation to the fair pay standard. In fact, the fair pay standard is actually introducing standards that are beyond some of the conditions in our industry. For example, the personal carer leave provision in our awards is less than the standard, and we believe that there are trade-offs there. There are also the preserved award rights in terms of negotiating agreements. So there are three key areas there that provide strong safeguards. Agreements are there by agreement. Awards will still play a strong role, particularly in those industries that have not been highly reliant on agreements but may do so down the track.

Senator JOYCE—Would you say that there is a close relationship on farms, closer than a lot of other employee-employer relationships?

Mr Corish—Definitely. There is no doubt, particularly in small farming enterprises, that the relationship between employers and employees is often very close. They generally work together on a day-to-day basis, often involved in hands-on work, so it is natural that that relationship is strong. There is also the fact that often they live on the same farm. The employees' families live on the same farms as the employers' families, and often in close proximity.

Senator JOYCE—And they would have particular knowledge which an employer would be very willing and wanting to keep on the farm—such as how to start a pump, how a tractor works, how stock run. All that sort of information is very particular.

Mr Corish—Even employees who come onto a farm with no skills and no understanding of farming practices are usually quite skilled by the time that they have been there for six or 12 months. I suppose it is the hands-on complexity of the operation that encourages that.

Senator JOYCE—So they would have a very strong bargaining position, wouldn't they? The last thing you would want would be for somebody with all that knowledge to walk out the front gate, because they would just walk down to the next employer.

Mr Corish—Absolutely. The evidence is that there are real shortages of both skilled and unskilled labour in rural Australia. You only have to look in the rural newspapers each week to see the number of position vacant advertisements. Your assumption is correct: a lot of those employees, particular those who have been on a farm for two or more years, have a great understanding of the various operations of that particular enterprise.

Senator JOYCE—Do you pay any of your employees the award or do you pay them all above the award?

Mr Corish—In our own case, under our AWA system, they are all paid above the award.

Senator JOYCE—Do you think you would have any chance of employing someone if you offered them the award? I know that around St George you would not have a hope.

Mr Corish—I can assure you that the chances of employing someone based on the award or at the award would be very slim, because there are opportunities for them elsewhere to get above the award.

Senator JOYCE—So this process is currently in place; I know in a place like St George we are on two per cent an employee. I want to go to another thing. Do you think there is a strong correlation between the level of social cohesion in a town and the level of employment?

Mr Corish—Most definitely there is. There is no doubt that the rural communities that have a strong base of employment—in other words, low unemployment—are much more cohesive and, dare I say it, generally better communities than those that have the opposite.

Senator JOYCE—You might want to take this on notice. Can you tell me anything about the level of Indigenous employment in Australia and the trends that have been involved with that? Maybe you could look at it pre Whitlam and post Whitlam.

Mr Corish—I would certainly have to take that on notice. I am not up to date on that at all.

Senator JOYCE—I can help you out: it has fallen post Whitlam. Would there be certain people such as shearers who we might have a concern with because their bargaining position is going to be such that they might be able to get way beyond what the award is? The award has actually been a dampener on what they have been paid.

Mr Corish—I will ask Mrs Wawn to add to this but my experience is that, yes, that is the case—there are many shearers out there who are paid above the award.

Mrs Wawn—The Australian Workers Union's recent survey showed that about 60 to 70 per cent of shearers were paid above award. The current award rate per sheep is just under $2.10 and the average rate at the moment is between $3 and $3.50 per sheep.

Senator JOYCE—You were talking about the cost of corporate restructuring. You said it is not onerous in comparison to the benefits. Would that be a fair statement even though there may be some costs involved with getting the benefits of this legislation? In noting the benefits you get from being able to avail yourself of the legislation, you would certainly take on those costs.

Mr Corish—I think that is why the transition period is so important. Farmers do not have to make those decisions in the next five minutes; they have time to evaluate the impacts of the legislation on their own business. I would suggest, from my experience, that the larger farmers will go down that track. The smaller farmers will certainly have to assess it a little more harshly. The transition time provides the opportunity to do that.

Senator JOYCE—That would be the same with all businesses, wouldn't it? If you could get a benefit from the legislation by corporate restructuring, you would do it.

Mr Corish—I would suggest that would be the case.

Senator JOYCE—Thank you.

Proceedings suspended from 12.30 pm to 1.18 pm

BARKLAMB, Mr Scott Cameron, Assistant Director, Workplace Relations, Australian Chamber of Commerce and Industry

HARRIS, Mr Christopher Lawrence, Senior Adviser, Workplace Relations, Australian Chamber of Commerce and Industry

HENDY, Mr Peter William, Chief Executive, Australian Chamber of Commerce and Industry

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

Mr Hendy—The Australian Chamber of Commerce and Industry is 104 years old. The chamber represents the Australian business community in all sectors of the economy and across all sizes of business: small, medium and large. We were representing employers when the Conciliation and Arbitration Court, as it was then called, was created in 1904. I want to make 10 key points supporting the Work Choices bill that is currently being looked at.

The first point is that our economy needs this reform. Australia has a partially reformed workplace relations system. Whilst we have made some important reforms, too much of the system is a product of the horse and buggy era. This is having a real impact on Australia. Productivity has stalled, unemployment may have bottomed out, we face skills shortages and an ageing population, and we need to take the next step if our economy is to continue to perform as well as it has since the mid-1990s.

The second point is that there is economic evidence in support of the reform. In our written submission, ACCI cite 54 Australian and international economic studies and commentaries supporting workplace relations of precisely the character now under consideration. The third point is that reform now is the right course to take. It is in precisely the current economic climate that Australia must pursue workplace reform. Reform designed to continue and further spread positive economic performance stands a far greater chance of success than waiting and having to implement overdue reforms in a panic at times of economic adversity. The fourth point is that reform makes economic downturn less likely. Reforms such as those in the Work Choices bill will help to avoid an economic downturn and ensure that Australia rides out cyclical or internationalised economic adversity with the greatest possible number of Australians remaining in work and the least impact on our economy and society.

Our fifth point is that enterprise based bargaining is not new. This is not a theory; it is the way employment already operates in contemporary Australia. Our sixth point is the minimum wages will not go down under Work Choices. Supported by an absolute guarantee of existing award wages, the new Australian Fair Pay Commission will review wages impartially and rigorously, as we understand it. Our seventh point is that awards will be retained and will remain the default model of employment under Work Choices unless employers and employees agree to some other approach. Our eighth point is that employees will gain new entitlements from Work Choices. To claim that Work Choices all works one way would be dead wrong. New protections for employees extend the obligations of some employers. Not only does this lead to complexity but it may also carry additional costs.

Our ninth point is that employees will be protected from coercion. It is patently untrue to claim that employees will be coerced into signing workplace agreements under Work Choices.

Protections will be retained and enforced by enhanced advisory and enforcement bodies. Our tenth point is that Work Choices is not perfect but it is a step in the right direction. In all, Work Choices represents a major advancement of Australian workplace relations across all the areas of the proposed reforms. Finally, we encourage the Senate to pass this legislation without delay.

CHAIR—Thank you very much. Obviously we will not have an enormous amount of time today for you to go over those matters, but I would like to ask you to respond to the issue of economic evidence in favour of these reforms. Perhaps you could tell us what is the view of Australian employers on these reforms.

Mr Hendy—We think there are two main elements of benefit in the package—that is, we are moving to a national system of industrial relations which will create efficiencies through moving away from six separate workplace relations systems; and we will be moving to more enterprise based bargaining through these reforms. The extent to which that will be able to occur will help kick-start productivity growth in Australia. This system is moving more towards enterprise based bargaining, in that decisions on terms and conditions are made in the workplace, where there can be productivity offsets that really benefit the Australian economy. In our submission we have quoted 54 academic and other studies that support that proposition.

CHAIR—That will obviously be taken into consideration in our report. I have another question that has often been asked both in the submissions and in our conversations on this: could you tell the committee exactly how, in your opinion, AWAs generate productivity increases?

Mr Hendy—AWAs are just another mechanism for agreement making. In this case, they are an individual agreement-making mechanism. The other primary mechanisms are obviously under the award system. You can do collective agreements that are awards or you can do collective agreements that are non-awards. The benefit of AWAs is that they are made in the workplace. The extent to which we can see decisions made in the workplace will help productivity. There is evidence cited in our submission that goes to this. Indeed, I can also go directly to AWAs where there has been a survey done by the independent Office of the Employment Advocate which shows that some 80 per cent of employers polled said that they thought that AWAs increased flexibility in the workplace where they had been introduced. Some 59 to 60 per cent said that they have increased productivity. I do not know if Scott has anything to add.

Mr Barklamb—All I would add to Peter's answer is that AWAs increase productivity the same as any agreement. The range of options and tools—from sophisticated KPI management and reward, gain sharing, profit sharing, all the sorts of gains that we have been talking about for 10 or 15 years—that are in certified agreements are possible through AWAs. However, in some workplaces, it drills down right through to very simple things such as start or finish times and core efficiencies in how you do your work day to day. So there is no single answer that encompasses all possible uses of AWAs, but we would say that it provides more employers with opportunities to pursue such productivity measures in their agreements. AWA making under the Work Choices reforms will reduce transaction costs, reduce administration costs and more easily translate the agreement of employers and employees at the workplace

levels into enforceable instruments and into new ways of doing things and more quickly translate their agreed approaches to unlocking productivity into practice.

CHAIR—There have also been some comparisons made between the present Australian Industrial Relations Commission and what is to be the Australian Fair Pay Commission. Perhaps you might comment on the role at present of the Australian Industrial Relations Commission. What is the current obligation on the AIRC to award an increase in the minimum wage?

Mr Hendy—Scott Barklamb is the employer advocate who speaks on behalf of the general employer community and he would be one of the key experts in Australia on the Industrial Relations Commission.

Mr Barklamb—Thank you, Peter. There is no obligation on the Industrial Relations Commission to increase the minimum wage. Nowhere in the Workplace Relations Act, nor in its predecessor the Industrial Relations Act, nor in the Industrial Conciliation and Arbitration Act, has there ever been a provision that says it must act to increase minimum wages as an obligation, nor with any particular periodicity, nor to any particular level. That is an area in which the AIRC has discretion and in which the Fair Pay Commission will have discretion. So we would say that that is an area of continuity between the two systems and approaches.

The questions in recent days, as I understand them, have come down to some of the matters that the commission will take into account against those of the Fair Pay Commission. I do not have the number to hand, but our observation of the new guiding provisions of the wage exercise of the Fair Pay Commission is that they continue to balance the needs of the economy and labour market against employees. Both concepts are still enshrined in there with important new additions about employment and employability and those who may be more vulnerably attached to the labour market or seeking work.

I can provide you with the practical experience of employers in the wage case. There are a couple of things that we really would like to say about it. The legalism and adversarialism of the quasi court case process we go to in the AIRC is directly damaging to the outcomes for the individuals who are covered by minimum wages, those out of work, for the employers and for the economy generally.

I would like to cite a couple of practical things that have really demonstrated to us difficulties with the approach. As we understand it, Professor Harding was called by the Commonwealth last year to give evidence. I raise this not for the specifics of Professor Harding but as an exemplar. The Commonwealth brought a very senior economist to give evidence about the employment effect of wage increases. The nature of the process ensured that his evidence was treated with the type of doubt process that you use in cross-examination in a court. He was as strong, and rendered as strong, only as the weakest of his answers. There was a system of doubt created in cross-examination by a quasi barrister process from the ACTU. It was not a case of an at-large elucidation of his expert views. He was not able to present the type of evidence that he came there to present. He was as strong only as the very narrow questioning of the ACTU's hostile questions.

That was not the first time that that has occurred. We have had that happen to other economic experts. That translates into key difficulties. There are things like not being able to

sufficiently take into account relationships between wage increases and employment—the elasticity question. We have included in our submission 54 papers which include a substantial number that go to that question. We say that there is an economic orthodoxy or understanding which is not sufficiently given effect to in the national wage decisions of the commission.

We have also through this court case and the hyperdoubt system that we have in these commission processes seen the evidence of our members, survey evidence that we have created, assessed with a very great degree of legalistic doubt and thrown out of the proceedings. The core thing that has disturbed us—which we look forward to having considered in a qualitatively different and hopefully superior manner—are arguments about wages, the elasticity of employment and the impact of wage increases in future.

CHAIR—What about the current obligation on the AIRC to award an increase on an annual basis?

Mr Barklamb—We say that there is absolutely no such obligation. That is a policy or principle—which is a word that we use a lot in these cases—of the commission which it has developed. The annual nature of the cases is simply a latter version of what we had in the 1970s. We had quarterly indexation and then in other periods we have had wages pauses and we have had inquiries. There is no rule in the system that it be annual.

I might add that the essential annual function at the moment is the ACTU in whichever dark, smoky rooms that it makes it ambit claims. That is the kick-off of the annual claims system at the moment. There is a principle, which should not be confused with an obligation, that wages not increase more often than annually, and that has been something that all parties around the table have supported during the past decade. That is a different matter. That is not an obligation to them each year.

CHAIR—That is right, and that is what I was asking about. Some have suggested that wage rates will naturally go down as a direct function of these workplace reforms. How does that statement accord with the experiences of your employers?

Mr Hendy—It directly goes against recent economic experience in Australia. The fact is that the only time you can actually have real wage increases is if they are matched with productivity growth. I know that is economist-speak and it causes a few people's eyes to glaze over, but the fact is that it is a formula that is correct. Unless you have arrangements in place, a system in place, that matches nominal wage increases with productivity, you do not have real wage increases. What we have seen from reforms that principally started in 1993 under the former government and were accelerated significantly in 1996 under the Howard government are changes that have rewarded and acknowledged the importance of productivity in agreement making. That is because we have moved further and further down the road of enterprise or workplace based agreements. We have seen real wage increases of the order of about 14 per cent since 1996. We think the runs are on the board and, if you want to extend the innings, you have to have these types of reforms continuing.

CHAIR—I know that your employers understand the labour market that they operate in, but the view often taken by their enemies—if I can put it like that—is that everyone will always bargain down any statutory minimum.

Mr Hendy—The plain fact from life in the labour market in Australia is that that is not true. If that were true, real wages would have fallen massively over the last 10 years—and they have not; they have actually gone up. In fact, we had one of the longest sustainable increases in real wages for decades. And the other golden reward from that type of change is unemployment at 30-year lows. They go together.

Mr Barklamb—I could add to that. The other part of that contention is that employers will bargain down to whatever minima you have. The other piece of evidence that we would say invalidates that is the experience with regard to conditions. There are already significant opportunities to change conditions and create agreements of a very flat, short, concise type. You can already do away with, or bargain into, some of the preserved matters—things like leave loading, shift allowances, weekend penalties and those sorts of things. You do not see that necessarily becoming a norm. What we aspire to is that those things are addressed in as many businesses as need to address them—no more, no less—where it is relevant. We think that there is no trend observed in the current bargaining that would lead you to predict that there will be any widespread move down to any statutory minima as such.

I am reinforced in that view by an observation that we make about the content of certified agreements. If a certified agreement must meet a test against an award, you would only ever see a certified agreement containing the 30 matters in awards, if that contention held true. Our experience, through a wide range of industries, is that bargaining is real, that people generally add to the number of things in awards. Certified agreements contain more items. So we think you can look to current experience to invalidate those types of predictions.

Mr Hendy—Just to add to that, it is relevant that a focus of the critics is obviously Australian workplace agreements. The argument is that people bargain away their hard-won rights. But the point is that evidence from the independent Office of the Employment Advocate shows that, on average, employees on AWAs earn 23 per cent more than their counterparts working on other agreements and that, in fact, higher earnings are seen across the income levels. It is not just managerial level workers; it is actually lower-paid workers. Women in the work force is one particular area where the critics of reform think that they have an Oxford debating point, but they actually do not. We find that women on AWAs earn, on average, 60.5 per cent more than women across the board.

CHAIR—Thank you for that.

Senator GEORGE CAMPBELL—Where did you get those figures from?

Mr Hendy—From the Office of the Employment Advocate.

Senator GEORGE CAMPBELL—Okay—a very impartial body.

CHAIR—One with a true grasp of the facts, I would have thought.

Senator GEORGE CAMPBELL—Just on that last matter, the statistics show that wages have grown by 13.8 per cent over the life of the government for the top percentile of wage earners in this country, and wages have grown by 1.2 per cent for the bottom two percentile—one-tenth of what has been available to the top percentile.

Mr Hendy—Sorry, what is the question?

Senator GEORGE CAMPBELL—Are you aware of those figures?

Mr Hendy—Not exactly, when they are presented in the format. I also know that earlier this year the Australian Bureau of Statistics put out its household income survey which showed that the income levels of the top deciles had grown at a lower percentage over the last nine years compared to those in the lowest decile. I think the difference was a 19 per cent increase for the highest decile compared to 20 per cent for the lowest, which actually shows a reduction in the gap between the two levels.

Mr Barklamb—I must add a query or a methodological caution to that, arising from the very extensive examination of household income distribution data in the last wages proceedings. Frankly, we cast some doubt on various contentions of the ACTU in the last case. The caution was that the lowest decile income households—if that is the data we are looking at—contains substantial proportions of joblessness. Anyone seeking to look at that data would want to be clear that they are actually comparing like with like with regard to employment.

Senator GEORGE CAMPBELL—It is ABS data.

Mr Barklamb—My friend Mr Harris reminds me that the ABS may have given a warning about the statistical reliability of people within that lowest decile.

Mr Harris—Senator, if it assists you I might be able to find the ABS's methodological cautions about using the bottom decile.

Senator GEORGE CAMPBELL—I would be very happy if you could find it, because there is no caution on the document that I have. Mr Hendy, in your submission, on page 28, you say:

ACCI has supported wage increases in the majority of national wage cases since 1997.

Can you outline to us what your position has been on each case since 1996?

Mr Hendy—For a large number of them, Scott argued the case. I will ask him to answer that.

Mr Barklamb—This is an exercise in my memory from a table we refer to on occasion. My memory is that we supported an unspecified increase of approximately $5 on that occasion. Remember that we are talking about 10 years ago and a different minimum wage structure at that time. At most stages we have supported increases around the $10 mark, which was a number that was given effect by the commission within the safety net period as an appropriate level of increase. There were some years when we did not support an increase. There were two circumstances. I am slightly exercising my memory on the first, which was in the context of the Asian economic crisis. From memory, the second was following a particularly high outcome in relation to inflation and wages in 2002. It is my recollection that we did not support an increase the year after that particular one. Certainly in the majority of recent cases we have supported there being an increase in the economic circumstances that prevailed.

Senator GEORGE CAMPBELL—Perhaps I can just refresh your memory, Mr Barklamb, by indicating to you that in 1997 you supported a zero increase. In 1998 you supported a zero increase. In 1999 you supported a zero increase. In 2000 you supported a zero increase. In 2001 you supported a $10 increase. In 2002 you supported a $10 increase. In

2003 you supported a zero increase. In 2004 you supported a $10 increase. In 2005 you supported a $10 increase. It is five to four against. How do you constitute that by saying that you supported an increase in a majority of cases?

Mr Barklamb—I think there was confusion in one those cases with two propositions. One was that we supported a deferral of the wage case, which some would paint as zero and others would paint as a deferral pending further consideration. We certainly did not treat that internally as a zero position. The other one was that we made a proposition at one stage of refining the wage rate to a bargaining rate centred on the minimum wage. My recollection is that we did not necessarily articulate a particular level of increase but that we were trying to encourage the commission that it could award increases if it focused them more tightly towards the lower wage rates. I would not dispute with you that it is perhaps a half-half proposition, but the point that we are trying to make is that it is not the case that Australia's employers necessarily look at the wage case process and say zero on every occasion. We have tried to engage it seriously and put forward some realistic propositions about affordability—indeed, with some difficulties for some industries where the wages are focused. There have been some difficulties during this period in areas like hospitality and the retail sector in various stages, but on balance there has been some support for a level increase on a number of occasions.

