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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

Wednesday, 16 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 Barnett, George Campbell, Johnston, Joyce, Marshall, Murray, Nash, Siewert, Troeth and Wong

Terms of reference for the inquiry:

Workplace Relations Amendment (Work Choices) Bill 2005

WITNESSES

Committee met at 9.02 am

BOWTELL, Ms Cath, Industrial Officer, Australian Council of Trade Unions

BURROW, Ms Sharan, President, Australian Council of Trade Unions

CHAIR—Good morning. We resume, for the third day, our inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005. I welcome our first witnesses, from the Australian Council of Trade Unions. Thank you for your submissions. I now invite you to make a brief opening statement before we begin questions.

Ms Burrow—I think this submission is backdropped by the fact that preliminary figures last night—and we had not finished counting Perth—showed that 550,000 people across Australia stopped work to make a submission to their parliament, and that was a submission to say no to these laws. I will indicate why they said no in a minute. In addition to that, when you have more than 5,000 submissions from individuals and when I understand you have a record number of substantive submissions to this inquiry, it is distressing to know that the democratic process that would allow you just the time to read those submissions is actually not available to you. We respect your work. We have always respected the Senate inquiry process. I want to put this on the record because I think it is very important that we make public our commitment to this Senate process in general and argue that of course it was a terrible disappointment to see the debate about extending it gagged and to know that you cannot hear from people around the country. I also indicate that one of our first requests is that you make a recommendation for an extended Senate debate so that the 700-odd pages, plus another 500 in the explanatory memorandum—without the regulations—can be dealt with, if in fact your role as law makers is to be respected and able to be done properly. I will come back to that.

I also put on record my concern that the representatives of working people have effectively not been heard here, except for a few of the unions and, of course, the ACTU. Our lowest paid workers, in many cases represented by the LHMU, will not have a direct voice. The Ai Group were heard, but their counterparts in terms of the representation of, largely, manufacturing workers, the AMWU, have not been heard. The CPSU, the government's own employees, have not been heard, despite the department being here. And you had two of the CFMEU's industry associations here—the HIA and the MBA—yet the CFMEU do not have a direct voice here. So we are a little concerned about the impact of not just these laws but the effective constraints on what we see as having been a very robust, frank and fair committee process over the years.

In terms of our submission, we first of all indicate that we have not entirely stuck to the terms of reference. That is because of two things. The first is the ramifications of awards simplification. When they are amplified in a unitary system where there are regulatory gaps, these gaps will no longer be filled by state laws. You would understand that traditionally, where there were gaps in federal awards, often those gaps were picked up by a broader coverage in the state awards system. That will no longer be the case. We have made submissions many times about the changes to the right of entry in the context of awards no longer operating when an agreement is in force, but you will effectively have people simply unable to be represented because of the constraints on the right of entry to the extent that they

are in the bill, and beyond, given those regulatory gaps. There are lots of other areas we could draw your attention to, but we will say that, to the extent our submission does not comply with the terms of reference, it is because we think that, as law-makers, you should have a look at these questions.

The second of three broad points is that the bill is not only not fairer; it actually fails the tests that we set out with the minister in February. We gave the minister five tests. We said that workers must have a genuine right to bargain collectively and a right to join and be represented by unions. These rights must, as a minimum, meet the standards set by international instruments to which Australia is a party. Fair and effective bargaining should be the principal means of establishing pay and employment conditions. This bill clearly fails to meet that benchmark. It actually does not meet the test of freedom of association. It does not meet the test of the right to bargain collectively. It does not meet the test of nondiscrimination that is well and truly established through jurisprudence at the ILO. We have now had numerous complaints. We expect another one to be resolved today by the governing body of the ILO, showing that the current laws—and indeed today the construction act—will not meet the test of international law. So workers are being denied what every other worker around the world has a right to expect.

We also said that in addition to those five tests there should be an effective set of minimum wages and terms and conditions of employment which are able to be adjusted to ensure that those unable to bargain do not fall behind community standards, to ensure equal pay for work of equal value and, of course, to underpin bargaining. None of these tests have been met. I will come back to the equal pay question, in particular, later. Employees should have access to fair and effective review mechanisms for employer decisions that are unfair or unjust, including access to conciliation and arbitration for the purpose of dispute resolution. We have effectively no avenues of redress for working people who are unjustly treated. We have a system where unions are effectively banned in what will be an increasing number of workplaces and there is no access to the commission in the traditional way to resolve disputes. Beyond that we have some provision from the Commonwealth for an inadequate employment service—which we believe will not go the distance—but the legislative provisions for the capacity to resolve disputes with the industrial umpire's backing will simply no longer be available. And of course we say that the system should promote safe, secure and healthy workplaces that are free of discrimination or harassment. We believe that working arrangements must facilitate living secure and balanced lives. We believe that these laws, if passed as they are, will simply be a recipe for increased bullying and intimidation, again with no redress.

I do not have time to go into this at this point, but I am happy to do it in debate. We do believe that these laws will damage the fabric of our society. Those of you who know our passion for work and family balance know that we believe that erosion of family time as well as the attack on take-home pay will effectively go to that statement on the social fabric.

The other test was that workers must have a right to be consulted and informed of business decisions that affect them in their work. This bill does nothing to promote or protect employee participation in the workplace.

My third broad point is that these are bad laws for two reasons. I say this to you because our respect for you as law-makers has been well documented, and you are responsible for the laws that will govern the country having regard not just for current workers but for our children and our grandchildren. They are technically bad laws. The benchmark set out for the test of good law-making says that laws should not be unduly prescriptive, but have a look at the proposal to have lists of what can and cannot be in agreement: unbelievably fettered agreement-making irrespective of the free bargaining principles enshrined in international law.

Laws should be easy to understand and accessible. We can take you to this set of proposed laws to show you that they are not only inaccessible; people are still trying to understand them. Great legal minds, let alone working people, are still finding pieces in this legislation that they find not only incomprehensible but incredulous. Laws should be mindful of the burden of compliance imposed. No longer will it be easy to enforce rights; employees will have to go to the courts to enforce their rights. I will pick out an absurdity to give you an example of this. No longer will there be scrutiny of agreement-making. Agreements will be lodged with the Employment Advocate. The declaration by the employer will be in secret; nobody will scrutinise it. The employee will not have a copy of it, and the unions will not have a copy of it. So the only way you could prosecute the employer is on the basis of this declaration, and then it would have to be through the criminal law. But, because no-one will see it, how would anyone know? What kind of law is that? What kind of transparency of laws is that in a democratic country? What sort of standard does that meet in that regard?

My last point in respect of bad law is that we are still finding the unintended consequences. Consider those we have already made public, such as the medical costs and potentially having to provide a medical certificate for each day that you are ill or take carers leave. We have already seen an erosion of the capacity for workers to access bulk-billing. I do not believe our senators would concur with the majority of workers having to pay $50 up-front from their wages and probably losing $30 all round for every packet of leave of one day or more.

I will pick out a couple of things that no-one has made public yet. One is the capacity to force the taking of short periods of annual leave—perhaps in single days. What kind of damage will that do to the fabric of our society and to workers' health if they have no time for respite? There another one that I just cannot bear: the equal pay provision. Not only have we seen our society dramatically broaden its gap on equal pay but, if you look at the equal remuneration principles, they remain for rich women. We cannot take a test case to get equal pay for women who are dependent on the minimum wage classifications. Let me give you a few examples: child-care workers, aged care workers, finance sector workers and potentially a whole range of industries where women dominate. We got some increases for child-care workers and nurses last year in the federal commission and in the New South Wales jurisdiction, but in sectors such as child care where you cannot get women to stay because they cannot earn enough to raise their own families that opportunity will be absolutely denied to us.

I just want to finish with a piece about women. Our work force demographics and the issues around increased productivity and the sustainability of our economy require that women participate to the maximum possible in the workplace. I ask you simply to look at the

history, and you can see it briefly at paragraph 5.4 and in a couple of other areas in our submission. If you look at 5.4, you would have to accept that there have been no significant conditions bargained for women in terms of their capacity to manage their lives—and, I might add, this is increasingly so for men who take up parental responsibilities. Whether it is the maternity leave test case, whether it is the introduction of carers leave, whether it is the equal pay decisions for women, whether it goes to the question of extended parental leave for casual workers, whether it is carers leave more broadly or, more recently, the work and family test case about the right to request permanent part-time work when returning from parental leave, we know that at every point none of these things were supported by employers—not one thing. Yet, here, with this legislation, we lack the capacity to take test cases that would allow provisions to be put into the award system to protect all people with parental responsibilities—but, let us be honest, in particular to protect women, given that the burden of care still falls to them. We will never see, universally, in this country, while these laws are in place, that fantastic outcome of the work and family test case most recently determined.

Can I simply say that, in summary, there are three points for you to consider: firstly, the laws fail to meet the test of fairness; secondly, they do not meet the test of international law; and, thirdly, they certainly do not come anywhere near to being the sort of standard that you expect—that we have expected and got, I might add, for a very long time—in terms of good law-making in this country. I am pleased to say that I am not in your position. As law-makers, this is not about politics. This is about, in fact, your responsibility to make laws to protect Australian workers.

I apologise for the haste of our submission. Given the time frame, there are some typos in it. We ask that, for the record, we be able to submit a submission in the same substance but to our usual standard. We noted that some of our employer colleagues took a little more time. We were happy to try and meet the deadlines, but we just ask for that indulgence from you.

CHAIR—Do you wish to say anything, Ms Bowtell?

Ms Bowtell—No.

CHAIR—Thank you for that. In the five days that we have available, we did endeavour to achieve a balanced program, which is why we tended to call peak organisations such as yourselves. We wanted to get peak organisations from the business community, rather than the thousands of small business organisations and other groups that also put in submissions. All of it, however, will be taken into account in the writing of the report.

Ms Burrow, you have made quite a few comments in relation to concerns about families spending time together. You have previously warned that children will not get to see their parents on Christmas Day and Easter and I think you also mentioned long weekends. I am taking this from a report of an AAP interview that you did on 12 October. What is your view of workplaces opening up after midnight and workers being obliged to come in at those sorts of hours and work through until dawn?

Ms Burrow—We do have workplaces where people come in from 12 and work through until dawn. It is called shiftwork. I simply ask you to show me where in the proposed laws you can protect public holidays if an employer decides otherwise.

CHAIR—I am talking about situations that exist now rather than hypothetical situations that might exist in the future, if these laws come about. Would you consider that those situations which exist now adversely affect family time?

Ms Burrow—We are very concerned about the impact of shiftwork that is not basically regulated and where workers do not have genuine choice. At the moment, workers at least do have choice. They have protection around overtime and penalty rates; they have a span of hours that makes sure that their weekly time is protected and, where they choose to work over and above that or where they choose to work outside the Monday to Friday span of hours, they are compensated. But it is a choice.

What you are putting in place, if you pass these laws, is the power to employers to absolutely tear up that choice. I repeat: we know that, where parents have a choice, they will, more often than not, choose family-friendly hours. That is the pattern of our way of life. And when you lose two hours on a Sunday, which is the ultimate quality time with family, the research shows you that you never get it back. We also have research that we can show you which shows there is very great concern about irregularity of hours, in terms of the impact on children, and, in particular, night work for women. So choice and protection is absolute. You show me in these laws where workers get any choice when an employer decides that this is the way they want to work their business.

CHAIR—You might consider a recent decision by the South Australian Labor government where South Australians will be able to shop around the clock in Adelaide's CBD in the lead-up to Christmas. I understand that, under a special trading exemption, city retailers can open for business from midnight on Wednesday, 21 December, to 5 pm on Christmas Eve. The state government has also granted exemptions for city traders to trade non-stop—that is, around the clock—for four days from 28 December to 31 December. In your view, what will happen to those workers forced to work all night during the festive season? Will they not be denied time with their families over Christmas under existing laws?

Ms Bowtell—The point is not that there are not 24 by 7 operations now. The point is that, under the current provisions, the award safety net protects unsocial and irregular hours through the payment of additional monetary compensation—penalty rates. There are penalty rates for evening work, penalty rates for call-ins that are beyond the minimum break between shifts and penalty rates for overtime. Long, unsocial and irregular hours attract a higher rate of pay.

The change that is proposed is that you can not only work those bad hours but work them for no additional compensation. That is the difference between the current system and the proposed system. So it is not that there are not 24 by 7 operations now—of course there are. Our hospitals have always been 24 by 7 operations. The difference is that, without a brake on rostering those hours through additional financial cost to employers, the rate of pay that workers will have will mean that there is incentive for more workers to work those unsocial hours.

CHAIR—So family time is just a question of the rate of pay, is it? You do not attach any importance—

Senator WONG—Madam Chair—

CHAIR—Excuse me, Senator Wong—

Senator WONG—That is a misconstruction.

CHAIR—You will allow me to decide the way in which I question.

Senator WONG—You do not verbal her.

CHAIR—You do not then regard family time as sacrosanct by itself?

Ms Bowtell—Senator, that is a misconstruction of my answer. For example, if you look at the total package for a family who forgo family time by working weekends—and often that is done in families where mum works the weekend and dad works the week—mum might, for example, only have to work two shifts as a nurse, instead of four, to make up the same financial return to that family. So the change to working unsocial hours at ordinary times does have a ramification for the total amount of time spent away from family, because the worker who loses shift penalties will have to spend longer at work to bring home the same amount of money.

Ms Burrow—Do not misconstrue what we are saying, Senator. We are saying that, where there is a choice, where families have a choice, both to protect take-home pay and to protect family hours, that is what they do. Overwhelmingly, this is still a country where there is respect for family time. If you pass these laws, then, as I said, you show me where there is any protection at all from the employer who wants to work Monday to Sunday, and wants to force their employees to work as they choose, not as the employees would choose, and for no compensation for family-unfriendly hours.

CHAIR—Nevertheless, I expect you will be talking to the South Australian government about attacking family time and keeping parents away from their children over Christmas?

Ms Burrow—If you want to talk about trading hours, I am sure my colleague Joe de Bruyn, who is coming up next, will tell you what he thinks about unsociable trading hours. Perhaps you should be asking business that question, because they are the ones that are benefiting from extended trading hours and, in fact, have pushed governments to extend trading hours. We are very determined to keep the fight going for family-friendly working hours and the choice that parents have. I stipulate choice—not a choice for the employer but a choice for the working parent.

CHAIR—What is your understanding of the effect of the work choices system on occupational health and safety legislation?

Ms Bowtell—It is a little unclear as to what the effect will be. I think it is proposed section 7C that seeks to preserve occupational health and safety laws to the extent that they are characterised as laws that do not deal with employment, but it is not entirely clear how that section will pan out. There is an interrelationship between the proposal to cover the field in relation to employment matters and preserving certain matters within the state.

There are some particular concerns, for example, in relation to right of entry to inspect health and safety breaches. Permit holders in the state systems would now have to carry a federal workplace relations permit if these laws were passed. Permit holders might be on site inspecting a purported breach of health and safety laws but have not given 24 hours notice that they wish to see some documents. By simply asking for the documents, they have turned

lawful entry onto that premise into unlawful entry onto that premise. They are suddenly converted from lawful entrants to trespassers simply by making a request that was not made in time.

The interrelationship between these laws and health and safety laws is very unclear at a technical level, leaving aside the impact of reducing the role of collectivism in the workplace, which has been seen to be an important part of protecting worker safety. There is a broad policy issue, but there are also some problems in technical interaction.

CHAIR—I would like to take Ms Burrow back to her remark on *Lateline* on 10 August this year. She said:

I need a mum or a dad of someone who's been seriously injured or killed. That would be fantastic.

Do you feel any remorse for that statement?

Ms Burrow—Not at all. It was not on *Lateline*; *Lateline* was filming a conversation I was having with a colleague. In fact, if you took it in that context, I was saying 'thank you' to a colleague. I am an enthusiastic personality and I had said earlier to a colleague that the construction act that you have passed will make it much harder to protect people at work. Where workers decide that they are in an unsafe environment and stop work, if they cannot prove that it was unsafe, even though it may have saved lives, they will be fined. I said that was outrageous and I stand by it. I indicated that I was going to make this a public statement at a rally here in Canberra and suggested that there were a number of people who might stand with me who had had family members who had been injured or, indeed, died.

Subsequent to that, I was having a conversation with Mr Maitland. He said, 'Sharan, I can provide you with support for that issue.' I said, 'Thanks, John, that would be fantastic.' Is 'fantastic' an appropriate word in that context? If you string it together, probably not. Am I always supportive of and grateful to my colleagues who offer help? Yes, I am. In terms of the issue, I feel no remorse at all. If the word in that context, as cut by *Lateline*, provided some offence, of course I would apologise, but the issue is so serious that it brings no remorse from me whatsoever. Every time we have a death on a building site—on average, one a week—or serious injury, and our workers are fined for trying to protect their colleagues, then I will expose that, Senator. They are your laws. You passed them, and they are outrageous.

CHAIR—So you would include in that Greg Combet's statement to the Melbourne rally yesterday, when he had on stage with him the wife, who I will not name, of a person who was killed in the workplace. He said that the new system would:

... put lives at risk, lives like the husband of—

this lady—

who is on the stage with us now and from whom you heard earlier. I want the Prime Minister to know something right now. We will hold the government to account for the human cost of these laws.

You would probably feel that I am giving you something by saying that, but I ask you this: is Mr Combet saying that the ACTU as a campaign tactic intends to exploit tragic workplace deaths to try and pin them on the government?

Ms Burrow—Greg meant it and I mean it. I sat on the stage next to Adriana and her two children. She lost a husband and they lost a father, and when your laws make it harder for

people to stand by each other, for experts in their game to determine whether or not a place is safe without fear of fines, I am sorry, Senator, you can try to blow this up all you like, but we will hold the government to account. They are bad laws and they are unfair laws, and when they put lives at risk you should be feeling responsible. We certainly will do our bit to make sure you do.

CHAIR—So you would agree with Unions NSW on Workers Online on 28 October when they said that the federal government's changes to industrial relations could kill people?

Ms Burrow—We think they can be responsible for increased deaths, and they certainly will not be responsible for reducing the number of deaths. Do you know why all the safety provisions in workplaces right throughout Australia are there? Because workers took action, because they said that people should not be injured at work and that this should be core business for us. If you look at any laws that go to health and safety around the country—indeed, your laws—they are there through the lobbying and the efforts of working people who stood by each other. What you are telling me is that you want to play politics with that. I think that is just unbelievable. We will continue to fight on occupational health and safety, we will continue to expose workplace injury and death, and, frankly, if that offends you because you want to push it under the carpet that is your problem, not mine.

Senator MARSHALL—I thank the ACTU for their submission. Certainly, the Labor Party agrees with you about the short and constrained process of this Senate inquiry. It is not going to do this very complicated bill justice. I am equally as disappointed as you were about the motion to extend this inquiry being gagged by the government. As deputy chair of this committee, I was gagged and was not even able to put on the public record the reasons I felt we needed to have an extended inquiry. I guess, in sheer arrogance, the government did not even put their position on the table before that debate was gagged. So we agree with you 100 per cent on those comments.

I want to go to one point because, as we go through this inquiry and I keep going back to the act, it becomes more apparent how devious this particular bill is. I want to take you to matters that are not allowable award matters, which is at clause 116B. Clause 116B(e) talks about the maximum or minimum hours of work for regular part-time employees. It occurs to me that if you are not allowed to have a maximum or minimum hours of work for regular part-time employees, it does two things. Firstly, it effectively allows a part-time worker to be worked as a full-time worker, except for when the employer wants to put that worker off with no hours. Secondly, it enables an employer to work as a part-time worker in effect what would normally be considered a casual worker but without a casual loading. What is your view of that particular clause and how do you see it working?

Ms Bowtell—In effect, the only protection that is left for part-time workers is a minimum call-in. The real problem is that the protections around the start and finish times and the protections around regular rostering and so on are not part of the safety net and do not flow through into the bargaining process. The only protection left in the award is the minimum call-in, and there are no protections left around regularity of rostering for part-time workers.

Senator GEORGE CAMPBELL—I want to go back to the submission that was presented to us by the department on Monday morning. It starts off with the heading: Reasons for Reforms. The first paragraph says:

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

despite the fact that this bill makes a whole lot of provisions which are highly interventionist by the government in how that relationship will be established. Is it the view of the ACTU that the government has made an economic case or an industrial relations case for those two statements?

Ms Burrow—There is no economic case and there is no industrial relations case. If you take a little trawl through history we can learn a little from it. In the late eighties and early nineties we started a conversation with the then Labor government and, of course, business and we restructured the economy in consensus with a view to doing just what the government would claim these laws will do—that is, lift productivity, restructure business and create a sustainable environment where we could generate economic growth. I will not go through some of the pain that that caused us but, by and large, it meant that you invested in skills, in appropriate infrastructure, in industry policy and in innovation. And guess what? It worked. It has not been totally responsible but it has been in large part responsible—I think everybody will agree, including economists—for the 15 years of economic sunshine we have experienced.

What we now need is another leap in productivity. We do not only not deny that; we advocate it. But we have been saying since 1997 that the freezing of TAFE funds, the lack of investment in infrastructure, the actual denial about industry policy and a lack of commitment generally in a tripartite sense to innovation and commercialisation of innovation, given the plummeting of the R&D dollar, are the things that we would like to work with any government on, frankly—any government and any set of employers interested. Not only is there not an economic case; in fact this is heading in absolutely the wrong direction.

Are we seriously saying we can compete on labour costs with China and India? I think that is an amazing statement for a government to make when they should be coming to all of the stakeholders and saying, 'We need to have a conversation and we need a plan of action about the next generation of productivity'. It goes to some of the same questions and some others but certainly to those base questions of skills, innovation, infrastructure, investment, commercialisation or industry policy and, more broadly, a process to make it happen.

Senator GEORGE CAMPBELL—So you support the view that productivity increases are achieved centrally through multifactor arrangements rather than through labour.

Ms Burrow—Absolutely. Multifactor productivity is actually holding up if you look at the economic statistics. We think there is an absolute case to look at how we do something about the skills crisis if we are to do something effective about labour productivity and also technology. Technology is now a big issue, particularly for small to medium firms who are finding themselves unable to invest in the technology that would guarantee their retention of,

particularly, international contracts if they are in a supply chain environment with big multinationals. It would be a joy to have a conversation about this. In fact, I proudly stood by my New Zealand colleague two weeks ago and invited the New Zealand employers, some of which are Australian companies, to do just that: to take a journey along that road and to have a conversation about a plan of action around productivity.

It is a sad story that by attacking labour rights and driving down potentially living standards and destroying Australia's great way of life in terms of family time that we would even see the pretence that this is going to do anything other than what happened in New Zealand—that is, a dive in consumer confidence. That is not going to be good for the economy or the business community driving this agenda.

Senator GEORGE CAMPBELL—In respect of another report done by this inquiry, some of the coalition senators indicated in that report that they thought that the safety net in this country may be too high. There was a lot of evidence presented yesterday by ACCI, in particular, with a lot of graphs showing that we had the highest minimum rates applying in any country in the OECD—the argument being essentially that our safety net was too high. There was an argument from at least one employers association and ACCI that it will be better off under the Fair Pay Commission because the interests of the unemployed will be taken into consideration.

You have been involved in a number of the past national wage cases. In national wage cases, does the Australian Industrial Relations Commission take into account the interests of the unemployed when setting wages? Has there been any economic evidence presented to those cases by employer organisations that clearly demonstrates that wage increases, particularly for the low paid, will impact upon the job opportunities for those that are unemployed?

Ms Burrow—Ms Bowtell can go to the actual quotations, but you will find in the decisions of the industrial relations commissions over several wage cases a denial that there is any evidence that constraining minimum wages will produce jobs or indeed has constrained job outcomes. In fact, our own government actually promotes the creation of 1.6 million or 1.7 million jobs, so clearly that is not an accurate claim.

In your first question, you touched on the issue of the standards base. I just wanted to say this and then I will pass on to Cath about the minimum wage cases. The standards base is a terrible argument. I would have thought it was a bipartisan approach to this. We have had a 100-year history of what we call, for short, a living wage principle—that is, that people would be able to live with dignity, in frugal comfort, to use the words of Justice Higgins, and raise a family. Yet despite the fact that the commission, as you said, listens to the evidence from all parties, it is absolutely inaccurate to suggest that it is not an expert tribunal, because experts are brought along by all groups—by employers, by government, by employees and by us—and they present the economic case. So the commission takes its decision on the basis of a number of parameters. It does go to the question to the needs of the low-paid, absolutely; the context of the economy and what it can bear; and of course the issue of relevant statistics like the unemployment statistics. So it has been a terrible debate in Australia that somehow the Industrial Relations Commission does not provide a comprehensive judgment.

I want to make the case that we should be very proud, given our growth trajectory and given the jobs creation that the government champions, of having one of the highest minimum wages; we are a community where we want people to live with dignity. It shocks me to think—and I think that is in part why you hear the voices of the church leaders—that we would somehow say that you have to drive down wages, irrespective of capacity to pay, and put people's lives at risk. I might stop here, because if I went on any further I would say that the obscenity that we see in this country actually marks this debate with its truth—that is, that there is a 16 per cent increase in CEOs' salary. Sixteen per cent! And we have a government and a business community saying that they are going to drive down wages for the poorest working Australians when there is no economic case. No-one—not even conservative economists—says that this is going to drive up jobs and economic growth. Cath, you might want to add to that.

Ms Bowtell—We have covered some of this off in our submission, Senator Campbell, at 2.2 through to 2.16. But it is true that every year the commission is confronted with argument about the impact of modest wage increases on employment. It is required, under the current legislation, to take into account the need to maintain high levels of employment as well as levels of inflation and productivity. That is one of the factors that the AIRC has to balance. Those factors are not factors that the Fair Pay Commission will have to balance. I note it has no regard to productivity or inflation, but only to employment.

Each year the Commonwealth, the employers and the ACTU look for new econometric evidence to try to sustain the argument in relation to the link between modest wage increases and the effect on the elasticity of demand for labour. Every year the commission has concluded that there is no negative impact between modest wage increases and labour demand in this country. That has proven to be the case. It is not only the econometric models that show that, but also history has shown that we have had modest wage increases and we have continued to have growth. The growth has been strong in the award dependent areas—retail and hospitality, in particular.

Senator GEORGE CAMPBELL—Ms Burrow, on Monday the six state industrial relations ministers and the two territory industrial relations ministers appeared before us. They described the proposal by this government to establish a unitary system as creating a dog's breakfast. Have you done any analysis of what the likely impact is in terms of the break-up between those who will be in and those who will be out of the system? Secondly, do you think in the context of the way in which this has been introduced there is likely to be a series of High Court challenges—not just one—to various aspects of the bill as well as the overall application of the corporations power to bring in the effect?

Ms Burrow—Cath will be able to give you a far more detailed answer, so I will pass to her, but let me say this: I have put on record that it will be a lawyers' picnic—there is no question about that. It may well result in a series of High Court challenges. But apart from that, it is going to cost business. I don't know if they understand this yet, but they will when they try to work their way through this incredible system of intersection of laws. Any notion that it is simpler or fairer or less costly turns on businesses being able to protect what stature they have as incorporated or not incorporated entities. Challenges will appear right across the board in contract law, potentially in anti-discrimination law. A whole range of issues will put a

cost burden not just on us but on business that they must be concerned about, particularly small to medium enterprises. Cath, do you want to take up the general issue?

Ms Bowtell—In regard to the general issue, the estimate that the ACTU has been able to put together is that somewhere between 22 and 25 per cent of employees will fall outside the scope of the federal system, because they are employed either by non-constitutional corporations or by the state governments. The previous estimates were based on a combination of both industrial disputes power and the corporations power picking up the state government employees because of their respondency to industrial disputes, because they would fall out under this system. So fewer employees are covered by the federal system under the proposal. Our concern is that the boundary of what is and is not a constitutional corporation is not clear in many instances and organisations may move in and out of being constitutional corporations from day to day, almost depending on their activities. If a not-for-profit community centre, for example, starts running a bookshop to make money, it moves into being a trading corporation and is within the scope of these laws. If the venture fails and it closes the bookshop, it is suddenly within the scope of the state jurisdictions. Instruments are made that are purporting to bind people for five years that do not bind. State tribunals act believing they have power, only to find they do not have power. It is very difficult around the edges of the system to know whether you are in or out of it. You may be in one day, out of it the next, and back in it a week later.

Senator GEORGE CAMPBELL—Two areas that have been raised with us so far in this inquiry, which you may be able to shed some light on, are firstly local councils, and there seems to be a great deal of uncertainty as to whether they will be in or out under this system, and secondly businesses that were being run by the churches—whether or not they were corporations. I was quite surprised that the Uniting Church, I think, said they employed 30,000 people between Sydney and Melbourne, and presumably a lot more around the country in a variety of businesses, I think mainly in the area of providing welfare assistance to those less well off in our society, raising money for the purpose of doing that. Can you shed any light on the circumstances of those theories?

Ms Bowtell—I believe it will be a matter of a case-by-case approach to the High Court in each of those instances. We have looked at local government, we have looked at the charitable sector and we have looked at some of the not-for-profit schools and private sector schools. And there are other areas where you can apply the reasoning of the court in the past to determine what is and what is not a trading corporation. But it does not give you any clear answer in relation to those areas. You have to look at the statute establishing local government in each of the states, where you might get different outcomes. You have to look at what each local government area is doing—some trade more than others and some are more involved in financial operations than others. It will be a case-by-case decision. You would not be able to have any clarity until each of those has been tested in the court.

Senator GEORGE CAMPBELL—So the uncertainty created by this legislation could go on for some considerable period of time while these issues are sorted out?

Ms Bowtell—Certainly.