Senator GEORGE CAMPBELL—Perhaps Mr Hendy can clarify the situation a bit further. Did you appear on SBS's *Insight* program this week, Mr Hendy?

Mr Hendy—Yes.

Senator GEORGE CAMPBELL—On that program did you say:

The fact is actually that my group, the Australian Chamber of Commerce and Industry has been arguing for minimum wage increases which would reflect maintaining a real increase in minimum wages over the last 10 years or so ...

Mr Hendy—Yes, I think I probably did say that.

Senator GEORGE CAMPBELL—You made that statement?

Mr Hendy—Yes.

Senator GEORGE CAMPBELL—Were you aware when you made that statement that had the Australian Industrial Relations Commission in fact adopted ACCI's submissions on the national wage cases from 1997 through to the present, workers in this country would be $95 a week or $4,940 a year worse off?

Mr Hendy—I am not aware of the exact figures.

Senator GEORGE CAMPBELL—How do you justify making that statement in which you argue for a real increase in minimum wages?

Mr Hendy—Because, loosely speaking—as Scott has explained—over that period we supported wage increases. Each particular year is a new year and the fact is, as explained with regard to 2003, we went for zero then because we had supported an increase. But because the increase that was actually awarded was virtually double what we had argued for, the logic of our next position was that it needed to be zero.

Senator GEORGE CAMPBELL—Is it not true that in fact Australian workers would be twice as worse off under your submissions than if the commission had adopted the government's submissions?

Mr Hendy—The problem with the system—and Scott alluded to this—is that we have legal arbitration, rather than an economic analysis. Unfortunately, it is one where you have one group saying, 'The minimum wage should be over here,' and another group saying, 'It needs to be there,' because the actual way that they make their decisions is by splitting the difference somewhere in the middle. That is how, unfortunately, minimum wages are set in this country at the moment rather than having a proper economic analysis. With the Work Choices bill we are seeing a proposal which we have now been promoting for a number of years: we should have an economic analysis that takes into account, for example, the plight of the unemployed—some half a million or more people in this country who do not get a look in in the minimum wage cases as they are run today.

Senator GEORGE CAMPBELL—But isn't the commission required to take account of the low paid and the unemployed?

Mr Hendy—Unfortunately, our view is that they do not do that.

Senator GEORGE CAMPBELL—That is your view?

Mr Hendy—Yes, that is our view. What we argue is that there is a receipt of information and submissions about economic cases, but they are not dealt with on their merits. They are dealt with as though they were a court of law, as opposed to an actual analysis of economics.

Mr Barklamb—I want to add to that. The commission has observed that it feels duty bound by its existing statutory precepts to exclude from its analysis of the low paid the very lowest paid—those out of work—and that is a statutory interpretation. With regard to many cases it has said that it feels bound to do so by the Workplace Relations Act in its current form. That has informed its consideration of the sorts of economic materials, as Mr Hendy says. The limitations of that case are all too clear, having sat through it. They are not necessarily revealed from the decisions—which are a recitation of economic argument rather than necessarily a detailed analysis of the economic arguments that have been put—although the decisions are enlightening, because the commission has at various points during the past decade talked about what it feels obliged to do by the statute.

Senator GEORGE CAMPBELL—I will come to that in a moment. But I want to make the point that, regarding your comment about the ACTU meeting in dark, smoky rooms to set the level of its claim, I think you are now conceding, are you not, that employers also sit around in dark, smoky rooms looking at how low they can reduce the level of the claim?

Mr Hendy—Not in my office. There is no smoking in my office.

Senator GEORGE CAMPBELL—There is certainly no smoking in the ACTU, either!

Mr Barklamb—Regarding the proposition that, had the commission followed our position, minimum wages would be lower than they nominally are, yes, that is a direct observation. But the question on the other side of the coin would then need to be asked: if the commission had followed the full ACTU ambit claims of $25 or $26 year on year, we have to ask what is probably a more complex question of what the effect on employment would have

been. The observation we would make, unambiguously, is that it would have had a disastrous impact on employment if the full ACTU ambit had been accepted year on year.

Senator GEORGE CAMPBELL—I come to your criticism that no economic analysis was done of the claims. That is one of the criticisms you have about national wage cases under the purview of the Industrial Relations Commission. But what do you say to the fact that in respect of this legislation the government has admitted that it has done no economic modelling or analysis to prove whether or not this legislation will achieve the outcomes it claims that it will achieve and which you support?

Mr Barklamb—I will firstly make the point that we are not saying that there is no economic consideration by the commission; we are saying there is an option for a superior economic consideration through a different forum. I have some respect for the people who have attempted to wrestle with the workplace relations statute in its current form and have heard us—I want to make that clear.

As to the government's understanding of the economic benefits, I am not here to talk about any particular modelling or anything like that but we have cited the 54 articles directly linking the types of reforms we are talking about here to economic improvement in Australia, along with very direct observations. The OECD and the IMF are articulating in a few sentences precisely the ideas behind these reforms. The need to unlock further workplace bargaining and the need to ensure that award wage structures take a better account of their impact on employment are precisely the types of economic observations which are being made by expert bodies. When that is allied with the very real feedback of our members and inputs through democratic organisations like ours, we think the policy makers can have some confidence that if these reforms are made they will have a real economic benefit.

Senator GEORGE CAMPBELL—I want to take you to a couple of the 54 references that you have in your submission. There is one at paragraph 84 which looked at 'the six success stories of the 1990s (Denmark, Australia, New Zealand, UK, Netherlands and Ireland)'. It is significant that the period in which that study covers is 1983 to 1995, when in fact in at least three of those countries—including New Zealand—for all of the time in the instances of Australia, New Zealand and Denmark, you had a highly centralised form of wage fixing. In fact, you had an accord operating in Ireland and in Australia at the same time. The accord still operates in Ireland—the compact.

Mr Barklamb—I will give an answer to this, and then I will ask Mr Hendy to do so. We have never maintained that workplace reform is the sole driver of economic growth or employment gains in any system, nor that it need not be supported by and a complement to wider economic reforms to generate economic growth and the like. There may have been a range of factors at play but, looking at that—and I have not read that study directly, so I will make an observation about what our economics team wrote there—one would say that it is very likely that they looked directly at the bargaining input to all of those different systems and found that it certainly had an important role to play.

Just on this, there has been some debate in recent days about the company kept by countries that have successfully unlocked growth and productivity and whether it is those countries to the more decentralised end of the scale or not. Is it the UK and New Zealand or is

it some of the Nordic countries, Denmark being the one that is cited here? One of the things that strike me is that the research looks at countries at an absolute level—are they regulated or deregulated? One of the things which I want to introduce into your consideration is this: has there been an act of change? Denmark might arguably be a comparatively less regulated labour market. There may be a difference between them and the UK and New Zealand, because they have actively made changes and introduced some dynamism into their system.

Mr Hendy—Scott's point is accurate. I do not have the study before me and I cannot go directly to it. It is not one I have read; our economist has read that. As it says in the document, in paragraph 84, it actually examines the extent to which a more decentralised bargaining system and stricter employment protection rules have been implemented in those countries in that time period. It is specifically looking at the benefits of those two things in those countries in that period. That supports the argument we have.

Senator GEORGE CAMPBELL—The point which you are ignoring is that at least two of those countries had a highly centralised form of wage fixation during that period, yet they are regarded as success stories. How do you extrapolate the argument that this system—a highly deregulated system—will necessarily produce more and better productivity outcomes than a highly regulated system? At least two of those countries for the vast majority, if not all, of that period had a highly regulated system.

Mr Hendy—I did answer the question. This is a study of the effect on structural unemployment of moving to a more decentralised bargaining system and stricter employment protection rules. That is what they were examining in those studies. They found that when they moved to less centralised and less strict employment protection rules in those countries, in those areas there was a better employment outcome. That supports our argument. I am not ignoring the point—it supports our argument.

Senator GEORGE CAMPBELL—But it is not necessarily the case in respect of several of those countries.

Mr Hendy—That is what the studies are saying. They are actually supporting our case.

Senator GEORGE CAMPBELL—But it is not the case. If they are saying that in respect of Ireland, then the study is wrong.

Mr Hendy—That is your opinion, but that is what the studies are saying.

Senator GEORGE CAMPBELL—Can I take you to pages 11 and 12 of your submission. At the top of page 12, in paragraph 49, you attribute a number of factors to Kerr. Is that the Roger Kerr who was the chair of the Business Roundtable in New Zealand?

Mr Hendy—Yes.

Senator GEORGE CAMPBELL—It is. So it is a study done by him.

Mr Hendy—Yes.

Senator GEORGE CAMPBELL—Was that for the Business Roundtable?

Mr Hendy—I do not know.

Senator GEORGE CAMPBELL—You do not know? Are you aware of whether or not the study in relation to employment results in New Zealand took into account the export of labour?

Mr Hendy—No.

Senator GEORGE CAMPBELL—It did not, or you are not aware?

Mr Hendy—I am not aware.

Senator GEORGE CAMPBELL—Are you aware of a recent study done by the New Zealand Treasury?

Mr Barklamb—I am not.

Senator GEORGE CAMPBELL—A study was released by the New Zealand Treasury in 2004, a report on New Zealand economic growth, an analysis of performance and policy, which showed that labour productivity growth in both New Zealand and Australia were similar in the period up to 1993, while it was higher in Australia from 1993 to 2002.

Mr Barklamb—We will certainly have a look at that. We make a couple of points about New Zealand. An equivalence of economic performance between the two countries would, arguably, in some circumstances, translate into a superior performance from New Zealand, given the size of our economy and some of our advantages. If they are equalling us, that could be a very direct function of some of the gains of the employment contracts type reforms. The second point you would make, obviously, in relation to New Zealand is—with the exception of some; I will not say 'marginal' because it is not the right word—they have not undone the employment contracts architecture. The incoming Clark Labour government has not looked at this and said: 'This doesn't work for our economy. Let's completely reverse it.' They have made some changes—changes with which we would not agree and I do not understand that our New Zealand colleagues agree—and there is some further proof as to the performance of that system and the actions of the policy makers.

Senator GEORGE CAMPBELL—But you are using the New Zealand example as an argument to substantiate reform of this character.

Mr Hendy—On productivity.

Senator GEORGE CAMPBELL—Yes.

Mr Hendy—There is an obvious economic argument that if your unemployment level is about 3.6 per cent, which is where it is in New Zealand, the extent to which you bring other people into the work force at that very low unemployment rate and the extent to which you can have a major increase in productivity are limited. That accounts for the labour productivity issue in New Zealand.

Senator GEORGE CAMPBELL—Mr Hendy, your submission has substantially quoted from the OECD and the IMF. Why does it ignore the OECD's recent findings which show that Australia's labour productivity is 23 per cent higher than that of New Zealand?

Mr Hendy—Australia is a more successful country than New Zealand.

Senator GEORGE CAMPBELL—It certainly is.

Mr Hendy—That is right, but that does not mean we cannot benefit from workplace relations reform. I do not see the connection.

Mr Barklamb—I have a point that I really feel I must add at this juncture: Work Choices is not the New Zealand Employment Contracts Act. We are debating a set of reforms that are qualitatively different from the level of reform in New Zealand in the early nineties. We can look to them as an example of the broad directions of change and to some measure of the benefits. In terms of direct comparability we do not at all resile from raising New Zealand, but we are not seeking to make an absolutely direct analogy between Work Choices and New Zealand.

Senator GEORGE CAMPBELL—I would certainly be surprised, Mr Barklamb, if you did not learn from their mistakes. Mr Hendy, you worked for former minister Peter Reith for a period of time. Did you work for Peter Reith when he visited New Zealand and when, he told me, he doorknocked people in New Zealand to find out how much they were in love with the Employment Contracts Act? When did you work for former Minister Reith?

Mr Hendy—I worked for him from 1998 until 2001, but I do not recall that anecdote.

Senator GEORGE CAMPBELL—You were not in his office when he was doorknocking in New Zealand?

Mr Hendy—I was not doorknocking in New Zealand, as I recall, on industrial relations reform.

Senator GEORGE CAMPBELL—He told me that he doorknocked in New Zealand and that everybody loved it.

Mr Hendy—He probably did.

Senator JOYCE—What relevance is this, Chair?

CHAIR—Senator Campbell, I suspect that does not necessarily relate to Mr Hendy's experience.

Senator JOHNSTON—It is all very interesting.

Senator GEORGE CAMPBELL—It is very interesting that Mr Hendy worked for so long for the minister.

Senator JOHNSTON—But utterly irrelevant.

CHAIR—You have five minutes left, Senator Campbell.

Senator WONG—While my colleague is considering whether he wants to ask you anything more, can I just go back to your submissions on the minimum wage. Is it the case that, in terms of the cases Senator Campbell read out, seven out of nine times your organisation's submission was for a rise that was less than inflation?

Mr Barklamb—I do not have a specific recollection of the particular rises against inflation.

Senator WONG—Unless we are going backwards, zero would tend to be less than inflation.

Mr Barklamb—Indeed, in those unique years. I think the point we were making earlier about the framing of our wages position is that the wages are an accumulation of many years of increases, but particularly in our minds as we come to set a position are the preceding case and two or three cases. So you could say to us: 'Isn't your position for a non-real wage increase?' That might be your premise based on inflation during that period.

Senator WONG—Mr Barklamb, it is not my premise. I am talking about the submissions your organisation has made for the national wage case.

Mr Barklamb—My apologies for expressing it that way, Senator. It may be that, on a narrow reading of a single year, a $10 increase may not have been a real increase. But in the minds of our members was how much over the odds they were paying in the preceding years. The wage increases are of a rolling nature and, in each case, in setting your position you are mindful of, and guided by, the preceding cases.

Senator WONG—Which justifies a zero submission on the majority of the occasions in recent years, which Senator Campbell read out?

Mr Hendy—It is as I was arguing before: if you had, from our point of view, what we thought was excessive the year before, maybe double what we thought was relevant, the logic is that the next year you would go for a zero rise. This is a cumulative effect. It is the explanation that I gave before, which is that we have a legal arbitration here that forces people into positions that do not argue from a sensible economic point of view. What you need to do is have an economic argument about the effect of a minimum wage rise on the economy, its effect upon low-income earners and its effect on the unemployed. We do not think the existing system adequately allows an analysis of those very important issues.

Senator WONG—I understand that is your position. What would the real wage outcome have been if ACCI's position had been adopted over the period that Senator Campbell outlined?

Mr Hendy—I do not have that figure. The argument we are dealing with with Work Choices is the setting of a minimum wage that is to the benefit of the economy, to the benefit of low-income earners and to the benefit of employers. What you need to take account of is the impact on the unemployed, which is not effectively done today in the system. We have something like—

Senator WONG—That was not my question, Mr Hendy.

Mr Hendy—I am answering the question, which is that over half a million people are unemployed and that a wage bargaining system that ignores those people is not serving the Australian people.

Senator WONG—Mr Hendy, I ask you to take on notice what the real wage position would have been. And I ask you again about the issue that Senator Campbell turned to, which is: how can you go on the public record and suggest that your organisation argues for minimum wage increases that would reflect a real increase over the last decade when the figures simply do not bear that out?

Mr Hendy—We actually support a system and a reform of the system—

Senator WONG—It is not a systemic question; it is a particular question about your position on the public record—

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

Senator WONG—He may not like the question, because it is demonstrating that Mr Hendy has in fact misled the Australian public. That is what he has done.

Senator BARNETT—I have a point of order.

CHAIR—Order, Senator Barnett! Senator Wong, Mr Hendy is attempting to answer your question, which is your last question, because the 30 minutes allocated to you in this session has been taken up. Mr Hendy will answer it, and then I will move to Senator Murray.

Mr Hendy—I was making the point that if you actually want real wage increases you need to adopt a system that allows productivity growth, and that is what we are seeking.

Senator WONG—You actually want a real wage decrease, don't you, Mr Hendy? That is the position of ACCI, which is the position you—

Senator JOHNSTON—It is not helpful to shout at him like that. It does you no credit.

Senator BARNETT—The senator is abusing the witness.

Senator GEORGE CAMPBELL—We have been consistently cut off by the chair.

CHAIR—Order! There is no need to respond to that question, Mr Hendy. I call Senator Murray.

Senator WONG—The inconsistency is very clear on the public record.

Senator MURRAY—The legislation before us has two principal objectives—one is to change the federal act quite considerably and the other is to introduce a unitary national system. I want to deal with the latter. Everyone in the chamber and hopefully a few in Australia know that I and my party support a unitary national system of industrial relations, but we support it, as you know, on a negotiated basis with the states and territories. What we are dealing with here is a hostile takeover.

You may not be acquainted with the evidence we had this morning, but I want to summarise it in this way. We had evidence from three employer organisations who are heavily biased towards the small business end of employers. They indicated that very large numbers of employees will continue to be under state award systems; that the transitional arrangements and effects could hang over for up to five years; that as agreements expired people would move onto new systems; and that, in some businesses, the effect could be that you would have people on old agreements under the old act, people on new agreements under the new act, people in federal award or federal agreement based situations and people in state agreement situations. In other words, it is very messy. You couple that with the evidence we had yesterday from eight state and territory governments—six of whom, on an unprecedented basis, were represented by ministers in front of a Senate committee—and it seems to me that you are going to have a singularly messy and highly confrontational situation for a while to come. It will be confrontational because of the legal challenges and messy because so many people will end up in the other systems.

I will give you one percentage which stuck in my head, and that was the very large restaurant and catering association indicated that 29 per cent of its employees will remain under state systems. Arising from that synopsis, I am beginning to think that the moves towards a unitary system are likely to fail practically, even if they do not fail legally, because so many people will remain in state systems. How do you react to that scenario that I have painted for you?

Mr Hendy—The ACCI's policy position is very similar to the Democrat position in that we have supported a single system for a long time. We would prefer that it be done cooperatively. When we put out our industrial relations blueprint in 2002 we put forward a process where we hoped that might be able to be done, potentially using COAG as the vehicle. In fact, before this Work Choices announcement, the government had a policy of accepting a referral of powers from any state that wanted to do that. Of course, you know that Victoria did that in 1996.

Our view from the employer community on balance is that, even despite that lack of cooperation, we thought it was better to proceed with using the corporations power, albeit that it is messy, which is one way to describe it. It is, as you described it, a hostile takeover obviously, but we still think that from an employer perspective it is, across the board, an appropriate way to go. We actually believe that there is a very high likelihood that after the High Court challenge—which, based on the legal advice we have seen, will not succeed, which means that the legislation would be effective—and some time after the next federal election, whichever party is in government, we will actually see a referral of powers. So before we hit that five-year deadline that we know about for unincorporated bodies—I am assuming the committee's knowledge of the bill—we think that actually there is a very high likelihood, as occurred in Victoria in 1996, that there will be a referral of powers.

Senator MURRAY—I have two main concerns, both of which lead to a conclusion that the mess will continue. One—and I do not have legal advice so I do not have a legal opinion—is that a High Court challenge could succeed, even if only in part, so the act would have been introduced, people would have switched to the new system and then it will all be thrown into chaos by a High Court decision. One of my questions to one of the ministers yesterday was whether they would consider an injunction to actually prevent the act coming into play until the High Court matter was resolved. Again I pass no opinion on whether an injunction could operate or could be applied, because I just do not know. The second scenario, which also results in a messy situation, is that the High Court challenge fails, you remain with huge numbers of employees under state systems and the states introduce various blocking mechanisms—they operate a defensive strategy, in other words—to make the operation of two systems continue. In those circumstances, is it your belief that it would still be possible to come to some sort of agreement and arrangement without setting the whole thing aside?

Mr Hendy—Yes, it is.

Senator MURRAY—Why?

Mr Hendy—Based on the experience in Victoria, basically. Just to mention the injunction, we have had a think about the potential for an injunction. It is obviously a mechanism under the law that could go to the High Court. The advice I have been given is that there is not much

likelihood of an injunction on legislation like this, but I am not a lawyer. That is the advice I have received. On the other part of the question, what happened in Victoria—and I think it was a good reform when the Kennett government decided to refer powers and I think it was seen as a bold stroke—was, if you actually look at the detail, sort of an inevitability. What had happened, if you go back a bit, was that in the early nineties when the Kennett government came to office they substantially deregulated the Victorian system—a light year away from where we are today, even with Work Choices. The Keating federal government encouraged workers to move from the Victorian system into the federal system at the time. Effectively, the bulk of workers covered by the Victorian system moved into the federal system. There was simply a rump left, which was about 15 per cent.

Senator MURRAY—I am familiar with that. I need to ask you another question and I have a short period—

Mr Hendy—That is up to the chairman. But it is an important point—and I think you would appreciate it—which is that it only made sense therefore, if you had a system running for only 15 per cent of the work force, to actually refer powers. It was actually a sensible not just economic but administrative decision on behalf of the Victorian government at the time. It was basically inevitable because of what had happened. My conclusion, therefore, is that we will see that experience reflected in other states as this goes by over the next four to five years.

Senator MURRAY—Normally I would not want to hurry you up, but we have got a fierce chair who keeps us in control and on time. My point is, of course, the states may adopt the reverse strategy—in other words, try to pull people back—and there may be ways to do that.

The other area I want to briefly discuss with you goes back to the minimum wages situation. I have thought that the Prime Minister has been dead right to crow about the 14.7 per cent—I see in your submission it is 15.5 per cent, but whatever the current figure is: 14.7 or 14.9 or 15.5 per cent—increase in real wages. I think when the whole economy is growing the people at the bottom deserved to have a real wage increase, regardless of who was responsible for that. The effect of your approach is to deny that that real wage increase was of social and economic benefit. The effect of your approach is to say that that was at the cost of jobs. That is not the Prime Minister's attitude at all; he thinks that real wage increase is one of the virtues of his government. Why are you so opposed to the Prime Minister's view that real wage increases have been in the interests of this country?

Mr Hendy—We think real wage increases are good because they actually reflect the fact that productivity is growing. Do not forget, the people who are getting these wage increases—if they are real wage increases, if they are sustainable and not causing inflation—are actually customers for the businesses that we represent. So we do not oppose real wage increases.

Senator MURRAY—But you have in all your submissions to the minimum wage case.

Mr Hendy—Well, we do not. In the economy we do not. The fact is—and I think you appreciate this argument—we are demonised as heartless, callous people but there is a genuine concern in the business community about low-income earners and those on unemployment. People might think that 540,000 people on the dole queue is a good thing; we do not.

Senator MURRAY—The other plank of your argument is that the commission do not take the argument about the unemployed into account. I would suggest to you that they do. Section 90(1)(b) of the act says that the commission shall—not may—take into account the public interest, the state of the national economy and the likely effects on the national economy of any award or order that the commission is considering or is proposing to make, with special reference to likely effects on the level of employment and on inflation. I put it to you that the ACCI's grievance with the commission is that they have not followed the route you wanted to go. They have followed an independent analysis. They have not agreed with the ACTU; they have not agreed with the ACCI. They have come up with their own prescription, and it has seldom been dead in the middle.

Mr Barklamb—The primary difficulty with the consideration of unemployment at the moment lies in the conflicting set of obligations the commission acts under. An analysis of the wages decisions will identify a number of areas where it feels compelled to particular approaches. One of those which has been used to balance or, if you will, nullify the considerations under section 90, which you have just read out, from the public interest sorts of tests is their finding that the needs of the low paid do not encompass the needs of the unemployed for work. So—perhaps to put some slight finesse on what we are saying—we certainly would not come to you saying we do not have a discussion about employment and unemployment effects in the wage case. But the commission has felt compelled by its statute, and in its decisions has evidenced, we feel, that it does not pay sufficient regard to those impacts. Our criticism is not one necessarily based on the types of disparities between our position and the outcomes; it is about the way certain arguments and evidence before the commission have been treated. We think they warrant further examination, both in the interests of our clients and members, as Mr Hendy has articulated, and in the national interest. We think these decisions could have done better by those out of work.

Senator MURRAY—If that same clause from section 90 was put into the Fair Pay Commission's remit—to examine things in terms of the public interest, level of employment, inflation—would you oppose it?

Mr Barklamb—As I understand the precepts under which the Fair Pay Commission are to act, those concepts are all there. Parties will be free to bring evidence on those materials to the Fair Pay Commission, which will have—and we say this unapologetically and without criticism of the commission—greater tools to examine those sorts of arguments with greater rigour and bring different skills and approaches to bear. We do not think that the act needs the addition of any further provisions to the types of considerations they will look at.

Senator MURRAY—So you support them looking at matters in terms of the public interest?

Mr Barklamb—We think any party can bring matters before the Fair Pay Commission—

Senator MURRAY—No. You support the commission being mandated to look at things in terms of the public interest?

Mr Barklamb—That was not what I said. I think that parties will be able to bring what their conception of the public interest is to the commission under the precepts that are in the bill.

CHAIR—We are stopping it there. Senator Siewert you have about one minute to ask a question.

Senator SIEWERT—In that case I will have to put some of these on notice. To follow up on the Fair Pay Commission, where in section 7J or 7K is there provided any support for the ACCI's contention that the AFPC will be superior to the current system of wage increases? Where in section 7J or 7K is there anything that requires proper economic analysis? Do sections 7J and 7K permit the commission to ignore any economic argument that it does not like? Is the Fair Pay Commission entitled to seek out one side of economic views?

Mr Barklamb—We will take those on notice.

Senator BARNETT—Thank you for your submission. Yesterday I was invited to, attended and spoke to a grade 10 class in Northern Tasmania. They asked me to speak about the industrial relations reforms. The reason for the invitation was to balance a presentation that was given just previously by the union representative. The first question I was asked was: why does the government wish to abolish the minimum wage? Notwithstanding the fact that that was based on an erroneous fact, Mr Beazley today has said publicly that the Prime Minister is determined to have wage levels that compete with India and China. He says that this is the Americanisation of the IR system. The ACTU says that the minimum wage will actually fall and take-home pay will be cut. I am seeking your responses to those allegations.

Senator WONG—Chair, is it appropriate to put these politician's statements to Mr Hendy? I know he is an ex Liberal staffer and so plays in the political world, but I am sure Senator Barnett can engage in the political debate without bringing Mr Hendy on board.

CHAIR—There is no point of order. Proceed, Senator Barnett.

Senator BARNETT—I have asked the question and I am seeking a response from Mr Hendy or whoever.

Mr Hendy—It is a bit hard to have the Chinese, the Indian and the American systems all at once, I must say. The fact is that Australia has no future if it is trying to compete with Indian and Chinese workers at their wage rates. What we need to do is compete on a productivity level. That is what the changes that we see in work choices will produce: an ability to compete as a smart and clever nation as opposed to relying on brawn and the sort of labour market we might see in China and India.

As you have raised it I should say that there are no plans to abolish the Australian Industrial Relations Commission. There are no plans to abolish the award system. There are no plans to abolish the minimum wage. I think it is worth saying, since you have raised it, Senator, that there is one mother of all scare campaigns going on. It is not actually dealing with the facts of the legislation but creating a straw man which it then proceeds to try and tear down. The fact is that there is reform here—significant reform. It does not go as far as we would like to, but I think it is actually reform that will help us compete. We have to compete with China and India but we will be doing it on our own terms, which are productivity and performance.

Senator BARNETT—Are you saying that this mother of scare campaigns is the motivating factor behind the ACTU saying that minimum wages will fall and take-home pay will be cut?

Mr Hendy—Yes.

Senator BARNETT—In terms of the minimum wage, an analysis has been done with the UK. I just want to go to the UK for a moment, if I could, and your assessment—

Senator GEORGE CAMPBELL—Madam Chair, the ACTU, as I understand it, will be here tomorrow morning. Senator Barnett can ask them directly what they said, rather than asking ACCI.

CHAIR—There is no point of order and you are wasting the committee's time. Please proceed, Senator Barnett, to ask your question.

Senator GEORGE CAMPBELL—Senator Barnett is doing a good job of wasting all of our time.

Senator BARNETT—I am asking for an analysis of the UK arrangements. I understand you have had a look at the UK system, in particular when they established the Low Pay Commission. I am just wondering if you are aware of the increase in the minimum wage in the UK and what level of increase there has been since the Low Pay Commission came into being. If you are not aware of those figures now, perhaps you could let the committee know.

Mr Barklamb—We will take that question on notice. I understand that the Low Pay Commission was introducing a minimum wage for the first time and has made some quite substantial increases to that, but those increases might be slightly distinguishable from the point at hand because we have a legacy minimum wage. Certainly the key point about the Low Pay Commission in the UK is rigour, that it has been able to bring an approach of modernisation to minimum wage setting in that country. It appears to be something like world's best practice in a lot of regards, if not all. We have the opportunity to learn and apply some of those lessons with our new body, even if it is not identical in form, function or legislation. I think the second of the points you would make is that that structure has yielded wage increases. It is not the case that it has been a dampening effect on wages.

Mr Harris—I would add that in the UK we are talking about a single minimum wage and in Australia we are talking about a system of multiple minimum wages, which is another important source of difference.

Senator BARNETT—Thank you. I just want to take you back to some earlier questions. In terms of the minimum wage, the ACTU, of course, put their ambit claim to the AIRC year on year. I think, Mr Barklamb, you said earlier that if that particular ambit claim was enacted it would be a disaster in terms of jobs. What do you mean by that?

Mr Barklamb—I do not have an empirical basis for that, but we would be talking about wage rises a quantum again in excess of inflation and a quantum again in excess of the productivity levels. We already have direct evidence from employers of persons on award wages in things like the hospitality, agricultural and retail type sectors about their inability to pay these increases and the practical difficulties these increases have caused year on year. Effectively, if not double the quantum, perhaps another third again would be a fair representation of the ACTU positions a lot of the time. I would feel complete confidence in saying that they would have had very grave effects in displacing minimum wage workers and, in fact, those even a fair way up the earnings tree of the awards wage distribution.

Senator BARNETT—Is there an impact on inflation?

Mr Barklamb—Absolutely.

Senator BARNETT—There have been numerous allegations that there has not been enough research done to support the government's proposals. But I note in your submission that you have made reference to no less than 54 submissions, reports and papers, starting at page 7 of your submission. You talk about the Department of the Treasury, the Reserve Bank and the Productivity Commission. Are there any you would wish to highlight to the committee—because there are 54 there—or draw to our attention? Are you of the view that this research discounts in any way, shape or form the allegations that there is not enough research to support the reforms?

Mr Hendy—We think that there is overwhelming evidence. If you are asking for any particular focus I would say the OECD and IMF are pre-eminent organisations as economic commentators in the world. Since both of them were set up, Australia has been a member, simply because we recognise them as pre-eminent economic advisers to governments.

Senator BARNETT—I have a question regarding New Zealand, because we have had some questions about that. I refer to page 11 of your submission. Do you back up your statements made in the submission that New Zealand productivity improved as a result of the industrial relations reforms in that country?

Mr Hendy—Yes, that is our understanding.

Senator JOYCE—I noticed in your submission on page 24 you said that you still believe that an excessive level of regulation of employer-employee relationships will remain. Secondly, you say:

The Australian Government needs to withstand further calls for 'protection' of existing rights beyond what has been announced;

I find that surprising. What form of nirvana do you have in mind?

Mr Hendy—In 2002 we put out what we called a blueprint for workplace relations reform. In 166 pages the nirvana was detailed. I could go through that in detail for you. I am quite happy to. But there is a great deal of complexity. I should not actually let this hearing go by without saying that we are not happy that the legislation is close to 700 pages long. The fact is that it could be a lot simpler. I think most people would recognise that. Part of that is because, as Senator Murray alluded to, there is a hostile takeover with respect to the Commonwealth-state systems. That has resulted in a significant increase in the number of pages. I could go through it.

Senator JOYCE—No, please don't. The second thing is, just out of curiosity, we are using part V, section 51(xx) of the Constitution—the corporations power. In your own words, can you tell us what was wrong with section 51(xxxv), which is to do with industrial disputes that permeate across state borders? Why the reliance on the corporations power and not section 51(xxxv) in your words?

Mr Hendy—I am sorry; could you repeat that?

Senator JOYCE—In the Constitution, in part V, section 51, subsection (xx) is the corporations power and subsection (xxxv) is the IR provision. Why are we using (xx) when we could be using (xxxv)?

Mr Hendy—It is because (xxxv) does not allow you to comprehensively cover the field to create one unified system. I hope I am on the right track for your question. The employer community is looking for one national system. The best way would be under another section, which has jumped out of my head—but it is the referral of powers section of the Constitution. That is what the Victorian government used in 1996. Without that cooperation, the relevant head of power is the corporations power, which is subsection (xx).

CHAIR—Thank you very much indeed. We would be obliged if the committee could receive your answers by Friday of this week to the questions we have asked you to take on notice so they can be considered in the report.

[2.37 pm]

YILMAZ, Ms Leyla, Manager, Industrial and Employee Relations, Victorian Automobile Chamber of Commerce

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

Ms Yilmaz—Thank you for the opportunity to make some brief submissions to this committee with regard to the Work Choices bill. VACC is an employer organisation with some 5,000 members in Victoria and Tasmania. VACC is a federally registered organisation but is also state recognised in Tasmania and was a registered association in the state of Victoria whilst we had a Victorian industrial relations system. Our members are predominantly small businesses, with more than 80 per cent employing fewer than 10 employees. Our members will be affected by the Work Choices bill, particularly given that some 35 per cent of our members in Victoria are unincorporated whilst some 50 per cent in Tasmania are not incorporated. VACC members will rely on our organisation to provide them with accurate advice in a simple and direct format in order to work their way through the complex bill that is before us.

VACC in principle does support reform of the industrial relations system. The Work Choices bill is a movement in the right direction, we believe. However, the bill is quite complex and we believe its complexity is primarily because of its need to rely on both the corporations power and the conciliation and arbitration power. If, however, the states were to cede their powers of industrial relations I think the bill would be in a much simpler format than the one we have before us. As I said earlier, we have been actively involved with the Victorian industrial relations system and since powers were ceded to the Commonwealth. In Victoria, we believe the introduction of the federal award common rule system has worked quite effectively for our industry.

Our members will need to contemplate their business structures. They will have to assess the value of entering into agreements or staying award reliant. Most of our members are in fact award reliant, with common law agreements in excess of the award provisions. We believe organisations will still have a valid place in the new industrial relations system. However, an organisation should not simply rely on an IR system itself for its role and its recognition. There is a need for industrial organisations to ensure that they are able to provide ongoing and relevant services to their memberships. We would expect—and we understand that the bill allows for—industrial organisations to be recognised and I am sure our long history in industrial relations will put us in a strong position to retain our relevance in the new system. We also hope that the government itself will be quite supportive of organisations, including financially, to enable the provision of detailed, relevant and accurate information for the small business community in particular.

We also believe that the industrial relations changes will provide our association with an opportunity to provide an investment in resources and to be a little bit more proactive in order to encourage more positive employment practices that we have in the past. Our organisation is developing a code of labour practices. We announced that quite some time ago, and that code

is supported by our interstate sister organisations as well. Our members have been critical of the current industrial relations system and it is believed that the new system, by freeing up the IR inflexibilities, will enable them to be a little bit more responsive to the economic and technological change that they face on a daily basis. Agreements themselves will be more easily accessible, which will address one of the reasons why our industry has not historically taken up agreements.

From an industry level, VACC will obviously make very strong submissions to the task force and the Fair Pay Commission as time progresses and as it is relevant, to ensure that the relevant federal award for our industry is preserved. VACC and our sister organisations have been active in maintaining relevant minimum conditions for our industry at both a federal and a state level so we are in a position to maintain a level playing field for the industry. We would be concerned if those needs were ignored and some form of generic, federal, common rule system that does not meet the needs of our industry is applied. Industry related conditions, classifications and rates are necessary for our industry.

Finally, we encourage an ongoing dialogue with the government, particularly over the transition period, as we expect that, given the complexity of the bill, over the transition period we may find issues we would like to bring to the fore for the government to address as time progresses. Thank you.

Senator BARNETT—Thank you very much for your submission. Just to put it on the record from the beginning: the VACC represents not only Victoria but Tasmania, and that is the Tasmanian Automobile Chamber of Commerce, represented by Malcolm Little.

Ms Yilmaz—That is correct.

Senator BARNETT—He is an irrepressible and vigorous professional advocate on behalf of your organisation in that state. I want to talk to you about your members because many of your members are really microbusinesses. Microbusinesses have five or fewer employees and they make up about 82 per cent of the small business community. I am seeking your understanding of how many of your members are actually in that category.

Ms Yilmaz—More than 80 per cent—some 85 per cent—have fewer than 10 employees, and that is across the two states—Victoria and Tasmania. They are VACC and TACC members. Our sister organisations indicate a similar pattern in their retail motor industry across their respective states and territories as well.

Senator BARNETT—Do you think the legislation has particular benefits for small business and microbusiness or is that not necessarily so?

Ms Yilmaz—I think that it does provide them with some benefits. However, they would need to consider, over that transition period, their business entity given that quite a large number of them are not incorporated and they will have to obviously consider the positives and negatives of incorporation. That is generally a business decision rather than an employment related decision, so that is one thing they will need to contemplate. In terms of those who have already made that decision to incorporate, access to agreements will be a lot simpler, and that is a positive. Our members have expressed concern, given the inflexibility and given the processing and registering agreements structure. From that point of view, it will be a simpler system and something they will welcome.

The other issue that our members often raise relates to the fact that the current system, as we know it, is a centralised system. It is an industry that generally does not have a lot of union membership and the award is something that they do rely on, hence the full bench decisions which ultimately flow through into the award do have some bearing on them directly. A number of those decisions are not tailored to suit their needs, hence that has created some difficulty for them. The agreement stream will provide some benefits for them.

Senator BARNETT—Can you advise the committee what level of union representation there is in your sector? You indicated that it was a reasonably low level. Have you got a feel for that?

Ms Yilmaz—We have sought some information from the Australian Bureau of Statistics and we understand that it is somewhere in the vicinity of six per cent.

Senator BARNETT—Because many of your members are small businesses or microbusinesses, the relationship between employer and employee is probably a little bit more direct than—

Ms Yilmaz—It is very direct. Most of our members operate in a family business style. Often you will find the employer working side by side with the employees on the shop floor or workshop floor, depending on the type of business it is. It is not a homogenous group. Generally they are out there on the floor working with their employees. It is a very different structure. We do tend to get a lot of queries from our members who indicate that their employees are seeking more flexible workplace structures and that the award is inflexible in that regard. Given that point of view and despite what the award says, unfortunately, from time to time, they seek to make those agreements at the workplace level, so the availability of agreements will be a lot more of a benefit for them.

Senator BARNETT—Have you got an understanding of the number or proportion of Australian workplace agreements that are used in your industry?

Ms Yilmaz—They are almost non-existent. We do have a lot of agreements that we process for members for the purposes of encashment of quite excessive unused annual leave or long service leave. Employees who have been with an employer for many years and who may have seven or eight weeks of annual leave—that is not including the current year's value—seek to have that paid out and, given that we currently have the capacity to do so, we have been drafting those sorts of agreements for those employees. From their point of view, they would rather take that leave and place a deposit on, for example, school fees or a mortgage rather than being forced to take such a long period of leave.

Senator BARNETT—ABS statistics show that Tasmania is in fact a small business state in terms of 50 per cent of the private sector work force being in the small business sector. Do you think that if these benefits flow through to small and very small business Tasmania is going to particularly benefit?

Ms Yilmaz—I believe that, for our members in Tasmania, it is not very different than for our members in Victoria, particularly regional Victoria. If they have the flexibility, they will use that flexibility. The concern is often raised that the award is not flexible enough to meet their economic needs, particularly in those areas where they are reliant on seasonal changes. Employees will often work long hours but they may prefer to take extended leave. The current

system does not allow them to do that and they do all sorts of things to try to work their way around that. The agreement stream will allow them to do that a lot more effectively.