Senator GEORGE CAMPBELL—Ms Burrow, one issue of considerable concern most people have raised is the fact that the minister will have power to prescribe matters that are prohibited content at any time. What impact is that going to have on the capacity to bargain in the workplace?

Ms Burrow—We find this an incredible situation. It is not only a serious conflict in terms of the separation of powers; it is actually the most authoritarian act I have seen anywhere in the democratic world—anywhere. What it is really saying is that you can cut a deal—and I did two last week for unions with an employer—and two things can happen: one is that, first and foremost, the provisions mean that the deal is not necessarily a deal anyway, something that employers would never put up with in contract law. An employer can simply entice people out of a collective agreement either by the use of individual contracts with the bribery of higher rates or better conditions or indeed by intimidation; and secondly—I have lost my train of thought.

Ms Bowtell—That the content of the deal is changed.

Ms Burrow—That is right. The minister can decide that he does not like something in the deal and simply say, 'No, we're not having that.' We saw that a little bit in the NTEU experience with the higher education act just recently. When the NTEU worked with employers to try and get around what were the most authoritarian laws I had seen, the minister virtually on a day-by-day basis was putting out a new list. This could mean that people never have certainty about bargaining and certainly cannot be guaranteed that you have closed a deal and it will be respected, like any contract should be, for the period up until its expiry.

Senator GEORGE CAMPBELL—Your argument is that that provision in fact allows for a highly interventionist position to be taken by the minister in any negotiations in any area?

Ms Burrow—No question. The minister can virtually now decide what every workplace should or will look like. It is unbelievable.

Ms Bowtell—It is certainly contrary to the stated objective of the bill, which is to devolve responsibility for agreement making to the parties at the workplace, when in fact the government has the capacity to then impose a term by removing a matter that people have agreed to. The other problem of course is that you cannot go behind the negotiating process. We will not know on what grounds people have traded various things in the negotiating process. Something that was highly valuable to one of the parties may then be removed, unravelling the value of the deal that they have made and removing the basis for ongoing harmony at that workplace—whether it is an individual agreement or a collective agreement.

Ms Burrow—You can see a whole other gamut of lobbying going on here. When workers' representatives sit at the table and ask for certain protections for workers, they can be fined; but where a business community starts to look at agreements and analyse what are the sorts of clauses that are being negotiated and decide that they do not like it as a community they can then lobby the minister who can decide at some point that he is simply going to prescribe that issue. How on earth can you claim that that is free bargaining by any benchmark associated with the test of international law?

Senator GEORGE CAMPBELL—It makes a mockery of their claim that the best workplace relations are those that operate directly between employees and employers.

Ms Burrow—Yes.

Senator GEORGE CAMPBELL—Can I take you finally to point 2.22 in your submission. You make the claim that the economic impact will be greater in regional and rural areas. Would you like to expand upon that?

Ms Burrow—Yes. We have been having a number of conversations with rural groups and political representatives who represent rural constituents. We believe that if wages are pushed down—and we saw some very honest statements in this hearing this week from employers who say that they absolutely want to push wages down—then what you do is reduce the capacity for consumer confidence and direct spending in terms of disposable income in those communities. There is a very real concern that the economic base of regional and rural Australia will be diminished. We are trying to do some work with a number of groups about getting some sort of solid economic analysis in terms of projection around this, but you would appreciate that we have been a little busy and we will get to it.

Ms Bowtell—I think it was also in the Victorian government submission—I can have a look.

Ms Burrow—Yes, that is true.

Ms Bowtell—Certainly the work that was done looking at the ramifications of the system in Victoria as it operated before the transfer of powers to the Commonwealth indicated that the incidence of workers who were employed only on the schedule 1A conditions was much greater in the regional and rural areas of Victoria than in metropolitan areas. The incidence of lowest common denominator agreement making was much higher in regional and rural areas.

Senator WONG—Ms Burrow, just briefly, you said before that we saw some reasonably honest statements from employers saying that wages would be pushed down. Certainly that seemed to be the tenor of the restaurateurs' submission.

Ms Burrow—Exactly.

Senator WONG—I will go to some specific technical issues that I want to get through in the time I have. The first is the coercion-duress issue. The statement by the department, when I asked this question at estimates, was that the bill proposed no change to the existing law in relation to the coercion or duress issue on AWAs. I would ask that you comment on that.

Ms Bowtell—It does make one particular change—that is, it puts into statute what has been a common law understanding in relation to making an AWA conditional for obtaining employment. In fact, the drafting is poor. It could be read to mean conditional upon an AWA being conditional to retain your employment as well, because it does not actually say just 'retaining employment'. Secondly, the 90-day termination provision adds to the coercive behaviour available to employers. So they have the capacity at the moment to lock out an employee under threat of not agreeing to an AWA, and they will have in the future, if this bill is passed, the capacity not to lock out the employee but simply to reduce conditions under threat of signing the AWA. So it is a case of, 'Sign here or we'll take away the following raft of conditions.'

Senator WONG—This is the unilateral termination—

Ms Bowtell—It is the unilateral termination of agreement and the reversion to the five minimum conditions as the only enforceable standards.

Senator WONG—Can you briefly give us a practical indication of how that would operate?

Ms Bowtell—An employee is offered an AWA. They say, 'I don't like the terms of it; I'm not prepared to sign.' They are answered with, 'Well, I'm giving you 90 days notice that I will terminate your current AWA'—or the current agreement. When we get past the expiry date and the 90 days have passed, the employer can then say, 'Sign here or you won't be getting your annual leave loading when you take leave,' 'Sign here or you won't be getting penalty rates when you work weekends,' 'Sign here or you won't be getting redundancy pay if you're retrenched,' or, 'Sign here or you won't be getting overtime pay if you work longer hours.' The only conditions that are enforceable are the five minimum conditions. They do not have to lock out the employee to coerce them; they can coerce them through the threat of withdrawal of conditions.

Senator WONG—Are you able to give us your view as to what this legislation does in respect of awards? What will the position of awards be, the effect of the no disadvantage test being removed and the various other provisions of the awards, which are so-called 'preserved'?

Ms Bowtell—The main change in relation to awards is that, once you have entered into one agreement, you are no longer covered by awards. Entering into agreement is a one-way street and, after that, when the agreement has expired, the award is no longer the safety net; the five minimum conditions are the safety net. So, over time, awards will become entirely irrelevant to most workers. That is the first significant change in relation to the bill. The second change is that they will be stripped back significantly in what they can cover in terms of both the addition of new non-allowable matters and the removal of matters from the list of allowable matters. Thirdly, the commission has no power to vary them other than to remove ambiguities and discriminatory clauses. So they can no longer move in line with community standards. For those three reasons the award safety net will be a safety net for very few people. In fact, it will not be a safety net, but it will be at ground zero.

Senator WONG—So the effective safety net is the five minimum conditions under this legislation?

Ms Bowtell—I think that is entirely where you will find yourself in a couple of years, yes.

Senator WONG—Finally, I would like to ask you about the transmission of business issue that I think paragraph 8.8 of your submission refers to.

Ms Bowtell—The transmission of business provisions are new compared to previous iterations of changes to transmission of business, and the definition of new business is very loose. It applies, according to the explanatory memorandum, not only to a new corporate entity; it could be the same corporate entity simply undertaking a new operation. So, for example, a call centre could obtain a new major client, set up a new team which is the new client's team, and that could be considered a new business. They could then set up a

greenfield agreement for that new business with themselves if they chose. Any transmitting employees would retain their conditions for only 12 months. After that, they would fall back to whatever the conditions are in the new business. That means that you can make a five-year agreement with a group of workers but transmit them to a new entity within your own corporate structure and the five-year agreement has only 12 months guarantee for those workers, after which they fall back to the five minimum conditions.

Senator WONG—And the effect of the removal of the no disadvantage test essentially removes the award as the basis—

Ms Bowtell—It removes the award as the safety net, and the protected matters can be overridden by simply one line saying, 'The rates in this agreement are all-inclusive and do not cover additional rates for working overtime.'

Senator WONG—Without the requirement for a higher rate of pay.

Ms Bowtell—No.

Senator MURRAY—It is a phoenix type device.

Ms Bowtell—The transmission of business is a phoenix type device, coupled with the employer greenfield agreement. The two work together to create a particularly unfair situation.

Senator JOHNSTON—Ms Burrow, I want to take you back to the early 1990s and the commencement of enterprise bargaining in Australia. From then until now, we have seen—you can correct me if I am wrong, but I think the figures bear me out—a steady and consistent decline in union membership throughout Australia. That is notwithstanding the very significant changes inaugurated by the Howard government—and indeed the Howard government coming to power in 1996. We have also seen in the last five years the consistent rise of the use in the workplace of AWAs, to the point now where there are more than 700,000 of them. I would have thought that, if all of the gloom and doom that you have predicted and want to promote was in fact a reality, your membership would have gone up. But the fact is your membership continues to decline in the face of what you say are draconian changes in the workplace. Doesn't recent history absolutely prove you wrong in all of the things you have said?

Ms Burrow—No. In fact, if you look at the 700,000 AWAs versus the 1.6 million people dependent on awards and the millions of people—up to four million, I think—under conditions associated with EBAs, then, Senator, I would ask you to do the maths. It is true that union membership declined, but it does not mean we stop bargaining. There are a number of reasons for that. It is ironic that the business community, who we actually supported to restructure Australia in terms of its economic base—which, I might add, caused us a lot of pain, including a decline in union membership—seem to have forgotten that they did better when they worked with us, even though we were mature enough to take the hit in terms of what it meant for unions more broadly.

Of course, that was also associated with the changing nature of the economy generally, with new industries, new areas of endeavour and a decline in the traditional sectors of our economy—although one of them, resources, has come back dramatically—particularly

manufacturing, which has seen a decline in union membership. So, given that we have never been overly organised in the small to medium enterprise area—not so much in the medium anymore, but certainly in small business—we have always maintained it is our responsibility, through the minimum wage case, through test case standards and indeed through the general nature of continuing to make and upgrade awards, to take responsibility for every worker in Australia at that minimum level.

You talk about the growth in AWAs. Well, yes, you have done a fair bit to promote that, I might add. When you go to the department's web site, you get great signs, 'AWAs online.' I have never seen any advice about collective bargaining. Nevertheless, despite the government's attempt, we are actually growing as a movement. We have stabilised. There are 1.6 million people dependent on awards, and you are going to strip that away pretty effectively. There are millions, up to four million, covered by the conditions in enterprise agreements. We supported enterprise bargaining, can I remind you. We do not support it in the straitjacket in which this government has put it—indeed, this government wants to continue to force it to decline. We do support bargaining at the workplace, but we support it in terms of the international law. Free bargaining is where you will generate productivity and flexibility, not fettered bargaining by government intervention.

Senator JOHNSTON—There are now more employees in Australia—the work force is greater, employment is up—such that there are more people in the marketplace for you and your unions than ever before. Yet your membership continues to decline. You are telling us that these are draconian measures and the workplace is being attacked by the Howard government. But your membership continues to decline and AWAs continue to rise. Over the last three years, the biggest pressure group I heard from was about child support. No-one is complaining to me—or to any of us, I do not think—about AWAs and how people are being dragooned into AWAs. I just do not see all the mayhem you are predicting and looking to. It is just not real.

Ms Burrow—I want to ask you a question in return: do you effectively think that by stripping away the no disadvantage test, which we protect for every worker—it is called the award system—that you are going to leave a country that is better off? Are you going to really support laws where your children and grandchildren will walk into a workplace and, by the Prime Minister's own words, be told that if they want a job they will sign the agreement, otherwise they can get on their bike? Our membership, first and foremost, is not any longer declining; it is growing. You might even be helping us with that, but you know I would give up that privilege for decent laws. As the biggest representative, democratic group in this country with almost two million members—a quarter of the work force—we have never walked away from responsibility for all workers. And you know that, otherwise you would not be taking away those fundamentals: the minimum wage case, the award system as a safety net and our right to collectively bargain. Not only is there no right in your current laws; you are going to take away the facilitative provisions of that effectively from the role of the Industrial Relations Commission. You heard Ms Bowtell. That 90-day rule is not designed to do anything other than allow employers to sit it out and then coerce people onto individual contracts.

Senator JOHNSTON—Why does your submission to us not deal with the items in schedule 3 of the bill?

Ms Bowtell—Perhaps because there are 700 pages of legislation to wade through. We did not deal with transitional provisions either in any detail because they were too complicated.

Senator JOHNSTON—I just think that it would have been very important for you to deal with schedule 3. I think it is a crucial issue that is confronting all of us—apprenticeship-trade training and school based apprenticeship training.

Ms Bowtell—We were aware that the AMWU were making a submission on that matter. I read their submission. We would be happy to endorse their submission, and we would be happy to provide you with more information on any aspect of the bill, if we are given appropriate time to do that.

Senator JOHNSTON—Thank you.

Senator BARNETT—Greg Combet said on 29 May on the *Sunday* program that this whole campaign is about a change of government. In terms of the public record, there is no reference in your submission to the fact that the union movement has invested $47 million in the Labor Party since 1996. Do you think there is merit in putting that on the public record before this committee?

Ms Burrow—What I am interested in doing is saying to you, Senator, that we would hope that we do not have to campaign around this up until the next election. We would hope that you as lawmakers will decide that you are going to say no to these bills. That is absolutely in your area of responsibility, given that you are elected to represent the interests of working people and these are bad laws. It is no secret that there are unions—not all of our unions; we cover a diverse range of unions—that contribute to the Labor Party, but I think they probably contribute to all opposition parties in one way and another, to be honest. Why? Because we do not see this government as a friend of working people. But I have to say that there are a few senators who I hope just might prove to be friends of working people, and we will start to support you as well.

Senator BARNETT—Let us go on to this issue of sick leave. You have raised the issue in your opening statements about the requirement for medical certificates. I just want to address that issue. What you have said today was consistent with the alarming statement that you made on 10 November in your media release, where you said that the Work Choices bill will give 'punitive new powers' to employers to unilaterally demand medical certificates every single time an employee is absent from work.

Are you aware of the provision in the bill—and I can alert you to the clause in the proposed bill relating to medical certificates—and can you tell me how different it is from the current arrangements regarding the need for medical certificates? To assist you in that regard, I advise that it is clause 73(9), 'Sick leave—medical certificate' under schedule 1 of the proposed bill. It mirrors the current arrangements, Ms Burrow. Why are your views different to what appear to be the facts?

Ms Bowtell—I think the clause is in the 93s, isn't it?

Senator BARNETT—It is clause 93N, 'Sick leave—medical certificate'. So what is different?

Ms Bowtell—I am not sure what advice you have been given about the content of awards as they sit at the moment, but we have done a review of this matter in awards. We did it in relation to our review of carers leave during the family provisions case over the last two years and in relation to sick leave as well. Our analysis of awards showed that awards fell into about three categories, broadly speaking. The first category is awards where there is a specific provision which says that there is an annual quantity of leave for which no proof is required and after that time the employer may require proof. Often it is two days or three days. Sometimes it might be four or five days before proof is required. Sometimes it slots in—there is an alternative arrangement—if leave is taken next to an RDO, next to a weekend or next to a public holiday. So that is one category of awards where in fact there is a period of leave guaranteed, no proof required, after which the employer may request proof.

The second category of awards will have a provision whereby either a medical certificate or a statutory declaration is the standard of proof that is required. The employee may elect to provide one or the other. That is particularly important in relation to carers leave, where you may not want to take your sick child to the doctor but, a week later, if the employer says, 'Why weren't you there? I need proof,' you can do a stat dec and say, 'My child had a severe asthma attack,' and you do not have to have gone to the doctor to get a certificate for that purpose.

Senator BARNETT—Is that changing?

Ms Bowtell—Yes, because under this provision the employer could insist that the only proof they will accept is the medical certificate, which would require the employee to forecast that the employer is going to do that and get to the doctor while the child is sick so that the doctor can provide the medical certificate.

Senator BARNETT—But what if you are on an award? Awards still apply.

Ms Bowtell—Yes, but the awards also underpin bargaining. So if the agreement is now silent then the award provision will continue to apply to that worker. So, if you have a certified agreement or an AWA that does not mention the standard of proof, the award standard of proof applies. Under this proviso, if it is silent, nothing applies. In fact, if it is silent, this then would slot in or this is the minimum that must be in the agreement, so it does override the award conditions. Only for those people who remain solely dependent on awards would the award continue to apply, but for the vast majority of people who are not solely dependent on awards, this will be the standard that applies. There is a third category—

Senator BARNETT—Do you want to outline the third category and then I have a question for you.

Ms Bowtell—The third category is where the employer may currently have the capacity, which would be aligned with this. So there are three categories, and for about a third of people this would not be much of a change but for two-thirds it would be.

Senator BARTLETT—And you have looked at the current proposal—

Ms Bowtell—Sorry, just to clarify: that related to awards, not necessarily to the number of people who are covered by them, so I have not been able to then say how many people would be covered.

Senator BARNETT—Do you accept that under the proposed reforms there is no requirement on the employer to request a medical certificate?

Ms Bowtell—No, it is at the employer's discretion, but if they do—

Senator BARNETT—Thank you, Ms Bowtell.

Senator WONG—Let her finish her answer, Senator Barnett.

Ms Bowtell—If they do, they can require—

Senator WONG—You can't stop her—

Senator BARNETT—Excuse me, you are interjecting.

CHAIR—Order! Senator Barnett has the floor.

Ms Bowtell—The section is quite clear, Senator, that there is no requirement on the employer. It is at the employer's discretion entirely whether to request it, but there is no discretion on the employee to provide an alternative form of proof.

Senator BARNETT—Do you acknowledge that there is a further provision in section 93N which states:

> (5) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

In fact, that is an added protection for the employee.

Ms Burrow—Does that cover inability to pay?

Ms Bowtell—We read that as covering perhaps if you are a long way from a medical provider or if you are unable to get an appointment, but we are not sure that it would cover cost.

Ms Burrow—I would be happy if it covered cost and an ability to pay. That would give us some comfort.

Senator BARNETT—I have just asked if it was an added protection. That was my question.

Ms Bowtell—It is entirely what the words say.

CHAIR—Senator Nash has some questions.

Senator NASH—Being a working mother, I am very well aware of needing to spend time with family. I want to revisit the annual leave part of this. Currently we can cash out four weeks annual leave and under the Work Choices bill we can only cash out two. Isn't that an improvement?

Ms Bowtell—The union movement has never supported the cashing out of leave. It is true that there is no limit under the current provisions on the cashing out of leave, but if you look at the collective agreements compared to AWAs, the cashing out of annual leave is not common in collective agreements. The only arrangements in relation to cashing out that are

common in collective agreements are cashing out of excess accrual. In fact, the union movement was involved in a significant case back in the nineties involving a company called Arrowcrest, where we opposed the capacity to cash out annual leave, and we opposed it on public interest grounds. That has always been our view. We were rolled in that case. That has continued to be available, but for additional compensation. But it is not something that unions go out and negotiate. You see it in AWAs but you do not see it in collective agreements.

Senator NASH—No, I understand that, but as we are specifically talking about the new bill, is what we would be moving to an improvement on the current conditions?

Ms Burrow—Not on workers' current conditions. If you are asking whether it is an improvement in your laws, yes, but in terms of the current practice, it is not an improvement for workers. In fact, because you are going to transfer all of the power to the employers in terms of individual contracts, with all of the attendant coercion we have talked about, more people will be forced to cash out annual leave. We have testimony from all manner of young people who have already given up all of their leave by coercion.

Can I make two other points on this. One is that, even if you are left with two weeks leave, Senator, these laws will mean that an employer can effectively make you take that in small parcels of one or more days. So you can be left with no block of time for recreation, for rest or for family, as determined by the employer. Those of you who care about the tourism industry should look at my emails. I don't know why they are not standing up for themselves but proprietors right across the country are saying, 'Unless you have three weeks annual leave, you don't get a week out of people, by the time they've done family duty, visited people and got their affairs in order. And if you don't have four, you don't get two.' They are very worried about the economy in their communities in terms of the decline in investment in holiday making. I would suggest it not only concerns time for family matters; there is an economic cost here as well.

Senator NASH—Thanks for that. I do acknowledge that you said it was an improvement in the law. Also, my understanding is that cashing out the two weeks can only be done—

Ms Burrow—I just wish they cared.

CHAIR—Order!

Senator NASH—My understanding is that, with respect to the cashing out of those two weeks, it can only be done at the request of the employee. Can I quickly move on to the fact that you said there is no economic case for the introduction of these changes. I would like to briefly quote from a report from the International Monetary Fund from September 2005, which says:

Further reforms of industrial relations are needed to expand labor demand and facilitate productivity gains.

This is a highly respected, independent international organisation. Are you completely disputing their claim that there is an economic case for the changes?

Ms Burrow—Absolutely. They were briefed by the Treasurer and the Treasury. There is no evidence at all. You may have read the papers. I have been having a serial argument with the IMF. In fact, I went and visited them in Washington just a few weeks ago.

Senator BARNETT—Didn't they listen to you?

CHAIR—Senator Barnett! Please proceed, Ms Burrow.

Ms Burrow—Are they listening to us? No, Senator Barnett, they are not. But I tell you what: they are nervous, because we have a conversation now that is respectful and has come a long way with the World Bank in terms of saying the market has to accommodate certain human rights and they cannot be called rigidities. The World Bank will have that conversation with us, but the IMF calls human rights and labour standards 'market rigidities'. If you want to support that, go right ahead, but I do not subscribe to your view of the society then that does not see a market—that is, business—having to actually shape itself around some fundamental societal commitments to people, to humanity.

What I would say to you, Senator Nash, in regard to this is: have a look at the evidence yourself. We can tender the evidence that it was based—and it has been now for three consecutive reports, I think—on false economic analysis, economic analysis which has been disputed and publicly found wanting by the Industrial Relations Commission. Do I value the IMF's view? Not at all. I suspect the Treasurer does. I can say it is wrong, it is actually deceptive and it is misleading in terms of anyone trying to plan for sustainable economies. But, most of all, it is an obscenity if we are really going to say that 'labour market rigidities' are going to include human rights and labour standards. Labour is not a commodity. I will argue that anywhere you like, any day, any time. Frankly, I think that, with children, you ought to be sympathetic to that view.

Senator MURRAY—I will put the same question to you, Ms Burrow, that I put to the AiG. In my view you, like the AiG, are one of the few organisations that all parties should take note of, because of your experience and expertise. The Prime Minister has indicated that he will accept technical amendments to this bill. A few times, both in your verbal submission today and in your written submissions, you mentioned technical shortcomings. I am aware that you have had far too short a time, as we have, to understand and examine this bill, but there have been a number of submissions which have addressed technical aspects. If you find time before this closes off on Friday to advise us of those technical opinions which you agree with in other submissions, that would be helpful. Would you take that on notice?

Ms Burrow—Absolutely.

Senator MURRAY—Thank you. The next area I wish to move to is the area of the Fair Pay Commission. I want to draw your attention to section 90(1)(b) of the act—not the bill but the act—as it is at present. It says, and this follows on from the introduction to the clause:

... the Commission shall take into account the public interest, and for that purpose shall—

and note that it says 'shall' and not 'may'—

have regard to:

… … …

(b) 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.

My view is that that is a very clear requirement for the commission to take into account social values, because that is part of a public interest test, and unemployment, because that is part of the level of employment. My question to you, Ms Bowtell, is this: that clause is not transferred across as a requirement to the Fair Pay Commission, is it?

Ms Bowtell—No, it is not. Neither that clause nor the specific requirement that the commission has regard to in relation to its general functions is. It is section 88B(2), which also picks up the requirement to take into account:

economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;

Those factors are not transferred over.

Senator MURRAY—And with that high level of employment do you read, as I do, that that refers to unemployment as well as employment?

Ms Bowtell—Absolutely. It refers to reducing unemployment and the high level of employment is the converse of having many people who want to participate.

Senator MURRAY—That is right. Can you confirm that that proposition has been put to the IRC in the various cases that have been put forward?

Ms Bowtell—The central debate in every case is the impact of the wage increase on employment levels. That is the major debate that takes place every year. The Commonwealth, employers, academics, econometricians and so on are questioned about that issue.

Senator MURRAY—Since the government and the business groups claim that the Fair Pay Commission will take into account unemployment, for me to move those clauses directly across to the new bill, in your opinion, would be a wise and helpful thing to do?

Ms Bowtell—I would have thought that the current wage-fixing criteria should be the criteria, at least. They are the not the criteria we would write if we were writing the wage-fixing criteria, but there should be diminution in the criteria that are taken into account by a new body.

Senator MURRAY—I intend to put the public interest test back into the bill. It will up to the government whether they reject it. Moving on to another matter, I will ask a question about ministerial direction. I have never forgotten Ian Smith's dreadful laws on detention without trial and house arrest, which were used to terrorise blacks in his Rhodesia and were subsequently used by Mr Mugabe in his Zimbabwe to terrorise whites. Ministerial direction can be used by ministers of any government, and I believe ministerial direction should always be, as far as possible, constrained by reference to the parliament. Do you think that it is possible that ministerial direction could be used in a Labor government if the Senate was controlled by the coalition to directly interfere in agreements struck? In this case, of course, it might be to the detriment of employers rather than employees.

Ms Bowtell—The power would certainly be there if the law was unamended. Whether the government of the day chose to do that would be a decision for the government of the day. But the power would apply to the government, whatever its political persuasion.

Senator MURRAY—So in the same sense that you are saying it is open to the minister to crash into, disrupt and damage an agreement between employers and employees of the enterprise under the new bill, it would be possible for a Labor minister of workplace relations to do exactly the same thing but with a different intent?

Ms Burrow—We would hope that, should a Labor government be elected, that these laws would not be in existence. Frankly, such provisions should not exist, whether they are used against employees or employers. What is little known because of the busyness of the week is that in some 21 countries over the last two days the union movements took action. The government would not allow the high commissioners in those countries to speak to our various colleagues around the world about some of these issues. They are very worried about the fettering of bargaining and what it will mean if democratic countries like Australia start to impose these sorts of constraints on free bargaining. We have some experience, as you said, with some of the worst cases. It might interest you to know that, without any such request, when the summary of these sorts of provisions was read by our South African colleagues, the President of COSATU got on a plane and landed in time yesterday to talk to the Perth rally about why it is that such democratic freedoms, whether they exist in the workplace or more broadly, should never be overridden. So it is an absolutely atrocious piece of legislation to allow such intervention.

Senator MURRAY—I happen to agree with your principles about ministerial direction, Ms Burrow; I think it should be restrained. My point in raising it is that there is a view that these laws will stand even if the government is defeated next election because they will retain control of the Senate and the new government will be unable to overturn them. My point is that ministerial direction could be used in a destructive mechanism, and anybody who thinks that these laws are sacrosanct needs to have another thought.

Ms Burrow—It is absolutely unacceptable and it could be used that way and it should not exist. Frankly, any parliament that concedes its power to a single minister in terms of law making and the implementation of that law, I think, is in danger of serious erosion of its democratic rights.

Ms Bowtell—There are other areas—

Senator MURRAY—My last question—sorry, I must interrupt you because I do not have enough time—is this: I think Mr Beazley agrees with the Prime Minister on when the effects of this law change will occur. Mr Beazley has described it as a slow burn, and the other day Ms Ridout said she thought it might take three to five years for the effects of the legislation to flow through. Is it your opinion that the full effects of the legislation because of the transitional arrangements, the longevity of certified agreements and the time it will take for existing contracts to expire will only emerge probably after the next election?

Ms Burrow—I think it very much depends on the maturity of the business community. In legal terms, you are right, if you look at the transition provisions. But if we saw some of the statements by the business community as indicative of the whole—and, frankly, at this point I hope that is not the case—then you would see all manner of provisions in these laws being used to break down both current award protections and collective bargaining protections. I think you are right. I think that is why the Prime Minister thinks he is confident enough to say,

'Wait two years.' I suspect that when we continue to expose what is already happening to working people out there and, if you like, the fast pace of cultural change that will happen if a business community drives these laws in terms of their own workplace culture then we could see very negative consequences for workers and, particularly, for working families much sooner.

Senator SIEWERT—I would like to follow up some comments that you made about the impacts on women but also about potential impacts on young people. In your submission at 6.8 you talk about the Western Australian experience—I think it is the second last dot point. In that particular point, you talk about the high proportion of juniors that were earning below the award rates. Could you expand on that a little and any experience that you know of about the impact on women when they shift to individual bargaining?

CHAIR—I should point out that we have about two or three minutes left.

Ms Burrow—Let me say that one of the reasons we are disappointed that the commission is not going to Western Australia is because you could see this in operation. You could see it as a failed experiment. It took a first term of the Labor government to build the minimum wage back up by $99, I think I remember, to the national benchmark. That had, obviously, a very draconian impact on workers and their families. It took away for women many of the guarantees around penalty rates and other things, particularly in contract cleaning. I could tell you lots of stories but I refer you to the submission by the LHMU—there are some incredible stories there—and the state government.

In fact, I will tell you one story, if I might, about WA. I met three months ago an apprentice chef—$6.90 all up. We are a weird set of folk. We sit in restaurants and ask the people around us what they earn and whether they are in a union and $6.90 all up. I said, 'No, that can't be right; that is $100 below the award roughly' 'Yes. No, I earn $6.90 all up.' Then this young woman discovered that she had actually signed a contract when we looked at it that took away all her holidays and all her sick leave. Any notion of penalty rates just did not exist. This is the work experience of a young woman in her first job. That will be the work experience of young people right across the country—no question about it. When we look at—

Senator JOHNSTON—When was this?