Senator BARNETT—In your introduction you referred to red tape in the system constraining you or holding you back at the moment. Obviously Victoria is different but in Tasmania we have two systems, as does every other state except Victoria. Do you think this move to one jurisdiction will alleviate and cut back the red tape and constraints? How will that benefit your members?

Ms Yilmaz—Our organisation has been supportive of a national system for quite some time and our members clearly support that. Given the complexity, they are often not sure whether they are covered by a federal or state system. From our point of view, having a national system, if that is achieved, will give us as an organisation an opportunity to be a bit more proactive and to invest more in terms of encouraging more professional employment related practices and education in the industry and other supportive mechanisms, which is not possible at the moment simply because most of our resources are directed to the claims that we have to deal with, the union claims, commission proceedings, test cases and so on. As an organisation we will be more positive and our members will reap the benefits of that as well.

Senator BARNETT—You have included unfair dismissal laws in your submission. That is not part of the terms of reference, but we are aware of your active opposition to the unfair dismissal laws. Once the legislation is passed and implemented, do you think there would be merit in your organisation, as a peak body, educating your members about the system and how it works—that is, having an education process?

Ms Yilmaz—We think it is imperative for our organisation to be on the front foot there and to provide that sort of level of education. The fact is that most small businesses do not understand the complexities of industrial relations. Therefore, they will need to be advised of what the positives and negatives are, what their options are in terms of the agreement-making stream, the award reliance, whether or not they wish to be incorporated and what their options will be. It is imperative for us to provide that level of advice.

Senator BARNETT—The reason I ask is that small business have traditionally been left out of the loop. Big business are okay—they can look after themselves with their human resources managers—but it is hard for micro and small business.

Ms Yilmaz—Yes, and their level of advice is going to be different to that needed by a larger business because their level of human resources, their experience and their level of understanding of industrial law are limited. So their reliance on their organisation will be quite important.

Senator BARNETT—You said earlier that there would be merit in the states ceding their power so that we would have some clarity across the board in terms of one industrial relations system. Do you think they will? Would you have a role in passing on your views to the state governments that there is actually merit in them ceding their powers so that there is clarity for all involved—big or small business? Will you have a role in perhaps assisting them to see the benefits of one IR system?

Ms Yilmaz—I think that our organisation has made it clear that we do support a national system. What has occurred in Victoria is for us a positive model and a model that we would

support. In Victoria we have a federal common rule award that is relevant to our industry and relevant to our industries across the other states and territories. All of our sister organisations operate on a state level, and there are various state awards that apply in those respective states. Generally they tend to follow what we call our 'parent' awards—the repair services and retail award or the vehicle industry award. Those are our major awards, and the state awards tend to follow those. That is an active position that we have all taken purely to ensure, as best as we can—given that we have a dual system in a number of states—that there is a level playing field across the industry. From that point of view, it would be extremely positive. In terms of how far we would encourage it, we would encourage the other states to cede their powers if it were done on a cooperative basis. That is our preferred position as well.

Senator MARSHALL—You indicated that your members were award reliant. Can I take it from that that they pay by the award and that there would not been many overaward payments or extra conditions apart from the award?

Ms Yilmaz—No, not necessarily. In the last national wage case, and for the last five national wage cases, we have provided evidence of the numbers of members that are award reliant. Generally they rely on the award for their conditions and then they negotiate in excess of that. The rates of pay are the base for the industry and that, for us, has been a tool, if you like, to ensure that there is no undercutting in our industry. So we have actively maintained the federal awards on that basis. There is a lot of negotiations in excess of the award and between 60 and 70 per cent of the industry pays in excess of the award rate.

Senator MARSHALL—So you use the award as the minimum floor to negotiate above. You talked about the industry valuing the importance of a level playing field. So when you say that 60 to 70 per cent pay in excess of the award rate, is that a rate which you negotiate and then recommend to your members?

Ms Yilmaz—No, we do not. It is simply the market forces dictating the market rate. It depends on the specialisation of the business. Whether they are based in a metropolitan or regional area, the type of business that they operate and sometimes the size of the business as well would dictate what they pay. Obviously, a number of sectors in our industry do rely on it. Take, for example, the body repair industry: they are tradespeople in very short supply, so they have quite a lot of clout when it comes to negotiating their own salaries. That is one of the most highly paid areas in our industry.

Senator MARSHALL—Can you give me an idea of what we are talking about? Would you pay $10 over the award or $50 over the award?

Ms Yilmaz—No, you would be looking at a minimum of $50 and then in excess of that. For example, a tradesperson's rate is $576 or something like that. For tradespeople in our industry it is not uncommon to find that they might be paying $1,000-plus. In the body repair spray-painting area, in excess of $1,000 is quite common.

Senator MARSHALL—In answering questions from Senator Barnett, you mentioned that your members had concerns that the current wage case decision increases do not suit the needs of your members. If 60 to 70 per cent are paying above the award rates, isn't the national wage case decision for the minimum rate really irrelevant to you?

Ms Yilmaz—It is not just the full bench national wage case decision; there are a number of other test case decisions that the commission hands down. They do not necessarily always reflect the needs of our industry. In terms of the national wage case specifically, there is an award of whatever dollar figure that the commission provides, and rather than that rate being applicable to the lower end of the market it is essentially carried all the way through the industry. We have been able to demonstrate to the commission that there is not a lot of absorption in our industry. So even for those who pay well in excess of the award rate there is constant pressure to pass on those increases and maintain the relativity of the overaward component with the adjustments at the award rate as well. That is a direct impact. The concern that we have had is that it is the lesser skilled that are often the ones who are going to be affected adversely by those decisions rather than those who have skills—the middle and upper levels.

Senator MARSHALL—What do you mean by adversely affected? Are you talking about employees or employers?

Ms Yilmaz—Employees. The response we have had from our membership is that when there is pressure to maintain those relativities across the board employers will generally want to maintain those whose skills are in short supply. They will generally focus on and maintain those. Those with the lesser skills will be considered as potentially disposable if it comes to choosing between someone who is extremely skilled and someone who has no skills. That is a real issue that our industry have had to contemplate when there has been a national wage case decision. Those are the issues that they have to deal with on a day-to-day basis.

In terms of the full bench decisions, I take you to, for example, the TCR case. We have had in our award a number of specific provisions that deal with transmission of business. A lot of our businesses have a franchise type operation. It can occur in sectors of the industry—not everywhere—that a licence can be taken without any notice. We have had provisions in the award to protect that employer to ensure that there is ongoing employment and to enable the transfer of those employees quite easily. The TCR decision has minimised that. When the commission hands down test cases and they flow down into the panels, the panel members—and each panel member must implement those decisions—tend to consider that they cannot deviate too much from the test case standard. It can create some problems.

Senator MARSHALL—The Fair Pay Commission will not be dealing with those sorts of issues.

Ms Yilmaz—No. The Fair Pay Commission will be dealing with other issues.

Senator MARSHALL—So the Australian Industrial Relations Commission will still be dealing with those types of issues. So nothing in this bill will change—

Ms Yilmaz—My understanding is that the AIRC will not have the capacity to make test case decisions. That is how I read the bill.

Senator MARSHALL—I am not clear on that. As you say, it is a long bill and there are few of us who have been through every detail of it as yet. That is something we will need to explore with the department so you will not be burdened by those issues into the future. You talked about the flexibilities that your members are after. Can you give us a summary of the sorts of flexibilities your members would be looking for from their employees?

Ms Yilmaz—I will give you a simple example. The ratio of men to women in the industry is something like five to two. We do encourage women into the industry but often the industry is not conducive to that because of the inflexibilities, particularly if you look at clerical employees. In our industry the women are in clerical, sales or some other area. If you look at the clerical side, the current award structure does not allow a lot of flexibility. For example, if you have someone working on a part-time basis you cannot vary those hours. Once you set those hours they remain set. If we have a working mother, for instance, who wants to vary her hours in order to attend to her children, attend school plays or whatever it might be, those inflexibilities come forward. Freeing up some of those inflexibilities so an employer and an employee can directly negotiate flexibility to suit themselves is something that we would find very useful and our members would support.

Senator MARSHALL—On that point, I am not really sure your members will take advantage of Work Choices at all, because they have obviously missed out over the last 10 years. You need to make an agreement to do those things and that can be done right now under the current legislation.

Ms Yilmaz—Yes, that is true. But the process of registering an agreement is complex, so our members avoid it for that reason. They do rely on common-law agreements, but you cannot negotiate outside the award when you are negotiating a common-law agreement. There could still be breach of an award. So you do need a registered agreement to negotiate around some of those inflexibilities, and the process of registering agreements has been an inhibitor.

Senator MARSHALL—I have one last question. You have indicated that 60 to 70 per cent of your members would pay above award wages, so 30 to 40 per cent would be reliant on the legal award minimum as it is now. As the floor is removed in terms of that legal minimum, do you see people dropping down to the new legal minimum?

Ms Yilmaz—I do not believe that the floor will be dropped down. That is not my reading of the bill. But what we will be doing as a priority is ensuring that our views are presented very loudly and clearly to the task force that will be looking at the rationalisation of awards, classifications, structures and rates of pay. There are sectors in our industry where it is imperative that we have a level playing field and that is something that we would need to protect. That is something that we will be putting very vigorously to the appropriate body at the appropriate time to ensure that the relevant award in our industry is at a level that maintains the capacity for employers in our industry to negotiate on a fair basis.

Senator MARSHALL—I put this to you because, again, I am not 100 per cent clear on how the new act will be applied practically. My understanding is that under the legislation you would be able to have an AWA that simply has the five minimum conditions and the Fair Pay Commission minimum as the underpinning standard, which of course will be lower than the legal floor of your award as it is now.

Ms Yilmaz—You will still have the federal award—whatever federal award will ultimately be the common-law award—and so, until such time, you still have the industry award that will set the pace for those negotiations, despite the fact that there will be the fair minimum wage.

Senator MARSHALL—All those things can be traded off without compensation, as opposed to the situation today where, if any of those matters are traded away, it must meet the global no disadvantage test for the award as a whole. What you are saying is the case now, but in the future there will not be a no disadvantage test. The floor will clearly drop.

Ms Yilmaz—The no disadvantage test will be altered quite a bit because the award will no longer—

Senator MARSHALL—The test will be against the five minimum conditions and the minimum rate.

Ms Yilmaz—Yes, as opposed to the award. That is right.

Senator MARSHALL—Regarding the 30 to 40 per cent of your members who rely on the legal minimum as it is, do you see a new legal minimum that is ultimately lower than the current legal minimum? Do you see your members going to the new legal minimum? If not, why not?

Ms Yilmaz—I do not. The reason is that the award has always historically been the basis for negotiation in terms of the main conditions.

Senator MARSHALL—Of course—it is the legal minimum.

Ms Yilmaz—In terms of our membership, as I mentioned earlier, we are developing a fair code of labour practices. Our members are very supportive of maintaining some sort of system where they can still be seen to be potential employers of choice, because it will not help them to provide rates of pay at the fair minimum range when it does not encourage people into the industry. Like every other industry, they already have difficulties in attracting people to the industry. Our industry is heavily reliant on traditional trades and to reduce any rates in that area will not assist them in any shape or form. In fact, our industry has been debating whether they should be putting forward a case to increase current award rates. So, by proceeding down this path, we believe that, taking account of the view of our membership and through our organisation, we will be able to set those floors at a reasonable level that encourages greater negotiation.

Senator WONG—My question is essentially on this issue, Ms Yilmaz: the position that you have put in your submission as to the benefit of a level playing field in terms of the competition in your industry. I have to say that at least on a personal level, not an official level, that is similar to what a number of members of the MTA in South Australia have put to me. The point I want to put to you is that in an industry such as yours, which has a fairly low profit margin and high levels of competition, there has obviously been an interest in people not undercutting each other beyond the award. The point is that in this legislation an AWA can remove all but the five minima without any trade-off—in other words, just a clause saying that they are removed. In your industry, if you have one or two operators who do that—that is, drop down to the five minima—will the competitive pressure on the rest of the industry not inexorably move to the five minima being the effective wage and condition floor?

Ms Yilmaz—No, I do not believe so. Our industry, as I mentioned earlier, is not a homogenous group. There are only certain sectors in our industry where there are those pressures. In the service station sector we saw that in Victoria when the Kennett government abolished state awards. There was a lot of pressure then to rely on the state system—I call it

that because even though we had a unitary system we still had two systems. So rather than relying on the federal award they tended to rely on the state minima. That did not apply to all of the members of that sector, but there were quite a few. We saw quite a dramatic change in the industry. There has been a huge rationalisation in that particular sector of the industry. Our members have learned from that. They are also facing more severe skill shortages than they were then. We have since then come quite a long way in developing training packages and aligning our classification structures with the training packages. Basically, rates of pay have gone up quite dramatically in the industry.

Senator WONG—Does it not take only one or two employers to introduce that competitive element downwards?

Ms Yilmaz—I disagree. It has to be quite a significant group. If it is one or two employers, those one or two will find that they will not be able to compete with the balance of the employers in the industry.

Senator MURRAY—Ms Yilmaz, this is an unusually short submission from your organisation. You have been before us many times.

Ms Yilmaz—I apologise for that.

Senator MURRAY—Did you not have enough time to get across the bill and the explanatory memorandum?

Ms Yilmaz—No, we did not. We have had quite a lot on our plate of late, and when the bill was announced I did not have sufficient time to put in a detailed submission.

Senator MURRAY—It is a problem with this rushed process. I would have appreciated people like you having had more time to give us your insights. I want to talk to you about schedule 1A. As you know, the two ministers of the Victorian and the Commonwealth government came to an agreement and the Commonwealth parliament unanimously passed the rescinding of that schedule and the full integration of about 350,000 to 400,000 Victorian workers into the federal act, so ending the remnants of the dual system. What effect did that have on wages and conditions in your industry? Did they increase as a result?

Ms Yilmaz—No, they did not. We have not noticed any increase, primarily because most of our members in Victoria were already covered by a federal award. Those who were not covered by a federal award had to simply come up to the standard. We found that for a lot of those who were not members of VACC but who were covered by schedule 1A it would have been not the rates of pay but the various conditions of employment that would have been quite substantially different. They would have had to come to terms with the change in the conditions of employment rather than the rates of pay.

Senator MURRAY—In coming to terms with those changes in conditions, who did they use for advice? Did they use you or the Commonwealth?

Ms Yilmaz—There has been a mixture. I know that the Commonwealth has been in touch with my office on a number of occasions to ascertain whether certain types of categories are covered by the federal award. A number of those particular employers chose to join our association. I imagine a lot of them had joined other associations to essentially access information about the relevant award that applied to them.

Senator MURRAY—My interest in this matter is that there is the potential—in fact, I would think it a likelihood—that employers will be forced to pay attention to those employers who only operate on the new five-minima standard and the fewer conditions proposed in the agreement. In other words, they will not stay with a broader range of wages and conditions. Is it your expectation that there will be a shift down to these minima and to fewer conditions?

Ms Yilmaz—I do not believe there would be, primarily because, when we look to our membership and the views of our membership, they are very cognisant of the fact that there are skill shortages in the industry. They are very concerned about the fact they might be perceived to be redneck type employers because of the fact they have a very competitive nature and their profit levels are small. They are very keen to encourage people into the industry—particularly younger people choosing a career in the automotive industry—and I do not believe there will be that pressure to minimise down to those five conditions.

Senator MURRAY—Essentially you are saying the supply constraints on skilled labour will mean that those employers who might be regarded as meaner or nastier than others are not going to be able to take advantage of the situation.

Ms Yilmaz—The supply constraints will be one element, but that is only one element. A lot of these businesses are beginning to pretty much grow in their capacity to operate more professional businesses. From a professional point of view, it is extremely expensive to hire and lose employees and not maintain some form of reasonable turnover rates. From their point of view, they need to try to retain their employees. From a cost point of view, as well as maintaining an effective operation and efficient operation, there need to be employers who understand their business.

Senator MURRAY—Forgive me—I should know—but do you have a high level of casualisation?

Ms Yilmaz—No, we do not. The majority of our employees are full time in our industry.

Senator MURRAY—Has the rate of apprentices and an increase in skills been noticeable of late in your industry? You were implying that there is a skilling up occurring.

Ms Yilmaz—A skilling up in the membership?

Senator MURRAY—No, within your employees.

Ms Yilmaz—Skilling up of employees and employers, if you like. Traditionally our employers have generally worked their way up through the ranks. They may have started off as apprentices themselves and eventually owned and run a business. We are beginning to see a lot of those particular employers changing their philosophy in terms of running a professional organisation, so there has been a lot of change within them as well as the employees. They all understand that there is a need to upskill employees as well as themselves to keep abreast of the changes. It is an industry that undergoes quite significant change on a regular basis. Technology is very rapidly changing in our industry. Even global effects are beginning to effect them, so they need to be responsive to those changes.

CHAIR—I do not think there are any more questions, so thank you for appearing before us today.

Subcommittee suspended from 3.19 pm to 3.46 pm

CASIDY, Mr Andrew Scott, General Secretary, Finsec

GELI, Ms Ingrid, Union Representative, Finance Sector Union

MASSON, Mr Rodney, Communications Manager, Finance Sector Union

SCHRODER, Mr Paul Johan, National Secretary, Finance Sector Union

CHAIR—I welcome witnesses from the Finance Sector Union. Thank you for your submission. I now invite you to make a brief opening statement before we move to questions.

Mr Masson—The Finance Sector Union thanks the committee for the opportunity to appear before you as you deliberate on what we believe is the most significant piece of industrial relations legislation seen in this place. Appearing with me is my national secretary, Paul Schroder; a member of our union, Ingrid Geli, who works here in Canberra as a mobile lender for the CPS Credit Union; and Andrew Cassidy, the General Secretary of Finsec, our sister union in New Zealand. Andrew has an important interest on behalf of his members in your deliberations because the New Zealand banking sector is 90 per cent owned by the Australian banks, and whatever our employers do here will have a knock-on effect for Andrew's members. Having said that, Andrew and his members have already seen similar laws passed in New Zealand and may shed some light on their impact, should the committee desire.

Ingrid is employed at CPS, which is currently subject to a takeover. Ingrid and her fellow workers have worked hard, through their union, to have their conditions covered by a collective agreement. Whilst Ingrid harbours a range of concerns about what the new laws will mean to her and her fellow workers in the future, one major concern is what will become of their conditions under the proposed transmission of business changes that see transmitting conditions last only for 12 months, with the possibility that they may then revert to the basic minima of the fair pay standards. While Ingrid's employer is currently saying there will be no retrenchments, with job loss being dealt with through natural attrition, the very real fear for Ingrid and her colleagues is that 12 months after the takeover they will lose their benefits, including retrenchment benefits, and will be left to compete for the remaining jobs on a take it or leave it basis.

I will provide some quick facts about the FSU for those who have not had us appear before them. We represent 60,000 employees in the finance industry. Our members work in banks, insurance companies, credit unions, brokerage firms, superannuation fund administrators, building societies, credit card firms and the like. They range from very large employers to very small employers. We are party to over 100 collective agreements across our industry. The majority of our members are not the Chris Cuffes of the world. They are not high-flying finance dudes raking in millions and naming their price; they are hardworking, honest people doing their best to raise families and contribute to their community.

They earn average or below-average wages. The majority of our members are female, and a large proportion of them work part time to allow them to juggle work and family responsibilities. They work, as you can imagine, in branches, call centres, processing centres, head offices, claims departments and credit centres. They are both the people you deal with

directly and the people who process your loan applications, credit card statements, insurance claims and other financial transactions behind the scenes.

The employers we deal with are some of the most powerful in the country. Over the last decade the market capitalisation share of the finance and insurance sector has more than doubled from 17.9 per cent to 36.7 per cent, surpassing both resources and manufacturing in capitalisation and stock market dominance. It has massive economic, legal and human resources at its disposal. It is certainly one of the most profitable industries in the country. The big banks increased profit in the last reporting season by 25 per cent. Insurance companies are providing returns on equity of 25.9 per cent and are the most profitable they have been for 25 years. Smaller financial companies are enjoying good returns as well. All of this has taken place under the current IR system, so it begs the question: 'What is the imperative for such a massive and unfair overhaul of the IR system?'