Ms Burrow—This was three months ago. So it already exists, and it is going to get worse under these laws. When you look at the issues for women, may I refer you not just to our submission but, given the time, to HREOC's and to the Victorian state government's. They both have very good work and family assessments in them. But, I said it before and you saw my passion: I cannot believe that women have come this far—that we have fought so many battles on which employers have opposed us at every turn: maternity leave, carer's leave, the last work and family test case; all of those things that have actually given us capacity to care for family and, increasingly, for older Australians, our parents and other family members—and yet we are going to say that this is going to be possible under a system where the employer has all of the power to say, 'Sign here or don't get the job'? I just think that that is farcical. But it is worse than that. It is actually a total denial of responsibility by government for working families, and I think that is obscene.

CHAIR—We are out of time. Senator Siewert, if you have other questions you might put them on notice. The committee will now have a short break for morning tea. Thank you for your appearance here today.

Proceedings suspended from 10.35 am to 10.50 am

de BRUYN, Mr Joseph, National Secretary-Treasurer, Shop, Distributive and Allied Employees Association

RYAN, Mr John Francis, National Industrial Officer, Shop, Distributive and Allied Employees Association

KIM, Ms Nicole, Private capacity

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

Mr de Bruyn—Mr Ryan and I are responsible for the submission before you. Also with us is Ms Nicole Kim, who is an employee of Myer in Civic in the ACT. She put her own submission before the Senate committee. She was not able to get a separate spot to come before the committee, so we arranged for her to appear with us. She is happy to answer any questions on her submission if you wish. She is a delegate of the union of two years standing at the Myer store.

CHAIR—Thank you, Mr de Bruyn. I invite you to make a brief opening statement before we begin questions.

Mr de Bruyn—We have circulated a brief statement, together with a copy of the Myer enterprise agreement. In the submission we make this morning we ask that the bill be defeated in its entirety. There are two issues that wish to quickly cover. The first is what I believe to be the single most important devastating impact of this bill on working people in this country, and that is the change in the no disadvantage test. Currently, an agreement that is made, irrespective of its nature, has to be tested against the award which would otherwise apply to the person. In the future, the no disadvantage test is simply against a single hourly rate of pay and four conditions of employment which the government is seeking to legislate.

The significant thing is all the things which are missing. Without it necessarily being a full list, I have tried to set them down here in order to draw attention to the significance of the things which are missing. The first thing which is missing is the entitlement of people to work their standard hours over a maximum of five days in a week. Under the government's proposals, the five-day week is gone and a person could be working, under an agreement, their ordinary hours over six of seven days a week every week and that would be regarded as perfectly acceptable.

A second thing which is clearly missing which is very important in many industries, including the ones that we cover—retail and fast food—is the provisions for rostering. There is no requirement for any maximum period of ordinary hours of work on any given day. So an agreement could provide for a person to work 10 hours, 12 hours, 14 hours or 16 hours in a day without any requirement for overtime, and that would be regarded as being perfectly acceptable. There is no provision for having any days off that a person may be entitled to to be consecutive. Normally, agreements and awards provide that days off, at least to some extent, are consecutive so that people have a weekend off, two consecutive days off or whatever it might be. There is no requirement for that, and there is no provision for any minimum period between ceasing work on one day or shift and commencing on a second day

or shift. And you can go on through a whole range of rostering provisions which you typically find in awards and agreements, none of which has to be part of any agreement making in the future.

Another thing that can be missing from agreements in the future is entitlements to meal break and tea breaks. A person could be asked to work an eight-hour day but there might be no meal break involved and no tea breaks involved, just continuous work. An agreement of that nature would be certified by the Employment Advocate without a second thought, because this is permissible.

The 17½ per cent annual leave loading is missing. Whatever people may think about that, it is worth 70 per cent of a week's pay every year and is highly valued by employees out there in the real world. My experience is that whenever the 17½ per cent loading is rolled up into an hourly rate of pay employees object. They believe they have been cheated and they agitate until they have the thing restored.

Also among the things which are no longer required in agreements in the future are all the penalty rates and shift loadings for working at unsociable times like Saturdays, Sundays, public holidays, evenings and nights or for working extended periods of time, which might be in excess of, say, eight or 10 hours in a single day, or for working under extraordinary conditions, such as heat, cold, noise or whatever, and including overtime. None of those things have to be part of any agreement, and obviously to have people being able to work without any penalty rates on Saturdays, Sundays, public holidays and nights is anti-family.

A further thing that is missing from any agreement in the future is a requirement to state the nature of employment and define it. If you do not define the nature of employment—whether a person is full time, part time or casual—essentially everybody becomes casual. We put it to you that that is a bad thing. Finally, of course, there is no requirement to have any redundancy provisions in agreements in the future.

All of these things, or in various combinations, can be missing from agreements in the future and the agreement will nevertheless be certified. There is no requirement to compensate the employee for any or all of these things being missing. There is no obligation to have a discussion to trade these things for higher benefits somewhere else and, therefore, what the government is proposing to do through this legislation is to create an enormous opportunity for employers to reduce the cost of labour and thereby start a race to a new bottom, which inevitably will occur in competitive industries, including the ones that we cover.

The retailers in Victoria, when they were seeking to stop the union restoring employment in retailing in Victoria from the Kennett contracts back up to the award rate with its penalties, gave evidence that that involved a 25 per cent cost increase. Therefore, if you now go from the award down to what is the equivalent of the Kennett contracts under this legislation, that is a 20 per cent reduction in the cost of labour. In industries like retail and fast food, where the margins are only one or two or three per cent, that becomes a very significant and very attractive cost advantage for an employer to utilise if they can. And, once one employer does it in a competitive industry, all of the others will feel they have to do the same thing in order to remain competitive. So you start this race to the bottom, and that is the fundamental

problem with this legislation which will have the greatest impact over a period of time on working people in a whole range of industries, including the ones we cover.

The second thing we want to quickly mention is prohibited content. This bill is silent on prohibited content other than what it allows the minister to declare by way of regulation. However, in the *WorkChoices* document that was released by the government last month, there are a number of things listed as being prohibited content in the future. One of those is trade union training leave and another is paid union meetings. If you look at the Myer agreement, on page 49 and 50, you will find a clause on trade union training leave. Under that clause, the union trains its delegates in the Myer stores around Australia—people like Nicole. We train them in the nature of the industrial relations system and how it works. We train them in the content and the meaning of the Myer agreement and all of its provisions. We teach them how to resolve issues and disputes that may arise at the workplace. And we train them in how to handle difficult issues, such as bullying and sexual harassment, which may occur from time to time.

By virtue of this ability of the union to train people with the company picking up the lost wages of the employee, you improve workplace productivity because disputes can be settled more efficiently and more effectively than otherwise. However, under what the government has announced, even asking for a trade union training leave clause in the future will be an illegal act, for which a union can be fined up to $33,000. To have such a provision in an agreement in the future and submit it for filing will be an illegal act, which will not be permitted. I just put it to the Senate committee that if you cannot have effective trade union training of delegates in order to resolve disputes then disputes will go longer, they will fester and they will reduce productivity at the workplace. I find it hard to imagine a more naive, stupid, unproductive and interfering piece of legislation than that particular provision.

The second thing is paid union meetings. Paid union meetings and asking for paid union meetings, according to the *WorkChoices* document, are going to become prohibited matters for agreement making. Let me explain how we go about agreement making in a company like Myer. The first thing we do is that we ask the company for a paid meeting of our delegates. We get the delegates together in each branch of the union from all of the 61 Myer stores in order to discuss with them the claims which the union proposes to make. We then go off, having settled those claims, and negotiate with the company. When the negotiations are complete, we once again ask the company for a paid meeting of the delegates to report back to them. Then we ask the company for paid meetings with all of the employees in the stores in order to explain the terms of the new agreement to them, particularly all the changes which are to be made. Then about a fortnight later, we come back and again, in company time, we do the conduct of the ballot and deal with any remaining issues and questions that people may have. When the agreement is finalised and certified, we then ask for a paid trade union training leave facility to train the delegates in the new agreement, so that they can implement it effectively at the workplace.

All of that is participative and democratic and that is the way that agreement making can most efficiently be conducted. If, in the future, paid union meetings are to be a prohibitive matter and if a union asks for a paid union meeting and you can be fined something like

$33,000, then I think we have gone into fantasyland and agreement making will no longer be able to function effectively. I am happy to answer any questions.

CHAIR—I want to ask you about the cashing out of annual leave. You may have heard my comments to Ms Burrow when I asked her about her concerns about maintaining relationships and knowing your kids. I would like to refer you to a current SDA agreement—Coles Supermarket Australia Pty Ltd Retail Agreement 2005—which does allow the cashing out of leave above a certain level: 228 hours. I want to quote the relevant part—section 6.2.16:

> ... the Company may, at the request of the team member, pay to the team member an amount equal to the team member's ordinary rate of pay inclusive of leave loading, for his or her annual leave entitlement in excess of 228 hours and reduce the team member's annual leave entitlement accordingly.

Is that something your members are happy to do?

Mr de Bruyn—It depends on the individual, because it is entirely voluntary. I was involved in those negotiations. The way it originated was that the company came to the union and said that they had a major problem with untaken annual leave—in other words, even though the agreement provides, under the annual leave clause, that annual leave must be given and must be taken by the employee within 12 months of it accruing, the company had failed to do it. So there were a range of people within the company who had a large amount of annual leave, which had accumulated over two or more years.

The company wanted to reduce that annual leave overhang if it could. We initially said no. We eventually agreed that if an employee agreed, and not otherwise, they could cash out annual leave, but they must retain at least six weeks of fully accrued leave at the end of that transaction. It is not what the government is proposing to do here, which is that out of the current four weeks annual leave you can cash two out. This was where there was an overhang of annual leave which was excessive and which the company felt it could not effectively clear. So a person can, if they want to, cash out annual leave, provided that at least six weeks of fully accrued leave remains.

CHAIR—Fine. I do not have a great deal of time. The point I want to put to you is: doesn't that show that employees may have chosen not to take all of their annual leave in one year and that that is their choice?

Mr de Bruyn—Sometimes employees decide that they do not want to take their annual leave because they want to accumulate it to take, say, two lots of four weeks, making a total of eight weeks, in order to have an overseas trip. Some people accumulate annual leave because they are concerned about their job and if they lose their job they want to get a higher payout because of the accumulated annual leave. There are all sorts of reasons why people sometimes do not want to take their leave. In my discussion with retailing employees I always say to them that it is in their interest, as well as the employers interest, for them to take their four weeks annual leave every 12 months so that they can refresh themselves and spend time with their families, because if they do not do that they will burn out.

CHAIR—The point I am making is that it is the employee's choice. Senator Marshall, you have 11 minutes.

Senator MARSHALL—Thank you for your submission, which you put together in a very short space of time. It is a plain-speaking submission and identifies some of the more absurd,

devious and underhanded provisions of this particular bill. I want to take you to one in particular, but before I do that I want to ask you a question about your oral submission and the bargaining with Myer. What is Myer's view on agreement making and paid union meetings as part of that agreement-making process?

Mr de Bruyn—Myer agree to trade union training leave and they agree to paid union meetings, because they regard it as being fundamental to the whole process. They agree for us to have meetings of delegates and meetings of the employees in company time as part of the agreement-making process. It has been like that ever since the first agreement we made back in 1994.

Senator MARSHALL—Thank you. I want to take you to section 96D, 'Employer greenfields agreements'. It is one of the more absurd provisions of the bill, where effectively an employer can make an agreement with themselves about conditions that are going to apply to new employees. How would that impact upon the employers in your industry and agreement making for employees?

Mr de Bruyn—If an employer made a greenfields agreement with themselves and provided only for the basic minimum entitlements, then people would miss out radically on all the things which I have listed in pages 1 and 2 of my submission this morning. Therefore, they would be much worse off than if they were employed by that employer under the terms of the award.

Senator MARSHALL—Do you see it as a provision that will be utilised by employers in your industry?

Mr de Bruyn—I think certainly some would do so, yes.

Senator GEORGE CAMPBELL—I appreciate your submission. A number of the issues that you have raised under point 1, the change in the no disadvantage test, are relevant to the question I am about to ask you. Have you looked at subdivision B of the proposed bill, 'Guarantee of maximum ordinary hours of work'?

Mr de Bruyn—Yes, we have had some opportunity to look at that.

Senator GEORGE CAMPBELL—As you would be aware, that provision provides for an average of 38 hours per week to be worked over the employee's applicable averaging period, which can be a 12-month period or it can be a lesser period. In your industry you have a lot of casuals—a lot of young people who work Thursday nights and weekends. What is the potential for this clause to be used by the companies to utilise regular employees, if I can use that term—permanents—to work a mixture of hours per week? What would be the impact of that on employment within, say, Myer or David Jones or a company like that?

Mr de Bruyn—A company could seek to try to average out to 38 hours across a year and have people doing much larger quantums of hours at the peak periods, like Christmas and Easter, Mother's Day, Father's Day and so on and then have people doing little or nothing at other times of the year when things are quiet, and thereby averaging it out. There is one company in the retail industry which has done that, and still does it today and it created for us enormous problems.

Senator GEORGE CAMPBELL—Who is that?

Mr de Bruyn—The company was Bunnings, the hardware chain. They said they wanted to average the hours of the employees out over a full 12-month cycle. After that was implemented, at their insistence the employees found this to be one of the most awful of their whole rostering arrangements because the individual employees quickly in any 12-month period lost track of where the hours were that they owed the company or the company owed to them compared with a standard 38 hours. When they got to a quiet time they were given time off. The tendency of the company was to give them, say a one- or two-hour later start on a day or a one- or two-hour earlier finish on a day, rather than giving them the time off in useable amounts such as whole days off. There was also no regard by the company as to when the employee might like to take the time off in the quiet times. The company simply dictated when it suited them, and that would not necessarily suit the employees.

The final problem we found was that when you got towards the end of the 12-month period, invariably the employee had a whole lot of hours still to be taken off and the company, because it had not managed its business well, wanted to keep on working those people. So there was a big bank of hours owing to the employee and they could not get the time off. So we found in our last negotiations with Bunnings, which was in 2003, that we had to fix up all these problems. To some degree we have been able to do that by putting in some very tight arrangements whereby once a person gets to the point where they have 50 hours in the bank from their employer, the employer must sit down with that employee and discuss when that time off is to be taken, and they have to take into account not only the interests that they have as a business but also the times when the employee wants to take that time off.

We have also got arrangements now where the employees must be shown where they stand in terms of either owing hours to the company or the company owing them hours on a weekly or fortnightly basis so they can track during the course of the calendar year how it is going. But it is a provision that has caused us enormous problems. When we came to negotiate that new agreement and we got the delegates together in a paid meeting, they were furious with the company—so much so that we decided not to try to convey that fury ourselves to the employer. We invited the employer to come to the delegates meeting so they could hear it from the delegates for themselves.

Senator GEORGE CAMPBELL—In terms of the experience with Bunnings, when the working hours were changed, was that done by mutual agreement between the employee and the employer or was it simply a matter of the employer directing the employee which hours they would work?

Mr de Bruyn—It was imposed by the employer on the employee. It was part of a new agreement. We entered into that agreement only because if we had not agreed to that averaging provision over the 12 months, the company would not have done an agreement with the union and would have gone its own way and done even worse.

So, in order to hang in there with a union agreement, we accepted it. Then when all the problems emerged we knew we had to fix that. That was one of, I think, three major issues in our last negotiation that had to be fixed. Had we not agreed to that, the company told us that they would make their own arrangements, probably through AWAs, and I think we would have been powerless to stop that—certainly, for many of the employees. We wanted to continue to have the union agreement apply in that company, so we accepted the new

arrangement with great reluctance. But the employer then imposed the arrangements on the employees and created all the problems for itself.

Senator GEORGE CAMPBELL—Is it true also that the company paid a bonus to workers to vote in the ballot?

Mr Ryan—In the first agreement that Bunnings offered, because they were so significantly restructuring the terms and conditions of employment as against the underpinning award, they offered a cash payment as part of the total package for the buyout of some terms and conditions of employment. The payment was virtually money for nothing for casual employees but did not necessarily compensate full-time and part-time employees for the actual buyout. The company at that stage was opening a number of stores. Between the time we concluded the agreement and the time that people voted on it the company opened a number of stores, all essentially staffed by large numbers of casuals, who all got this payment. Of course, they only got the payment if they voted 'yes' for the agreement. So the answer is: yes, they bought their way through the agreement.

Senator WONG—Ms Kim, thank you for making your submission and for appearing today. I am sure it must be a very unusual experience for you.

Ms Kim—Yes, it is.

Senator WONG—Under the legislation, as we understand it, an employer has the legal right to say to a new employee—and, arguably, an existing employee: 'Here is your AWA. It contains a minimum wage, the five minimum conditions and a clause that removes all other conditions of the award including redundancy pay, rostering, penalty rates et cetera.' I want to ask you how you think the people you work with, and potentially new employees, would handle the employer telling them that and what the effect on your workplace would be.

Ms Kim—When you first start at a workplace you are not aware of what your rights or working conditions are. I had no idea when I first started working. I think going for an AWA would be quite hard for people like myself and young people. They do not have the ability, knowledge or experience to sit with their boss and say, 'These are the conditions I want.' Realistically, it will be very hard for young people to sit down and do that.

A lot of people are very scared of new changes because there are not enough guarantees or safeguards. People with existing employers are worried that, if there are a lot of AWA contracts with new people, ours will be fought between people who are already in the workplace and people who are new and probably cheaper. I usually find with business that the main priority is profit and how much money business can generate; it is not usually decided upon whether it is good for workers.

Senator BARNETT—Mr de Bruyn, just to clarify: you are a member of the ALP national executive.

Mr de Bruyn—Yes.

Senator BARNETT—How much in donations has your union given to the ALP since 1996?

Mr de Bruyn—I have no idea. I only know of the donations that we give from the national office of the union. The branches normally do not disclose to me what they do, but they would make their normal returns to the Electoral Commission.

Senator BARNETT—I have been advised that it is in the order of $6.8 million. Does that sound about right?

Mr de Bruyn—No. That could only be a figure with any credibility if you include the affiliation fees in addition to any election donations.

Senator BARNETT—Because time is tight I want to ask a few questions with respect to the encouragement of union membership. You have a relationship, obviously, with Coles and Woolworths. In the agreement you have with Coles Myer Logistics, at clause 44(b)—

Mr de Bruyn—Can you tell me which particular site that covers, because the Coles Myer Logistics are all warehouse agreements and they are site-by-site agreements?

Senator BARNETT—I do not have details of the sites but if I read it to you it might come to mind. It is headed, 'Union recognition and membership.' It says:

It is the policy of the Coles Myer Logistics that it shall strongly recommend that all employees covered by this Agreement shall join the Shop, Distributive and Allied Employees' Association. This includes positively promoting union membership at the point of recruitment and strongly recommending that all employees remain members of the SDA

In your view, is that clause unlawful under the current law?

Mr de Bruyn—No, because that form of words was quite common in many of the agreements that we were making some years ago. Following the 1996 legislation I went and discussed the terms of that clause with the Employment Advocate and he assured me that that was not against the law.

Senator BARNETT—So you do not believe that it is a denial of workers' rights to freely associate—to be a member or not to be a member of the union?

Mr de Bruyn—No, it is an expression of the employees' right to have a view.

Mr Ryan—Can I also add there that the government leader in the Senate, during the debate on the 1996 bill accepted that wording nearly identical to that clause was consistent with the freedom of association provisions of the workplace relations bill at the time. That was based on the fact that what was tabled in the Senate was an opinion from the Attorney-General's Department which specifically analysed the union encouragement clauses of the SDA in relation to the proposed workplace relations bill of 1996, and each clause was identified by the official advice of the Attorney-General's Department as being consistent with freedom of association. The government accepted that the bill would operate consistent with the technical advice from the Attorney-General's Department.

Senator BARNETT—I will put it another way. You do not support the concept of no ticket, no start?

Mr de Bruyn—No. That became illegal a long time ago. You should understand that in the retail industry today, even if the employer makes some sort of statement where they say they support union membership, it is up to the union to invite and persuade the employee to join

the union. In the Western Australian branch we have to sign up over 10,000 people every year just to stand still. That is in a branch that has about 20,000 members.

Senator BARNETT—Mr de Bruyn I want to ask you another, final question with respect to your relationship with Coles and Woolworths. It is a good cooperative relationship, I understand?

Mr de Bruyn—Yes.

Senator BARNETT—I understand you have collective agreements with both Coles and Woolworths?

Mr de Bruyn—Yes.

Senator BARNETT—Most of your members would therefore be employed on those collective agreements?

Mr de Bruyn—The members in those companies, yes.

Senator BARNETT—An allegation has been made about 'check-out chicks' being overpowered by heavily dominant employers. They will continue, I assume, to be employed under those collective agreements under the new workplace relations arrangements.

Mr de Bruyn—I expect that for the foreseeable future both of those companies, and many others with whom we have agreements, will continue to make agreements with the union. However, under the legislation it becomes possible for any employer whose employees are covered by an agreement to start offering Australian workplace agreements to any employee they wish. Those Australian workplace agreements could contain nothing more than the basic rate of pay and the four legislated conditions of employment. And even though that is eminently worse than the agreement, those things would then become applicable once the employee signs on the dotted line.

Senator BARNETT—Is it your expectation that the collective agreements you have with Coles and Woolworths will continue?

Mr de Bruyn—Yes, for the foreseeable future.

Senator JOYCE—Thank you very much for coming in today and for your submission. You have a very strong union. What do you see as your role after this legislation goes through? What do you see would be the role of the union then?

Mr de Bruyn—I think the union will continue what it has always done—that is, to negotiate with employers for the wages, working conditions and job security of employees and get as many agreements as we can; to represent employees at the workplace in terms of any grievances, issues or questions they put to us; and to go out there and invite employees of a company to join the union and then invite the employees to elect the delegates and then train the delegates—do all the things we are doing now.

Senator JOYCE—And that is a crucial stage—do all the things you are doing now. As far as you are concerned, if you are doing all the things you are doing now, this legislation is not greatly impinging on your right of operation.

Mr de Bruyn—Initially, and in a major way, the effect will be in the non-unionised area. That is what our experience was in Western Australia under the Kierath legislation, and that is

what our experience was in Victoria under the Kennett legislation. Once the law is changed, it is in the non-union area where the changes immediately take place. That is where I expect that employers will take away the penalty rates and the other entitlements of people, which I have listed in my submission, in order to give themselves a competitive advantage over others. Once they do that, in an industry like ours where the margins are very small, the employers who have not done it will be under pressure to go down the same path. So, over a period of time, you will find an extension of these arrangements, where you will have individual agreements or non-union agreements being made, where basic entitlements are missing and, eventually—which will be some years down the track—it will impinge upon us in the unionised area. I expect companies will come to us and say, 'We can no longer compete.'

Senator JOYCE—So it is in the non-union areas where you see an issue. Why would there be non-union areas? Why wouldn't everybody be covered by you now?

Mr de Bruyn—The retail industry employs about 13 or 14 per cent of the work force—well over a million people—and we physically cannot get to every single person in every single retail and fast food workplace to invite them to join the union. Turnover in the retail industry is enormous. In the fast food industry, the industry itself tells us that turnover is about 100 per cent per annum. The ability to maintain reasonable levels of membership in fast food means that you have to give it constant and continuing attention. Then if you look at the times when these places are open—morning, noon, night and so on—and people working different shifts at different times during the day across the seven-day trading week, it becomes very difficult to give existing places the attention that is required. I say that as an organisation that has probably 120 or more full-time organisers out in the field every day with the primary job of recruiting union members.

Senator JOYCE—People working morning, noon and night seven days a week does not sound drastically different from what is in the bill. If people are currently working morning, noon and night, seven days a week—

Mr de Bruyn—No, different people working at those different times. A fast food place will often put a person on for a three- or four-hour shift. That person then leaves but another one replaces them to do another three- or four-hour shift, so you are talking about different people at different times.

Senator JOYCE—I have one final question for Ms Kim.

CHAIR—I am sorry; you will have to put it on notice. I need to go to Senator Murray.

Senator JOYCE—I will put it on notice.

Senator MURRAY—I only have time for two questions, and you will need to keep your answers short. The first question is about the connection between the unions and the ALP. There have been several questions to various witnesses on this matter. It seems to me the line of argument goes like this. The coalition is very competitive with the ALP. The unions support the ALP; therefore if the coalition can weaken the unions they will weaken the ALP. Do you feel that is a line of thinking behind this bill and influences its provisions such that unions will have less ability and less authority than in the past?

Mr de Bruyn—There is no doubt that the legislation is aimed at weakening unions. There is a range of provisions in the bill which are clearly aimed at weakening unions. Whether the government's intention is for that to then weaken the ALP is a question for the government to answer.

Senator MURRAY—The second question concerns the relationship of all agreements with the awards. As you know, I and my party supported the 20 allowable matters introduced in the federal Workplace Relations Act. We supported the reduction of federal awards by about two-thirds and the reduction in the size of the remaining awards by about one-third—in other words, a rationalisation. But the one thing we insisted on was the no-disadvantage test and that all agreements, both collective and individual—including common law—would use the award as the reference point in the safety net. My extensive experience of small business is that they will vary pay and sometimes hours but for most other conditions they will simply refer to the award. They abide by the law, because they do not have enough time to think through all those issues; therefore, if you expand or contract the award, those are the conditions they will apply. To my mind, the net effect of these changes is to cut the connection between agreements and awards, and the net result has to be a loss of conditions of employees, whether they are on collective agreements or individual common law agreements. Is that an accurate conclusion?

Mr de Bruyn—I believe it is, and that is what I was trying to address in pages 1 and 2 of the statement this morning. All the things that will no longer be required to be in agreements in the future; therefore, to varying degrees, some or all of those things will be missing from agreements that are made in the future. The only qualification I would make is that, where you have a union negotiated agreement, obviously the union—and certainly we as a union—will seek to hang onto everything we have. We will not want to give things away if it can be at all avoided but, where you have agreements which are collective agreements without union involvement, or where you have individual agreements, I have no doubt that there will be a very substantial loss of entitlements from the existing award base in agreements in the future under this new legislation. Employers expect that this will happen. They freely tell me that this is what they know certain employers will do.

Senator MURRAY—I would summarise it this way: the one-in-five workers, roughly speaking, who are union members are likely to have their conditions preserved for longer because the unions will fight to preserve their conditions whereas the four-out-of-five workers who do rely directly on the system but are not union members will lose their conditions far quicker.

Mr de Bruyn—They will tend to lose their conditions. It depends on their employer. I am the first to agree that there are employers who are not bad employers. There are employers who will not intend to take advantage immediately of these things but, as the employers have said to me consistently as this legislation has been in the throes of its formulation, they know that there are some employers who will use it and will use it immediately. The problem is that that creates the competitive pressure for the others to follow suit, and that is where the new race to the bottom will take place.

Senator MURRAY—That is exactly right.

CHAIR—Senator Siewert has a couple of questions.

Senator SIEWERT—My question is about the OEA. You refer to the OEA in your submission. My understanding, and I think your submission highlights this, is that once agreements are sent into the OEA there will be no checking of the agreements to make sure that they are actually compliant. Is that how you understand the system will work?

Mr de Bruyn—Yes.

Senator SIEWERT—And that is a change from the situation now, my understanding of which is that they go through and check them. Is that correct?

Mr de Bruyn—The Office of the Employment Advocate is supposed to check them, but I doubt whether they check all of them. There were examples that were submitted to a Senate committee back in August where clearly a checking process could not have occurred. The example I am referring to is the case of Krispy Kreme in New South Wales, where two former employees of Krispy Kreme gave evidence in a written submission to the Senate which explained the way in which they were forced onto an AWA and forced by their employer to sign an AWA which was manifestly below the award standard, yet those AWAs were certified.

Senator SIEWERT—But from now on we are not even going to get that.

Mr de Bruyn—No, there will be no checking.

Senator SIEWERT—You also mention the waiver provision. Sorry, I forget the section number. We have not heard anybody talk about that here that I can recall. Can you articulate a bit further your submission about the waiver provision and cutting the waiting period over agreements?

Mr Ryan—The way the waiver provision works is that the legislation starts off with a presumption that a worker will be given a copy of the agreement and be given a copy of the relevant information statement. But it then immediately goes on and says that you do not have to do that if you have a waiver that is signed by an employee under the provision of the bill. The problem with the waiver is that there is absolutely no protection whatsoever for the employee. When you go to section 104 of the bill, there is nothing to say that an employer is prohibited from applying coercion or duress to an employee to get them to sign the waiver. So the employer will start the process by making certain that every employee signs a waiver. It will be conditions of employment for existing employees. They can simply threatened with any consequence to sign a waiver, because it is not an instrument that is otherwise protected from the application of the duress or coercion principle. So employers will be able to get the waiver. Once they have the waiver, they can go to an employee individually and simply say, 'Here is the AWA; this is what we expect you to sign—you've got one minute to sign it,' with the employee never having seen it before. Collectively, if they get all employees to sign the waiver, they can go to the group, call them into a meeting room and say: 'Here's the new collective agreement. We want you to vote on it now.'

Senator SIEWERT—And then that can be submitted to the OEA and it is not checked.

Mr Ryan—Yes.

CHAIR—Thank you for your appearance.

Mr Ryan—Madam Chair, I have two technical matters. We did table an extract of the financial records of Publishing and Broadcasting Ltd. This relates to paragraph 202 of our submission. The other is that there is a typographical error of substance at paragraph 62. We quoted Pope John Paul, and I would hate to quote him incorrectly.

CHAIR—Yes, we cannot allow that to happen.

Mr Ryan—It is not just a minor error. It says 'a very important conclusion of a mythical nature'. It is 'a very important conclusion of an ethical nature'.