The power imbalance that normally exists between an employer and an employee should not be misunderstood by this committee in considering this bill. To help make it a little clearer, consider the different between the following cases. The first is a call centre operator earning $34,000 a year performing a job that requires her to work outside normal hours but pays her penalties for doing so. The penalties are a necessary part of her remuneration for a job she desperately needs in order to make ends meet each week. Each week she watches as more and more temporary staff are brought into her work environment. The second is a major bank making $3 billion to $4 billion profit a year, with a CEO earning between $4 million and $9 million a year. Below the CEO we have a group of highly paid executives seeking to advance their careers. They are charged with delivering desired results such as decreasing the cost to income ratio to the lowest in the country amongst their competitors. They advise senior and middle management, including the manager of our call centre operator, as to how this will be achieved. The notion that our call centre operator will enjoy a level playing field on which to negotiate with her major bank employer to maintain—let alone advance—her conditions is illusory and illogical.

Our submission included a number of case studies that seek to highlight the power imbalance in the workplace. These are studies that are currently in play or that we have witnessed in the last 12 to 24 months. How employers use certain inducements—not the least of which is to say, 'Sign here or you don't have a job'—to lure employees to forgo their rights is highlighted by some of these case studies. The current safety net of awards and collective agreements—and the no disadvantage test that the awards and agreements provide—has meant that employees lured off certain conditions unfairly or unknowingly have been able to win back those rights and have their employer's misuse of power exposed and corrected. The bill before the committee will take away many of the provisions of that safety net fought for and won by employees in our industry over many years. The bill will leave the thousands of people we represent directly, and the thousands more who rely on the conditions we have established through awards that underpin their employment, vulnerable to the excesses of some employers.

Left with no choice but to compete, other employers will be forced to move down the same path of attacking employee conditions. We see them doing it now. We hear their competitors say, 'We will watch and see what CBA does, and then we will consider our options.' It is not

as though we have not experienced a decade of short-term cost cutting in the industry, where the cost to income ratio is king. It simply does not gel with our members' experience that removing their safety net of conditions would create a race to the top in wages and conditions of employment. Rather, they know it will create a race in the opposite direction.

We do not come before you as opponents of change. In fact, we are not all that enamoured of certain aspects of the current act, and have not been since 1996. One ready example of where we would call for change would be to introduce some compulsion on employers to respect their employees' preferred instrument in bargaining and to be compelled to bargain in good faith.

Our members have participated in enormous change in their industry, brought on by deregulation, globalisation, technology and other factors. In many ways they have been 'change agents'. But fundamental to the change process has been the protection offered to employees through their awards and agreements. These include rights such as redundancy, redeployment and retrenchment provisions, established to protect people's dignity in times of restructure or merger; mutual agreement arrangements regarding rosters that allow employees genuine input to the hours of work so they can strike a balance between their home and work responsibilities; RDOs, public holidays, overtime penalties, penalties for hours outside the normal span of hours, allowances and more; and rights that transmit current conditions to a receiving employer in a meaningful and lasting way when functions and people are sold off. The changes that we have seen have not been easy for working people in our industry: massive job losses, intensification of work for those left behind, growing pressures for sales and decreased staffing levels. Yet, in all that, knowing that there was a safety net of conditions and that processes underpinning their employment provided members with some sense of security and certainty.

Under the bill before this committee, those provisions will be up for grabs and at risk. The removal of the safety nets, the driving of the floor downwards will not, in our view, mean that conditions will move upwards. This is exacerbated by the stipulation in the bill that it is not coercive to have someone accept the conditions of an AWA as a precursor to employment. In many ways, employers take their cue from governments. If governments move to drive conditions and safety nets down and legalise what is effectively coercion by employers, employers will take the cue that moving employee conditions downwards is the thing to do.

There are many more ugly tricks in this legislation, and there is not enough time for us to go through all of them. However, removing unfair dismissal rights for those persons employed in businesses with fewer than 100 employees is clearly a major concern to thousands of our members. Disallowing others unfair dismissal protection, if the dismissal is for operational reasons, is of great concern too, given the restructuring we have seen in our organisations.

Unilateral ability to terminate collective agreements 90 days past expiry is a major concern. Removing skill based classifications from awards is a major concern, when we in our industry feel that skills and the building of those skills are critical for where we are going in the future. Demolishing the safety net and undermining collective agreements and conditions through making AWAs the primary industrial instrument is also a major concern.

To all those, we make a couple of key points. There is not an equal power relationship in the workplace; therefore, there can be no equal bargaining position between an individual employee and an employer. There can be no reason to lower safety net provisions, unless it is intended to lower conditions generally. Employers will move conditions downwards in a race to the bottom scenario. Basic protections and conditions that have made our industry a decent place to work, that protect people's dignity and provide for a balance between work and family life will be lost if this bill is passed into law. Thank you for the opportunity.

CHAIR—Thank you. We will now move to questions.

Senator JOHNSTON—Thank you for your submission. I am interested in your case studies. Approximately how many employees are there in the Commonwealth Bank Group in Australia?

Mr Schroder—About 25,000 to 30,000.

Senator JOHNSTON—Does that include Commonwealth Insurance Ltd?

Mr Schroder—Commonwealth Insurance Ltd is a very small part of that.

Senator JOHNSTON—That is incorporated in the 25,000 to 30,000 employees. How many CIL employees are there?

Mr Schroder—There are 300.

Senator JOHNSTON—I notice that your paper sets out that one in three of those 25,000 to 30,000 people—roughly, 10,000—are on AWAs.

Mr Schroder—That is right.

Senator JOHNSTON—At this early stage of the evolution of AWAs I find that an interesting figure. Do you suggest that those people, given what is involved in signing and registering an AWA, have been dragooned into, were under duress or coerced into signing those documents?

Mr Schroder—That is a great question. At the moment we have one employer who delivers a great many of the AWAs—in fact they disproportionately represent a big batch of AWAs in the economy generally.

Senator JOHNSTON—The Commonwealth Bank?

Mr Schroder—Yes. There are few AWAs in the economy; the Commonwealth Bank is one of the most significant AWA employers that there is.

Senator JOHNSTON—That is probably a product of their privatisation, wouldn't you say?

Mr Schroder—It may be a product of a range of things. I presume it is more an ideological pursuit on the part of management, who say that is the better way for them to operate. No employee would choose an AWA. Going back to your question in particular, we have a lot a people on individual contracts, packaging arrangements and common law agreements that we have previously agreed to and given effect to. Many of the managers in the industry are on common law contracts. We have also got a large number of people on AWAs, particularly at the Commonwealth Bank. They would not have been initiated by the

employee, they would not have been pursued by the employee, but they were the only thing being offered to them.

In relation to this particular legislation, they are always offered in excess and with regard to the no disadvantage test. We say currently that somebody who is on a common law contract protected by a certified agreement or on an AWA underpinned by a certified agreement—and enabled by a certified agreement, incidentally; something that the FSU agreed with the company about—operates in that instance above what we think is a reasonable, accepted, understood safety net. Our point is not that there are no grounds on which and no circumstances under which somebody would want to have an individual engagement. That is not our point. Our point is that people would probably not initiate it off their own bat and they should do it with a decent and proper safety net that underpins it.

I can talk about an example of what happens in our industry. I think it is unique—or at least different from some others. We know that where an employer wants an employee to take up an individual contract it is said to them, 'You will not get a promotion unless you sign an individual contract. You will not get a wage increase unless you sign an individual contract.' This whole question of being forced or coerced is a very difficult one in our industry. Your employer may be $40 billion, $50 billion or $60 billion large and most likely earning between $5 million and $10 million in their own salary. People in our industry are fairly bright; they know what goes on. If you are asking whether any unlawful pressure what brought to bear I would say possibly, but most likely not.

I give this example and I give it specifically. When the ANZ Bank sought to have their managers sign individual contracts one of their most senior managers was inviting people into her office on the 33rd floor of Queen Street to say, 'Where are you up to?' People are not silly. They know what is expected. We say that the power relationship between the employer and the individual employee is just not there.

Senator JOHNSTON—Do you think it is the role of the employees to initiate the terms and conditions being offered to employees?

Mr Schroder—It is interesting you should say that. I think employees should have some say about the way in which their terms are governed.

Senator JOHNSTON—And you saying that in an AWA they have no say?

Mr Schroder—I think it is as simple as this: if you asked employees whether they want a collective agreement with the union involved we know from our research that even the nonmembers would say yes. We think there are some fundamental things that you should be considering to make this a different thing. That is, not a thing that is just initiated by the employer; not a thing that simply gives very powerful employers more power over their individual employees.

Senator JOHNSTON—You have said that AWAs are offered with promises of promotion and wage rises. So there is a quid pro quo in joining the company through an AWA.

Mr Schroder—That is not quite what I said. I said that unless you signed you would not get those things.

Senator JOHNSTON—There is value for the signature. They are signing because of something. You call it an inducement; I call it a consideration.

Mr Schroder—I do not think you have represented what I said properly at all, actually. You asked me whether somebody is dragooned or forced into taking an agreement. I am saying that what is offered to them, threatened to them, suggested to them is that things in the future will be withheld unless they take the agreement.

We know categorically that if you are a call centre worker your boss says, 'You sign this packaging arrangement or you will not get the promotion that comes. In fact, the promotion requires you to sign this.' If you ask them whether they would prefer to be in a collective agreement, whether they would prefer to have the union represent them, most likely their answer would be yes. Is it an option available to them? No, it isn't.

Senator JOHNSTON—Do you ask them, 'Are you prepared to give up the promotion and the wage rise in order to stay in a collective agreement?

Mr Schroder—I would ask the question in completely the reverse way. I would say: if an employee wants to negotiate their terms and conditions through their union in a collective way, why should they give up something for what we think is a basic, fundamental human right?

Senator JOHNSTON—Do you provide assistance in the negotiation of AWAs?

Mr Schroder—Yes, we do. Of course we do.

Senator JOHNSTON—And how many people utilise your services? You have 10,000 in the Commonwealth Bank.

Mr Schroder—A great many. In fact, it is causing us to fundamentally change the way we organise ourselves.

Senator JOHNSTON—So where is the problem?

Mr Schroder—The problem is that an individual has nothing like fair bargaining power with a massive bank or an enormous insurance company. That is the problem. We are no advocate for the 1996 act. We are no advocate for what is in front of us. We have had a good look at this legislation and we don't like it a great deal. But if we look to the future, we have to say that if you are going to have a fundamentally different system, it needs to respect the fact that people do not start even, that people are at a disadvantage relative to their employers, and they need to have basic and fundamental protections.

The most chilling one for us is the possibility that you could have reduced your annual leave entitlement. Most of the employers in our industry have hundreds of millions of dollars of liabilities on their books for annual leave. It accumulates rapidly. They regularly come to us and ask for one-off cash-outs—not one of the examples in the submission, but they regularly come to us about that. In the past we have agreed to cash-outs of people's annual entitlements. The idea—and I cannot imagine who this suits; I cannot imagine who this is for—that somebody might be expected to accrue less than four weeks of annual leave and be able to take less than four weeks annual leave in our industry would work like this: 'We are understaffed. Christmas is a busy time. You know your sales targets are not going to be changed when you come back. You know your expectations are not going to be modified or

adjusted based on your absence. Wouldn't it be better—especially given that you cannot get your annual leave until two stupid weeks that do not line up with your partner, who also works for the bank—if we just gave you a little bit of money?'

Call me old-fashioned, call me aspiring to some sort of iconic thing that annual leave of four weeks is something we all rely on—call me all of those things—but it makes me sick in my guts to think that people who do not have a fair bargaining position, who are under enormous pressure in a workload sense, could possibly be leaned on. I am not talking about evil here. I am simply talking about somebody taking an advantage that is going to be offered to them by this legislation. 'To be logical, Rod, you have accumulated six weeks leave and you know you will never take four weeks of it. What about if we just bump you up a bit and you take two weeks from now on?' To me, that decays everything that I think each one of you, regardless of your political persuasion, would say is a fundamental way of working in Australia.

Senator JOHNSTON—You want to prohibit the exercise of a right to take that money instead of leave.

Mr Schroder—What I want is a fair list of minimum protections, knowing full well that we have laws for all manner of things because we know people cannot be properly protected. Please do not get involved in some word game about choice and limiting choice. People should be entitled to four weeks annual leave for their families, for their kids, especially in our industry, where the majority of employees are women. They are employed because they are good at running their households, they are good with their kids. Yet there is a possibility of one of these fundamental things being challenged. All of you are going to have a hell of a lot of things to think about over the next little while. The concept that somebody's annual leave could be less than four weeks is extraordinary.

Senator JOHNSTON—I cannot understand how you would maintain that 10,000 Commonwealth Bank employees would all sign AWAs, as you say, in an induced situation. Every single one of them is induced, and there are no voluntary AWAs? No-one is doing a deal in the workplace? No-one is getting ahead?

Mr Schroder—I do not think I even said that. In fact, there will be no argument from me that every single person is induced, that every single person is forced. What I am saying is that it becomes expected, and when it becomes expected and you do not have the power or the authority of other people, it will become the norm. This parliament is in a position to say what the things are that underpin a basic decent way of living. I say annual leave is one of those examples. I also say that individuals do not have the bargaining power of their employers, and you need to understand that when you are setting the laws that govern these interactions.

Senator MARSHALL—The supporters of the bill run an argument—and we have heard it today from a number of witnesses—that goes like this: the safety net is not being removed but simply being lowered; employers will not follow in the race to the bottom down to the new low that is being set because in order to attract staff and get the right skills and the right people to work there you need to pay proper and decent wages; and, besides, we are in a workers' market. So can you explain to me why—in the banking situation in particular, which

I suspect and hope, to be honest, relies on highly skilled and motivated workers to conduct a business—do you still say that we will see a race to the bottom?

Mr Schroder—It is difficult reading through this bill to think about how it has been drafted and whether the people who drafted it did so not knowing what actually happens in the real world—or do they know full well what happens in the real world? We are fortunate in the sense that it is a highly skilled work force. We do have a reasonable level of engagement with most of the key employers in our industry and we are regularly talking with them about their issues and putting to them what we think our members want. It is really quite bleak, though, when you consider the competitive pressures that each of these major employers are under, one relative to the other.

I will give you the clearest cut example, and I will not mention the brand names because I know they will get upset. One of the large banks said to us, 'We would like to give you a commitment that people won't be worse off under this new legislation, but what would I tell my chief executive officer when the other chief executive officer rings and says, "Why'd you do that?"' So this peer pressure is one element—'Why are you giving up something? Why are you giving away flexibility?' The other element is also true of another major bank, which said to us, 'We would like to make the commitment that we will be moving upward, but we need to leave our options open so we do not put ourselves at a competitive disadvantage relative to the competitors.'

Think about the pressure that businesses are under, even the chief executive officers. I am not sitting here before you saying that David Morgan, John McFarlane or John Stewart are deeply evil or that they have some vicious plan to rip people off, but they are under enormous cost pressures, one against the other, to deliver cost savings for their shareholders, as they perceive it and as they see it. So it is nonsense to say that an employer would be prepared to sustain the argument that 'We pay these people more than other people pay them,' that 'We offer these people more than other people.' They all want to talk about being an employer of preference in these things, but the reality is that nobody pays a dollar more because they know the sort of pressure they will be under up the line. If you are the manager of a call centre, you will have very strong, very strict cost constraints on you. You are not going to say, 'To be a good employer I'll chuck a little bit more in.' That is just not the reality.

So that is how we see it. Perhaps there is, but I do not imagine there is somebody sitting in their office today saying, 'As soon as this legislation is in we can go around with a machete.' What we think will happen is that things will slow down and things will be tried on, and as they are tried on successfully by one they will need to be tried on successfully by another or they will put themselves at a cost disadvantage.

Senator MARSHALL—The last thing from me: the example you gave about annual leave and the little talking-to people will get seems to be a practical example of why the undertaking the act gives us—that the request to cash in up to two weeks of your annual leave will need to be initiated by the employee—is really quite misleading in a practical real life sense. So do you believe, after the talking-to example that you gave us earlier, that people will simply have a pro-forma letter put in front of them requesting the company to cash out two weeks of their annual leave?

Mr Schroder—We have had some very intelligent exchanges over the last little while with some employers who even understand that at the point of promotion you are not in a position to negotiate these things and that, yes, letters will be formed and pro forma situations will be put in front of people. I categorically believe—and the FSU fundamentally believes—that reducing people's annual leave from four weeks is actually a horror. What will come of that is that in the future a new standard will be set and the new standard will be inferior to four weeks and when you have to put your hand up in a job against somebody else and the other person is prepared to do two weeks you will be obliged to do two weeks. Worse still, that will be absorbed over time because your negotiating power for wages in the future will be diminished by this bill, so not only will you cough up your two weeks but you will also not keep parity over time and you will not keep your advantage anyway.

So of all of the things in this bill—and there are, in our view, many things that we think will lead to negative effects for employees—the idea that basic fundamental minimums are up to be negotiated between the part-time teller and their chief executive officer in Martin Place or Bourke Street is a ridiculous nonsense. Our employers are well acquainted with the law, and the way this will happen will be by the conversation, the pressure point and the logical proposition: 'You haven't been able to take your leave for the last few years because we are understaffed and you can't get released and you can't get it at the time you want. So why wouldn't you just take a little bit of money?' That is what is going to happen. 'Can I do that?' 'Yes, you can. You just fill in this and that will happen and your pay will go up next week. You can go home and tell your partner, who also works for us, that your pay's gone up. Then a little bit later on you can explain that you can't have your holidays with your kids, or actually you don't need to do that, because you never could anyway, because you couldn't get it at a time that suited you anyway because we are understaffed.'

Senator BARNETT—Mr Schroder, I want to take you to task with regard to your comments on annual leave. You have made a number of assertions and allegations this afternoon with regard to annual leave with a clear implication that under the current arrangements there is four weeks annual leave and you actually cannot cash them out. Can you advise the committee of the law regarding annual leave as it stands today?

Mr Schroder—Yes, I can. I do not understand your term 'allegations'; I am not making any allegations. What I am saying is that as you set the law for the future—as this parliament determines how the future should go—you should be—and I have said that I am not enamoured with the '96 law—

CHAIR—Would you go on to the question.

Senator Wong—He can answer the question as he sees fit, as Mr Hendy did.

Senator BARNETT—I would like you to answer the question. Can you cash out annual leave today?

Mr Schroder—You do have the capacity in some circumstances to cash out annual leave—that is right.

Senator BARNETT—How much can you cash out today?

Mr Schroder—I cannot answer that question.

Senator BARNETT—You can't answer that question? So you are not sure whether it is one week, two week, three weeks or four weeks?

Mr Schroder—You can negotiate out of your annual leave under certain circumstances, yes.

Senator BARNETT—All of your annual leave—or you are not sure?

Mr Schroder—I have just said I do not know the answer to that question.

Senator BARNETT—So you do not know the answer to that question. Let us go to the second question.

Mr Schroder—Do you think that people should be able to?

Senator BARNETT—Excuse me, I am asking the questions.

CHAIR—Senator Barnett has the call.

Senator BARNETT—We will go to the second question. Given the government's plans, are you aware of the law as proposed that it will actually be unlawful for an employer not to offer four weeks annual leave? Do you accept that?

Mr Schroder—Yes, I have done my best to read the bill that is before us.

Senator BARNETT—So you accept that as fact?

Mr Schroder—I accept as fact that there is drafting to the effect to provide some protections about four weeks annual leave—some and inadequate.

Senator BARNETT—I put it to you that the proposed law that is before the committee and that we are considering is actually an improvement, an enhancement and an increased safety net for employees with respect to annual leave, whereby there will be a minimum of four weeks annual leave with up to two weeks annual leave being able to be cashed in at the employee's request. Do you accept that as the proposal before the government or do you have some other analysis or review of that?

Mr Schroder—I understand what the drafting is, and what I am saying to you is that, when the government goes about setting what is a fair and decent and Australian minimum for annual leave, the proposition should be categorical, should be very, very clear and should be four weeks.

Senator BARNETT—Let me put it to you, Mr Schroder, that the current arrangements are this: you can actually cash out your four weeks annual leave and, under the government's proposal—

Mr Schroder—And my response is, as I said at the beginning: we are not enamoured by the '96 act. We are not enamoured by the fact that annual leave can be negotiated away. We do not think it should be and indeed we think it is one of those things—it is not only an iconic thing but it is fundamental to the way people live their lives or should live their lives—that should not be up and on the bargaining table between people who have very different bargaining authority.

Senator BARNETT—Mr Schroder, the answer you gave to my first question was that you are not sure. I am putting it to you that, under the current law, you can cash out all four weeks of your annual leave. Under the government's proposal—

Senator WONG—He has just answered that.

Senator BARNETT—Excuse me, Senator Wong—there will be a minimum of two weeks that you can cash out of your four weeks minimum, and that is at the employee's request.

Mr Schroder—Thanks for putting it to me in that way, but my response is still that what you are doing in this regime is giving predominance to individual contracts. You are failing to acknowledge the difference in power and bargaining authority between the employer and the employee, you are taking away a fundamental proposition about being no worse off overall. The only reason I can conclude that that is being taken away is that there is an intention to go somewhere less than no worse off. We can have a competition upwards from now. You do not need to change one thing to have competition upwards.

I say that—with the dominance of individual contracts, with insufficient safeguards, with a range of other things that we could draw attention to—you are compelled, if you are going down that path, to provide genuine, real and proper protections for people. The current bill does not do that. I used the example of annual leave as one example.

Senator BARNETT—You have used the example of annual leave, but I put it to you that you should know exactly what arrangements apply today for your employees—the people that you act for—with respect to annual leave before you start making criticisms of the proposal before you. Because I put to you that the number two is a higher number than zero, and at the moment you can cash out—

Mr Schroder—I do appreciate that. I am marginally numerate!

Senator BARNETT—You do not appear to have accepted that, so I wanted to put it to you in such simple terms!

CHAIR—I think Mr Schroder has taken that point. As requested by the Labor Party, we will now move to Senator Murray, who has approximately 10 minutes.

Senator MURRAY—Mr Casidy, did I hear correctly that you are here to talk to us about the New Zealand comparison?

Mr Casidy—I am here obviously to support our sister union, the FSU, as they make submissions on this bill. I guess from my perspective we bring a degree of experience, having lived through the Employment Contracts Act of 1991 in New Zealand, which is a bill in design and intent—

Senator MURRAY—Let me just stop you there. You have heard the chair and I have a limited amount of time, so you will need to discipline your responses, but New Zealand has been raised in debate as a comparison and so on. What I am particularly interested in are three matters. One is the progress of legislative change, briefly described through '91 to date, because I understand there have been various changes since then. The second is the movement in productivity from that period to date, and the third is the issue of wages and conditions and what has happened from that period to date.

Mr Casidy—We started out with the Employment Contracts Act in 1991 and moved through with that legislation until the election of the Labour government in the late nineties. They overturned that in 2000 and introduced an act with a fundamentally different point of view—one which sought to strengthen collective bargaining as the primary method of keeping a minimum platform for people in place, I guess, combined with some minimum statutory rights for, particularly, low-paid workers.

What we saw in the finance sector in the 1990s period was precisely as Paul described—fear. It was a race to the bottom; and it was a race to the bottom that was largely prompted by the competitive fear that employers in the finance sector have of each other. We saw across workers, particularly those in finance, significant attacks on overtime and penalty rate payments. We saw significant attacks on pay systems and a movement towards performance or sales target incentive type pay systems. We saw significant attacks on redundancy provisions, many of which, I am pleased to be able to say, in a bargaining sense we were able to repel in the finance industry. But then, again, the finance industry in New Zealand was the only industry from 1991 to 2000 that achieved pay rises that were equal to, or slightly above, the cost of living during that time. Every other occupational grouping in New Zealand received pay rises of less than CPI as measured by the Victoria University of Wellington. We saw a concerted attack on workers' conditions and a spiralling downwards in employment conditions. From my perspective, that evidence is very clear across the Tasman, some 1,200 miles away.

In the late nineties, obviously a change of government brought a difference of view about how we might try and address those things. I think that was prompted by a number of reasons—one obviously being political, but the other being that during the 1990s our unemployment had continued to grow in New Zealand, despite what we were promised would happen as a result of the ECA. Productivity rates in New Zealand remained historically low compared to those in Australia. Our base salary rates compared to those of Australian workers continued to decrease and the gap grew wider to the point where today Australian workers on average earn about 30 per cent more than New Zealand workers do.

In 2000, when that law changed, we saw some significant changes in productivity issues and some significant benefits in unemployment issues. We are starting to see now a recurrence of some of the terms of conditions of employment that were lost; they are starting to come back as the norm. For example, there has been much debate this afternoon about four weeks annual leave. New Zealand is not due to have four weeks annual leave as a statutory minimum until 2007, which for us is a historic and significant step in the right direction. We have seen what we would describe as the worst of times in terms of impact both on people and on the economy during the 1990s and some good times since 1999-2000, when there has been quite a change.

The other thing—and this is part of what is not talked about a lot—is that the fundamental tenets of acts like the ECA are about shifting the focus off collectivism and responsibility for each other onto individualism and responsibility for yourself only. One of the things that strikes me about what the Employment Contracts Act did in New Zealand is that it placed not just one but a number of nails in the coffin of what you in Australia describe as 'a fair go for all' or an Australian way of doing things—which we might like to take some credit for

occasionally because we do share some values that are similar to yours—and basically say that, as a way of life, that is not necessarily the best way to do things. We see now, for example, children coming out of high school with no understanding of the concept of collectivity, whether that is in a union concept, in a church concept or in a sports club concept and so on. I think the ECA was the government in New Zealand's clearest signal to people that it wanted to change from a cult of collectivism to a cult of individualism.

Senator MURRAY—I react warmly to some of your remarks in that I have always viewed workplace relations—in your context, industrial relations—matters as very much being part of the social contract and having a social component, not just an economic component. I get distressed when people express just in economic terms concepts that matter so much to people. My question arising from what you have said is: the government have quite rightly made it clear that the proposal before us is not the New Zealand model—and that is true—but large numbers of employers and quite a few conservative politicians still remain attached to the vision of the New Zealand model. Essentially my reading of the empirical literature is that it did not produce jobs growth; it did not produce productivity increases. It decreased social cohesion, reduced wages and conditions and it was generally bad for New Zealand. Is that a summary you would agree with?

Mr Casidy—I could not have put it better myself—I only wish I had.

Senator MURRAY—I am not sure how much time I have but, before I lose my time, I want to ask you what is probably the most important question of the day: have you got any tips for the Wallabies?

Mr Casidy—Pack your bags, go home, don't bother!

Senator MURRAY—Okay! I thought you might lend us a front-rower or two. Returning to the matter at hand, before the chair chops of my hand, I just want to be sure of something in my own mind. I have the impression that the FSU is entirely under the federal legislation, that there is no-one who is under state legislation.

Mr Schroder—We have no members covered by the state awards or state agreements—none.

Senator MURRAY—You have tried to make it clear that you are not a supporter of the 1996 act, which, of course, puts you and I at odds, because I am.

Mr Schroder—There were improvements.

Senator MURRAY—I want to ask you about the importance of awards. What I have always liked about the safety net is the way in which certified agreements, both union and non-union, and individual agreements, both AWAs and common law, used the safety net of the award as a reference point. Principally, as you know, that relates to conditions. People can quite easily negotiate above-award pay; it is more difficult to negotiate conditions. Is the proposed reduction of the allowable matters from 20 to 16—and I appreciate that there are other things happening—a major issue for you?

Mr Schroder—No, not particularly. The idea of eroding an award is of concern to us. But the four that we understand to be coming away do not have any particularly detrimental effects on us based on our current arrangements and what we can currently rely on. Of much

more concern for us, in terms of undermining the safety net, is the prospect that, under the new regime, at a certified agreement's nominal expiry date it could be terminated. Then, once it is terminated, you would return to those fair pay conditions and not your award. We do not know what is in store. We do not know what sort of review is going to happen for awards as we go further down the track. Of much more concern to our members—and I think it is going to be a disincentive to enter into collective agreements under the new regime, frankly—is the idea that you would reach an agreement that absorbs your award and, with the capacity of an employer to give 90 days notice to terminate an agreement, you could end up not with your old agreement and not with your old award, but with just those very basic fair pay conditions.

Senator MURRAY—I must say that that coincides with my view. I have been less concerned with the reduction from 20 to 16 than I have been with the breaking of the nexus—the connection between the award and collective and individual agreements, because they will now be funnelled back to just the five minimum standards.

Mr Schroder—For us, where the position of power is relatively questionable on a number of occasions, the fact that an employer can say, 'We have come to our nominal expiry date, here's 90 days notice, it's gone, also your award is gone' and you are then back to those inadequate minimums, is something that is quite chilling for our members. Not only is it chilling that the nexus is broken and the underlying protection has gone, but it may also even create a disincentive to move to certifying agreements under the new regime.

Senator MURRAY—I have one last question. Your submission essentially covers an attitude, because I think you had insufficient time to examine the detail of the bill. Nevertheless, the Prime Minister has said that he will accept technical changes. Could I ask you, in the short time available until Friday when this inquiry comes to an end, if you do find technical changes that you would like us to pursue, could you let the committee know? Whilst that may not change the direction, it might at least have some effect which is of benefit.

Mr Schroder—It would be our tendency to be expansive about what represents something that is technical but the idea that agreements can be terminated with 90 days notice, the implications for the transmission of business and what happens there, the prohibited content issues and particularly the idea of an operational reason for being able to dismiss people are the sorts of things we think would need to be considered. We have had a chance to look through the bill and we draw attention to those points.

Senator MURRAY—We need to be advised of them otherwise we will not be able to make the amendments we might think worth while.

Mr Schroder—We will ensure that we do that in relation to those six or seven things I have just identified.

Senator SIEWERT—I go back to your comment on the larger number of women employed in the sector. Have you had a look at the potential implications of the legislation on the gender pay gap?

Mr Schroder—Yes, we have. It is early and there is a lot of stuff to trawl through but the finance industry is the worst industry in Australia for lack of pay equity. It goes to Senator Murray's point, too. There is a range of ways that this can impact negatively. Perhaps the most clear is this: we have done a lot of surveys and studies that show that men tend to self-

promote better than women. They put themselves forward more, accept a little bit less and those kinds of things. Maybe it is delusional but that seems to be true. The more you individualise the work force, the fewer agreed protected collective minimums, the worse it is for women—always. In our industry I think women's wages are running at about 57 per cent or thereabouts of men's. There is a range of reasons for that—longevity in service, structural factors and where people are in the organisation. This industry should hang its head in shame about pay equity. There is nothing in this legislation that will make that easier to deal with and there are a number of things that make it much harder.

Senator SIEWERT—Can the data you are referring to be provided to the committee?

Mr Schroder—Of course. We have spent a lot of time in recent years concentrating on pay equity and those problems in our industry. I could also forward to you the specifics of the way in which we think this bill will be detrimental to pay equity in the finance industry.

Senator SIEWERT—I am sure my colleagues would appreciate that information as much as I would.

Mr Schroder—We would be happy to get both of those to you by Friday.

Senator NASH—I was a little intrigued by your comments earlier that the basis for women being good at their job was that they were good at running their household and good with their kids. I am sure they have a few more talents other than that.

Mr Schroder—I am sure of that as well. I was saying why some of the employers choose them.

Senator NASH—I would like you to clarify a few of the comments you made earlier about AWAs when we were talking about the Commonwealth Bank. Does the CBA employ 10,000?

Mr Schroder—Yes.

Senator NASH—How many of those are on AWAs?

Mr Schroder—I meant 10,000 are on AWAs; about one-third of the work force are on AWAs, and predominantly in managerial and more senior roles.

Senator NASH—How many of those 10,000 belong to your union?

Mr Schroder—A large number. I cannot tell you the exact number.

Senator NASH—Of that 30,000 all up, how many belong to your union?

Mr Schroder—Just a little over 50 per cent of the work force.

Senator NASH—So you have a majority of the 10,000 who are on AWAs.

Mr Schroder—I cannot make that delineation for you. We have just a majority of the work force but I cannot tell you off the top of my head how many AWA people are members.

Senator NASH—You commented earlier that no employee would choose an AWA. None of those employees out of that 10,000 on the AWAs in CBA would be on an AWA by choice?

Mr Schroder—I think I said that no employee would initiate an AWA.

Senator NASH—You said that no employee would choose an AWA.

Mr Schroder—Let me clarify that, then: we have not surveyed them but we would think that people generally would not initiate AWAs. People have not initiated AWAs; the employers initiated those AWAs.

Senator NASH—Is that not pure presumption if you have nothing to base it on?

Mr Schroder—Yes. That is the point I was trying to make. I think employees' rights and the things that they like should be respected in this legislation. I am surmising or presuming that those AWAs have been initiated by the employer and I very much doubt that an employee would get up in the morning and say, 'I think I would like an AWA today.'

Senator NASH—So you very much doubt it. We need to note that that comment about them not choosing an AWA is purely subjective and purely your view that is not substantiated by any recent—

Mr Schroder—What I can rely on in relation to the Commonwealth Bank is the fact that on a number of occasions we have asked employees how they would like to be represented and how they would like their terms and conditions handled, and they would like a collective agreement with their union involved. There is nothing in the current legislation that allows us to encourage an employer to respect that right and there is nothing in the new bill that will allow that to happen. So we know—we have checked—that the majority of Commonwealth Bank employees would prefer to have a collective agreement that their union is involved in, but there is nothing we can do to encourage an employer, in this case the Com bank, to respect that.

Senator NASH—Is any of that information public or is that purely for your union?

Mr Schroder—Yes. It is in our submission, actually.

Senator NASH—All right. Thank you. But again, just to clarify, it is purely your view that they would choose not to be on an AWA.

Mr Schroder—I have tried to clarify by saying that I would be very doubtful that any employee—

Senator NASH—It is a simple yes or no.

Mr Schroder—I do not have a simple yes or no.

Senator NASH—To whether or not it is your view?

Mr Schroder—I have surmised that.

Senator NASH—It is your view?

Mr Schroder—Yes, it is my view.

Senator NASH—Thank you.

Senator WONG—Very quickly, Mr Schroder, to your knowledge, there have been instances where employers have initiated AWAs?

Mr Schroder—Yes.

Senator WONG—Have there, to your knowledge, been any instances of your members themselves initiating AWAs?

Mr Schroder—No, none to my knowledge.

Senator GEORGE CAMPBELL—It was Mr Masson, I trust, who asked a question to us and who made the introductory remarks. We need to be brief because I will get cut off in exactly six minutes—I can guarantee that. First of all, I apologise for not reading your submission in detail. We have just not had time because of the constraints on the inquiry. Thank you for bringing Mr Casidy along. It was most enlightening to hear about the New Zealand experience, which has been quoted at us ad infinitum. I want to ask you: what is the gender balance within your industry? Do you have a figure on it?

Mr Masson—Across the total industry?

Mr Schroder—It is 55 per cent women but, of our membership, about 62 per cent are women.

Senator GEORGE CAMPBELL—About 62 per cent women. Do they make up the bulk of the part-time workers?

Mr Masson—Yes.

Senator GEORGE CAMPBELL—What percentage would that represent?

Mr Masson—Well into the high 90s, we believe.

Senator GEORGE CAMPBELL—In the high 90s in terms of part time. Are you aware of the provisions of this bill in subdivision B?

Mr Masson—Immediately?

Senator GEORGE CAMPBELL—It is a guarantee of maximum ordinary hours of work and it talks about the averaging of the 38-hour week.

Mr Masson—The national secretary is saying he is aware of it, so perhaps he might be able to respond.

Senator GEORGE CAMPBELL—So you are aware of that provision, Mr Schroder?

Mr Schroder—That is right.

Senator GEORGE CAMPBELL—Have you looked at the implications of that provision in respect of part-time employees?

Mr Schroder—We have not actually put our minds to what that means, but we do know that over the last decade our employers have tried to blur the line between part-time and full-time employees. In fact, very few of them have any restriction on the top cap at all, so a part-time employee in our industry is anyone who works for one minute less than the 152-hour monthly cycle that tends to be the regime. I do not think it is very clear in this bill at all what a 38-hour week means. I do not know what the 39th hour gets paid at—or the 40th or the 41st.

The idea of averaging overtime is ridiculous nonsense, and you will see in our submission that there are about 1½ million hours of overtime worked in our industry every week, the majority of it—and Ingrid is nodding—unpaid. I am not sure what the parliament has in its mind when it thinks about the industry, but the whole idea of staffing pressures, workload pressures, hours pressures and the blurring between part time and full time or casual and part

time mean that the whole issue of controlling your hours relative to work and family life is very dubious in our industry. I think the way that this is structured—

Senator MURRAY—And in ours!

Senator NASH—And in ours!

Mr Schroder—Okay! The whole idea, this provision and the fact that it is not going to be protecting in the same way and that an individual contract can prevail, will lead to an erosion of people's already vulnerable basic protection of their work life relative to their family life.

Senator GEORGE CAMPBELL—What is the average number of part-time hours that worked in your industry?

Mr Schroder—I cannot answer that question, but each employer has a different construction for part time and full time. Some of the banks have large numbers of part-time hours—people who work 29 or 32 hours a week. Some of them try to match lunchtime business and have quite small 12-, 14- and 15-hour regimes. Interestingly, one of the larger banks which traditionally has had that small group of hours is trying to move to the larger number of hours, because it is easier for training and easier to form connections—'engagement' is the new word we are being inundated with.

Senator GEORGE CAMPBELL—But, currently, those would be fixed hours per week?

Mr Schroder—Either they would be fixed or they would be fixed by what is called mutual agreement. In each of our certified agreements there is a proposition called mutual agreement which says that your roster is your roster, unless you and your employer agree something else. Those are all things that are vulnerable under this bill.

Senator GEORGE CAMPBELL—Under these provisions it is possible for the employer to introduce averaging to cover their peaks and troughs, which would have an impact not only upon the availability of employment in the industry but also upon the capacity for women in your industry to meet their family commitments.

Mr Schroder—Of course. I did not mean any insult to Senator Nash, but a very a large number of our members work as part-timers to meet their work commitments and their family commitments. The idea that you have some influence and some control is vitally important. The certified agreements currently provide some protection. But Ingrid would say to you that, even if you have those, there is a lot of pressure and a lot of the time there is no protection. As soon as you say that it is 38 hours averaged, you are changing this fundamental proposition. It is a blurring and we say that, when one group has much more power than the other, blurring always works in favour of the powerful.

Senator GEORGE CAMPBELL—The other aspect about the averaging of hours, which the department indicated on Monday when they appeared, is that you can create a set of circumstances where you may not accrue four weeks annual leave. Presumably, at the moment, if you are a part-time worker you get four weeks annual leave.

Mr Schroder—Yes, of course you do.

Senator GEORGE CAMPBELL—Under this provision, it is possible not to accrue four weeks annual leave if you work fewer than 38 hours per week.

Mr Schroder—Obviously my passion about annual leave has created some interest in this discussion. I think that somebody having four weeks annual leave is vitally important, especially when you have families—kids, older parents and other people you are trying to connect with. Andrew made reference to what sort of impact that blurring could have on the type of community we live in. Who will be able to commit to their sporting club, who will be able to look after people, who will be around to care—who will be around to do these broader things that the whole community is based on? We see the idea of four weeks annual leave for full-timers and part-timers as not only iconic but essential to a good and decent lifestyle.