CHAIR—I do appreciate the difference and I assure you that that will be corrected for your own sake. Thank you for appearing before us here today.

[11.39 am]

BAKER, Dr Ken, Chief Executive, ACROD

ALTAMORE, Mr Robert Jeffrey, Vice-President, Australian Federation of Disability Organisations

O'NEILL, Ms Collette Maree, National Policy Officer, Australian Federation of Disability Organisations

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

Dr Baker—I thank the committee for the opportunity to appear before it and to put a perspective on this important bill. ACROD represents disability service providers nationwide. Among our membership are around 550 non-government, non-profit providers of services to people with disabilities. Those services include both open employment services—that is, organisations which assist people to get jobs and maintain jobs in the open work force—and supported employment services, sometimes called business services, and these organisations directly employ work forces of people with disabilities.

The concerns we have raised in our short submission are specific and relate to protecting employment opportunities for people with disabilities. The recommended amendments we are proposing would not, in our view, weaken the bill or divert the bill from its intention. They would, moreover, be consistent with Commonwealth policy in other contexts. There are three specific areas of concern.

The first concern is to align the definition of employee with a disability in the bill to the definition contained in the Disability Discrimination Act for the purpose of protecting employees with disabilities from unfair dismissal. The definition in the bill relies on the Social Security Act. While that is appropriate for the Fair Pay Commissioner's role in setting a special federal minimum rate of pay, it is not appropriate in terms of the commission's role in protecting the rights of employees with disabilities.

The second concern relates to the Australian Fair Pay Commission's power to set or nominate 'a method' for determining an award based wage. In our view—and it is a view that has been endorsed recently by the Australian Industrial Relations Commission in a conciliated hearing which was agreed by unions and employer bodies—there should be multiple methods for determining an appropriate rate of pay within supported employment or business services.

The third concern is to allow the Australian Fair Pay Commission the ability, in terms of the time line to which that commission works, to phase in award based wages in supported employment or business services in a way that was consistent with the decision of the Australian Industrial Relations Commission and consistent with Commonwealth policy, as announced by the Prime Minister in April 2004.

CHAIR—Mr Altamore, do you wish to speak?

Mr Altamore—The Australian Federation of Disability Organisations, or AFDO, is the peak national body of organisations of people with disability. Our mission is to champion the

rights of people with disabilities. As the committee is aware, the Work Choices bill has been introduced to parliament at the same time as the radical changes to the income support and employment assistance systems have been proposed through the Welfare to Work bill. We would urge the committee to consider the Work Choices bill in the context of the likely impact on people with disabilities of the Welfare to Work bill.

In our submission to this inquiry, the Australian Federation of Disability Organisations has identified four concerns related to the impact of this bill on people with disability. These concerns are: an increased risk of poverty, inadequate protections for people in negotiations and in the workplace, and greater barriers to employment, due to reduced minimum conditions. As just discussed, the interaction of the proposed changes to the industrial relations and welfare systems is also a concern.

We are happy to answer any questions the committee may have on the specific concerns. More generally, it is AFDO's position that the bill does not pay enough regard to the particularly vulnerable position of people with disability in the workplace and the labour market. People with disability are one of the most disadvantaged groups in the labour market. Despite this, there is little in the bill to address the direct and indirect discrimination that people with disability confront on a daily basis. Fundamental issues such as access to information and support to provide informed consent are not explicitly addressed in this bill. There are also few restraints on employers to prevent them from exploiting workers with disability. Those protections that are included in the bill are poorly targeted. At a time when we are all seeking improved participation of people with disability in the work force, protections such as these are needed more than ever before.

CHAIR—Ms O'Neill, do you wish to speak?

Ms O'Neill—No.

CHAIR—In that case, I will ask for questions and pass to Senator Johnston.

Senator JOHNSTON—Dr Baker, I note that the order that you have got in your submission is a little different to the order in which you mentioned the three points. Can I take you to clause 90S, which I think you might be familiar with, which talks about a federal minimum wage. It talks about:

(b) all employees with a disability, or a class of employees with a disability …

I would have thought the inference from that—and I want to be helpful here and note your concerns—is that you can have more than one class of calculation of a federal minimum wage. I will put this to the department for you on Friday. I think the point you raise is a good one, but it seems to me that the act has, to some extent, accommodated you—although you might wish to disagree with me.

Dr Baker—My intention, I suppose, is to seek clarity within the act so that there is no ambiguity. I think the intention is to allow for multiple methods. In the explanatory memorandum there is mention of multiple methods, but the act itself says 'a method'. I am conscious that the Senate itself was recalled two weeks ago to change to an indefinite article in antiterrorism legislation.

Senator JOHNSTON—We are all aware of that, yes.

Dr Baker—Much can hinge on a single word.

Senator JOHNSTON—Given that the Commonwealth did support the position originally, I will raise it with them for you. Coming to your definition point—I will raise each of these, because I think they are technical in nature—with No. 3 I am interested that Mr Altamore's submission wants to adopt the definition under the DDA, whereas you have questioned it. I would be interested to know if you could give us a bit of a mind's eye picture of the sorts of disabilities that you would see in employment that would not fit the definition or be eligible for a support pension.

Dr Baker—The definition in the DDA is broader than the definition in the Social Security Act, which is the one that the bill has adopted. The Social Security Act, as senators will know, is to determine income support eligibility. It defines a person with a disability as someone who essentially cannot work full time for at least two years. The DDA talks in more general terms about mental or bodily impairment and includes past, present and future and imputed disability.

The sense of that is that a person, for example, may develop a degenerative condition like multiple sclerosis and it may be that an unethical employer, when he or she finds that out, may anticipate that this person will develop a disability and an inability to do their job sometime in the future and dismiss them on that basis. That would be unethical and unfair.

Our sense is that when it comes to protecting employees with a disability it is appropriate to apply the DDA definition, whereas when it comes to the commission's powers to set an appropriate special federal minimum it would be appropriate to use the definition of employee with a disability that is in the bill.

Senator JOHNSTON—That assists us. I will take that further for you on Friday with the department to see if we can clarify that.

Senator BARNETT—I want to pursue the matter in regard to the definition of a person with a disability. I have had a look at the Disability Discrimination Act—I don't have it in front of me—at the definition. The one that you just described is obviously far broader than the one referred to in the proposed bill. Can you outline in more detail the definition under the DDA—exactly who it would include? Have you got any sort of assessment of numbers in terms of the impact of, say, just accepting the DDA's definition? One of the problems with the DDA, we all know, is that it is a little ambiguous and vague in parts. You have to be clear about definitions when we come to this sort of legislation.

Dr Baker—I do not have any accurate figures on the coverage. On the broadest definition, one in five Australians has a disability of some sort. The intention of the DDA is to ensure that employees and prospective employees are not in any way disadvantaged because of their disability so that employers do not make decisions on the basis of a person's disability—they rather make decisions on the basis of a person's merits as an employee or as a candidate for employment. I think that would be an aim that would be shared, surely, by all stakeholders in this. It has existed in legislation for more than 10 years. The recent review of the DDA by the Human Rights and Equal Opportunity Commission found that in all the areas where it operated it was least effective in the area of employment. So I think that, although the definition is broad, there is no sense that it is unnecessarily impeding employers in making

legitimate decisions about employing or dismissing people. If anything, it would need to be strengthened in overcoming prejudice that employers may have in their decisions.

Senator BARNETT—We will certainly have a look at that, and thanks for bringing that to the committee's attention. Can I ask your views of the proposed legislation in regard to the ability of the Australian Fair Pay Commission to set pro rata wages across different classifications, as Senator Johnson indicated, for people with disabilities and contrasting that with the current arrangements, where under some awards that provision is not allowed. It is simply not provided for under some awards. So in a way, the way I read it at the moment, the bill is actually filling the gaps so that we can cover and allow for people with disabilities across the board to receive pro rata wages. What is your understanding of the current law?

Dr Baker—At present, there is a distinction here between people who are in the open work force and people who are in supported employment, or business services. For people in open employment, there is only one recognised legitimate method for determining an award based or sub award wage, and a wage that reflects their productivity. The intention has to be one we would strongly support—and again I think it would be shared by all stakeholders—that a person be paid fairly according to their skills and their level of productivity. Most employees with a disability in the open work force attract an award wage. We are dealing with only a minority whose productivity would limit them to a wage that was less than an award.

So at present there is only one system that operates there and one assessment tool, and the view at the moment is that that would be appropriate. The problem I think you are alluding to—which I think is right—is that not all awards make provision for use of the supported wage system. That is a problem. If this commission can rectify that problem, that is something we would support.

Senator BARNETT—And that is my understanding. I think that will be an improvement for people with disabilities, because you have those with the business services, previously called the sheltered workshops, and you have the award system. Some of those awards, at the moment, simply do not have provisions. So I am just clarifying your understanding.

Dr Baker—My remarks were related purely to open employment. When one turns to supported employment, there has been a long negotiation but recent agreement among all parties that there be a dozen or so wage assessment tools recognised as legitimate. Each of these tools is named within the LHMU supported employment—business enterprises—variation, which has just been agreed by the commission. Each of them complies with the federal Disability Services Act. I think it is important to have that recognition and that guarantee. The risk for business services is that that situation, which took a long time to negotiate and genuinely, I think, is the way forward—because there is no single gold standard in terms of wage assessment tools; there needs to be recognition of a range—is not unintentionally undermined by the wording in this bill.

Senator WONG—I will start first with how people with a disability may fare under the scheme that is proposed in the legislation. The evidence that this committee has been presented with is that an employer can make it a condition of employment for a new employee, and arguably an existing employee in certain circumstances, that they sign an AWA. An AWA is only required by law to have the minimum wage and the four minimum

conditions, and all other rights such as redundancy, penalty rates, shift allowance and overtime can be removed by a provision simply saying that they are removed and contemplated in the minimum hourly rate. From your perspectives, how do you see people with a disability, given their particular position in terms of the employment marketplace, operating and faring under that system?

CHAIR—Is that addressed to each of the witnesses?

Senator WONG—I am happy for either or both ACROD and AFDO to respond to that, as they wish.

Mr Altamore—The Australian Federation of Disability Organisations, as I said, has three concerns with the operation of this bill, which will affect the ability of people with disabilities to gain and maintain employment. First of all, we do have concerns that the bill's proposals will actually lead to a lowering of wages for people with disabilities, particularly those employed at the lower end of the wage market, through the inappropriate application to them of the Australian Fair Pay Commission's power to determine wages classifications.

In this respect, I need to draw attention to a slight departure between the positions of AFDO and ACROD on this, in that the Australian Federation of Disability Organisations sees substantial problems with the application of the definition of a person with a disability in terms of 'disability support pensioner' for people for whom a special wage determination can be made. We believe this is far too wide. We understand the value of having special productivity based wage determinations for certain classes of people with disabilities—and we understand that the legislation addresses the problem whereby many awards did not contain this facility.

However, we think that, in their eagerness to address the problem, the draftsmen have cast the net far too wide and have opened up the possibility for special wage determinations to be made for all classes of people with disabilities, even though that may not be strictly necessary because the person with a disability, given proper workplace adjustments, can be just as productive as a person without a disability. We therefore suggest that the power to prescribe a special productivity based wage determination should be severely circumscribed so as only to apply to people with disabilities for whom productivity concerns are a real issue. I dealt with that with some concern because I did not have a chance to address this when Senator Johnston questioned my colleague Dr Baker.

Senator JOHNSTON—My apologies.

Mr Altamore—Thank you. Secondly, we have a major concern in that the bill in its current form does not address the disadvantaged situation of people with disabilities in terms of negotiating their working conditions and negotiating in the workplace. I note that, in the definition of people suffering disadvantage in proposed section 83BB(2), people with disabilities are not included in the categories of people suffering a disadvantage. That is an illustration of how the bill fails to address the disadvantage of people with disabilities in the workplace in negotiating their terms and conditions. People with disabilities are subject to much indirect and direct discrimination in the workplace. This has the potential to increase under the bill. For example, in negotiating an agreement, there is nothing in the bill requiring the employer to afford extra time for a person with a disability to respond to the agreement.

There is nothing that says that a person has to be provided with the information in an accessible format. For example, many people with a disability, including me, have been unable to read the 700 pages of print in the bill and the 500 pages of print in the explanatory memorandum which comprise this package. As such, the bill affords inadequate protection.

Thirdly—and I am conscious that I have gone on for some time so I will deal with this very briefly and come back to it later—we believe the reduction in the minimum allowable conditions of awards and agreements will disadvantage people with disabilities more severely than the general community. That is because many of the conditions regarding the open approach to things like rostering will affect people with disabilities who have difficulties in terms of the physical effects of their disability on their health and their ability to work long hours, extended hours or outside normal hours. Also, in terms of people with disabilities being asked to work outside normal hours, it will increase their costs. For example, if a person with disabilities needs attendant care to get themselves ready for work and the attendant care organisation charges extra fees out of hours, that increases a person's cost of working. The person's ability to negotiate increased pay in compensation for this is not provided for in the bill.

Ms O'Neill—I want to add one more thing to that. In the current system in relation to people getting supported wages, there is a lot of overview and oversight in the role that the Industrial Relations Commission plays. We heard that with the last witnesses. That oversight will be gone or dramatically reduced. There will not be anyone overseeing the application of special wages in the way that we would want for people with a disability.

Mr Altamore—The lack of oversight is a serious problem.

Senator WONG—There are quite a few things you went to, Mr Altamore. I will try to come back to them if can recall them all. I will start first with the relative bargaining power in the labour market of people with a disability. You have alluded to this and your submission goes through what people with a disability face in terms of seeking employment and the substantial discrimination and attitudinal barriers that they face. Given that, what do you think of a system where an employer can say to someone, 'This is your AWA. The job is only offered under these conditions. It contains no requirements as to rostering. It simply contains the four minimum conditions and the minimum wage'? What will the position of a person with a disability be if they are confronted with that sort of AWA?

Mr Altamore—I would like Collette to answer this first and then I might come in.

Ms O'Neill—Most people with a disability would be significantly disadvantaged in that situation beyond the disadvantage experienced by other people. If, for example, you are a person with an intellectual disability or a cognitive impairment, it will be quite hard for you. If you are given a sheet and told, 'Read this contract,' you might need extra time, because it just takes you longer to understand. You might need to take it away and read through it with someone who is a support person for you so that you can fully comprehend the agreement that you are being asked to sign.

The other pressure on people with a disability will be the income support system, which requires people to take offers of employment. It is not a reasonable excuse to reject a job simply because it is offered under an AWA, even if the conditions in that AWA would leave

you disadvantaged. So people will feel a lot of pressure. Under the proposed Welfare to Work changes, to reject a job that is deemed to be suitable by the secretary of Centrelink will mean an automatic eight-week payment suspension. So the person is in a very difficult situation: they cannot necessarily understand what they are being offered at that time, they are under pressure from the employer to sign immediately and they have hanging over them the risk that they might lose their pay for eight weeks if they do not sign. It is one thing to know that you have the appeal rights where you can explain to Centrelink why that was not a suitable job, but in the meantime you might actually have your pay cut, and that is a lot of pressure for a person to be put under.

Mr Altamore—In addition to the pressure that Collette has mentioned, people with disabilities do not have the same flexibilities and opportunities as people who do not have disabilities. Often you are so grateful to get a job offer that you feel you have no alternative but to take that job and take what is offered to you, because you may not get another—for example, and it goes back a few years, I had to put in 300 applications to get my first job.

Senator WONG—I want to go to the issue Ms O'Neill raised first and then go back to the issue you raised, Mr Altamore. The issue raised was the interaction between the legislation which is before this committee and the welfare changes which will be before another committee of the Senate next week. One of the changes to which you alluded, Ms O'Neill, was the definition of suitable work in the Welfare to Work bill, which removes any reference to the award. In other words, as you correctly identified, a person with a disability would be required to take employment under an AWA with only the minimum wage and the four conditions. Given the breaching regime that you describe, what sort of choice do you think a person with a disability in that situation would have?

Ms O'Neill—One of the difficulties with the interaction with the Welfare to Work bill is that a lot of the Welfare to Work bill is left to the discretion of the secretary and guidelines, which means that people with disabilities will not know that they have a legislative right to reject a job in certain circumstances. As you would appreciate, whether or not something is acceptable for someone with a disability can be quite grey. It can be very clear to you that you cannot take that job, but it may not be clear to somebody who does not know what your condition is like and what it means—for example, you may have a mental illness and you know that you can work a seven-hour day with meal breaks and that will be okay but you know that if you were asked to work extra hours without any notice that would not be all right and in fact your mental health would suffer. As someone negotiating an agreement, you may not be confident that Centrelink is going to understand that. It puts people at a real disadvantage because under the system we really need everybody—the employment advocates and Centrelink staff—to be absolute experts in disability for everyone, rather than just keeping legislative protections which take the pressure off the staff in those other agencies, and we need to give people with a disability greater support and protection.

Senator WONG—Mr Altamore, do you wish to add to that?

Mr Altamore—No, I think Collette has expressed it adequately.

Senator WONG—It seems to me that you are saying that a person with a disability on income support could face the choice—or no choice—of having to take work that is

inconsistent with their disability or having their payments breached, and that is the position that this legislation would put Australians with a disability in.

Ms O'Neill—Definitely. I would like to pick up something Robert said and run with it a bit—that is, people with disability want to work, and people with disability—

CHAIR—Just a moment, Ms O'Neill. I certainly appreciate your comments, and I am listening very carefully. The conversation is veering to concentrate on the Welfare to Work bill—

Ms O'Neill—Sorry.

CHAIR—which is not before this committee. I appreciate the fact that you need to make your comments interactive with that, but I would prefer you to concentrate on this legislation.

Senator WONG—But I think the point is, Chair—

CHAIR—I take the point, Senator Wong.

Senator WONG—that this legislation removes the award protections for people with a disability.

CHAIR—I take the point that you need to make this conversation hinge on the Welfare to Work bill—

Senator WONG—That is, the bill that we are determining—

CHAIR—but I do not take your other point.

Senator WONG—removes award protections for people with a disability, which means they will be required potentially under this legislation to take job offers which are inconsistent with their disability and their capacity.

CHAIR—I do not know that that is true. Could you go to your next question, please.

Senator WONG—I want to turn to the issue of rostering, Mr Altamore, which I think you raised in answer to a previous question. You made the very good point that, for people with a disability, the removal of protections as to rostering of hours could have significant detriments—that it is a real problem for many people with a disability if rostering protections are removed. Could you respond to that?

Mr Altamore—Yes, and I will invite Collette to pick up points that I might miss, because Collette has had interaction with a great number of people with disabilities on this one. Basically the situation is that, if rostering protections are removed and people with disabilities are forced to work out of normal hours, it could potentially take them out of the employment market or result in them losing their current jobs. For example, if you need attendant care and you cannot get your attendant care to come after hours or the cost of having attendant care after hours is prohibitive, having regard to the low wages that you are being paid for your work, work becomes problematic. Similarly, if you depend on public transport to get to and from your work and that public transport is unavailable outside normal hours, a fundamental tenet of work is your ability to get to and from work safely, and if you do not have that ability you cannot work.

Ms O'Neill—One of the things I was going to say—and it does relate to this bill, Chair—is that people with disability, because they want to work, will tend to underestimate their condition and will strive to take work because they think that it might work out if they give it a go. They want to be in the work force and they want to keep giving it a go. So, for example, a person with disability may agree to cash out some of their annual leave, not really appreciating that, say, they have a degenerative condition and that in fact they may need that leave in a way that they cannot appreciate now to accommodate their condition, to take extra leave occasionally so that they can stay in the work force. Again, someone with a mental illness might accept conditions that they think are okay because they need and want to be in the work force, but in fact, in the end, they will not be able to sustain that work and will make themselves sicker by doing that.

Senator WONG—Your submission refers to the adequacy of protections, and you make the point that clause 90P of this bill defines an employee with a disability as a person eligible for the DSP. As you know, the government is proposing to alter the definition of access to the DSP. You probably do not have the numbers, but can you give us a sense of the range of people with a disability who would not be protected under this legislation because of that narrow definition of disability in the proposed act?

Ms O'Neill—Thanks for that, because I think that this is important. It goes to the point that you were making, Senator Barnett and Senator Johnston, that the strength of the Disability Discrimination Act definition is its breadth and that it does not rely on trying to categorise people by impairment type but instead talks more broadly about people being confronted with barriers that stop them having equal access because of an impairment. So it still has that medical basis, but it is about barriers, and that is the primary problem, not trying to categorise.

If the changes to the disability support pension go ahead, the range of people covered by 'employees with a disability', if that is linked to the DDA, will be extremely narrow—and, I suggest, narrower than you would like. For example, people with quite severe disabilities—including people in wheelchairs and people who are deaf—will be excluded, because they will not be eligible for the disability support pension. People who are deaf, who are sign language users, do not qualify for the disability support pension under the current rules, and I would imagine that you are not seeking to exclude from protection people who are deaf—people who clearly have disability. The definition works. As Dr Baker was saying, it has been put to the test and it has been shown, in numerous reviews, to be the best definition because it does not rely on impairment, which necessarily precludes people.

Senator JOHNSTON—Thank you.

CHAIR—You have about 30 seconds, Senator Wong.

Senator MURRAY—And counting.

Senator WONG—And counting! That puts a person under pressure, doesn't it, Chair? Mr Altamore, what do you envisage in terms of rates of pay, if anything, for people with a disability under this legislation?

Mr Altamore—I am struggling to answer your question as to what I envisage for rates of pay for people with disabilities.

Senator WONG—I am talking about the open employment market, Mr Altamore; I should be clear about that.

Mr Altamore—Our concern would be that the combination of workplace pressures, discrimination, disability and disadvantage will result in downward pressure on rates of pay for people with disabilities, particularly those working in lower paid areas and in areas where protections are less strong—for example, where there are no award protections, no collective agreements.

Senator WONG—From AFDO's perspective, do the four minimum conditions and the minimum rate of pay adequately protect people with a disability?

Mr Altamore—I would say no, because—and this gets to the third point of our concern—the removal of many of the conditions previously allowed as minimum conditions in awards takes away from people with disabilities' conditions, which are very important to their maintaining their employment. For example—

CHAIR—Mr Altamore, I will have to ask you to make your answer brief because Senator Murray is waiting to ask some questions.

Mr Altamore—Effectively, what I am trying to say is that the conditions being removed from allowable conditions are conditions which are important to people with disabilities in gaining and maintaining their employment.

Senator MURRAY—I have two questions. The first is to you, Dr Baker, with respect to your submission. Item 2 says:

> A related concern is the potential conflict of timelines between the AFPC's determination of a special Federal Minimum Wage (by next Spring) and the phase in of award-based wages in Disability Business Services.

Is that a once-off problem, or is that a problem that occurs every time there is a minimum wage determination?

Dr Baker—I think it is a once-off problem. There has been quite a long process towards developing wage benchmarks across the supported employment sector. Traditionally, wages were paid on a pretty arbitrary basis. So there has been a gradual evolution towards providing transparent methods of measuring a person's productivity and skills, and payment of an appropriate wage on that basis. But, because of the lack of viability, essentially, of many business services and the increased costs that having to pay wages immediately would force on them, there has been, again, agreement among all parties to phase in gradually—

Senator MURRAY—Sorry, I need you to keep your answers short. What should take precedence? Which should guide the other? Should it be the Fair Pay Commission?

Dr Baker—I think, in this case, the agreement should be that the process of phasing in award based wages is respected until the end date of May 2008.

Senator MURRAY—If that process were delayed, the problem would be, of course, that it would delay the introduction of the minimum wage for the general population.

Dr Baker—Yes, and I would not expect that to happen. I would think that this would just simply be an exception that the commission would allow.

Senator MURRAY—My second set of questions is to you, Mr Altamore and Ms O'Neill, and it is with respect to your submission recommendation 5: that the minimum working conditions be expanded to include at least rostering limits and penalty rates. It occurs to me that you are outlining a principle that the bill should be more expansive with respect to anyone who is disadvantaged—namely, that whilst you might have five minimum conditions for the general population, who are assumed to have every ability to interact with their employer, with respect to those who are disadvantaged there are more categories than just disabilities in this question. There should be an expanded number of minimum conditions. That is the principle you have outlined, is it not?

Ms O'Neill—Yes, that is right.

Senator MURRAY—And those two that you itemised are the most important for your sector?

Ms O'Neill—They are the most immediately important, but there would be others because people with a disability include a broad range of groups. There might be different conditions that are important for people with different impairment types, more or less.

Senator MURRAY—If there were to be a two-tier system—one for the general population and one for those whom I would describe as disadvantaged, including the disabled—would you perhaps on notice come back to us with any additional conditions you think should be added to the five minimum conditions.

Ms O'Neill—Yes.

Senator SIEWERT—In terms of the level of employment and encouraging people with disabilities into the work force, what current provisions exist that help with that and what do you think is going to be lost with this particular legislation?

Ms O'Neill—I am glad you asked that question because it gives us a chance to say something that we think is really important, which is to remind senators that most people who have disabilities acquire them as adults and that they are actually in the work force at the time. We have been pushing for a long time for a focus on job retention, rather than getting people back into the work force. That is a much harder job than keeping someone in the work force to begin with. So we are particularly concerned with the protections to keep somebody in a job. For example, we say that the term 'operational requirements' is far too broad and we think it gives people too great a role to dismiss someone with a disability on the basis that it is operationally required. Employers are like everyone else: they have the same level of ignorance about disability and they also have discriminatory attitudes, as everyone else does. We must not make it easier for people to act on those attitudes. Rather, we should get them to actually do a bit of work to try to keep people in the work force. Often, it seems difficult and it can seem like a real mountain but, when it comes down to it, most people do not need much to stay in the workplace. They need very few accommodations. Those accommodations tend to be cheap and there is a program that you can apply to to get money for them. We need to make sure that people do not take an easy route when they are confronted with someone coming to them and saying: 'This is what is happening for me. I have got this condition or something has happened and I need a slightly different role.' We should not allow an easy route.

Senator SIEWERT—That leads me to my next question, because I think it applies to that as well. I would have thought that it was also important in wage agreements that you might want to negotiate to set up an appropriate workplace to provide the services and support facilities that people living with a disability might require in a workplace.

Ms O'Neill—For some people with disability, it is true; although, for a lot of people with disability, the accommodation is a once-off, up-front thing and, assuming that they do not move premises, they will be fine—a ramp is put in or a desk is fixed at a certain height. That might be all they need. For people who have an intellectual disability or a mental illness, conditions that will perhaps have an ongoing impact, then, yes, it would be important to be able to negotiate some flexibilities. We give an example in our submission about the person who takes medication once a month and needs a couple of days off because of the effect of the build-up to getting the medication and the immediate post effect. People should be able to know that they can put it to their employer that they need that sort of assistance and have an expectation that, given that it is a reasonable request, it will be met with a reasonable response.

Senator JOYCE—Thank you very much for coming. It has been very worth while to listen to your submission. I hear your concern about the operational requirements. I think you said that one in three people who will have a disability next year were walking around the workplace today. What do you think is a fair amount that the employer should pay in restructuring a workplace for a person returning to work after an accident or for a person with a disability? What do you believe is the extent of onus on the employer?

Ms O'Neill—The Disability Discrimination Act says that the onus will depend on the employer and on a number of factors. The DDA says that a small business owner does not have to do as much as a government department, and that would be reasonable. We would say that people should, in part, meet their requirements on the basis of their capacity to meet that. The workplace modifications program is quite extensive and will meet those costs for employers. While it has a cap, that cap can be lifted in certain circumstances. We would argue that there are few costs that an employer should not meet, mostly because they have access to a program to pay for it.

Senator JOYCE—I heard what you said about deafness not being defined under sections 94 and 95 of the Social Security Act. What form would the preferred definition come from? Is there something currently apparent that you could lift as a better definition, or would you have to redraft something in its entirety?

Ms O'Neill—We would be recommending that the definition of disability contained in the Disability Discrimination Act be adopted when it is relating to protections for people with disability in the work force. We are happy with the stricter definition being used in relation to people who might need supported wages, but even then we would like that to be supplemented by strict controls and strict oversight so that it is only used in genuine cases where people have a restricted capacity.

Senator JOYCE—You would also be looking for a broader definition of clause 90U, the range of authorised assessment processes—changing it from 'a method' to 'a number of methods'?

Dr Baker—Yes, that was a point I raised in ACROD's submission. It relates only to employees in supported employment and business services—that is, work forces that consist of people with disabilities—not to open employment, where there is only one method at present, a supported wage system, for determining productivity based wages.

Senator JOYCE—Mr Altamore, is the act now in a form that you can read?

Mr Altamore—I could read it electronically. It would be very laborious and I would not have a good comprehension of it. Senator Joyce, I do not want to focus on my ability to read the act or not to read the act; I want to focus on the inability that people with disabilities generally have had to come to grips with this legislation and the important consequences it might have for them because of these short time frames and the inaccessibility of it. Does that answer your question?

Senator JOYCE—Yes. I hear your concerns about AWAs. I was thinking more whether you feel, in your position as a peak body representative, that you are comfortable that you have been across the Work Choices legislation now.

Mr Altamore—I would have to honestly say no. That is because I am a volunteer and I have had to combine this with my work. Obviously, had I put my full working life into it, I may have been able to. But that would have been very difficult as well. I would have needed it in braille because braille is the form of literacy for blind people—it is the only way we can read and write effectively.

Ms O'Neill—Can I point out that people with an intellectual disability require at least three weeks to read basic documents, so they had no hope of reading this document and contributing in the time.

Senator JOYCE—That is a concern. I hear that and I will take note.

CHAIR—Thank you for appearing before us today.

Proceedings suspended from 12.31 pm to 1.20 pm

DUDLEY, Ms Sheridan Helen, Chief Executive, Job Futures

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

Ms Dudley—I will start by thanking senators for inviting me to give evidence here today. Job Futures is concerned that the debate on the industrial relations changes appears to have become so polarised that it is very hard to see where there are benefits and where there are problems. It seems that Chicken Little has got hold of the debate. There is a sense that either we have to make all these changes right now or dreadful things will befall the economy, or we have to throw out the whole lot or dreadful things will befall society, and we do not think that either of those positions is accurate. The whole thing appears to have become all or nothing now, and we do not believe there is any compelling urgency for all or nothing now.

We do, however, believe that there is a need for more flexible workplaces and a more flexible industrial relations system. We think that is driven by demographic changes, despite the fact that we have some doubts about the magnitude or the impact or the timing of the changes. There is no doubt that changes are driving skills shortages so, in the longer term, we believe that a more flexible system is necessary. But we also believe a more flexible system is necessary now to get current disadvantaged job seekers into work. A view appears to have been expressed that all disadvantaged job seekers will be worse off as a result of these changes, but we do not actually believe that is the case. We believe that it provides opportunities for organisations such as Job Futures to help most disadvantaged job seekers into work because of the ability it provides for more flexible arrangements to be negotiated. However, we believe that there are a number of provisions in the legislation that may in fact cause harm to some of those job seekers as well, so we believe that there is a need for safeguards to be put into the legislation to make sure that we can gain the benefits for our most disadvantaged job seekers but not harm those where harm could be prevented, and we are concerned that the speed at which this happening may prevent us from doing the things necessary to get the benefits, whilst producing harm.

We think the safeguards that are required are particularly around disadvantaged job seekers not being required to take jobs where conditions are unsuitable and unsustainable. We are talking about people who have been out of the work force for a long time, who it has been very hard to place into a job. To force them to accept conditions which are unsustainable will only cause them to drop out, to lose their benefits for eight weeks, to have an experience of failure and to be less inclined to want to get back into the work force in the longer term. We believe, and we believe that it is the impact of the Welfare to Work reforms, that we need to get disadvantaged job seekers into the right job in a sustainable community, not force them into jobs which are unsustainable.

We are also very concerned that Job Futures and Job Network members should not be required to breach job seekers who refuse employment where the conditions are unsustainable because employers have required them to work times, days and places that a disadvantaged person returning to the work force simply cannot cope with. So we want to see protections put in place for that.

The other thing we believe, in addition to the protections that need to be put in place for individual job seekers, is that some system issues have arisen. For the first time since the Harvester case, minimum wages and welfare have been separated. We are concerned that, if minimum wages are set such that somebody cannot support themselves and their family, the welfare system must pick up that gap. If we have separated minimum wages and welfare, we must make sure that the welfare system can address the gap—and I am not seeing that it can, at this stage.

We also need to continue what the government has been doing in linking welfare, work, education, skills and training more closely. Government departments are pretty good at being in silos, and we would want to see those things brought more closely together so that disadvantaged job seekers are not treated by one department in one way and another department in another way. They have to be treated as whole people trying to get back into the work force and being encouraged to do so, not punished if they fall out when they have been looking for work for a long time.

CHAIR—Thank you for that. You said in your submission that the changes are likely to deliver benefits.

Ms Dudley—Yes.

CHAIR—Can you tell the committee what you see as the benefits of this legislation.

Ms Dudley—The benefits that we think are likely to accrue relate to workers who require more flexible and unorthodox work patterns in order to get back into work. There are quite a lot of groups of those. I have mentioned them in the submission, and I might comment on them. There are a large pool of underemployed workers. Often, they want additional hours but they need regular hours in another job if their first job is to be sustainable. So one of the only ways to get underemployed people into more employment is to enable them to have access to those sorts of jobs. Sole parents are another group. We find, in placing sole parents who want to get back into the work force, that quite often it is quite difficult to work with employers where conditions are rigid. Often, sole parents want to work 10 weeks and only during school time and then not during school holidays. What they want is a continuing, ongoing relationship with an employer. They do not just want to go from term to term. One of our members in Job Futures has actually negotiated such an arrangement with an employer that gives certainty of employment. We think these changes will enable us to work more closely with employers to make those kinds of changes.

People like retired baby boomers, women over 45 and older workers who might only want to work for a few hours a day or a few hours a week can also benefit. They might also benefit from the ability to cash out annual leave. Retired baby boomers returning to the work force do so generally because they do not have enough super to live otherwise. Annual leave is not much use to them. They only want to work for a few days a week, and the money is more important to them. So we think that has a benefit.

There are other groups like seasonal workers who establish a continuing relationship with an employer. The only employer might be the abattoirs, but they are only employed to go in and work when there are spring lambs or whatever else it might be. We think this will also enable them to have a continuing relationship with employers instead of six weeks casual

work, no work, and then another six weeks casual work. We think there are a number of groups who could take advantage of these reforms.

One of the other groups I would like to mention is older workers who are retraining in trades. We work with disadvantaged job seekers to do that. There is an example of that in my submission. We work with older workers to retrain in a trade. Those workers need quicker progression to reward their experience rather than four-year apprenticeships at low wages. Those sorts of workers might also benefit. We think it would be worthwhile reinstating the old classification of 'journeymen' which fell out of the system for that kind of group. We think that there are benefits to be obtained. In my submission I am talking particularly about our client group, not the wider community. That is where I would like to keep it focused.

CHAIR—Yes, I understand that your submission deals with particular segments of the demographic, but I am interested in your remarks regarding cashing out annual leave. We have heard a great deal about the pros and cons of this. You would obviously think, from what you have said, that there would be some segments of the population that could actually benefit, if they wanted to, from cashing out their annual leave.

Ms Dudley—Indeed. Sole parents returning to the work force are another such group. If they have an arrangement where they work only during school terms and school hours, so they have all of the school holidays off, annual leave is not of great use to them. So we think that is the case.

I have also recommended in the submission that there needs to be some kind of transparent formula that is accessible to workers so that, when they are negotiating to cash out entitlements, they can know whether what they are being offered is a reasonable cash-out rate. That sort of stuff is very hard to work out, even for one's payroll officer. It is unrealistic to expect disadvantaged job seekers, who may have low literacy or numeracy levels, to be able to know whether or not, in cashing out their annual leave, they have been disadvantaged. In the legislation, we would like to see a requirement for some sort of transparent formula, which the employee and the employer could refer to, that says, 'If you are on this rate and you are going to cash it out, then here's the rate at which it is cashed out.'

Senator MARSHALL—You talked about the benefits of this bill being unorthodox work patterns and regular hours. I was wondering how this bill assists, because you have indicated that you have already been able to negotiate arrangements like that. It is my understanding that under the current legislation there is the ability to negotiate those arrangements. Can you explain that a little bit more?

Ms Dudley—It is possible. You have to have a willing employer and a workplace where there is no disagreement through unions or awards to those sorts of patterns being negotiated. We are saying that, whilst it is possible, it is actually quite difficult sometimes to get employers and often to get unions to agree to it. We think having the ability within legislation to come to that kind of arrangement, particularly in the longer term, is going to be a benefit. In the longer term, as the demographic changes, as there are more and more skills shortages and fewer and fewer workers to do more and more jobs, the pool of people left is going to be made up of the disadvantaged unemployed, who are going to be the ones who require the most flexible and most negotiated workplaces. We think that having legislation which makes a

more flexible workplace possible is a good direction to move in, but with the rider that we need to put safeguards in place to make sure it does not harm people along the way.

Senator MARSHALL—Do you think there are enough safeguards in this bill?

Ms Dudley—No, we do not.

Senator MARSHALL—You mentioned cashing out annual leave and gave a number of examples. I think the first example you gave was sole parents who may have been able to negotiate a working arrangement where they have all school holidays off. That is leave, of course, but probably does not come under the strict definition of what we would know as normal annual leave. One of the concerns that have been put here is that, if the cashing out of annual leave becomes the norm, over a period of time the norm will be a reduced amount of annual leave. Do you think the ability to give people the flexibility in certain circumstances—like semiretired baby boomers who are not looking for annual leave provisions; those examples that you used about people who can negotiate periods of time off during the year—outweighs the potential downside for the rest of the community?

Most people find it difficult to take annual leave. Employers do not employ people simply for the sake of employing people; they employ people because they have a job for them to do. There are always pressures. We heard from the Finance Sector Union in particular that big banks, for instance—I will just use them as an example—work at below 100 per cent of their staffing requirements. Leave under those circumstances is nearly impossible to take, and there are all sorts of pressures put on people to not take leave. Their fear was that the pressure from employers to not take leave will lead to a diminution of leave entitlements. I ask you to comment on that.

Ms Dudley—I agree with you. I think that this is one of those balancing things. There is no doubt that in some sectors it is hard to take leave. As an employer over a number of years, it is often hard to get people to take leave. The not-for-profit sector is a good example of that; people do not want to leave their clients in the lurch, because that is what the not-for-profit sector is about. Yes, there is that pressure, but the other side is that some people do not need it. The question is: do you put in place safeguards that then disadvantage other people? This is, of course, a question for you, but I think there needs to be a balance in there and people do need to be able to have flexibility to manage their lives.

I agree there is a risk. I think it would be a bad thing if people were to take no annual leave. Personally, I believe people need to take leave to rest and recharge their batteries. But, as I say, there are a number of groups who do not need that. I think we should give them the flexibility, because they actually want the money, not the leave. When I say we need to put safeguards in the legislation, I do not know how to craft them but they are exactly the kinds of safeguards that I am talking about, to make sure that people do take leave. It may be something around full-time and part-time work. If someone is already working part-time or chunked patterns or something like that where they have regular time off then the annual leave issue is not so crucial, but if they are already working a 38-hour week then it is more crucial that they take it. That might be somewhere the safeguards are crafted around.

Senator MARSHALL—I might come back in a minute about some of the other safeguards that you think need to be included in the legislation, but I take you to your paragraphs on separating welfare and wages. You spoke to that briefly. You say:

The industrial reforms create the Fair Pay Commission ...

You then go on later to say:

This is a fundamental shift in philosophy, separating welfare payments from wages. Job Futures **recommends** a system must be established to ensure that if minimum wages fall below the level required for an individual to properly provide for their dependents, the welfare support system will step in to fill the gap.

Two points come out to me. Why should we be supporting a system that would ever allow the minimum wage to fall below the level that is required for someone to support their family, themselves and their dependants? That was the fundamental basis for the minimum wage—that people have enough to live in frugal comfort. If we then support such a system—and it is in effect the current system that we have now, because there is nearly one million working Australian families who require government assistance just to keep themselves at the poverty line, so we already have an element of this and my concern is that it will get worse—why should the state, in effect, given your comments there, subsidise employers that pay low wages?

Ms Dudley—This is a bit outside the scope of my submission but I think what I would say is that if you are going to separate welfare from wages—and I am not actually advocating that in the submission; I am saying that that is what it appears to be doing—and if that is what is going to happen then we need to make sure that the welfare to work reforms and the IR reforms do run together on that and that the IR reforms do not run ahead of the welfare reforms. We are not actually advocating that that happen in terms of the minimum wage dropping to that level but what we are saying is that, if it does, we need to make sure that the welfare system fills that gap. I am not going to comment on the issue of whether we should set a minimum wage that enables somebody to support themselves and their dependants, but what I am saying is that it is incumbent upon the government that, if it plays with the policy levers on one side of the system that enable the minimum wage to fall below its 100-year standard, then it needs to play with the policy levers on the other side of the system to make sure people do not fall below a reasonable standard of living.

Senator MARSHALL—I am interested in the assumption that you have made by including that section in your submission. It would appear to me that the logical conclusion one draws from the government setting up the so-called Fair Pay Commission is that they are unhappy with the outcomes that have been determined by the Australian Industrial Relations Commission in setting the minimum wages up until now. The evidence that the government is unhappy with that is that the government has, in every instance, argued for a lesser outcome than the Australian Industrial Relations Commission has granted. If they are unhappy with those outcomes, the proposal is to set up a new system that will deliver lesser outcomes. It would appear to me—and I want you to clarify this—from the way that I read your submission that you have made the assumption that the minimum wage will reduce. You have effectively said that in your second paragraph. I wonder if that is the assumption that you have made and why you have made it.

Ms Dudley—The assumption is that it may well reduce—

Senator MARSHALL—When I say reduce, I mean not increase at the same rate as it has in the past.

Ms Dudley—That was going to be my next statement: I think it probably will not increase at the same rate as it has. I do not want to get into the issue of what happens when you appear before a national wage case, which I have done, because that is outside my remit here, but, yes, I think it is likely to increase less fast, if I can put it that way. But the government's motives in doing that are also well outside anything I would want to comment on.

Senator MARSHALL—I will not press you on that. We changed the program this morning and I did not realise it until quite late. I was expecting you later this afternoon and I was intending during the tea-break to see if I could find in your submission whether you had actually detailed some of the safeguards that you thought were required in this bill. If you have detailed them in the submission, you might point me to them and just speak to them briefly. If you have not, you might simply articulate that on the record.

Ms Dudley—I think page 2 of the submission, where I have summarised the recommendations, covers the major things that we would like to see in place.

Senator MARSHALL—Are there any things in that list that you see as essential elements to be included?

Ms Dudley—Yes. I think we would see it as essential that the legislation contains safeguards to ensure:

… that people are not forced to work hours or days that are unreasonable in light of their circumstances.

For example, if a sole parent whom we are attempting to place into employment is offered a job and is then told that they will have to work every second weekend and all public holidays, and they have no way of caring for their child at those times, we believe that they should not be required to accept that job, because it is unreasonable in the light of their circumstances, and nor should we be required to put in a participation report in relation to that, and nor should they lose their benefits for eight weeks for doing so.

If that is to be the case then it is going to have all sorts of the perverse consequences for Job Network members in trying to place people into jobs. For example, we would not refer a sole parent to a job if they had particular circumstances that meant they could not work weekends or public holidays unless we were absolutely sure the employer was not going to require that, because once we have referred them and we get into that cycle they will be at risk of losing their benefits for eight weeks if they do not accept, whereas, if we do not refer them in the first place then they have not got into that cycle. That is a perverse sort of outcome which would be a result of requiring somebody to accept conditions on that basis.

We are required by DEWR at the moment to have regard to a job seeker's circumstances in placing them in employment. We want that safeguard to remain in place so that we can actually give people the experience of success rather than failure. We are concerned that there should be safeguards that enable us to say: 'This job is not suitable for this job seeker in the light of all their circumstances. This person is disadvantaged'—they might be disabled, a sole parent or whatever it is—'and what is being offered in terms of the minimum conditions and

requirements is not acceptable for them trying to get back into work in the light of their circumstances. It will be unsustainable. They will fall over and fall out of this job.' Then they would lose their benefits, under these proposals, and that would give them an experience of both failure and losing their benefits.

We think we need incentives to get people placed so that they have an experience of success. We are worried that this will, firstly, constrain our members from actually helping people into work, because they will be so concerned about making sure the employer is not going to put unreasonable conditions on it, and, secondly, give a job seeker the experience of both failure and losing their benefits. That is an area where we think safeguards are definitely required.

Senator MARSHALL—Just finishing up, at point 3 you say:

A transparent formula be put in place to ensure that if benefits are traded for cash, such trades are of equal value.

Half of that is what is in the current legislation—the no-disadvantage test—which is going to be discarded by this bill. What you are arguing for is that the OEA currently makes that rather subjective decision in a global sense against the award but, under the new system, there will be no such requirement. So I take it from what you say that even the existing system of a no-disadvantage test is not enough and that there needs to be a system that puts a value on those conditions that may be traded and that is open for everyone to see.

Ms Dudley—I was not actually going to the no-disadvantage test. What I want to see in place for our disadvantaged job seekers is that, if an employer said, 'If you want to cash in two weeks of your annual leave, we'll pay you an additional 10c an hour for it,' the employee has some formula against which they can test whether that 10c an hour represents the real value of that two weeks or some lesser amount. We want to see it done through some more formulaic way so that everybody can see whether that is a reasonable trade.

Senator MARSHALL—So you are saying that people will not necessarily know that on the surface. It has been put to me through estimates and I have heard members of the government ask: 'Why would people trade something off if they don't get equal or better value for it?' You say that that is a difficult concept to swallow.

Ms Dudley—What I am saying is that some of our disadvantaged job seekers are not very literate or numerate. Therefore, if you are trading two weeks leave—76 hours—to be amortised across 221 days at 38 hours a week, I think it is a big ask to work out whether that is an equal trade. I would like there to be some reasonable way.

Senator MARSHALL—Of course, it does not also take in—

CHAIR—Sorry, your time is up, Senator Marshall.

Senator BARNETT—Thank you for your submission. I particularly appreciate Stephen's story, which highlights the merits of having a job even for somebody in that position. Thank you for sharing that with us. On page 6 of your submission, there is a sentence about the merits of the flexible workplace relations system. It says:

We need a system which is nimble and adaptive and allows people to match their life circumstances to their employment in the way which maximises both.

I want to seek your view for the record as to whether you support the proposition that a workplace agreement made at the workplace by an employer and employee is the best type of agreement possible and would deliver the best benefits possible both for the employer and the employee.

Ms Dudley—For some people it is. For a disadvantaged job seeker who has a disability and needs specific things in their workplace to make their work a possibility, an agreement that is worked out with the employer that relates to that particular person's circumstances may well be a benefit, whereas a more general agreement might not pick up the very things that they need to make work possible for them. I would not want to say as a blanket situation that that would be better for everybody but, certainly, for people like Stephen that kind of arrangement would work.

Senator BARNETT—You have shared with us a number of examples, including in your introduction where you referred to the seasonal workers who benefit from a more flexible system. You referred to sole parents—the mums or dads. You referred to older people who can benefit in terms of their retraining from a more flexible system. With respect to opportunities, your submission says:

In the past our awards-based industrial relations system has ... not been very good at this.

I want to ask you about two of those groups that have not been referred to: they are the partners of fly-in fly-out workers who are available to work two weeks in three or similar truncated patterns. This is relevant for Tasmania's west coast. It is a mining community, and a lot of the families live up on the north-west coast. They come in, they work and then they go back to their families after four days or whatever. Can you expand on the merits for those types of families? You have referred to commissioned research. Can you provide us with the research, or give us an outline of that research, on what you say is a growing group?

Ms Dudley—We had some research done for us, which I have mentioned, by MacroPlan Australia which shows that fly-in fly-out workers are a growing proportion of the work force in a number of areas. Joondalup in Western Australia is a good example. I cannot remember the figures, but an enormous number of people fly in and fly out to Karratha, Hedland and places like that—something like 11 per cent, but don't quote me on that one. Those sorts of workers who are away for a week or two weeks and then back for a week have partners who often want to work but who do not want to be working when their partner is home. So the more we have fly-in fly-out workers, the more we are going to have that demand. Often it is women. That is the demographic where there is the most potential for increasing the participation rate. We need to create those kinds of flexible working hours so that a woman can work for two weeks and then, when her partner is home in the third week, she does not work, or whatever the system is. That is an opportunity which is not being taken at the moment. A number of those women, we believe, are not in employment. They are not counted in the participation rates because they cannot negotiate those kinds of arrangements.

Senator BARNETT—This is addressing the skills shortage issue that Australia has and will have into the future because of the need for employment growth. So you think this is an area perhaps that can help address the skill shortage problem.

Ms Dudley—Yes. We think a number of these groups we have mentioned are people who are not counted as being in the work force at the moment, because for one reason or another it is just too hard for them to get into it. We think there are a number of people who do not count as unemployed and who do not see themselves as unemployed, but who are available for employment if we can create workplaces that have the flexibility to enable them to work with the conditions they want. A lot of these women, the partners of fly-in fly-out workers—up at Karratha a truck driver can earn $80,000 a year—do not actually need a lot of money; they are more interested in having a job, but having it under the conditions they want.

Senator BARNETT—Sure, and you have just answered my next question. Some of these groups cover that area where they will come into the work force. They will be new participants in the work force.

Ms Dudley—Indeed.

Senator BARNETT—The other category I wanted to ask about is people with physical or mental disabilities. We had a submission this morning from two of those groups represented. You say that they will benefit from a more flexible arrangement under our proposed reforms. Can you outline how that would happen?

Ms Dudley—I am saying that some of them will, not all of them. I would not want this to be seen as saying everybody is going to benefit. Stephen's story in the attachment to my submission is a classic example of the sort of arrangement because he started off on quite low hours. He could not even work 15 hours a week when he started, and now he is working full time. So that kind of flexible workplace arrangement and assistance to enable someone to gradually ramp up their involvement in the workplace as they get more confident, fitter and all of those kinds of things is a benefit.

Senator BARNETT—I noticed in Stephen's story—it is telling—that he is working full time. He started off at 15 hours and now he is working full time.

Ms Dudley—He had not worked for 12 years because he was in constant pain. He was unable to work. A number of employment agencies, including the CES, had given up on him. He had actually dropped out of the system. Yet by working with him in the way we did, we now have a very productive person. Whilst there have been a lot of claims that all disadvantaged workers of exactly the sort Stephen is will be harmed by the proposed changes because they have no bargaining power, I believe it is possible to give people the skills. This guy is now a motor mechanic. This is a skill shortage area. He now has a job which enables him not to be a victim. That is important as well.

Senator BARNETT—Can you or your organisation—either now, or taking it on notice—quantify the number or proportion or significance of people you expect might to come into the workforce as a result of the government's reforms? Can you quantify that in any way?

Ms Dudley—I would not be able to quantify it because working with really disadvantaged people is so individualised. We have no research that would quantify it. We have only started to work with these very disadvantaged people to see whether we can devise systems to get them into the workplace. We know it is possible but we could not put a number on it.

Senator BARNETT—But you believe there will be a net increase.

Ms Dudley—I think that there will be a number of people who will benefit but there will be a number of people who will not.

Senator MURRAY—Ms Dudley, roughly how many clients does Job Futures have?

Ms Dudley—It is very hard for me to say. I cannot give you an immediate answer to that. We have a lot of the market share, particularly of specialist and disadvantaged clients across Australia.

Senator MURRAY—Would you describe it as tens, hundreds, thousands or tens of thousands?

Ms Dudley—Probably tens of thousands—20,000 sticks in my mind.

Senator MURRAY—Yes, I thought it was thousands or tens of thousands. That will do. So you have substantial experience backing your remarks.

Ms Dudley—Indeed.

Senator MURRAY—It seems to me that there are a number of principles that one can elucidate, one of them being the obligation principle—that is, if you can work, you should work—with another being the fairness principle, where citizens are entitled to have a safety net of income and working conditions and for their living standards to grow and improve. The other one that came to mind as you were discussing this matter was the 'need' principle: that work choice and supply should be available according to people's individual needs, as far as is possible.

I want to ask you about the safety net. Across Australia at present there are two safety nets. One is under the federal system, which has 20 allowable matters under awards to which all individual agreements, both statutory and common law, and all collective agreements, relate. The other is the state systems where the award matters are unlimited. This legislation proposes to move people from an unlimited safety net under the state systems and the 20 allowable matter safety net under the existing system essentially down to five minimum conditions—although, for people purely on awards you will still have 16 allowable matters. It seems to me that, in the framework you are discussing, that is a radical shift. You have said that you think there are insufficient safeguards. Given your flexible, very lateral thinking approach, what extra safeguards would you add, apart from those you outline with respect to welfare connecting?

Ms Dudley—For our client group—I am not really talking about the wider community; I am fairly confined to this group—we need to make sure that they are not taken advantage of. I really think that is the bottom line. In terms of what other safeguards we would have in mind, I do not have a list that says, 'We want to make sure there is this, this and this'. But, as I said in answer to a previous question, it is to make sure that disadvantaged job seekers in particular are not forced into unsustainable work situations that they are going to fall out of later. That is a particular interest for us because of our role and what the welfare to work reforms are doing. All of their incentives are around us not just getting somebody into a job but keeping them there for 13 weeks and then 26 weeks. So there starts to be a tension if you do not have enough safeguards, particularly for this group of job seekers, and they get into a

job, it is unsustainable and it is a bad experience for them. Then we do not get an outcome payment and the person does not get into the work force in the longer term.

Senator MURRAY—Let me get to a more specific area. The Australian Federation of Disability Organisations, which deals with disadvantaged people of a particular type, and which therefore might fall broadly into your field of concern, said that the minimum working conditions should be expanded from the five to include at least rostering limits—which addresses your hours issue, if I understand you correctly—and penalty rates. Essentially, they are arguing for a two-tier system: one that would apply for the general population and one that would have additional minimum conditions for those who need special assistance or who are disadvantaged. Do you react well to that?

Ms Dudley—I am very wary of two-tier systems because the minute you place different conditions for a different group because of their disability or their condition, you actually isolate them by saying, 'This is a disabled group who need to be treated specially.'

Senator MURRAY—Isn't that an extremely unreasonable approach? The whole disability act says that you must provide toilet facilities which are suitable; you must provide ramp facilities and lift facilities which are suitable. What are you suggesting—that they have the same facilities as for an ordinary person?

Ms Dudley—No, I think that is a different issue. I think that enables them to do the job by giving them physical access to the workplace. In terms of a two-tier system of conditions, it depends on the level of disability. If we are talking about someone who is so disabled that they need a supported workshop or some arrangement like that in the longer term, that group may in fact need some different conditions. But if you are talking about somebody who is in open employment—for example, somebody like Stephen who now could get a job as a motor mechanic in an open employment market but who has a disability—I would be reluctant to see people in that category put into a special box. So I think there are levels to this. There are some people who have such a disability that they will never be able to work in open employment. For those sorts of people, yes, we may need that two-tier system. For people who can work in the open market, I have a real worry about a two-tier system in an open market.

Senator MURRAY—Effectively, your answer is that they should all end up on the five minimum conditions. Is that what you are saying?

Ms Dudley—No, I am saying that I have not thought through that issue but my response generally would be that I do not like two-tier systems in an open market because I think it categorises people.

Senator MURRAY—You can't have it both ways. You either say the five minimum conditions should be enlarged for the whole population or you say the five minimum conditions apply for the whole population. If you think there need to be extra safeguards, you can't hem and haw on it. It is five or more, and it is either more for everybody or more for some.

Ms Dudley—No, I think the issue is about safeguards for people entering the work force in certain situations, not necessarily safeguards for the entire population.

CHAIR—I need to stop you there, Senator Murray. Senator Siewert has some questions.

Senator SIEWERT—Earlier you were talking about flexibility being better for women, but the experience in Western Australia when they went to individual bargaining was that women were significantly disadvantaged. My understanding is that one in 12 women had family-friendly provisions. How do you see increasing flexibility as actually being beneficial to women when the experience is that it has not been?

Ms Dudley—Yes, I saw some figures that Helen Creed had on that point last week at the ACOSS conference. Obviously, there are disadvantages for some people. What I am saying, and the only point I am making, is not that this is going to be better for everybody but that for some women—some sole parents, some women returning to the work force—to be able to negotiate more flexible conditions is going to be of benefit to them. I am not saying it applies to everybody, but I am saying that it does apply to some people. That is why I keep saying we are going to need safeguards to make sure that it does not harm people who could take advantage of this and move into the work force.

Senator SIEWERT—The point there is that in Western Australia overall it was worse for women. So while a few may gain, it seems to me that many more are going to lose.

Ms Dudley—That is why my point is that an inquiry such as this—and I am concerned that it is so short in terms of the size and complexity of the legislation—gives the opportunity for these kinds of safeguards to be built in. That is what I think needs to happen. That is why I said earlier that there is no compelling urgency to rush this through. The sky is not going to fall in if this is not passed next week. That is why I think that there is the opportunity to get benefits. Our concern at Job Futures is about the very thing you are talking about—that it will harm other people. That is why we need the safeguards.

Senator SIEWERT—On page 8 of your submission, you recommend:

> ... that this legislative protection remains in place and job seekers not be required to accept remuneration and conditions that are less than those provided for in any relevant award.

You touched on this earlier when you indicated your concern about referring people to jobs. Is it your recommendation that people should not have to accept conditions under the Welfare to Work provisions that are lower than their relevant award?

Ms Dudley—If there is a relevant award in place and the provisions of the Social Security Act are there, we believe that those provisions should still apply, yes.

CHAIR—Thank you for your appearance here today.

Ms Dudley—Thank you.

[2.06 pm]

BLAKE, Mr Nicholas, Industrial Officer, Australian Nursing Federation

LEVETT, Mrs Coral, Federal President, Australian Nursing Federation

McGINNESS, Ms Clare Elizabeth, Victorian Branch President, Australian Nursing Federation

MILBOURNE, Ms Katrina Jane, Member, Australian Nursing Federation

CHAIR—I welcome our next witnesses from the Australian Nursing Federation. Thank you for your submission. Do you have any comments to make on the capacity in which you appear?

Ms McGinness—I am a clinical nurse.

Mrs Levett—I am a full-time nurse manager at St George Hospital in Sydney.

Ms Milbourne—I am a registered nurse.

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

Mr Blake—On behalf of the delegation and also the Australian Nursing Federation, we appreciate the opportunity to be here today and to participate in the public hearings. In my short opening address, I do not seek to take this committee through all of the details that we raised in our written submission, but rather to highlight a number of issues and concerns that we request that this committee consider in preparing its final report. Firstly, I will make some brief comments about the Australian Nursing Federation and the nursing work force. The Australian Nursing Federation is made up of over 145,000 nurses across the country. That represents around 60 per cent of the nursing work force in this country. These 145,000 nurses, in our view, have exercised their rights under freedom of association to have the Australian Nursing Federation represent their interests as both nurses and as employees in terms of their industrial needs as well as their professional needs. We would seek to continue that role and we are fearful that this Work Choices bill may reduce our capacity to continue that role. Nurses make up over 54 per cent of the Australian health work force, which has significant implications in relation to industrial advances and the remuneration, allowances and conditions that nurses enjoy. They are predominantly female and over half of the nursing work force are part time.