Senator GEORGE CAMPBELL—Can I just give you the good news that the department has agreed, or the minister has agreed, to review this provision. I suggest that if you have any comments about it you should get them in very quickly.

Mr Schroder—We will gladly take up that invitation.

CHAIR—Senator Barnett has one last question.

Senator BARNETT—I do. Mr Schroder, I just want to make the observation and allow you to respond.

Senator GEORGE CAMPBELL—Why does he get another kick at the ball?

CHAIR—You had an extra minute, Senator George Campbell.

Senator GEORGE CAMPBELL—You turned it off on us yesterday.

Senator BARNETT—This is a very short question, Senator George Campbell, and it relates to a comment from Mr Schroder and Mr Casidy. Mr Schroder, your colleague Mr Casidy apparently was unquestioning about and accepting of the New Zealand legislation and the four weeks annual leave. I just make the observation—

Senator MARSHALL—Is it a question or an observation?

Senator BARNETT—I ask, Mr Schroder, whether that appears contradictory or inconsistent with your earlier comments where you were not confident about the Australian government's proposal for four weeks annual leave? Whereas Mr Casidy apparently appears to accept the New Zealand legislation for four weeks annual leave. What is the difference?

Mr Schroder—I am not sure what your question means?

Senator BARNETT—Let me ask it another way. It appeared to me that Mr Casidy said that he accepted the New Zealand legislation as providing a four-week leave annual leave minimum.

Mr Schroder—As at 2007?

Senator BARNETT—Yes. Yet our legislation as proposed—

Senator GEORGE CAMPBELL—Is he asking a question or is he making a statement?

CHAIR—He was asking a question to which Mr Schroder was responding.

Senator BARNETT—Excuse me, I am asking a question.

Senator GEORGE CAMPBELL—He can have 20 minutes in the chamber if he wants to make a statement. For God's sake, stand firm in the way in which you are conducting these proceedings.

CHAIR—Please ask the question, Senator Barnett.

Senator BARNETT—Mr Schroder, what is the difference between your colleague accepting the New Zealand legislation proposal for four weeks annual leave and the Australian government's proposal?

Mr Schroder—As I have just been reliably informed by note, there is no provision to cash out the four weeks annual leave in New Zealand as at 2004. I am relying on that. The proposition that I have put here repeatedly is that it is our view that, when annual leave is negotiable, it will be deteriorated over time and people will be under pressure to take fewer than four weeks, and fewer than four weeks is not something that will be seen as a positive by almost anyone in the community.

CHAIR—There is one factual question which Senator Joyce would like to ask you; he would like you to give the answer to the committee by the end of the week.

Mr Schroder—Sure.

Senator JOYCE—I was also fortunate enough to work for a bank for five years. How many of your members are on salary? You were talking about overtime.

Mr Schroder—Yes.

Senator JOYCE—I remember working Saturdays as well. But it was always salaries.

Mr Schroder—People may not think this, but we have disproportionate numbers of members of people who are on packaged salary. We have a large number of members who are on packaged arrangements where they have opted out, say, of the hours provision of their award in return for a financial package and a common law contract. Is that the group of people you are talking about?

Senator JOYCE—Yes.

Mr Schroder—There is a large proportion of our members in that situation.

CHAIR—Perhaps if you can supply that number to the committee.

Mr Schroder—I would be happy to do that.

CHAIR—That would be good, thank you. And thank you for your appearance here today.

Mr Schroder—Our pleasure. Thank you.

[4.53 pm]

BARTON, Ms Tanya Maree, Delegate, United Services Union, Australian Services Union

KRUSE, Mr Ben, Manager, Legal and Industrial, United Services Union, Australian Services Union

PEARSON, Mr Neville Keith, Member, Australian Services Union

VOSS, Ms Vivien Patricia, Member, Australian Services Union

WHITE, Ms Linda, Assistant National Secretary, Australian Services Union

CHAIR—I welcome our next witnesses, who are from the Australian Services Union. Thank you for your submission. I invite you to make a brief opening statement before we ask questions.

Ms White—Thank you. I have with me Vivien Voss, who is the manager of the Albury-Wodonga Community Centre. She has been working in the community sector for 20 years and she has been on the management committee of a number of organisations. Neville Pearson is a plant operator from Armidale. He has worked for 26 years in local government. Tanya Barton is the child-care director at Enmore Children Centre in Sydney. She has worked for 22 years in Marrickville Council. Ben Kruse is also with me; he is from the ASU New South Wales USU branch. They would each like to make a short submission to the committee. Before they do, I will give you a brief overview of some important matters the ASU wishes to draw to your attention.

The ASU have 120,000 members in Australia. We are a key union in a number of industries. We are the principal and major union in local government. We have members in every local government council across this country. So in every state, in every territory, in every local government there is an ASU member. We are the principal union in the social and community services sector—that is the private sector. We are also the principal union in the private sector generally with a diverse membership in airlines, IT, business equipment, TABs, call centres, cash, transport and shipping—and there is an ongoing list of other locations.

Work Choices will affect our members in different ways. In our submission to you we have tried to encapsulate some of those different ways but will not, of course, encapsulate everything. We have many employees and members under state awards and many have been in the federal system for years. We obviously have a significant membership in Victoria, all of whom are under the federal system. We believe that in each of our sectors membership will be adversely affected by the legislation, and Vivien, Neville and Tanya will focus on how they see it in their sectors.

I want to concentrate briefly on our views on the federal system but, in doing so, I want to reiterate our concerns about the use of the corporations power in some of our sectors and how that will actually operate in social and community services. We have a number of awards covering workers in this sector, both state and federal, and the award rates are the actual rates, as Vivien will tell you. Enterprise bargaining is relatively rare, as these organisations for the most part depend on government funding for their existence. State and federal governments have funded these awards—no more, no less. Basically, when the awards go up, people's

money goes up, although notably under the New South Wales SACS award in 2001 the federal government did refuse to fund their portion of some of the sectors payable under that award. The management of most SACS organisations is voluntary. The employees often number fewer than 10, and the significant majority of these organisations will probably not be constitutional corporations, but they might be one year and they might not be the next. It will just depend on the funding, the projects, the staffing and what they are doing at any given time.

The reliance on the corporations power will create, and has created, enormous confusion in this sector. It is also creating confusion in the local government sector, and I will deal with that in a moment. Who is a constitutional corporation? What is the activities test? What is trading? Eminent High Court minds have pondered this in many High Court decisions, and now voluntary management committees will have to do likewise and will probably end up paying lawyers to be told: 'Maybe you are, maybe you're not.' It will depend on where they are at any given time. In fact, their focus will be away from delivering services to the most disadvantaged in the community because they will be pondering the imponderable—that is, what is a constitutional corporation under the Australian Constitution? When do they determine what to do? And, when they do determine what to do, what will be the result? Will they be in the federal system? Some might be in the state system. For those without a state award to fall back on, they will be on the five minimum conditions, and there might not be any certainty as to rates because, as we talk, who knows what those rates will be?

We have not been helped in local government either by what is meant by a 'constitutional corporation'. The WorkChoices booklet issued by the Australian government suggests at page 11 that city councils will be constitutional corporations. Yet the minister, the Hon. Jim Lloyd, on 2 November issued a press release designed to calm down the New South Wales councils by saying, 'Councils may not come under the new system as they are currently not constitutional corporations,' which means that they will remain under the New South Wales system under their existing New South Wales award and there will be no change. On one hand, the WorkChoices booklet says that city councils will be; on the other hand, the minister makes a pronouncement on 2 November to New South Wales local government, including Gosford council, that they probably are not. It is no wonder that people are confused. As you can imagine, voluntary management committees and social and community services have their heads spinning about not only their funding but what they are at this point in time. It really is an unfair burden for our members and their employers to be placed under when they are about doing their business.

I will turn briefly to another part of the legislation that we find particularly offensive, and that is the introduction of prohibited content in agreements, which will have the minister designate a number of things as prohibited. While we have not seen the regulations—I presume they are not in existence—the very popular WorkChoices booklet gives a preliminary list of what to expect. Most items on this list are matters that do pertain to the employer and employee relationship. Basically, what we cannot believe—and neither can our members when we go out and tell them—is that the mere fact of talking about something will attract a fine. If you ask to be educated by a union about the Work Choices legislation, the mere fact of asking your employer, and not whether they agree or not, will attract a $33,000 fine. I

challenge the senators here to show us and our members which other Western democracy imposes fines on employers or employees for asking about things in their workplace. One of our members said to me recently that it is a return to the era of Charles Dickens's *Oliver Twist*: 'Please, sir, may I have some more?' From our perspective we cannot understand why this is so.

Finally, in the private sector we in our union are at the sharp and pointy end of things. I guess the thing that we see coming down the track and getting very close to us is that we have negotiated a number of federal agreements, and done so across the union, and we are extremely concerned about how some of these clauses will fit together. One particular matter which causes us significant concern, which raised in the previous submission by the FSU, is the ability to terminate an agreement. If you terminate an agreement with 90 days notice and if that agreement has redundancy pay in it, that means those people lose that redundancy pay and go back to the five minimum conditions.

Currently under the proposal you can then sack the staff. If there are over 100 you have to give operational reasons, which many companies that I have dealt with frequently characterise any of their actions as. If there are under 100 you have to give no reasons. Then you can start a new business that is ostensibly the same but different. You can make a greenfields agreement with yourself and then you can hire staff on better than the five conditions but probably worse than what you originally hired them on, and then the cycle begins again. While you may say that is a fanciful and naive thing to say, it happened in the Geelong wool combers dispute last year or the year before. We can see it happening again quite readily. People, particularly in regional areas where we have members, will be faced with this. Their employer will become the judge, jury and workplace negotiator for them. We see that as a detrimental and backward step for people.

Far from creating jobs in these sectors, what this will do is drive down wages. It will basically drive the wages paid for existing jobs downwards. For the reasons that we have enunciated in our submission, we think there are a number of things that are wrong with this legislation and the ASU asks that you reject the legislation. Each of our members would like to say something to you. Tanya Barton would like to say a few things about how it affects her and her sector.

Ms Barton—I will start off by informing you that early child educators where I work are gravely concerned. Today for the first time in 23 years union members and non-union members alike joined the rally for the national day of protest. That is quite remarkable, quite amazing and memorable. It actually united the entire early childhood work force for the first time in 23 years.

The concerns that we have are many, but I will touch on some of the major ones. The first is our right to a skill based pay or salary system. Having worked in this area for some time now, I have worked in an environment where there was no acknowledgment of skill based pay. We were heavily disadvantaged and our rates of pay were poor. When the skill based pay system was introduced it gave us an opportunity to improve our work conditions and rate of pay. It has continued to do that. Compared to the private sector we are better off. It has ensured some equity issues. Because we are working in a care industry, which is probably not an industry that is particularly valued, the financial reimbursement is minimal. It has been

empowering. It has also given an opportunity to attract people to our industry to ensure that children are well looked after. With increased rates of pay we can attract more staff and staff our services. If this bill gets up I am sure that is not going to be available and it is very concerning.

The other issue of concern is the possibility of not having paid maternity leave. Back in November 2001 the union, working in association with the Local Government and Shires Association and the commission, accessed paid maternity leave. It has had a significant impact on families. Working in child care you get a very close look at how families operate and the pressures that families are put under. Paid maternity leave makes a difference for many families in terms of having or not having children. It allows families to make choices as to whether they have their children in child care from six weeks of age or four months of age or 12 months of age. It is really important that we continue to provide paid maternity leave. The council I work for never had that initiative. They were not able to do it; it was in the too-hard basket. They would have continued for many years not giving that opportunity. By having it in the award it happened; it became real to families. It was very much valued and continues to be. We hope to safeguard that and we will do whatever we can to do that, because it is worth fighting for.

The other part of the bill that you are putting forward that we find challenging is the loss of the union having right of access to workplaces. It is important from an OH&S point of view. We need the opportunity to debate and to engage. We need someone independent who can assist in negotiations. Often when there is conflict in the workplace the staff do not feel empowered, they feel threatened. They may not have the skills to negotiate, to share information or to engage. Union support, and the support of an industrial relations commission, provides that. It is a means of ensuring fairness. It is really important that we continue to have that opportunity.

Another part of our current award conditions is a clause that supports balance between family, home and work life. It has been a significant benefit to families. Workplaces have become much more reasonable. Workers are allowed to negotiate hours of work that meet family needs. It is vital if we really want to have a society that values young children that we consider that. In today's society it is a necessity for most of us to have both parents, whoever they may be, working. We need to keep young children and their needs in mind. That clause in the current award assists that greatly.

Ms White—Mr Neville Pearson would like to make a short statement. I should draw to senators attention that both Mr Pearson and Ms Barton put in individual submissions which go through a range of matters that they will talk to.

Mr Pearson—Senators, I am going to speak more on the grassroots level of local government. I was on a consulting committee in 1992 and in that role I was involved with getting a salary system up and running. I worked hours and hours at that, and thoroughly enjoyed it, and now we have a career path in local government through grades and steps. It is a very good system. The union and the local government, our council and the general managers and engineers, all supported that and everyone worked as a team. It has taken us since 1992 to get this up and running and now we are going to change the whole system and

throw it out the back door. I believe that in local government, where its funds, through federal and state, are short, we just have to go down the path we have.

Let us face it: we are an ageing work force. I am talking from my heart. I work with all these guys and if they get lower wages then, because of higher full fuel prices and everything else, they are going to be destitute. If they get lower wages, two weeks holiday a year and do not spend enough time with their families it is going to be a real chore for these average guys. There are not too many collar and tie fellows out in the bush—I will give you the drum. I would like the senators to look at this legislation very carefully. I believe in the state award; it is working. Why change something if it is working? It is working perfectly fine.

I will give you a bit of an insight into my own personal situation. I have been a member of the National Party since I was 18; I am 55 now. I have been a delegate to the Armidale branch of the National Party, worked 16 hours a day for the National Party and spent a lot of time being a scrutineer and handing pamphlets out. If this legislation goes through I am going to make sure I take a few people with me. So have a careful think about that, senators. The New England tablelands used to be a stronghold; we have Independents there now. Think about the National Party and Liberal Party—not a force.

Ms White—Finally, Vivian Voss would like to address you on the social and community services sector.

Ms Voss—Thank you for the opportunity of coming. I work for an organisation called the Albury-Wodonga Community Centre. We currently have four projects. Three of those projects make no income. One project makes 25 per cent of its income through fundraising. We would like to know what percentage of our income under the constitutional corporation arrangements would make us trading and what award I would have to pay my staff under. As it is at the moment, half my staff would be able to stay under a state award and the other half would need to go over to a federal award. Having sat and discussed this with my staff in the last week, I know that not one of them, understandably, wants to go over to a federal award.

The Albury-Wodonga Community Centre is governed by a management committee. This committee has been under severe stress for many years. The GST meant we had to purchase an accountant for the BAS return, which was previously done by a volunteer treasurer. The SACS award in 2001 meant that half our funding was increased—the state government was forced to increase it—but the other half was not federally funded. Both these initiatives have depleted our organisation's ability to provide services. This initiative will mean that the management committee may have to get professional advice for contract development, another unfunded cost.

I am currently also on three boards. Not one member of any of those boards has skills in bargaining or contract development. We are all volunteers supporting our community and its development. The organisation that I also manage has to currently competitive tender for funding for projects. We are being undercut by large organisation that pay a minimum rate for unqualified staff while we are paying qualified staff at a much higher rate. We are currently seeing this happen time and time again. Organisations are being squeezed to use contracts and may be forced to use cuts in conditions to be able to competitively tender. Recently one

organisation in Albury received federal funding and they are being strongly encouraged to get their staff to sign AWAs.

The only annual pay increase for me and my staff in our organisation is the CPI rise. There is no funding for us to work out productivity increases or pay increases of any sort other than the CPI. Under the new Fair Pay Commission there seems to be no avenue for us workers—whether singly or as a cooperative—to apply for annual increases, as in the current system, where workers get a CPI annual increase most of the time. The organisation I work for does not have the capacity to increase its charges to cover the costs of AWA development for staff. We are currently working with the most disadvantaged, economically and socially. Our clients do not have the capacity to pay for increased costs that may occur.

I also come from a strong conservative area, Albury-Wodonga. I am continually being approached by people from the Liberal Party whom I know personally. They state to me that they totally and absolutely disagree with what is currently before our parliament. In fact, most of them buy me a drink in the pub on a Friday night. They believe that this legislation will cause distressing situations for their young people. They believe that their children are going to suffer from it and they are not happy at all. I would encourage this committee to look hard and long at what this will do to our community.

Ms White—Those are the opening remarks we wish to make.

CHAIR—Thank you for that. We will now proceed to questions. Senator Marshall and Senator Wong, you have about nine minutes.

Senator WONG—Ms Barton, I want to ask you about the paid maternity leave issue and how widespread that has been. You are from a particular sector—the early childhood sector, wasn't it?

Ms Barton—I work in a long day care centre for a local council.

Senator WONG—Tell me about the impact of paid maternity leave for you.

Ms Barton—When we were running the campaign I spent a considerable amount of time talking to people, and the response was quite amazing. I do not have children of my own so I do not have a vested interest here. When you are talking to families you find that decisions about having children or more than one child are influenced by the availability of paid maternity leave. I was surprised by that because it is nine weeks full pay, 18 weeks half pay. You may think that that is a relatively small amount of money in the scheme of things but it has a significant impact. Most of the people I was talking to required the funds to get by.

Senator WONG—Was it part of a collective agreement or was it an award to vary it?

Ms Barton—It was an award win. Basically it was an order from the industrial commission and it became a clause within the award. As a result, local governments had to implement that and it has been a benefit that has been much valued by both union and non-union members.

Senator WONG—Was it supported by all employers?

Ms Barton—Yes. It was actually supported in principle by the council I work for; it was just that they did not get around to doing it or thought it was too difficult to do. Once it became an award it was obviously implemented straight away.

Senator WONG—What about the family friendly provisions—was that what you were talking about?

Ms Barton—Yes.

Senator WONG—Could you tell me about the impact?

Ms Barton—I am also on the consultative committee, and council put together a flexible working policy. It has had practical solutions for improving opportunities for mothers, fathers and carers to combine their home, work and family lives. An example of that would be negotiated hours of work. It empowered workers to negotiate and it gave some responsibility to the employer to consider that. It has worked very well. I do not believe there have been any hardships from the council's perspective and it has not been detrimental to work. Possibly it has improved people's working lives.

Senator WONG—As I understand the government's legislation, paid maternity leave and the inclusion of family friendly provisions in an instrument of employment is not one of the five minima, and an employer can simply remove those and other award conditions—by a simple provision that says, 'Those conditions are removed'—without paying any more and without engaging in anything else. In those circumstances, do you think the people with whom you work or the sector in which you work would be likely to continue to retain these sorts of provisions?

Ms Barton—I am surmising here. In relation to early childhood settings, a number of councils operate child-care centres and a number of councils are to hand them over to the community. If we look at history, I do not think we can leave things to the goodwill of an employer. It is very hard to predict. Different political parties could have different views. There could be financial decisions being made. I would hope to believe that they would honour it but I could not guarantee that. We are here today taking back working conditions from workers, so that would probably lead me to be sceptical.

Senator WONG—We have had a lot of the beliefs put before the committee today.

Ms Barton—I would be confident to say, given that I have come here today to try and convince a number of senators to reconsider the bill that they are trying to put through, that I do not have a great deal of faith in systems that take conditions back. Nothing is ever really safe if we can be at the stage that we are at today.

Mr Kruse—I would just like to add something about the paid maternity leave. That local government state award covers 45,000 council workers across the state. One instrument provides paid maternity leave across the entire industry. Our union got agreement with the Local Government and Shires Association—they supported it—and the industrial commission supported it. That is a non-allowable matter, because it constitutes part of the fair pay and conditions standard—unpaid maternity leave is part of the standard, therefore it is non-allowable.