There is a national shortage of nurses. Depending on which report or review you read, it is widely acknowledged that, by 2020, there will be around 30,000 nursing vacancies in the country. Over 50 per cent of the nursing work force will retire from nursing within the next 15 to 20 years. We note, in terms of the nursing work force, that significant challenges are facing the Australian population in the provision of nursing care and care to the community.

On behalf of the membership of the Australian Nursing Federation and the state branches, we have prepared a formal submission for this inquiry. We wish to raise a number of key issues about the bill itself and about what we believe will be the impact on nurses. Firstly, the further reduction in the award safety net is a real concern to the ANF and its membership. In

particular, we are concerned that there is a real possibility that our existing classification structure and, as a consequence, our career path for nurses, which is currently in all our federal and state awards, may be lost forever. We are strongly of the view that if that is the case there will be a loss to the industry of many thousands of nurses. They will simply leave if there is no career path.

There are tens of thousands of nurses who currently exclusively rely on the terms of the safety net provided for in federal and state awards. They are employed predominantly in the residential aged care sector throughout the country, where there are over 3,000 employers—in medical clinics, day procedure surgeries and other small businesses. They rely exclusively on the terms of the award. They are not covered by enterprise agreements, and it is our view and our understanding that they are not covered by contracts of employment or individual contracts of any nature.

We are also concerned about the proposed deregulation of working hours. As you would be aware, most nurses are employed in a 365-day-per-year, 24-hour-a-day industry. As a consequence, they are required to work unusual times—on weekends, public holidays and so forth. Awards and agreements currently provide for a range of, I suppose, parameters that ensure that nurses work reasonable numbers of hours, that they have a reasonable break between shifts and that there are nurses available to replace them at the end of their shift, and we would be very concerned if that deregulation of nursing hours has an impact on those current parameters.

We are concerned that the bill has the potential to reduce the existing entitlements of nurses. As we pointed out in our submission, on average, a nurse receives about 20 per cent of their remuneration in loadings, penalties and allowances, and that is reflective of the industry in which they work and the hours and so forth. We are also concerned that the bill continues this push towards individual contracts—AWAs—at the expense of collective outcomes and the awards. We simply note in our submission that in nursing the real benefits to the Australian community, to employers and to employees come from systemic changes that result from collective, industry wide outcomes, not individual outcomes.

We note that in nursing, as in the bulk of the health industry, we have always pattern bargained—we pattern bargain and the employers pattern bargain—and we will continue to pattern bargain. Everyone understands and acknowledges that it makes good sense in nursing. No-one that I am aware of on the employers' side has opposed pattern bargaining. In fact, they come to us demanding a pattern outcome. We are quite happy to talk about that in more detail, if you wish.

In conclusion, it is widely acknowledged throughout the community that in the next 10 to 15 years the provision of health services will skyrocket. Whilst we are a healthier community and we live longer, it is a fact of life that, when we access health services, our needs are more acute, and nursing intervention is more acute as a result. In relation to residential aged care, it has been acknowledged that the demands on that sector are going to increase dramatically as the Australian population ages, and the aged care sector is predominantly, if not exclusively, about nursing care.

Our ability as a community to provide reasonable health care services is primarily, in our view, dependent on the ability of the Australian community to provide and maintain a nursing work force. We are of the view that the Work Choices bill takes us in the wrong direction—that, whilst as a union we will be able to continue to represent the majority of our members, those members who are in a weak bargaining position or a weak industrial position will suffer and so will their clients. We call on this committee to consider those issues in preparing its final report. Thank you very much.

CHAIR—Thank you for that. I invite Senator Johnston to ask some questions.

Mr Blake—I am sorry to interrupt, but two of the nurses want to make a very short statement.

CHAIR—I am sorry, I did not realise that. Please go ahead.

Mrs Levett—Thank you again for the opportunity to address this committee. As I said, I am a full-time nurse at a large hospital in Sydney, and I represent 1,300 members of the Australian Nursing Federation in that hospital. I see and speak to them all regularly and frequently. Certainly, in the last some months I have had reason to meet with my members on a more frequent and more regular basis, due to their concerns about the Work Choices issues and now the new Work Choices bill.

Senator BARNETT—Is it a public or private hospital?

Mrs Levett—I work in a public hospital. Just by way of an aside, I also work casually in a private hospital on the odd occasion—probably once or twice a month—as a registered nurse in a coronary care unit, but my main job is a full-time one in the public sector. The issues that my members have are very concerning to me. They are very worried about the Work Choices bill. They have a lot of faith in their union. My work site has a 95 per cent union membership density. They like what the nurses union does for them. They rely on the nurses union to do the sort of work that it does—that is, achieve pay rates and conditions for the profession. They are very happy with the job that has been done to date, and are certainly expressing, at the moment, their happiness with the process that we have had access to through the state's Industrial Relations Commission.

The other issue that is of particular concern is that they are very frightened about the future of nursing. They, of all people, know how difficult it is to recruit and retain nurses. We are on the brink of a major problem now. We are just keeping our heads above water at this point in time. Many hospitals are struggling with that, but we are keeping our heads above water—just. The real fear for nurses is that any change to the detriment of nursing—anything that makes it less attractive—will cause us to topple. We do not believe we can sustain the existing shortage in an environment that makes it less attractive to nurses to enter the field, and certainly less attractive for nurses working in the field.

In New South Wales, in particular, we have recently achieved a major outcome through the state industrial relations system, in the form of a reasonable workloads clause that has enabled nurses, for the first time in history, to have a legally enforceable ability to not have an unsafe workload on a day-to-day basis. That is very important to the nurses of New South Wales, and other states have similar arrangements. We believe that under the Work Choices bill we would potentially—probably—lose that ability to enforce a reasonable workload. We think it is the

one thing that has kept nurses in nursing in recent times, and it would appear that it has attracted some nurses back into nursing, because they believe that they cannot be placed in a dangerous situation and certainly not one that might compromise care. We believe that the loss of that would be detrimental to nurses staying in the profession. If they do not believe they can work in a safe environment, they are not prepared to do it.

The other thing that concerns my members in particular is that they like their union to bargain for them, to get their conditions and their pay rates. I have not found a nurse yet who is happy or looking forward to the day they can negotiate their own agreement. They are terrified of it. They do not want to do it. I guess that, if I impress upon you nothing else, I would like to impress upon you that, as a group, they do not want to negotiate on their own behalf. They are scared of it.

Just briefly, the other thing that concerns me and concerns many of my colleagues is the notion of losing the protection under the unfair dismissal laws. We know as nurses that the patient's strongest advocate for good care and a safe environment is the nurse's eyes. If nurses think for a minute that, by reporting substandard conditions in a small industry—

CHAIR—Unfair dismissal is not within the scope of this inquiry. I should point that out—

Senator WONG—The government did not want to inquire into it—

CHAIR—We have already discussed it in numerous inquiries.

Mrs Levett—Sorry, I did not know.

Senator WONG—that is, not this particular provision. That is the government's position; they do not want to look at it.

Senator BARNETT—We have only done it a number of times.

Senator WONG—Operational requirements are—

CHAIR—Order! Did you wish to mention any other matters?

Mrs Levett—No, I will leave it at that.

CHAIR—Ms Milbourne?

Ms Milbourne—I just wanted to say that it is a great privilege to be here to be able to speak with you. I put in an independent submission and was then invited as a member of the ANF and as a registered nurse to join with the ANF. I thought I would outline a couple of things that have not yet been emphasised to you through the overview that we have given.

I wanted to point out that 93 per cent of nurses and midwives are females who are casual and part-time employees. I am concerned that the proposed bill will adversely affect some of these nurses and midwives. I think that there is some concrete evidence to support my concerns. In my submission I quoted the ABS statistics from 2005. Those stats indicate that women covered by collective agreements have an hourly wage rate 11 per cent above women on registered individual contracts. Casual workers on AWAs are paid 15 per cent less than workers on registered collective agreements. Permanent part-time employees on award-only conditions earn an average of eight per cent more than AWA workers. Employees already on AWAs report finding the intensity of work more difficult to deal with and report a greater difficulty balancing work and family commitments than other workers. I find that there is

some evidence to support this also from the Victorian task force 2002. I understand that that is in the Victorian report to you.

In my view, these factors will unfairly disadvantage nurses and midwives because they are predominantly women. They will be disadvantaged compared to other professional groups which have a higher proportion of males. I also think that, because they are women, they will have less bargaining capacity and their ability to negotiate on individual agreements will be less.

I also wanted to bring out my concern about the five minimum standards not acknowledging the fact that nursing and midwifery are, at times, 24-hour, seven-day-a-week services, 365 days a year. My concern is that these people currently get remunerated for the unsociable hours that they work, such as night duty and weekend shift, and they get that through additional leave. The rest of the non-shiftworking work force gets 13 public holidays on top of the four weeks of annual leave that they get. I do not believe that the five minimum standards actually acknowledge a shiftworking group will not have access to those 13 days.

The last thing I wanted to say was that I really do think the nurses are being disadvantaged by the proposed bill. I think there needs to be a little more thought put into it, especially from the work force perspective, for our profession. I think we need to have sufficient safeguards for shiftworkers, for their rights to be comparable with the rest of the work force. I suppose the last thing that I think is really important is that the Australian public really needs to have the freedom of choice between AWAs and agreements.

Senator WONG—On a point of order, Chair: Ms Milbourne indicated that she had a separate submission, and I have just asked the committee secretariat if we could be provided with a copy of it. The only submission I have before me currently is the ANF submission.

CHAIR—I understand that Ms Milbourne did say that in her opening remarks, and I would also want to see it put before the committee.

Senator WONG—If there are any additional questions of her after we get the submission, could that be facilitated?

CHAIR—All right. Mrs Levett, if there is such a shortage of nurses, you would think that employers under either state or federal awards would then be inclined to offer at least an attractive package in order to lure nurses back to the work force—in other words, a package that suited nurses.

Mrs Levett—They could do that now, but in some industries they do not. That is why the aged care sector, in particular, is so much worse off than the public sector. So, yes, some employers will have the smarts enough to offer a better package, but plenty do not now, resulting in a gap as high as 25 per cent in a differential in wages across the industry. Aged care is the worst hit.

CHAIR—Yes, I am certainly aware of that.

Mrs Levett—They do not offer that now.

CHAIR—Are you aware that it will continue to be unlawful to force employees into new agreements; that if a worker does not like what is on offer, they can opt to stay on their current arrangements—that is, under the enterprise bargaining arrangement or the award?

Mrs Levett—My understanding is that their current arrangement is a transitional one that has a very short life in the career of a nurse—that is, a maximum of three years—and most nurses are not very reassured by the fact that their conditions might not change much in three years but at the end of that period they will be required to enter either into a different enterprise agreement with the four minimum standards or into some other industrial agreement. They are not very reassured by the fact that nothing will change in the short term, although, as I said, the most concerning thing that will change in the short term is the loss of the reasonable workloads clause, which is not an allowable matter and will no longer be legally enforceable.

CHAIR—So you are aware that employees will be able to keep the conditions that they have at present until they agree to new arrangements with their employer, regardless of the basis of that—whether it is an EBA, an AWA or whatever?

Mrs Levett—It is my understanding that they will not be able to keep all the conditions. The reasonable workloads condition is listed in the documents I have read as not an allowable matter and therefore no longer enforceable. That one thing, in particular, is worrying nurses.

CHAIR—We will follow that up with the department when we talk with them on Friday.

Senator JOHNSTON—Thank you for attending today. Mrs Levett, Ms Milbourne and Ms McGinness, are you practising nurses at the moment?

Ms McGinness—Yes.

Senator JOHNSTON—Enrolled and registered?

Mrs Levett—Yes, registered.

Senator JOHNSTON—Thank you for giving up your time to come to the Senate inquiry. How many of you are employed in state public hospitals?

Mrs Levett—I am.

Ms Milbourne—I do casual shifts in the public system.

Ms McGinness—In public and in private in Victoria.

Senator JOHNSTON—Mr Blake, you have 273,000 nurses, of which 145,000 are members?

Mr Blake—Yes.

Senator JOHNSTON—So that is approximately half—very approximately. How many of the 273,000 work in state-run public hospitals?

Mr Blake—I cannot give you exact figures, but I would estimate 60 per cent.

Senator JOHNSTON—I was going to say about 150,000 nurses would be in state public hospitals. Do you understand that they are not subject to the terms and conditions of this bill?

Mr Blake—No, that is not my understanding. That is an issue we have taken advice on, and it remains unclear.

Senator JOHNSTON—Is it possible for you to table the advice?

Mr Blake—We have received general advice through our legal advisers—

Senator JOHNSTON—And you would rather not table it on that basis?

Mr Blake—I am quite happy to send you two of the papers that we have had advice on.

Senator JOHNSTON—We would appreciate that.

Mr Blake—In effect, the advice says that it is a live issue.

Senator JOHNSTON—But do you understand that, in the state public system, the employer is in fact the state government?

Mr Blake—No, that is not the case.

Senator JOHNSTON—What is your understanding?

Mr Blake—In Queensland, South Australia and Western Australia nurses are employed directly by the state.

Senator JOHNSTON—Sorry, which states? Queensland, Western Australia and—

Mr Blake—South Australia. In Victoria nurses are employed by the boards of management of the hospitals themselves.

CHAIR—But they work under a state award?

Mr Blake—They work under a federal award that operates in that state.

Senator JOHNSTON—But the boards are in fact the instrumentalities of the—

Senator GEORGE CAMPBELL—Let him answer the question, for God's sake!

Senator JOHNSTON—Sorry, go on.

CHAIR—He is just very keen.

Mr Blake—In Tasmania they are employed by the Director-General of Health. The relationship between those entities and the state for the purposes of this bill is something that we have sought some advice about. Our advice is that it is not clear and it is quite possibly something that may be dealt with later.

Senator JOHNSTON—We would appreciate if you could consider tabling that advice.

Mr Blake—Sure.

Senator JOHNSTON—We would be very interested to see that. In Queensland, South Australia and Western Australia the state government is the employer?

Mr Blake—Yes.

Senator JOHNSTON—So were employees—namely, nurses—in the state systems in those states to be told as state government employees that their terms and conditions were going to be put in jeopardy by this bill, that would obviously be wrong?

Mr Blake—I think it is much more complicated than that.

Senator JOHNSTON—Explain to me why.

Mr Blake—My understanding is that, as pointed out by Coral Levett, there are matters in relation to the content of agreements and in relation to the safety net awards that will be affected by this bill.

Senator JOHNSTON—How?

Mr Blake—Parts of it will become unenforceable. Any caps on part-time employment, for example, will become unenforceable.

Senator JOHNSTON—Only if the state employer agrees, surely?

Mr Blake—I do not understand the question. In my view, either it is an entitlement or it is not. If the entitlement is not protected by law, there is, as far as I am concerned, no entitlement.

Senator JOHNSTON—This does not apply to state government nurses.

Mr Blake—I am not a lawyer. I do know there is a range of legal views about this issue—about the impact on employees who are directly employed by the state governments, not just nurses. I am not in a position to give you a definitive answer.

Senator JOHNSTON—This is my last question. I would have thought that your lack of understanding of that point, or the fact that it is up in the air, would have been in your submission to indicate that a very substantial number of your 145,000 members are not or may not be subject to the bill.

Mr Blake—We do not hold that view. We strongly feel that they are subject to the bill. We note that from time to time state governments do change and there is a different view about the employment of nurses from time to time through state employment. We are concerned that all of our nursing membership will be affected to varying degrees.

Senator JOHNSTON—Where do you say that in your submission?

Mr Blake—We say throughout the submission that the nursing work force will be affected by this legislation.

Senator JOHNSTON—Thank you.

Senator GEORGE CAMPBELL—Mr Blake, from looking at your submission on page 5, the demographics of the nursing profession has some considerable problems, hasn't it?

Mr Blake—Yes, it has.

Senator GEORGE CAMPBELL—Why is it that young people are not coming into the profession? Are their specific reasons for this?

Mr Blake—There are specific reasons. As you can note by the graph, we have an ageing work force problem. As I indicated in my opening statement, over half of the current work force is due to retire shortly and we are not getting the supply side right. They are not coming in to replace the existing work force. There are a number of issues around that. Nurses, who are primarily females, now have a range of different occupational choices. The remuneration of nurses, both under awards and agreements, remains very poor. The entry level for a nurse out of university is about $35,000 per year. That is about the same as an administrative officer. It is quite low. Nurses are simply not prepared to put up with it any more; they will change careers. They will go and work at the local service station and pump petrol rather than be run off their feet.

Ms McGinness—I will add to that. In Victoria, as part of our enterprise bargaining agreement in 2000, we bargained for ratios whereby we can guarantee that in a public hospital one nurse will look after four patients and in a smaller hospital, one to five. We have certified ratios in Victoria. As a result of those ratios, 5,300 nurses have come back to nursing in Victoria. In Victoria, we think that we have hit the winning ticket with ratios. However, in 2003 we wanted to improve our ratios, but we had to fight to actually maintain them. Our Labor government and our nursing policy branch did not want to have ratios kept in, even though there has been major research done by John Buchanan that shows that Victorian nurses came back to nursing because of ratios.

On my ward in particular, some of my nurses have been nursing for some 15 years. They used to have eight patients on a shift and did not know the names of their patients; they only knew that the antibiotic was due at 12 o'clock in room 10. Now they have a workable workload. They enjoy coming to work; they do not have to worry about not knowing their patients' names. It is safer in Victoria, and we have shown that by the recruitment that has come about as a result of those ratios, which we could lose.

Senator GEORGE CAMPBELL—If I get a chance, I will come back to the Buchanan research, but we have pretty limited time. The gender balance in the nursing profession is very high in favour of females, isn't it?

Mr Blake—Ninety-four per cent are female.

Senator GEORGE CAMPBELL—I note that it also has a disproportionately high number of part-time employees. Clause 90B in this bill provides for averaging of hours to a 38-hour week. The shorthand version of that is that you can work your 38 hours per week over a 12-month cycle—you may work 20 hours one week and 50 hours the following week—with a lot of variation. It also makes provision in the clause for 'reasonable hours' to be worked over and above, and it is unclear whether that is with or without payment. We would expect that it is with payment. What are the implications of that type of provision in terms of the working arrangements that you have in your profession? That will build a lot more flexibility into the way in which staff can be utilised in hospitals, and rosters can be changed without any reference to employees.

Mr Blake—The starting point from our perspective is to acknowledge that hospitals are not retail shops or production lines. At the end of the shift, the patients still need care. Unless there are provisions that ensure that there are replacement staff coming at the start of the next shift to replace the nurses going off, there is a requirement for the nurse to stay on duty. At the present time, both awards and agreements have extensive provisions to ensure that those hours of work are controlled and managed through rosters, breaks and a series of penalties and allowances that are a disincentive for the employer to keep nurses back on shift. My view is that proposed clause 91C, the total deregulation of working hours, as you have outlined, will mean there will be more incentive for employers—who, perhaps, simply require a continuation of patient care but are unable to get staff—to require nurses to work longer hours and much more time during peak demand. We believe it will be an absolute disaster for nursing, and we have said that in our submission.

Ms Milbourne—With 93 to 94 per cent of the work force being female, the unpredictability of those work hours during peak times, like winter versus summer, may have fairly serious child-care implications for them.

Mrs Levett—One other factor on hours: nurses have learnt over recent times to control their own workloads through going part time or reducing hours. It is a more foolproof way of controlling your workload. If you cannot get an eight-hour shift that is of the right workload, many nurses cut their hours back to control that. I suspect that, if there were a requirement to work more hours, a full-time nurse would certainly more seriously consider dropping back the permanent hours to part time. A part-time nurse working, for example, 30 hours a week, if required to work extra hours on a regular basis, would in fact drop their base rate hours to, say, 20 hours a week to accommodate it. They will get around the system to control their own workloads. It is a personal safety mechanism that many nurses use.

Senator GEORGE CAMPBELL—At the end of the day, if flexibility arrangements like this are introduced, would the natural response of nurses be to leave the profession? Is that the ultimate sanction that would apply?

Mrs Levett—They would reduce their hours and they would certainly leave the profession.

Ms Milbourne—There is quite a strong potential, if you cannot get child care, to do something unsafe like leave the child at home alone, or else you leave the profession.

Senator GEORGE CAMPBELL—Ms McGinness, you said you worked in both private and public sectors. Is that at a hospital that has both in the one facility?

Ms McGinness—No. I work at Monash Medical Centre as an after-hours nursing coordinator, in charge of the whole hospital after hours. In the private sector I work at Epworth private hospital as a research fellow because I am currently undertaking a PhD in nursing on a full-time basis.

Senator WONG—Mr Blake, on the coverage issue, I am not sure whether Senator Johnston was suggesting you should not be worried about the bill because you are not covered, while conceding that it is a bad bill or making some other point, but the issue I want to raise is with respect to Ms McGinness. You would have members who would work in both public and private sectors, wouldn't you? Quite a number of nurses would do shifts in different facilities under different industrial arrangements. In the relevant High Court challenge, which the states have indicated they would take up, even if it found some proportion of your membership to not be covered by this legislation, there may well be people who in a different working environment could potentially be covered?

Mr Blake—Yes.

Senator JOHNSTON—Sorry, what is the question?

Senator WONG—I am asking whether that is the case.

Mr Blake—Do our members work in both the public and private sectors? Yes, that is true. In the aged care sector, particularly in places like Tasmania and Western Australia, you may find a nurse working for three or four employers over a period of a few weeks.

Senator WONG—My question really goes to the issue that Senator Troeth raised. As I understood it, if this is required, if employers are going to have to pay more to keep people, they will do that, essentially. I think it was a bit more complex than that.

CHAIR—Supply and demand.

Senator WONG—The supply and demand argument. One of the submissions we had previously in a different context was from an employer in the community sector who made the very good point that her funding is essentially government funding, so her capacity to change the remuneration levels, change the work arrangements, was in large part not her decision, in a sense. Does that restriction on nursing employers also exist?

Mr Blake—Sure. I give the example of the aged care sector, which has over 3,000 employers across the country. Over 90 per cent of their funding is federal government funding, and that is tied. The vast majority of them have very limited, if any, ability to generate revenue. They will tell you that enterprise bargaining does not suit their needs because the federal government does not fund enterprise bargaining outcomes. They have recently been in touch with us to raise concerns with us that the Australian Fair Pay Commission may not be making a recommendation every year, so that also will affect their annual funding. Currently, they get safety net adjustments in their funding. But one of the concerns for us, and we have heard the argument through the media—

Senator BARNETT—How would that affect their funding if they were on an award?

Mr Blake—The funding is partially tied to the review of the safety net through the living wage case. When the living wage case decision is handed down, their funding is adjusted through a formula—

Senator JOHNSTON—But it cannot go down.

Senator WONG—But, as I understand what you are saying, Mr Blake, the point is—and this has been raised in the Senate—the funding mechanism for a range of Commonwealth grants, including to the aged care and disability sector, is tied in part to the level of minimum wage increase.

Mr Blake—Yes.

Senator WONG—As I understand it, the proposition from employers is: 'We are concerned that, if you have a wage freeze or do not have regular wage increases, not only is it not necessarily good for our employees but our bundle of funding from the Commonwealth may diminish.' Is that correct?

Mr Blake—That is exactly right. Their current inability, they say, to bargain will be reduced even more.

Senator WONG—One of the themes of your submission, as I understand it, is essentially unmet demand—that you do not have enough nurses within the profession and within specific institutions and this is an ongoing problem. Will there be pressures on the employing bodies to try and reduce cost to try and increase staff numbers?

Mr Blake—In our experience, the employers will approach this in one of two ways. Predominantly they will seek to employ cheaper labour where they can. They will seek to

bring in lower skilled labour to do the work that traditionally was carried out by nurses, because it is cheaper. Those opportunities are being reduced over time because the gap is closing. Alternatively, they will simply move away from areas of providing health that they believe are not profitable and will concentrate on areas that they believe are profitable. That is why we say quite strongly that in an industrial system it is only through collective, industry-wide initiatives that we can bring about change so that everyone benefits.

Senator WONG—And deal with the labour supply issue.

Mr Blake—Yes, and deal with the labour supply issue.

Ms Milbourne—Can I just add to that. Substitution of professionally trained nurses is leading to a decrease in standards of care in the aged care sector especially.

Senator WONG—I have two other topics that I want to cover very briefly. The first is, I suppose, a general one about how your members—perhaps this is more directed to the nurses—would deal with the situation, which the bill renders legal, of an employer putting to an individual employee: 'You getting this job is dependent on you signing this Australian workplace agreement,' when all that is required in that agreement is the four minimum conditions, the minimum wage and a clause which specifically removes all penalty rates, shift allowances, overtime, redundancy pay and annual leave loading. Can you tell me how you think the people with whom you work would deal with that sort of situation in terms of being able to negotiate a different arrangement.

Ms Milbourne—How people react in that situation will probably depend on which generation of the work force you are looking at. Generation X and Y people—the younger people—will probably say that they are not negotiating and they will leave and go either internationally or interstate, where the conditions are better, because they are quite mobile.

Senator BARNETT—Interstate?

Ms Milbourne—If the conditions being offered are above that baseline. Or, if they are of the next generation up, they may be locked in by mortgages and children and they may find that they have to go into that agreement. I think that, because they are women and the evidence suggests that they are not very good at negotiating, they will be quite disadvantaged.

Mrs Levett—The first thing we would see is a major shift. You would have nurses moving all over the place trying to get out of this deal. They would do what they can to avoid the AWA, and sign it in the end when there is nowhere else to go. They would certainly shop around. You would get a mass movement of the nursing profession, I believe, trying to get a better deal elsewhere. I suspect, though, the areas that movement would start in would be the aged care sector, migrating then to the private sector and, probably last of all, the public sector.

Nurses have always demonstrated their willingness to get up and move somewhere else. Certainly from talking to nurses at that moment, a lot of the younger nurses, as you said, are talking about travelling overseas. That is how seriously they are taking this. They think they can get a better deal elsewhere. They have a mobile and transportable qualification. If the deal is better overseas and they are in a position to travel, some of them are considering that.

Senator WONG—Ms Milbourne, on the issue you raised about unsociable hours, how will the potential removal of penalty rates under the AWA I described affect employees in that situation?

Ms Milbourne—I think they will be less likely to want to do those hours and that will lead them to leave the profession.

Senator BARNETT—I want to thank you for your contribution, particularly the registered nurses here who have taken time out. We appreciate that. Can you confirm on the record the percentage of nurses in the public sector? I think you said 60 per cent.

Mr Blake—That is my broad view, yes.

Senator BARNETT—What proportion of nurses are on an award?

Mr Blake—They are all on awards. Most of them have collective agreements that run along with the award, but they are all on awards. Are you talking about the public sector?

Senator BARNETT—Yes, that is fine.

Mr Blake—All of the public sector is covered by awards.

Senator BARNETT—What about in the private sector, the other 40 per cent? How many are on an award?

Mr Blake—I would say 95 per cent. There would be a few that may not be covered by awards because they have a new employer or their employer has just changed their name, but the vast majority.

Senator BARNETT—I will now focus on the public sector. Have you been advised by any state government that they will remove any of the terms and conditions that currently apply to nurses in that state—for example, abolishing overtime or penalty rates?

Mr Blake—No.

Senator BARNETT—Are you aware of the Victorian government's statement that they will be maintaining the terms and conditions for those nurses in that state?

Ms McGinness—They have just said the long service leave. They have not said anything on any other issue. The ratio issue is something that the government have wanted to get rid of since it got in. I believe that as soon as they are able to they will abolish that.

Senator BARNETT—In terms of the private sector, have you been advised by any employers of nurses that they intend to remove or abolish penalty rates, overtime or other terms and conditions?

Ms McGinness—In Victoria, we have written to all private hospitals to ask them if they would protect the current agreements. We have heard from most. They have said that they would. However, there have been a handful of significant private hospitals in Victoria that have not responded. We have had no comment from them at all.

Senator BARNETT—Can we take it from that analysis, then, that your public utterances on penalty rates and overtime—that they will be or could be removed—are based on those few employers that have not responded to your questions in Victoria? If not, on what basis would you be going public to say that penalty rates and overtime will be removed?

Mr Blake—We know that a sizeable section of the nursing work force works for employers who refuse to negotiate agreements of any nature, never mind collective agreements or AWAs; it is nothing. They are represented by employer organisations and employer industrial consultants which have made it very clear to us that they see penalty rates and other provisions currently in the safety net as not being justified and that they should be removed. We have had applications in the Australian Industrial Relations Commission by any number of employer groups seeking to strip back awards based on efficiencies and productivity arguments. They have lost those cases, but their intentions are clear.

Senator BARNETT—You have read the bill and you are aware that your nurses, who are currently on an award, can stay on the award.

Mr Blake—My understanding is that that is the case until they either change jobs or the circumstances change. We do not know what that means, pending the outcome of the award review task force. The award may simply be a shell—a meaningless, historical relic. We are not sure. We are very fearful that the award that currently protects and provides some dignity to our members who are not covered by agreements will become quite useless.

Senator MURRAY—You think you are on a roster! It seems to me that, if you want to summarise the bill, it is going to mean that employees are going to be more dependent on the goodwill of their employer than they are at present and they are going to be more dependent on the union's ability to take on the employer where the union is present in the workplace. Given that any Commonwealth government is supposed to govern for us all, their message on this seems an odd proposition. Essentially, they are saying that it is up to the state governments to look after you. 'Here we are trying to introduce a unitary system'—says the coalition government—'but if that has some downsides, don't worry; it is the state governments who will look after you.' It seems a very strange set of logic to me. It exposes the fact that this bill will reduce your wages and conditions, if you have to rely on the state governments to maintain them. Is that a reasonable summary of how you see things?

Mrs Levett—I am not sure if I understand exactly what you are saying.

Senator MURRAY—Let me put it in a more straightforward way. The federal government says that it wants to introduce a unitary system. The federal government says that it wants to reduce the protections available and the safety net available under this system. Effectively, your collective agreements in the federal system will go from 20 allowable matters to five minimum conditions. When the nurses say, 'But this is going to have this, that and the other effect,' they say, 'Don't worry; you should go to the state government and have it look after you.' The fact is that the federal government is supposed to look after you. That is really what my question is about.

Mrs Levett—That is quite right. But, in my 25 years of nursing, we have battled with the state governments about every cent that we have ever got in addition to our wage, and for every improvement in our conditions. Irrespective of the government that is in on the day, it is never easy. Nothing is ever given out. We battle for everything. We do not have faith in—

Senator MURRAY—Exactly. Let me interrupt you because I have limited time. That means you always relied on the industrial relations tribunal—

Mrs Levett—Yes.

Senator MURRAY—and, in the case of the federal award, the 20 allowable matters; otherwise, it is open ended in the states. That is the point I want to put across.

My next question is with respect to the public interest. I am a supporter of legal industrial action which includes strikes, but I recognise that for certain sectors—police, nurses and some other sectors—to strike is a very difficult thing, because of the public interest. It has always been my view that, because of the 20 allowable matters, you do not have to strike for everything because you have the protection of the safety net. Now it is going to be reduced to five minimum conditions. I think it is going to force you into more strike action and more industrial action because you are not underpinned by the new system. Is that a correct judgment or am I wrong in that?

Ms Milbourne—I think, yes, that has very strong potential.

Mr Blake—I think that it will definitely be the case. One of the things that concern us when we read the bill is that it is an economic argument. It does not acknowledge that certain groups of workers either have a commitment or a professional requirement to stay at work, and nurses are one of those groups. We have historically relied very heavily on the Australian Industrial Relations Commission and industrial tribunals in the states to manage the public interest and to recognise that nurses cannot walk out on their patients. They cannot let their patients suffer just to improve their remuneration. In this system, as I understand it, we will have no choice. We will have to embark on industrial action when that is available and either put our economic interests first or suffer. That is my understanding of how this new regime will work.

Senator MURRAY—My view is that amongst the factors that have contributed to a fall in industrial disputation are the availability of enterprise bargaining, which gives you flexibility, and the underpinning of the safety net of the 20 allowable matters in the federal system. They are going to remove both those protections; they are going to remove the no disadvantage test. Either you walk off the job and get another job or you are going to have to fight for it in the streets, aren't you?

Mr Blake—That is exactly right.

Senator MURRAY—Thank you.

Senator NASH—Thank you very much for being here today; I have the greatest respect for the nursing profession. Mrs Levett, I am sorry if you have already put this forward, but how many nurses are there in your public hospital, under the public system?

Mrs Levett—I have about 1,450 nurses who work at the hospital.

Senator NASH—Out of those, how many belong to the union?

Mrs Levett—There are 1,310.

Senator NASH—Are the others on AWAs?

Mrs Levett—I am sorry; what was your first question?

Senator NASH—I just want to find out how many nurses in your hospital are under the union and how many are not.

Mrs Levett—You did ask about membership. I looked at the figures yesterday, and about 1,310 of the 1,450 are currently members. None is on an AWA. In New South Wales we all come under the New South Wales state nurses award.

Senator NASH—So even those not in the union are under the award?

Mrs Levett—Yes. Whether or not you are a member, the nurses association determines or negotiates the award and the award conditions, and all nurses, regardless of their union status, are employed under that.

Senator NASH—Obviously, you understand that the current situation will prevail, even under the new system, so your concern is about what will happen in the future rather than what will happen to your nurses, who will be covered by the award they are currently on.

Mrs Levett—No, I have concerns about the non-allowable matters. The most important one of those, as I alluded to earlier, is the potential for us to lose our 'reasonable workloads' clause, because it is listed as a non-allowable matter. That, arguably, is one of the most important aspects of the New South Wales state nurses award at the moment. It will no longer be legally enforceable. It is the one thing that is, I believe, getting nurses to come back into the profession and keeping them there—their safeguard against being overworked on a day-to-day basis. It is only a new thing. We are only just seeing the difference in the profession from its inception, which was only 18 months ago. If it goes, it will not be a matter of waiting; it will be straightaway. If we cannot enforce it, it is useless. Our nurses will very quickly pick up on that.

Senator NASH—I will take you back to the comment you made: 'Anything that makes it less attractive will cause us to topple.' Again, I want to come back to supply and demand, for want of a better term, especially in that in three states your employers are state governments. If nurses were going to leave, causing the nursing situation to topple, because of a government that is put there by the people of their state, it is very difficult to think that those people or, in general, the people of this nation would allow that government to let the situation continue. There is a bit of a grey area in the assumption that employers will not renumerate you properly under the new system. A lot of assumption is being put forward here about what the employers will do under a new system. There seems to be a general assumption that employers will try to do the wrong thing by employees, which I think will not necessarily be the case.

Mrs Levett—To put that into context: I based that comment on the fact that, in the hospital I work in, on an average day we work about 30 to 40 nurses down from what we need. In the hospital 20 minutes from me, the Prince of Wales Hospital, they work on average about 120 nurses down a day. These are very delicate work forces. They get through somehow. My point was: if another five or 10 nurses go from that environment, that can make the difference between being able or unable to function. It is really delicate now. I guess my comment was based on the delicate nature of the understaffing situation now.

Senator NASH—I completely understood what you said. It was just that, to me, that would then indicate that an employer would find better ways to retain nurses.

Mrs Levett—The nurses are not there, and you have to keep in mind that we are dealing with professionals who do not want to work in this environment. As Nick alluded, we are not

training enough nurses, there are not enough university places to meet the need now, so it is not just a matter of supply and demand: if they are not there, they are not there.

Senator NASH—You said that nurses do not want to work in that environment. Doesn't it stand to reason that a change in that environment might encourage more nurses? If you maintain an environment that is not attracting nurses, that seems to me to be self-defeating.

Ms McGinness—We have changed the environment in Victoria and made it a very attractive place for nurses to work, and that is why 5,300 nurses have returned since 2000. We found in Victoria that nurses are there; they just do not want to work. Adding on to what Coral just said, in Victoria we put in place great recruitment and retention strategies and found nurses who were on the register but who did not want to work. We retrained them and re-educated them as part of the things that we fought for, and they have now come back to the work force because it is an easier place in which to work. With a workload of four patients instead of eight, you get to know their names and get to have real continuity of care. It is a safer place in Victoria now. We are so willing to push that ratio agenda all the time, but even our chief nurse thinks that they are inflexible and expensive, which has prompted me to study the value of a registered nurse in Australia—what value we add to patient outcomes. In the United States, they have taken away registered nurses and replaced them with unlicensed workers, and that is what they are going to do.

Senator NASH—Mr Blake, this is a question of immediate governance, but do you see any of the current state governments wanting to move towards AWAs and away from collective agreements?

Mr Blake—My understanding is that they have not said that.

Senator SIEWERT—I want to follow up on your answers to some of the other questions. In particular, the first one was from Senator Murray, where he talked about action in the public interest. Have you looked at the provisions in the bill about essential services and whether nursing would potentially come up as an essential service, and does that concern you?

Mrs Levett—Yes, it certainly concerns us. As was alluded to, there are two options: industrial action or leave. If the industrial action option is removed because we are deemed an essential service and therefore it would be unprotected, that leaves one choice—leave.

Senator SIEWERT—My other issue—and it is related to that and I do not think you refer to it much in your submission—is health and safety. You quickly touched on it before. I know you were told that it was to do with unfair dismissal, so there was no need to cover it, but it also relates to how you negotiate safety provisions through collective bargaining. Can you touch on that for me, please, and mention the sorts of things that you do at the moment to look after health and safety?

Mrs Levett—I tried to say before that occupational health and safety are very important, and the nurses union has a very strong part to play in that in the workplace. The nurses encourage that. They know that union representatives look out for occupational health and safety aspects. They are heavily involved in local occupational health and safety committees in hospitals. As I said, nurses are the eyes and ears of safety in the workplace. Indeed, there is a lot of fear around that, if safety issues are raised, there is the potential to dismiss an

employee. I know that is not part of this inquiry, but nurses are worried about losing their jobs if they raise safety concerns. That is the bottom line.

Senator SIEWERT—If you went to take industrial action and you were classed as an essential service, you would essentially not be able to deal with those really significant issues. Is that your interpretation?

Mrs Levett—Yes, absolutely.

Mr Blake—Can I add to that that the Australian Nurses Federation has a policy called a 'no-lift' policy, which essentially means that nurses are not able to lift patients without some mechanical support device. We have been able to introduce that into the vast majority of health establishments through collective agreements—in most cases, by employers saying, 'Yep, we think that's great'—because nurses have the worst incidence of back injuries of any occupation. We are able to impose that on the remaining, tacky end of the industry, which does not wish to do that—which does not wish to spend the money. Through collective agreements you can do that.

CHAIR—You have one more question, Senator Siewert.

Senator SIEWERT—My final question returns to this issue of public versus private, and the argument being put that, because you are covered under state awards, it is not going to be a problem. I would have thought that, if you are a nurse in the private sector and the conditions and awards are being lost, that is actually going to drag down the conditions under the state award as well.

Ms McGinness—Definitely. And already we do not have ratios in private hospitals in Victoria and you have a shortage of nurses in private hospitals. They have gone to the public system. That is the bottom line.

CHAIR—Thank you for your appearance here today.

Proceedings suspended from 3.11 pm to 3.25 pm

STEVEN, Mr Antony John, Chief Executive Officer, Council of Small Business Organisations of Australia

STANTON, Mr Robert Thomas, Chair, Council of Small Business Organisations of Australia

HAYCROFT, Mr Graeme, General Secretary, Small Business Union

CHAIR—I welcome our next witnesses, from the Council of Small Business Organisations of Australia Ltd and the Small Business Union. Thank you for your submission. I now invite you to make a brief opening statement before we ask questions.

Mr Steven—The hype over the past few months about industrial relations changes has been over the top. From where we stand, small business will be able to operate in the 24/7 world on a somewhat more equal basis with big business. Many state awards and IR systems do not provide the opportunity to flatten wages across the week and allow small businesses to offer services when the customer wants them. For instance, a hairdresser operating on a weekend will often have to charge an extra fee to absorb the costs of penalty rates. As a company, an AWA can be taken out or, if the relevant state hands over their IR system to the federal jurisdiction, such as Victoria has, then all sole proprietors and partners will be able to take out an AWA as well. AWAs will also enable small businesses to negotiate better deals with their staff to allow flexible work times that will help families with things like school hours, shopping et cetera and in return for other hours and more suitable rates.

The real benefits come from the ability to structure an agreement suitable to the individual business and the staff members, without being tied to overarching industry-wide policies that restrict and limit the ability of the businesses to compete. We understand there will be the occasional bad employer and we fully support unions getting involved for their members where this may occur. There are eight million employees in this country, and we understand that seven million of them work at above award rates. Of the remaining one million working on award rates, 800,000 are from high- or middle-income family households. One can assume that these represent the new entries to the work force. The 200,000 that are left are on the award and need some help to increase their skills and experience because, along with their attitude, they should be able to become more valuable to their employer through training. Union assisted career path planning and negotiations are big opportunities at this level and their unions.

If the system does not work it will be because a severe downturn has occurred in the economy. Work skill shortages are growing due to the rate of economic growth in Australia over the past few years and the beginning of mass retirements of baby boomers. We are going to be faced with dramatic retirements in the future, and staff will become more difficult to recruit and very expensive in the future, especially those with good attitudes and skills to sell.

In a speech recently to the *Australian Financial Review* IR conference, I said that a cultural change seems to be on the way whereby employees will need to see themselves as small businesses. They will be marketing their skills and attitude to all sorts of employers—and the more experience they have, the more recompense they will be able to demand. It all depends on the productivity they will provide, just like a small business.

CHAIR—Thank you. Mr Stanton, do you wish to speak?

Mr Stanton—Yes, please. No doubt the existing system is complex, especially for any company that trades across state boundaries. Small businesses certainly need more flexibility for their industrial relations arrangements. COSBOA believes that general flexibility in work conditions will be of benefit to both employers and employees. This should lead to greater productivity and certainly, in the current economic climate, better wages for employees. The benefit for many businesses, especially in retail, which trades seven days a week in many states or, as in Queensland, tourist and seaside areas, is that this should enable businesses to flatten wages across the week and so reduce compliance costs without having to take into account penalty rates at certain periods or overtime after a certain number of hours. There needs to be consideration given to a simpler form of incorporation so that more businesses can incorporate and take advantage of the proposed changes.

In addition to the aforementioned, COSBOA believes that any change to the system needs to allow full access to the federal system for any and all employer associations, whether state based or national, so that they are in a position, when required, to represent members' interests. It needs to be cheap to access and not dominated by lawyers and/or expensive advocates. It needs to be simple to understand and operate for both small businesses and their representative bodies and fair to both employees and employers. COSBOA firmly believes the system must have balance. In essence, we support responsible employment practices.

Mr Haycroft—I own a labour hire agency called the Labour Hire Australia Group, which is probably my day job. It turns over about $25 million or $30 million a year, so that is the size of the agency.

CHAIR—And what is it?

Mr Haycroft—It is a labour hire agency, so I am an employer. About five years ago, we set up a company called the Small Business Union, designed to provide services to other employer associations. We have since done that, and we are probably one of the major four groups in Australia that sets up workplace agreements in the marketplace. The particular point I have come to see you about today is supported by three of the other major groups. I will name them. There is Enterprise Initiatives. Mr Thompson was here on Monday.

CHAIR—Yes, that is correct.

Mr Haycroft—He did not raise this particular issue, but he supports it. There is ESSA, which is Employment Services and Solutions Australia, from Western Australia. They are arguably probably the biggest lodger of AWAs in the country. And there is a firm called Workplace Relations and Management Consultants. Probably, of the small business AWAs done, this particular grouping has done certainly more than anybody else. So we represent those groups which do the work.

Our fundamental concern is that there have been about 12,000 to 15,000 businesses which have already come on stream with Australian workplace agreements. With nearly 700 pages of legislation—designed largely, it seems, to ensure that there is no change to the workplaces of most businesses—the one group unfortunately that are going to be affected are those which have already done AWAs, because the new legislation prescribes a different form of AWA than those that have been existing. This means that those businesses, on 1 February or 1 March,

when and if this legislation comes into place, are going to have to put new people starting on a different form of workplace agreement to those which are already in their businesses.

We think this is a gross imposition on them. These are the people who pioneered this reform in this country, and they should be given the opportunity simply to continue doing what they have been doing for a reasonable period of time, so that, with the AWAs that they have in force, when someone else starts they will start on the same basis. It is a simple proposition: not forever; we have suggested probably a period of three years from the date of proclamation, which effectively means that they have about 12 months to two years to reorganise their arrangements to change to the new form of AWAs.

The new AWAs are not substantially worse; they are just different. There are some changes. There is less flexibility in some areas. It is simply that they are different, which means that if you are starting someone new on a less flexible arrangement, then you cannot change that one; you would have to change the existing more flexible ones. So this means quite substantial change. In many cases a firm might have 100 employees on a particular type of AWA, then one new worker starts and in practice they would have to very quickly go to the stage of changing those other 100 to be in line with the new ones. That is not the end of the world, and it can be done without too much trouble, given time.

That is the fundamental essence of our submission. The legislation, we believe, will work. It certainly means the end of the industrial relations club, and that is no bad thing. It will allow businesses to continue the process of one of the most important things we found in this legislation. Once consenting adults make an agreement, then no other busybody can cast it asunder. That is significant, and that is one of the reasons we applaud it and support it.

The final point we would like to make is that there will be, because of the nature of this, a number of little administrative stuff-ups. It is inevitable because it is a huge change. There should be a process in six to 12 months time where primarily the administrative things can be sorted out. I believe that the people who should be involved in that process are those who do it.

Senator MARSHALL—On Tuesday we heard from Mr John Hart from the Restaurant and Catering Association of Australia. They were looking forward, in their words, to eliminating penalty rates. You indicated you wanted to flatten wages over the working week. I think Mr Stanton used the words 'not attracting penalty rates for extra hours'. Can I assume that you are also after the elimination of penalty rates?

Mr Steven—That is up to the individual company or business that is developing a workplace agreement with their staff.

Senator MARSHALL—Then tell me what you mean by flattening.

Mr Steven—Flattening rates so that the cost is equal on Mondays to Fridays as it is on Saturday and Sunday so that we can offer the same service on a weekend as we are being demanded to by the customer.

Senator MARSHALL—So the working week, you say, is from Monday to Sunday, seven days.

Mr Steven—In the service industry that has already happened. We are being held behind because of these industrial relations arrangements.

Senator MARSHALL—I am not making a judgment; I am just trying understand clearly what you say at this point.

Mr Steven—That is what we are saying. That rate will not necessarily be dependent upon penalty rates being included or not. That is up to the workplace agreement that is signed by the employer and the employee. The rate will be struck by the employer saying to the employee, 'What is the most efficient, productive way to employ you and what are you worth as an employee? Will you be able to earn that money for the business?'

Senator MARSHALL—Mr Stanton, you mentioned penalty rates for extra hours.

Mr Stanton—Again, that was on flattening the rate across the 24/7, if you like—a single rate.

Senator MARSHALL—Mr Steven, you talked about the employer working out how the employee can make money for their business. I am interested to know how in your organisation already AWAs or employment contracts, common law contracts, are negotiated. I assume from what you say that the employer works out what they require and then would put that to the employee.

Mr Steven—My organisation is a peak lobby group for small business organisations around the country. We are not an industrial relations group per se. We are speaking on behalf of a number of our members that are. My own business, which is contracted by COSBOA, is operating under state awards at the moment and I can speak with some experience in that area, although we are a Monday to Friday operation. But retailers and hoteliers—service orientated businesses—are not. They have to be able to compete with the bigger companies that already have access to AWAs.

Senator MARSHALL—I just want to touch on competition quickly. Would a lot of your members be in competition with each other?

Mr Steven—Yes.

Senator MARSHALL—Is the wages component part of that competition?

Mr Steven—Indirectly, yes. It is a matter of competition for the customer and competition for the best staff.

Senator MARSHALL—If one of the competitors were able to have a lesser labour cost, would that create competition in labour costs with the other competitors?

Mr Steven—It is a mix that cannot be measured completely in the context of your question, because, when you are designing a business or putting together the finances of the business, wages are only one component. There is also the marketing and there are the facilities that you are operating from, and all of that impacts on the amount of people that you get to be customers of your business. Of course, in that mix comes the expertise of the staff. In this workers' market we are not going to be looking to cut wages. We will be looking to increase wages so that we can have better staff—more qualified, more efficient staff—so that we can compete in that marketplace you are referring to.

Senator MARSHALL—We heard from a witness this morning—and I think they were referring to the food area—that margins can be as low as one, two or three per cent and, if one of the competitors is able to reduce their labour cost, that will force a race to the bottom. Do you see that as a potential?

Mr Steven—I have seen this 'race to the bottom' quote being used a number of times. Usually it comes from the union side of the argument. We in small businesses see the race continuing as it is, to the top. We are not looking to try to compete with big business. We cannot do that. We are looking to create niche markets off to the side, away from big business, and therefore we need better staff, more efficient staff, more friendly staff. To survive in the future in the open marketplace that this government has put into place, we need to operate in a more competitive and efficient manner, to be able to compete with big business.

Senator MARSHALL—Would a lot of your members employ people on the award rate?

Mr Steven—Most would not. Most would be employing people well and truly above award rates, especially in areas like the building and service industries.

Senator MARSHALL—Do you have a breakdown of that information that you might be able to provide the committee with?

Mr Steven—I do not, but my members do, so hopefully, when and if they make submissions to you, you will get some of that information. But you have got to remember that the small business council covers all industries.

Senator MARSHALL—Mr Haycroft, on your web site you have a 'McIlwain watch'. My understanding is that you are referring to Mr McIlwain, the Employment Advocate. Why do you have a 'McIlwain watch'?

Mr Haycroft—If you read the rest of the web site, you will see that he and I have had some contretemps over policy issues with respect to how he conducts his particular function.

Senator JOHNSTON—You have had some what?

Mr Haycroft—Contretemps.

Senator JOHNSTON—Oh, contretemps.

Mr Haycroft—Differences of opinion, Senator. I thought that these issues were significantly important enough that we should start to list them.

Senator Johnston interjecting—

Senator MARSHALL—Don't be distracted by my colleague, Mr Haycroft.

CHAIR—Order! Yes. Please proceed, Mr Haycroft.

Mr Haycroft—With pleasure. So, yes, we have not put anything specific up, but I intend to. It is simply the history of the decision making—some of his decisions which have been less than satisfactory. My view is that they should just be put on the public record without any further comment. I do not intend to make any further comment here about that.

Senator MARSHALL—I did want to ask, because it goes to the question of how the new act will assist or not assist that arrangement. My understanding, from what I have read publicly on your web site, is that the Employment Advocate has accused you of organising

and sponsoring AWAs that were signed by employees when they did not know what it was they were signing.

Mr Haycroft—Yes. If you go further on the web site you will see that there is a television story where the people accused of that were standing in front of the business before a sign saying, 'We support our employer.' They very much wanted them.

Senator MARSHALL—Did the Employment Advocate actually send an inspector in to investigate this matter?

Mr Haycroft—Yes. That report is available on the web site, too, for anyone to read.

Senator MARSHALL—How could they come to the conclusion that the employees did not know what they were signing after they did an inspection?

Mr Haycroft—Mr McIlwain's report as to how he came to that conclusion is on the web site as well. I invite people to read it.

Senator MARSHALL—I guess my knowledge of the Office of the Employment Advocate is that they have a very low threshold of a test in this respect in the first place. I find it, I guess, unusual that you have been able to actually get to a lower threshold than even they apply.

Mr Haycroft—I disagree. The evidence, surely, is with the workers themselves, who in that case particularly wanted that particular arrangement. I will leave it at that.

Senator MARSHALL—All right. I just want to go to your submission and see if you need to correct this. Your opening sentence is:

We write to you on behalf of all the employees in all the businesses in Australia who have already implemented AWAs for their employees.

Do you mean you write on behalf of all the 'employers'?

Mr Haycroft—I meant in the general sense, because of the nature of the change. The grandfathering provisions in section 101 are very brief and are not really very specific. The advice that we have had is that new workers starting would be on the new form of AWA. That would mean as a matter of commercial practicality that, if you cannot vary those—

Senator MARSHALL—You have misunderstood the question. I am just trying to find out who you represent. The submission I have published here says:

We write to you on behalf of all the employees in all the businesses ...

But you do not actually represent employees do you? Your web site clearly indicates that you represent employers.

Mr Haycroft—We represent the interests of all parties. In this particular case I believe it is the employees who are going to be affected more than employers. Both parties will be affected. It was not meant to deceive in any way; it was simply to say that these are the interests of the parties that are going to be affected by this and I write on their behalf.

Senator MARSHALL—Nowhere on your web site do you claim to represent employees, though?

Mr Haycroft—It does not have to be on the web site, does it?

Senator MARSHALL—I am just trying to establish who you are purporting to represent here. Is it your position that you are representing employees and employers?

Senator WONG—It would be unprofessional conduct for a lawyer to attempt to represent both parties. You are not suggesting you actually legally represent both parties to a contract?

Mr Haycroft—No, of course not. I am talking about the particular interests of the parties involved. These are the people that are affected—I believe unintentionally—by this. I am simply drawing to your attention that employees are affected and employers are affected. I am not claiming to be an advocate of either.

Senator MARSHALL—Mr McIlwain has counselled your partnership arrangement with the OEA. I understand that is a first. Do you want to comment on that?

Mr Haycroft—If you read on, you will find, I think, that I said I did not want it.

Senator MARSHALL—It may just be my link. I have actually been trying to get into your links and I keep getting empty pages. I have been trying to read them.

Mr Haycroft—If you read on there my correspondence says that I do not particularly want to be your partner. It is worth noting that of the other major producers, if you like, only one of them is still a specified partner per se. We still lodge electronically. It is my view that it is not the appropriate way for this work to be promulgated throughout the country in terms of a partnership with a government bureaucracy. I think we do it better if we represent our clients and simply have a straightforward system where we lodge stuff.

Senator MARSHALL—Thank you. That is all I have.

Senator GEORGE CAMPBELL—Mr Steven, in your submission, which I have just been reading, it says in the introduction:

There are 1.3 million small businesses in Australia of which around 800,000 are micro businesses. Most of these employ staff either at the state level using the local awards or under the federal system.

I understood, when we did the small business inquiry two or three years ago, that in fact 66 per cent of small businesses do not employee anyone.

Mr Steven—I guess that depends on the definition of small business. Those statistics I have dragged from the Australian Bureau of Statistics.

Senator GEORGE CAMPBELL—Did they give you a figure as to how many of these companies were employing staff?

Mr Steven—For a start, I do not think that all of them were companies. I have not been given a copy of my submission back. Is it possible I could have another look at it?

Senator GEORGE CAMPBELL—I hope you understand what you wrote in it.

Senator MARSHALL—We have only just received it.

Mr Steven—Yes, I realise that. It did not seem to arrive, unfortunately. It was written on 11 November.

Senator GEORGE CAMPBELL—The only point I am making to you is that we had submissions from COSBOA to that inquiry. We were told there were 1.3 million small businesses in the country but that roughly 66 per cent do not employ any labour—they are

either family businesses, microbusinesses or sole proprietors. You say here that a vast majority of them employ staff. I was wondering whether there had been a dramatic change in the past couple of years.

Mr Steven—I would advise the inquiry to check with the Australian Bureau of Statistics figures, because I do not have the resources to check my own statistics here.

Senator GEORGE CAMPBELL—I suggest, Mr Steven, that it is pretty unwise to put statistics in a document if you have not been able to check them out and verify them.

Mr Steven—As I said, they came from the Australian Bureau of Statistics. If you are questioning them then, as an inquiry, I want you to have a look at—

Senator GEORGE CAMPBELL—Are you saying that the ABS told you that the majority of these small businesses employ staff?

Mr Steven—I would have got that information from their media releases, yes.

Senator GEORGE CAMPBELL—On the registration of the company, why are you of the view that the incorporation provision should be made easier for small businesses than it is for others in the community?

Mr Steven—As it stands at the moment, I understand that until the states give up their jurisdiction and hand their IR systems to the federal jurisdiction, AWAs will only be available to companies in the five states that have their own jurisdictions. The only way they can then tap into what is happening is for them to become a company—that is, the sole proprietors and partnerships.

Senator GEORGE CAMPBELL—To become incorporated.

Mr Steven—The sense that I have taken from my own council is that they feel a large number of small businesses will endeavour to register to be companies in order to take advantage of this earlier than waiting to see what happens with the High Court and the states.

Senator GEORGE CAMPBELL—But what are you seeking in terms of assistance for small business?

Mr Steven—Under the Australian Securities and Investments Commission there is a fairly onerous procedure for becoming a company and it is costly—and usually you do it through an accountant, which also adds cost. If there were easier, quicker and cheaper ways to register to be a company, we would like the government to investigate to see if it is possible to extend an easier facility to small business.

Senator GEORGE CAMPBELL—So you do not have anything particularly in mind.

Mr Steven—We have discussed this. We have investigated it to the degree where we realise that there are constitutional problems. If there are legal people available who can come up with an answer to that, we would be very interested to talk with them. Obviously, the federal government has jurisdiction over the Corporations Act. If you are an individual, you fall under the state jurisdiction. Is there a way of becoming a company or another entity under ASIC which would bring you into the federal jurisdiction? That is the question we are raising.

Senator GEORGE CAMPBELL—So you are not seeking any particular assistance or special treatment from the government in order to get there? In other words, you are not asking the federal government or the taxpayer to pay your fees for the purpose of—

Mr Steven—We have just left the red tape forum to come here this afternoon and we are looking for less red tape. This falls inside that request.

Senator GEORGE CAMPBELL—I am just trying to understand what the paragraph means. In your submission you say:

The employee wants flexibility for the family. Both parents are working, demands on the family created by children, such as school and sport. And hopefully a more even workload within the household, all this will mean the workplace will need to be more flexible to attract and retain the best staff.

You then go on to say:

Lower costs can be gained by way of negotiating a flat rate instead of penalty rates and overtime loadings for example, and more production because we will be able to allocate staff more freely to time sensitive jobs.

Are you saying there that you ought to have the capacity to negotiate a flat rate which would exclude penalty rates or overtime payments for weekend work?

Mr Steven—Once again, we are not talking on a general basis. As I said to Senator Marshall, the agreement would be with individuals and their circumstances that relate to the unique business that they are working for. I can see—

Senator GEORGE CAMPBELL—Can I specifically ask you about this—

CHAIR—This is your very last question, Senator Campbell.

Senator GEORGE CAMPBELL—You say:

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

That seems to be a clear statement that you believe that, under the provisions of this bill, you will be able to negotiate lower rates for weekend work than are currently the case, because you will not be applying penalty rates or overtime loadings on weekends. How does that fit in with your previous statement of looking to make the workplace more family friendly and meeting the needs of the family?