There was some resistance. If you look at the statement from Narelle Rich of Wellington Council you will see that her council did not support paid maternity leave, but because it is now in the award she got it. If you look at the statement from Kristy LeMilliere at Moree, women at Moree get it. A lot of the bush councils probably would not have supported it and would not support having it in agreements, but because it is in the state award it is available right across the board. It is a very important condition that will be stripped out of the award over time if it does not constitute a basic standard.

Ms Barton—What I can tell you is that, before it became an award condition, the award stated that I could be sick for a day and access sick leave. If I had worked until the time I was having a baby and left for a day to have the baby, that would be leave without pay. That shows you the crazy world we live in sometimes. In my council, I worked with a person who had a miscarriage at 5½ months. Did they give leave provisions in recognition of that? No, they did not. That is probably why I say that I surmise. Nothing is ever guaranteed in life, is it?

Senator WONG—I will defer to my colleagues.

CHAIR—You have about a minute and a half, Senator Campbell.

Senator GEORGE CAMPBELL—Ms White, you will be pleased to know that the prohibitive content is at the fiat of the minister. So when he decides that something is prohibited, it is prohibited, and that will be put in the regulations. You will read about it probably on the front page of the newspapers when somebody is arrested and put in prison. Ms Barton, the reason for this reform is clearly stated:

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.

Could you tell us how AWAs in your industry would increase productivity?

Ms Barton—You cannot lift productivity in all industries. We are a heavily regulated industry. It is a care industry, so are you going to count the number of nappies we change or how much time we spend with a three-month old baby? I cannot see where you would have AWAs as a strategy to improve productivity. I do not think it will happen.

Senator GEORGE CAMPBELL—So it would be irrelevant to your industry?

Ms Barton—Totally irrelevant.

Senator GEORGE CAMPBELL—Mr Pearson, do you want to respond?

Mr Pearson—Yes. Under the state award as we have it today, with these career paths with grades and steps, I see a huge training plan going on. I am being trained to go up a grade and a step and other members of staff are too. Therefore, unusually enough, in the bush we have productivity gains as a result. We have multiskilled people driving trucks, graders and dozers. That is all a part of a career path. Everyone bucks in and does a day's work. I believe in a fair day's work for a fair day's pay, and all the council employees I work with—and I am a supervisor of some of them—do a fair day's work for a fair day's pay. Start crucifying the guys and you will get nothing out of them. I think I have answered that question.

Senator GEORGE CAMPBELL—Under this legislation, career paths could be abolished—

CHAIR—That is all, thank you. I will now pass to Senator Johnston.

Senator GEORGE CAMPBELL—They will not let me ask you questions. They are too worried that they might get some real information.

CHAIR—You are out of time, Senator, and you know it.

Senator JOHNSTON—Ladies and gentlemen, can I ask who has actually read the bill?

Ms Voss—I have read some of it.

Ms White—I have certainly read it.

Senator JOHNSTON—Mr Kruse?

Mr Kruse—Yes, I have read parts of it and I am certainly familiar with the Work Choices policy too.

Senator JOHNSTON—Ms Barton?

Ms Barton—Yes, I am familiar with the Work Choices policy.

Senator JOHNSTON—The handout document. You have not read the bill, though?

CHAIR—This one—the 16-page one?

Ms White—No, there is—

CHAIR—There is the bigger one, the 64-page one.

Ms White—The 63-page one.

Senator JOHNSTON—But how many of you have actually read the bill?

Ms White—I have read the bill.

Mr Kruse—Yes, I have read the bill.

Senator JOHNSTON—You have read the whole bill. Mr Kruse?

Mr Kruse—Yes.

Senator JOHNSTON—Good. And Ms Barton?

Ms Barton—I have read the briefer version.

Senator JOHNSTON—The briefer version, the 61-page version. Mr Pearson, I take it you have not read the bill at all.

Mr Pearson—No, I have not read it but I have a page here about what we will be losing in our state award conditions that we currently enjoy.

Senator JOHNSTON—And that is from the union, is it?

Mr Pearson—It is, yes, but it is extracts out of—

Senator JOHNSTON—Would you be prepared to table it for us?

Mr Kruse—It forms part of the United Services Union submission.

Ms White—It is part of the submission. It has already been tabled.

Senator JOHNSTON—What is the current award rate for most of your members? Do you know what it is per hour?

Ms White—How long is a piece of string? We have 200 federal awards. We have countless state awards. I cannot tell you off the top of my head what the minimum award rates are for any of the 200 awards. You would have to say which industry, and I am happy to answer that question on notice. We have a very vast coverage—

Senator JOHNSTON—A community worker, for instance, in the not-for-profit section?

Ms Voss—In New South Wales our award has six categories, each with a year increment, developed on skills base. So from go to whoa they are vastly different, depending on the task you do. One of the issues within our industry is that removing a skills based award classification means that people do not actually know what they are worth because they do not know where they fit in.

Senator JOHNSTON—What is the hourly rate on the lowest level? Are you aware of it?

Ms Voss—I do not pay any of my staff on cat 1 and I could not tell you what is. I know the middle range, because that is where most of my staff are. Most of my staff are paid in the range between $18.44 and $21.75 an hour, because they are in the middle of the skills base.

Senator JOHNSTON—Is anybody on $5 or $6 per hour under the award?

Ms Voss—I have never ever stated that they were, no.

Senator JOHNSTON—No, but have you ever heard of such a low rate?

Ms Voss—No.

Senator JOHNSTON—Ms White, you are aware of your New South Wales branch vice-president, are you not—a Ms Fran Tierney?

Ms White—I am aware of her, yes.

Senator JOHNSTON—And are you aware that on 27 May she appeared on *The World Today* and represented that she was a community worker in the not-for-profit sector?

Ms White—I am not aware that she did.

Senator JOHNSTON—Well, she did. Let me read you the transcript. Liz Foschia of the ABC said to her:

Fran Tierney is a community worker in the not-for-profit sector and relies on the ACTU's annual wage case for a pay rise.

I think you can all relate to that.

Fran Tierney says:

We have no other way of getting increases. So with that, with those minimum clauses gone, we're gone. And we didn't get an award 'til the early '90s, so it's not long that the social and community services sector people have had an award. People with degrees were being paid $5 and $6 an hour and probably that's what it'll go back to.

The journalist, Liz Foschia, then says:

What are you currently paid an hour?

And Fran Tierney replies:

About $16 an hour, yeah, so we'll lose that.

Ms Foschia then says:

Ms Tierney says the changes will make it even more difficult to attract people to work in the sector.

And Fran Tierney says:

It's hard enough to get workers now. It's going to be impossible.

She represents that she is going to get $5 or $6 an hour. Ms Voss, you can confirm, can't you, that you are not aware of anybody getting $5 or $6 an hour?

Ms Voss—No, but what I can tell you is that I do not get paid that but I do nearly 20 hours a week in my organisation as a volunteer because we do not have the funding to pay—

Senator JOHNSTON—I am not asking that. I am asking about whether the vice president of your union has blatantly, wilfully, maliciously misrepresented the situation to the public of Australia.

Senator MARSHALL—She was including unpaid work, which is very common across all industries.

Ms Voss—I was not there. I do not know what the context was. I would like to see the rest of the context.

Senator JOHNSTON—Have a look: 27 May, an extract.

Ms Voss—It does not do anything for us.

Ms White—Senator, I think the point that is being made here is that people work unpaid overtime in this sector significantly. So while your hourly rate may very well be the hourly rate for 38 hours, if you work 20 hours overtime or you work a range of additional hours on a regular basis, that is going to reduce your hourly rate.

Senator JOHNSTON—You know she is talking about the award rate.

Ms White—I do not know what she is talking about. I have heard this for the first time, Senator.

Senator GEORGE CAMPBELL—Did she say that?

CHAIR—Order! Order! Order!

Ms White—Did she just say that? She does not say—

Senator JOHNSTON—She talks about an award—

Senator MARSHALL—No, she does not—

Senator JOHNSTON—She does—

Senator MARSHALL—Well, that is not what you read out.

Senator GEORGE CAMPBELL—That is not what you read out—

Ms White—Not what you read out, Senator.

Senator JOHNSTON—'We rely on the ACTU on the award rate' is what she says.

Senator MARSHALL—That is right—

Mr Kruse—Senator, I can—

CHAIR—Order! Senator Johnston has the floor.

Senator JOHNSTON—Let us just pause. The vice president of your union is on the radio representing that she will go back to $5 or $6 an hour under this system. If you have read the act—

Ms White—Twelve dollars seventy-five.

Senator JOHNSTON—you will know that the minimum award classifications cannot fall below their current levels. Everything she has represented is in fact a lie, is it not?

Ms White—As I understand, she made her representations to the ABC before Work Choices was clear—

Senator JOHNSTON—She was guessing.

Ms White—I think certainly all of us were guessing, Senator, and I would presume you were guessing too.

Senator JOHNSTON—Why would you say such a terrible thing to your members?

Ms White—I think that it is unclear. We do not know—

Senator MARSHALL—Point of order, Chair. It is completely out of order—

Ms White—I cannot speak for—

Senator GEORGE CAMPBELL—No, Ms White, do not—

CHAIR—Order! Your point of order?

Senator MARSHALL—to expect a witness to answer on behalf of somebody that is not here.

Senator GEORGE CAMPBELL—He is just being a smart aleck lawyer.

Senator MARSHALL—It is inappropriate for him to ask.

CHAIR—No, I think—

Senator MARSHALL—And why doesn't he table that?

CHAIR—Yes, he will happily.

Senator MARSHALL—Table it. The proposition to ask someone to comment on something that they have not got before them again is something that seems to fly in the face of earlier rulings of this committee.

CHAIR—All right. He has asked his question; he has received an answer of sorts.

Senator JOHNSTON—Happy to table it.

CHAIR—He is happy to table the letter.

Ms White—Senator, 'of sorts'? I gave the answer.

CHAIR—Senator Johnston, do you have—

Senator JOHNSTON—No further questions, thank you, Chair.

CHAIR—One minute remaining for the coalition. Senator Barnett, do you have a question?

Senator BARNETT—Yes. Ms Barton, you referred to the rally today. Greg Combet, head of the ACTU, had expected and anticipated half a million people to be rallying around Australia, and you referred to the rally in your introductory remarks. Are you disappointed at the numbers that turned up to the rally today around Australia?

Ms Barton—I was sharing information that could be helpful to the Senate on my workplace. I have been a bit preoccupied today, so I cannot really comment on—

Senator BARNETT—Not a problem. I will move to the second question in regard to maternity leave—

Senator MARSHALL—Why would you be disappointed with over half a million people rallying?

Ms Barton—Sorry?

Senator BARNETT—and your friend who had maternity leave. You were talking about the maternity leave issue earlier in response to Senator Campbell.

Ms Barton—Yes. I do not believe I referred to a friend who had maternity leave; I think I referred to a work colleague that had a miscarriage.

Senator BARNETT—Yes, indeed, who had a miscarriage. Are you aware that, under the current award provisions, annual leave, parental leave and carers leave will actually be preserved, and those conditions that are more generous in terms of the awards for parental leave and so on will remain in the award? If they are over and above the fair pay and conditions, they will remain in the awards. They are an allowable matter and therefore can remain in the award.

Ms Barton—My understanding is that they can remain for a transitional period of three years, but after that there is no guarantee; it will be dependent.

Senator BARNETT—Ms Voss, I have 30 seconds—

CHAIR—This is the last question.

Senator BARNETT—to ask you a question about your Liberal Party supporters who have been buying you drinks. I am interested to know how many there were. I want to protect privacy in terms of names, but I would like to know the name of the hotel. I would like to know how many drinks you received. I would also like to know what sorts of drinks they were, when this was and whether you can provide some details to the committee, because it is a fascinating proposition.

Ms Voss—If you email me, Senator, I will be more than obliged to give you their names and phone numbers, which I am sure they would approve of. And it was tequila.

Senator GEORGE CAMPBELL—If you ask a nonsensical question you get a nonsensical answer.

Senator BARNETT—Was it? And did you walk out horizontally or vertically?

Ms Voss—It was tequila, and I took a taxi home.

CHAIR—Senator, I think you should not ask that question.

Senator MARSHALL—He should withdraw that and apologise to the witness.

CHAIR—You should withdraw that question, Senator Barnett.

Senator BARNETT—I will withdraw that, Ms Voss. But the import of the question was—

Senator MARSHALL—It is a disgrace.

Mr Kruse—That is fine, Senator.

Senator BARNETT—I look forward to receiving the names.

Ms Voss—I think he has a thing for—

Senator GEORGE CAMPBELL—Climbers everywhere, in every profession.

Senator MURRAY—For the record, I am going to take that last exchange as a joke because I cannot see it in any other way. It is a reminder to be careful about what you say on the record; we have to be. Ms White, your submission deals with the attempted takeover of the state systems, which it seems will affect your union very particularly. Am I right in assuming that the majority of your members are under the state systems, with the exception of Victoria and the territories?

Ms White—No, not necessarily. The local governments in Queensland and in Western Australia are under the federal system. I think the balance would probably tip slightly towards the federal system. The private sector is divided in the state system as well, but I think it would be lineball.

Senator MURRAY—I am trying to get a fix in my mind as to how many employees will end up shifting across to the federal system. This morning the head of the Restaurant and Catering Association indicated that he thought about 29 per cent of all workers in restaurant and catering would remain under the state system, because they are employed by unincorporated associations or for various other transitional reasons. Would it be as high as 29 per cent in your union?

Ms White—It will really depend on where local government falls. It will really be whether local government falls under constitutional corporations. The next question will be: if they have federal awards and they are not constitutional corporations, where will they go? It is hard for us at this stage. We are doing an analysis council by council and, for social and community services, who would know? At this stage it is very difficult. There are some that are trading corporations for a short period of, say, 12 months because they are funded for a particular project, but the following 12 months they might not be. If, say, a neighbourhood house runs a festival one year and they make a profit that is 20 per cent or 25 per cent of their activities—it will really be very difficult for us to determine.

It will be similar for some of the churches. What is Centacare? Centacare is not incorporated. It is a Catholic organisation that is run by the local diocese in most places. Will they be covered? Will parts of it be and others not? Those are the sorts of questions people are asking, but I cannot give you an answer. I would not be able to say with any great certainty at the moment how many would stay. It will depend on what local government does and social and community services.

Senator MURRAY—You referred to the press release by the Minister for Local Government, Territories and Roads, Jim Lloyd. Is the position that he outlined the one that you prefer? It seemed to me to be a fairly clear statement.

Ms White—Certainly, in New South Wales, they would prefer to remain under the New South Wales state award. As the members here have said, they would like a clear statement of where local government is, otherwise it is going to be a major battleground in the High Court.

Mr Kruse—Can I add to that?

Senator MURRAY—I want you to answer but I just want to add a question so that you when you answer you answer this as well: if the recommendation from the committee were that local governments not be constitutional corporations in line with what I understand Minister Lloyd's press release to say, you would support that?

Mr Kruse—I can only speak on behalf of New South Wales and then perhaps Ms White can clarify the situation nationally. But, certainly in New South Wales the employer, the Local Government and Shires Association, have put in a submission saying that they are opposed to going into the federal system. They do not wish to be characterised as constitutional corporations. I cannot speak for them, but if you read their submission I would say that that is clear. We certainly do not want to be regarded as constitutional corporations. We do not want to go into the federal system. We have a state award that everyone is happy with—the employers and the unions. It suits the small councils; it suits the big councils. We would support staying in the state system.

Ms White—With my national hat on, it is not so clear, because some are in the federal system and there may not be any place for them to go back into the state system. But they would probably rather be in the state system. That would be a technical matter that we would have to sort through. It might open some difficulties about who is covered by what award at what particular time, but I think that an industry wide approach—which is what I understand local government would want—is what they would have to have under something as significant as this.

Senator MURRAY—Can I get some guidance from the chair? Do we need to have Minister Lloyd's press release tabled, or will it automatically be taken into account by the secretariat?

CHAIR—I do recall some discussion yesterday about not asking witnesses to discuss a paper that was not in front of them when it was my turn to ask the questions, but perhaps a slightly more benign view is taken of you doing that, Senator Murray.

Senator MURRAY—Except that she has the paper.

CHAIR—If she has got the paper, I would be happy to have it tabled.

Senator MURRAY—I was asking a question where the witness had the document.

CHAIR—You were asking a question where the witness had the document in front of her. Ms White, are you happy to table Minister Lloyd's press release?

Ms White—I am happy to table the press release.

CHAIR—If you are not, I am sure we would could get a copy of it. That is tabled. Senator Murray, are you finished?

Senator MURRAY—Is my admonition withdrawn?

CHAIR—Yes, your admonition is withdrawn, Senator Murray. Consider yourself unslapped.

Senator SIEWERT—My question is to Ms Voss. You were talking earlier about how some of your colleagues seem to be under the federal system and some under the state system. Could you explain that a little bit more?

Ms Voss—The issue for my organisation, and some organisations like mine, is that some of our projects make a percentage of an income through various means and activities. The organisation that I manage has four separate projects. Three of those projects make no income other than government grants. One of those projects does. It makes 25 per cent of its money through varied means. For us, the major issue of concern in that area is: would those staff have to go under a federal award or would they remain under a state award, or does the whole organisation have to go under a federal award because one project makes an income? I guess what I am saying is that we are not sure where the line is drawn and what our legal obligations would be as an organisation. We do not know what percentage of money an organisation has to make before it becomes a constitutional corporation. For us, that is the difficulty.

Senator SIEWERT—In the organisations that you work with that get government grants, is that an issue already or do you think that is going to be in issue requiring individual agreements?

Ms Voss—Some of our organisations—not mine, but some of the ones I work with—currently get federal funding, but they do not make an income. Would they still remain under a state agreement? For us, it is unclear. We are not sure where we lie and that is the difficulty. I am also on the Albury-Wodonga Council of Social Services, so we meet as an interagency and of course this matter has been discussed. Most of the organisations do not know where they lie, if they make an income. For example, one of the organisations has people who sleep over. They have a disability accommodation service, and all their clients pay a percentage—about 85 per cent—of their benefit to stay. Would that be considered an income under a constitutional corporation? We are not sure where we are. None of us would have the funding to take an argument to the High Court, nor do we want to waste our money on that. There are very few clear guidelines as to where the social and community service sector organisations lie.

Senator JOYCE—Firstly, thank you for coming all the way down here. I can understand the problems you are having with regard to getting a definition of what a corporation is. Have you negotiated at all with the Local Government Association about getting some clarification on that matter so that if you are not a constitutional corporation you would be removed from the system?

Mr Kruse—In New South Wales we have our own advice about this issue. We certainly know that it suits us and suits the employers for councils not to come under the federal system. But from what I understand, unless the act categorically excludes us from the federal

system then it will get down to looking at everything on a case-by-case basis and having to go through this period of uncertainty, possibly for years, until the High Court challenges are over. I know that the employers in our industry are really concerned about this period of uncertainty regarding which system we will be in. If there is an opportunity to rule it out, we say it should be taken up in the content of the legislation. The federal minister is of the view that we should not be captured. We, the union, the members here and the employers are of the view: make it easy and exclude us.

Senator JOYCE—Do you have something from your employers, though?

Mr Kruse—It is in their submission. The submission of the Local Government Association and the Shires Association that has been tabled makes it clear that they are opposed to being captured by the system.

CHAIR—Thank you for your appearance here today.

Senator BARNETT—Chair, I have a point of order. Senator George Campbell has claimed in evidence this afternoon that people will go to jail if they include prohibited information in agreements.

Senator GEORGE CAMPBELL—There are criminal penalties in the act. Have you not read the act?

Senator JOHNSTON—There are civil provisions in the act.

Senator GEORGE CAMPBELL—There are criminal penalties in the act as well.

Senator BARNETT—So you stand by that statement?

Senator GEORGE CAMPBELL—Yes, I do.

Senator BARNETT—We will call you to account in due course, Senator Campbell.

CHAIR—That is something that we will need to get the department to clarify on Friday, and we will.

Committee adjourned at 5.48 pm