Mr Steven—What about a highly-skilled mother who is willing to work at a lower rate in return for the ability to pick up her children after school? If a small business can provide that flexibility, retain her skills and still travel along nicely in this economy, I think we would be very pleased.

CHAIR—I want to ask you, Mr Stephen, and you, Mr Stanton, as office bearers of your association, what the feedback from your members on the proposed legislation has been like.

Mr Steven—Generally speaking, they are very happy with it. They think that the opportunities for the flexibility I have been able to highlight will help small businesses to survive and compete in this 24/7 world, in which we are also battling very large businesses that have economies of scale in their arsenals. There are some underlying concerns regarding the abolition of the no disadvantage test, but we understand that, in this workers market and

this particular time in the economic cycle, that will not impact as much as, say, the unions are concerned it may.

Our members have also asked the council, 'What happens when the economic cycle turns?' Our understanding is, as I said in my statement, that over the next 20 years we will be looking at an ever-shrinking market of skilled and unskilled employees. I think you will find that this workers market that I am talking about will continue for quite a while. We also hope that, with the evolution of India, China and other companies, the demand on the economy in Australia will be very strong. We are feeling fairly comfortable with these changes, even though those concerns have been expressed.

Generally speaking, we feel that there has been an overreaction in the media and the Australian population. We see all the minimum rates being retained. The awards will still be there. There will be flexibility to work with employees on a one-to-one basis. I think that it will suit small business tremendously.

Mr Stanton—I will hark back to the penalty rates issue a little bit. As you are finding now in AWAs that are being approved, the 24/7 flat rate that is being discussed will incorporate a rate that covers penalties on the weekends. Where a retail business is open until 9 or 10 pm, workers will get a rate that incorporates penalty rates, but, where the staff work from eight until five, they will get paid the penalty rates as well. Nobody is really talking about abolishing any penalty rates; they are going to be built into the flat rate.

CHAIR—So you are talking about a higher flat rate—

Senator WONG—Would that be COSBOA's policy position—

CHAIR—That is why I am asking them the question, if you do not mind, Senator Wong. You had your full time on this, and now it is our turn to ask questions. Mr Stanton, we are talking about a higher flat rate which will apply throughout the week, 24/7, which will incorporate penalty rates which would have formerly applied for the weekend—is that correct?

Mr Stanton—That is correct. That is what I believe you will see being negotiated in the workplace.

CHAIR—Thank you. I will pass over to Senator Barnett.

Senator BARNETT—Firstly, I thank COSBOA for being here and for taking time out of the small business red-tape forum, which is so important. I also thank you for your advocacy for small business both nationally and around the country. It is very much valued and appreciated. The *Financial Review* address, which you have attached to your submission, Mr Steven, is very comprehensive and thoughtful. Mr Stanton, you talked about the increase in productivity and said that the proposals would increase productivity. Can you explain why? The reason I ask is that there have been a number of allegations made that there is not enough evidence to support the fact that this proposal will actually benefit business—small business and big business—across the board in terms of increasing levels of productivity. What do you say to support the proposition in your submission, Mr Steven or Mr Stanton, that this legislation will increase productivity?

Mr Stanton—The first evidence I can give of this is that somebody who is currently required to stay back and work overtime, at overtime rates, is never as productive as somebody who has just come to work after a break—an overnight sleep, a lunchbreak or whatever. I think you are going to find that there are going to be more workers employed—if there are any out there to employ, because it is so tight now—and you will have somebody filling those hours at a rate that the small businesses can afford. That is going to be a rate that is negotiated within the workplace and that will include the penalties. Tony, did you want to add anything?

Senator BARNETT—Mr Steven?

Mr Steven—Another example is a hairdresser operating on a Sunday. They will be able to cut more people's hair over the period of the week. So there is more income to the business generally, even though the staff members are working throughout the week at the higher flat rate.

Senator MURRAY—Senator Barnett and I pay a search fee at the hairdresser!

Senator BARNETT—Thank you, Senator Murray, for alerting the nation to that fact!

Senator JOHNSTON—So do I!

Mr Haycroft—Can I make a contribution to that particular point? There is a lot of talk about penalty rates and what they really are. Labour market reform is not about paying people less; it is about making machines work harder. It is about the truck that drives seven days a week, 24 hours a day, if it can. It is the capital cost that is the killer. When penalty rates were brought in in 1948—incidentally, the year of my birth—it was a different society. A man—or a woman, although there were not many women working like this—could make a living with a shovel and a pick. We had this idealised view of the world being a nine-to-five world. Penalty rates were called penalty rates; they were not called reward rates. They were designed to stop people from working. Today we have a very capital intensive society and we need to keep the machines going, because that is the reflection of our standard of living. I might add how we actually do this. If you want to know how we go about doing this process—

Senator BARNETT—Could you be brief? I only have an allocated amount of time, and I have some other questions.

Mr Haycroft—Do you want me to tell you how we actually do it?

Senator BARNETT—Just be brief in summing up your comments, thanks.

Mr Haycroft—Say there is a small business which has 50 people. We go through and work out how much they have been paid in the last three months and we work out an average hourly rate for each person. I do not know of any case where we have ever paid anybody less than what they have got in the last three months. That is how you actually do it.

Senator BARNETT—I want to turn to your submission, COSBOA's role, who you represent and the types of small businesses you represent. You have been asked about the feedback from the community generally in terms of the legislation. Can you describe your members and where they are located?

Mr Steven—The Council of Small Business Organisations of Australia is made up of approximately 30 members, most of which are state or industry based associations of small businesses. They cover industries such as retailing, real estate, pharmacy, civil contracting, hairdressing, baking—it just goes on; it is quite a myriad and quite wide.

Senator BARNETT—Have you consulted with those members? Did they support your submission and your support for the legislation?

Mr Steven—Through their associations, we have, and they have supported our submission.

Senator BARNETT—In your submission, you talk about the benefits of flexibility. You also talk about the reduction in compliance costs and how important that is in terms of cutting red tape. Can you describe how important that cut in compliance costs and red tape is for small business, particularly microbusiness? You talk about the problems involved in operating across the state borders, for example.

Mr Steven—Red tape, generally, overall, is being dealt with currently, as we said. There are a lot of issues regarding tax and superannuation and all the rest of it, but a lot of it does fit within the employment silo. When you start employing staff, it becomes very difficult because of the paperwork and the rules that you have to adhere to. I understand there are some 4,000 awards around Australia. The different clauses affect different businesses in different places. My own business now has an office in the ACT and in Tasmania and with future ventures I am looking towards the bigger states as well. Without these changes, I could be looking to operate in four different jurisdictions, which could become very difficult. The scope for error increases as that complexity increases. The red tape behind employment is staggering. It is being dealt with in the inquiry that is happening over at the convention centre now, and I am pleased to be able to reiterate that to you here. Super choice, all the tax obligations that go with employment and occupational health and safety all have to be considered, and every industry is very different as well.

Senator BARNETT—Are you saying that as a result of cutting the compliance cost and the red tape—

Mr Steven—Any cut at all would be a benefit.

Senator BARNETT—there is likely to be an increase in productivity? Will there be an impact on wages? Is there a possibility of higher wages?

Mr Steven—Indirectly, I can see that possibility being argued, yes. As I was saying to the senator earlier, the mix is in the whole business. To say that that particular saving is going to be passed on to that particular cost is hard to do, but overall the effect of an efficient business does have an effect on the economy generally, and we have seen that over the last 14 years.

Senator BARNETT—Are there any improvements that can be made to the bill?

Mr Steven—When does the committee close? I have not considered actually trying to improve upon the legislation.

CHAIR—The report of the committee will be tabled next Tuesday, but the debate on the bill itself will be held in the last two weeks of parliament this year.

Mr Steven—That is a generous offer, so I might take you up on it.

Senator BARNETT—Sure, take it on notice. You have included the issue of company registration in your submission, and Senator Campbell asked about that in terms of the merits of trying to keep those costs down. I think that has been taken on board by me, the government and others on the committee. I think you have summarised it well, and I really appreciate your submission today.

Mr Steven—Thank you.

Senator MURRAY—I am pleased to hear red tape is being dealt with. I well remember being at your forum, and giving Minister Hockey the idea that the government has now run with to provide an incentive to reduce the small business red tape. I am pleased about that.

Mr Steven—At the micro and home based level, that is right.

Senator MURRAY—In my home state of Western Australia, most small businesses are under the state system. Those that are under the federal system at present mostly use above award payments and their conditions are the award conditions. So they pay above award but everything else is to the award. The award, if it is federal, is 20 allowable matters. If it is state, it is open-ended and varies enormously. But the gap between the two was not that great. Now, you will have a system whereby those small businesses that are under the new Work Choices bill will relate their AWAs or their common law agreements to the five minimum conditions, and the gap between the state and federal systems will be very significant.

Mr Steven—Over time.

Senator MURRAY—Right now. The reason I am sketching that outline to you is we have been advised that very large numbers of small businesses will remain under state systems. It has been difficult to get a figure but, for instance, Mr John Hart indicated that across the nation about 29 per cent of his industry, restaurant and catering, would remain under the state systems. What sorts of problems, in your view, will emerge if, say, a figure of a third—and I am just inventing that figure because I really do not know what it will be—of small businesses remain under state systems, with open-ended awards and the system continuing as it is at present, and the remainder are under federal systems? What sorts of competitive difficulties might emerge from that?

Mr Steven—This is conjecture, of course, because I have not done any study on this, but my feeling is—and this is why I interjected earlier—that over a period of time they will move, where they can, to the federal jurisdiction. Otherwise, they will not be able to remain competitive.

Senator MURRAY—So they will have to incorporate. Is that what you are saying?

Mr Steven—That is why we are concerned about the capabilities of the current Corporations Act. But they will have to work towards moving to the federal jurisdiction. The federal government has indicated to us on a number of occasions that they believe that the state jurisdiction will disappear between three and five years into the future. That will be after a High Court challenge, I assume. There will be competitive problems between the two areas.

Senator MURRAY—You have always struck me as a practical man. I heard in your remarks an indication that you thought the best way to resolve it would be negotiation between the state governments and the federal government. Is that correct?

Mr Steven—I would like to see something like that happen. However, all indications at this point in time are that there will not be any negotiations; it will be a battle in the High Court. So we are waiting to see. We are spectators in that while the giants battle.

Senator MURRAY—To summarise, you have had no feedback on, have not thought through or have not had any understanding of what effects having this new system working with the state system in the same industry will have? To use your example of hairdressers, you have unincorporated hairdressers and incorporated hairdressers. If one lot were on five minimum conditions and the other was on open-ended awards, it could be a very different situation.

Mr Steven—Mr Stanton has something to say but, before he does, I would like to say that there will a major role for associations in the small business sector and one, I hope, for the government in educating small businesses as to which is the best way to go. I think that a very large exercise will be required when this legislation comes through in educating small business about what the best way for them to operate is. I know that in my home state of Tasmania there are a number of small businesses dealing with industrial relations regulations advocates and associations asking about where they should go in the future.

Mr Stanton—In Western Australia at the very moment staff shortages in retail are just about epidemic. I think that, in an environment where you are going to have the two different legislations—the state award and the federal award—if the gap between those two awards becomes too great, and there is competition for personnel one way or the other, whichever award works out to be better, if one is competing with the other you are going to find that there is going to be a massive shift from the state award to the federal award or the federal award to the state award, because the staff will go and source the best deal that they can get. In Western Australia, in retail in particular—and I can speak from experience—already the personnel are out there looking for the best deal that they can get.

Mr Steven—It is a workers' market.

Senator MURRAY—In the time available to me, I want to put a question to Mr Haycroft about his proposition, and I will invent two dates just to make it easy for us to discuss. If this Work Choices bill becomes law in February 2006, and you have someone on—shall I describe it as—an old AWA, which expires in December 2006, your proposition is that anyone who is appointed after February 2006 but before December 2006 should be on the same terms and conditions as a person whose agreement expires on December 2006—is that correct?

Mr Haycroft—Yes. You see, the agreement that expires in December, to take your example, in practice does not expire at all, because they keep on going past the notional date unless the parties want to change. But I think it is reasonable to have an end date, because it then becomes unfeasible for someone after, say, two years and 11 months to say, 'We will put you on the same AWA; it goes for a month.' All it does is allow that business a period of time, for about 12 months to two years, to re-sort, because they will not need to bring in consultants to re-do the stuff and that is all. It does not go forever—

Senator MURRAY—So that transitional period you are looking for—and it would be a technical amendment, I would think—is, what, 12 to 18 months?

Mr Haycroft—I think you would set three years from the date of proclamation. In commercial practice, that would mean no-one is going to be doing AWAs for 12 months. If they were silly they might, but most businesses will say, 'Right, we have got a window of opportunity—12 months to two years—to get to this stuff sorted out.' That is all. If they are tardy they can go to their three years, but it is going to be commercially impractical for them.

Senator MURRAY—Am I out of time, Chair?

CHAIR—Just about.

Senator MURRAY—I have one more question, if I am allowed the time, and that concerns Sunday. West Australians would know that I was a strong opponent of the referendum, and I was very pleased that the Gallop government's referendum lost and that 24/7 does not apply in Western Australia. I would like to see the West Australian system throughout all of Australia, because I think people should have Sunday available for sport, family, church, and so on. That has worried me about the penalty rates. I have always felt that penalty rates emphasise that, really, you should not work on a Sunday unless you have to—and there are lots of people who have to, including you and me.

Mr Steven—Small business people are reasonable, rational people who build relationships with their staff. If I wanted to maintain somebody on a higher wage because they were worth it, and they wanted to retain penalty rates on the weekend, there would be nothing wrong with me including penalty rates in an AWA. It is to fit the situation. One size does not fit all in small business, and we can negotiate one-to-one to make sure our businesses work and that the staff are happy so we retain them.

Senator MURRAY—So what you are putting here, as an official view of your association, is that you support penalty rates where the employer supports them?

Mr Steven—And the employee.

Senator MURRAY—That is what you are saying. Thanks.

Mr Steven—Flexibility is the key to these changes.

CHAIR—I think Senator Siewert has some questions to finish off this session.

Senator SIEWERT—Yes, I have a couple of questions. I would like to go to the West Australian experience as well. You mentioned that you thought the race to the bottom was a myth, yet during the 1990s when we had the Court government's IR changes there was clearly evidence of the race to the bottom. You can find it in the ACTU's submission this morning, where they highlighted that rates dropped below awards. So it is not a myth.

Mr Steven—I do not remember saying that it was a myth. I thought that was an argument being put by the unions, but I believe, because it is a workers' market, that that is probably not going to happen.

Senator SIEWERT—First, it may not always be a workers' market; and, second—

Mr Steven—I have explained my views on that.

Senator SIEWERT—you are talking about retail, not other areas. I am presuming that, as a small business union, you cover other areas as well as retail?

Mr Steven—We certainly do, and what I have been saying covers more than just retail. Civil contractors are in the same boat, as are real estate agents, the Pharmacy Guild—it goes on.

Senator SIEWERT—So you do not think that is going to happen? You do not think there will be a race to the bottom, despite the evidence to the contrary?

Mr Steven—I do not believe there will be a race to the bottom because I think that there is too much demand for good staff. I can give you examples in my own business and from my members.

Senator SIEWERT—You were talking earlier about having a higher standard rate. Are you going to be prepared to recommend to your members that they adopt a higher standard rate?

Mr Steven—I am sorry; what do you mean by 'a higher standard rate'?

Senator SIEWERT—When you were talking about overtime and penalties, you were saying that what will happen is that, for people on the standard rate, that will be higher.

Mr Steven—It could be.

CHAIR—Flat rate, I think it was.

Mr Steven—Flat rate, yes—it could be.

Senator SIEWERT—Are you prepared to recommend to your members that that is in fact what happens?

Mr Steven—No. I am prepared to give the information about the structure of the system to my members so they can make that decision at the workplace level.

Senator SIEWERT—I am also going back to the 24/7 issue that you brought up. How is that going to be family friendly in the rest of Australia—besides Western Australia, where I also agree with Senator Murray, in that I am pleased that that was not supported? How, in the rest of Australia, is it going to be family friendly if we are moving to this 24/7 pattern?

Mr Steven—I think you are still thinking about an overarching policy. If I have a staff member who wants to not work on weekends, I can arrange that for them. If I have someone who would like to work on weekends and have Monday, Tuesday and Wednesday off, I can arrange that for them. The flexibility is the answer here, not the overarching policy that goes across industries or entire workplaces. It is one-on-one that we are looking at.

Senator GEORGE CAMPBELL—But not all businesses will have that flexibility.

Mr Steven—But small businesses will most predominantly have that flexibility—and they need it.

Mr Haycroft—I come from the Sunshine Coast. Senator Murray said that people like to have Sunday off in Brisbane. Guess where they go? They go to the Sunshine Coast for the weekend, Saturday and Sunday, and they expect things to be open. The people on the Sunshine Coast understand that it is a 24-hours-a-day, seven-days-a-week, 52-weeks-a-year business. They have their days off during the week. They have made that lifestyle choice about going to live and work on the Sunshine Coast. If you are going up there and you are in

the tourist and hospitality business, you work on the weekends and you have Tuesday and Wednesday off, or whatever. That is how life goes.

Senator SIEWERT—And I would suggest that, when they make that choice, they also do it bearing in mind that they will get higher penalty rates and overtime.

Mr Haycroft—No, they make a judgment about living the lifestyle on the Sunshine Coast and knowing what the rates are. We are talking here about the reality of the award system as it is on the Sunshine Coast and in most tourist areas—it was all observed in the breach. Penalty rates really did not apply. In fact, in the hospitality business, the restaurant and caterers award in Queensland does not have penalty rates for weekend work. It is accepted. The 'club' has accepted that. So that is pretty much the standard in Queensland. There are no penalty rates if you are working in a cafe. That is how it is. You do not have to do workplace agreements, because that is the system.

CHAIR—Last question, Senator Siewert?

Senator SIEWERT—I am done.

CHAIR—You do not have any more? Okay.

Senator Wong interjecting—

CHAIR—No, you have had your 20 minutes, Senator Wong.

Senator WONG—There is one minute left, and I have not asked a question. Just one question: do you accept that penalty rates and overtime provisions do operate as a disincentive for people to be rostered on those days, on weekends?

Mr Haycroft—That is the design.

Senator WONG—Yes, precisely.

Mr Haycroft—They are called penalty rates, to stop employers doing it.

Senator WONG—So the removal of them is something your organisation would support?

Mr Stanton—I think I have already explained that—not necessarily any removal of them; they are going to be built in and negotiated into the flat rate.

Senator WONG—No. I am sorry, Mr Stanton, but I am under time pressure. As I understand your organisation's position, you are not prepared to recommend an increase in the ordinary time rate but you do want to see a removal of the overtime and penalty rates?

Mr Steven—I do not remember saying I would like to see a removal of the rates. We would like to see an individual agreement struck that will favour the flexibility that might be required by both employees and employers.

Senator WONG—That would remove penalty rates and overtime.

Mr Steven—Not necessarily. As I have said before, some employees may wish to retain penalty rates and the normal rate throughout the week. That might suit the employer they are with. It is all about relationships.

Senator WONG—I understand your position, but it is quite clear from your AFR speech that you are positively speaking of the removal of overtime and penalty rates. Obviously it is a significant cost for small businesses who are competing in the 24/7 world.

Mr Steven—Once again, you are taking my words as an overarching policy. That is not how I meant them.

CHAIR—I think your speech says it all. You have spoken about negotiating a flat rate instead of penalty rates and overtime loadings, for example. For the record, Mr Steven, COSBOA say they represent, as the peak council, other organisations. Can you identify—and you can take this on notice if you like—what the other organisations are that COSBOA represents?

Mr Steven—I can notify the inquiry of my web site address. It is www.cosboa.org, where a full list of our members appears. If you want any more information, I would be only too pleased—

CHAIR—No, thank you very much for that. Thank you for your appearance here today.

Mr Steven—Thank you.

[4.28 pm]

CARSTENS, Ms Debra (Debbie) Janet, New South Wales Chairperson, FairWear

CHONG, Ms Hui Har, Member, FairWear

DELANEY, Ms Annie Maree, Campaign Coordinator Victoria, FairWear

FAWCETT, Ms Kathryn Lee, Member, FairWear

LIU, Miss Hui Juan, Member, FairWear

NGUYEN, Ms Lilian, through Ms Bich Thuy Pham, interpreter, Member, FairWear

PHAM, Ms Bich Thuy, Member, FairWear

CHAIR—Good afternoon. I welcome our next witnesses from the FairWear campaign. Are there representatives here from the Textile Clothing and Footwear Union as well?

Ms Carstens—The FairWear campaign is made up of a coalition of organisations. The Textile Clothing and Footwear Union is one member of that coalition. Kathryn Fawcett is here from the union as a member of FairWear.

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

Ms Delaney—Thank you. We really appreciate the opportunity to talk to you today. We each are going to briefly address you, and we look forward to your questions. Firstly, Fair Wear has been working tirelessly for 10 years to ensure that outworkers in Australia have legal protections. Our submission documents a body of collected evidence going back to a Senate inquiry in 1995, which some of you were part of. There has been extensive research—reports, Senate inquiries and state government inquiries. This body of evidence has substantially contributed to courts and governments implementing legal protections that are in place today specific to outworkers. These can be summarised as clauses of the clothing trades award and legislative measures in New South Wales, Victoria, Queensland and, most recently, earlier this year, in South Australia that provide clarity for outworkers in terms of their employment status as employees, their capacity to recover unpaid wages up the supply chain, and a retailers code. We believe that this package of protections is critical to improving outworker rights. Such protections are general protections of their rights, their employment status and their access to representation and monitoring mechanisms to ensure that their rights in fact become a reality.

We believe that an essential part of protecting outworkers is the aspect of monitoring the supply chain. Over the last 10 years, the work in developing this package of protections in Australia is finally starting to take some hold in terms of turning back exploitation in the clothing industry, which has been extensively documented—our submission lists a range of that research and submissions et cetera. We believe that Work Choices severely threatens this package of protections for outworkers and will turn back the fight against exploitation in this industry significantly. We believe that monitoring of the supply chain is critical. That happens through federal and state awards—for access to work records and access to supply chain lists

through the contracting chain—state legislation and also a voluntary industry code: the Homeworkers Code of Practice.

We are going to refer a number of times to the supply chain. We have a brief document for committee members which documents a summary of a supply chain. Some of you might be familiar with the nature of the supply chain, but it is quite complex. I will not talk to it at this point, but a number of our members might mention the nature of the supply chain, so it might be a useful reference for you.

We believe that without effective monitoring of the supply chain, exploitation cannot be exposed. Today, we ask you to listen to what outworkers Lilian and Helena have to say, and to understand what is at stake in reducing their legal protection. We believe there is a risk of condoning a Work Choices system that legally sanctions exploitation. We recommend that the bill be amended to maintain current protections and put in place equivalent protection in the federal system. My colleagues will elaborate on some of these points. Thank you.

Ms Nguyen—My name is Lillian. I am here to represent thousands of Vietnamese outworkers who are part of our outworker networks, our friends, our neighbours and our colleagues. We want you to hear our story first-hand. We want you to understand how powerless we are without the legal protections we have now, which will be taken away by Work Choices. I have been an outworker in Australia for over 18 years. I was forced to stop work a couple of years ago because of a workplace injury, for which I have never received workers compensation. I still have pain. My kids have jobs now, so they can help with the family income, but when they were younger and at school I did not have that choice.

I think back now about working at nights, 60 hours a week, seven days a week, for just $100 a week. Once my children were older—in the last 10 years—I was able to work in the daytime. I would still have to work late into the night, though, to meet the deadlines that the bosses gave. It is typical for a boss to deliver an order and ask an outworker to complete it in two weeks but once we have started the order say he needs it in a week. Sometimes we have to work overnight to finish an order. I was sewing for up-market labels that sell in Myer and David Jones. I would get $8 for an evening dress, which would take me more than an hour to make, and $15 for a ladies suit, which could take up to two hours. These are sold for over $200. It was always really stressful trying to balance family needs with urgent orders from the boss. I was always really tired. Sometimes I was so tired I could not eat. But the bosses do not care about these things.

Over many years I have seen many other outworkers suffer low pay and unfair conditions. My story is repeated in thousands of households. I know lots of outworkers, but I have never met an outworker who gets award wages and conditions. With such extensive exploitation, strong laws and a solid background of protections are needed. When I heard that employers can choose not to be covered by the outworker parts of the award, I could not believe it. Bosses in the clothing industry have proved over and over again that they rip off outworkers as much as they can, and by choosing not to be covered by the award protections they can rip off outworkers legally.

Another problem with new Work Choices laws is that it puts it onto individual outworkers to try to protect themselves. Outworkers would have to go to court to prove that they are

employees or to try to chase money they are owed by bosses. But outworkers will never go to court. We have no money for a lawyer. We do not have enough English. We do not know the law. We feel scared when you talk about court.

We are not weak women. Many experiences in our lives have toughened us up—persecution in our home country, the journey on boats to Malaysia to escape, life in the refugee camp and the immigration experience to Australia. However, we are powerless in the face of our bosses. Work Choices gives more power to these bosses and indirectly encourages the exploitation of outworkers. These laws need to be changed to fix this problem. Thank you very much.

Ms Chong—We are here to represent outworkers because we are scared. We are scared about what will happen to us when even the few existing protections for outworkers are taken away by Work Choices. We are scared of how bosses will exploit us further when we become independent contractors and their current treatment of us becomes legal. We are scared for our future.

The outworkers I know generally get $4 an hour and even $3 an hour. I am luckier because I can earn $8 an hour before tax, making designer wear that retails on Oxford St, Sydney, for hundreds of dollars. But then maybe it is not so lucky when I realise that for my skills I should be earning a minimum of $14 or $15 an hour. And I have to work seven days a week, more than 12 hours a day, to meet the deadlines my boss gives. I don't get any overtime pay and no superannuation pay. My hourly rate is only for the sewing. Eight dollars an hour doesn't include the two to three hours I spend unbundling the pieces and dividing up the shapes and colours to prepare to work. It doesn't include the time I take to make the first couple of samples to show the boss that I know what I am doing. It often takes a while to work out what to do because the boss doesn't label the pieces and only provides minimal instructions. And maybe I am not so lucky that I have so little time to spend with my husband and to relax with my friends. When I finish work I am really tired. I wonder if it is the stress of my job that has stopped me getting pregnant all this time.

For outworkers there is always a lot of pressure. We have to spend so much time sewing that there is no time for anything else. We wonder when things might get better for us. At the moment things are just getting worse. Once the state laws are taken away, we won't be clearly recognised as employees anymore. With the new laws our wages of $3 an hour, $4 an hour, $8 an hour will be legalised. My $8 an hour becomes legal and there is no hope in the future of fair wages for my high skills. We are supposed to be employees now, but we are not treated that way. However, as long as the law clearly says we are employees then the union and government inspectors can make the bosses pay the award rates when they follow the supply chain through and prove our bosses are not paying us properly.

We are scared because we have no power to protect ourselves by negotiating with our boss. My husband says my skills as a tailor are worth much more than this. But negotiating with our bosses is impossible. We take this price or we don't get the work. The bosses just say they will give the job to someone else. It is pointless to ask for a higher wage. There is no choice about $4 per hour. We can't talk about choices at work with the boss. We can't argue. But with Work Choices the government expects us to negotiate with the boss as independent contractors and get a fair deal. That is not realistic at all.

Outworkers are scared for our future and are asking the government for help. Please keep all the current protections for outworkers. Give us back some hope for our future. Don't legalise our exploitation but help to end it. Thank you very much.

CHAIR—Thank you for that. Just before we proceed to questions, Ms Carstens, I understand that the ladies here today who are outworkers are not using their proper names because they do not wish to be identified. Is that true?

Ms Carstens—They are using the English names that they use publicly. They are not using their Chinese and Vietnamese names because they do not want to reveal them.

CHAIR—Which names do they work under?

Ms Carstens—I am not exactly sure in each case.

CHAIR—I expect you are aware of this, but the fact is that the panel has just been filmed by a television camera. You are aware of that?

Ms Carstens—Yes. We actually discussed quite extensively with David Sullivan what exactly would happen, so the applicants were aware of that.

CHAIR—So they are aware of that?

Ms Carstens—Yes. Thank you very much for checking. Madam Chair, we actually have two others who want to make some very brief statements.

CHAIR—They will need to be brief.

Ms Fawcett—I will be as brief as possible. I just want to address some of the particular provisions in the bill. When we talk about the current protections for outworkers, we are talking about two categories of protections. The first is substantive wages and conditions, which are contained in awards and legislation just as they are for other workers. The second category, though, is different. It is a set of laws that is directed towards monitoring the supply chain, regulating the supply chain, importing conditions into the supply chain and making parties accountable for their behaviour. It has been found universally that that second category of law is necessary to get players in the industry to meet their obligations under the first categories of laws. Both categories of laws are going to be dismantled, and some abolished, if the Work Choices bill gets passed in its current form without amendments. Worse than that, there are apparent or claimed protections in the bill which are undermined and made ineffective by other provisions in the bill.

In relation to the first category, wages and conditions, there are two key ways in which the bill facilitates the reduction of wages and conditions for outworkers. The first is that in a number of states it overrides deeming laws, which deem outworkers to be employees and thereby provide that all employment entitlements can be automatically accessed by an outworker. What this effectively amounts to, in our view, is legalising the opting out of the entire system for outworkers. The second aspect of the bill that allows for the reduction in conditions: if an outworker makes it within the scope of the bill as an employee, the only guarantee is the fair pay and conditions standard. There are many ways in the bill that an employer can achieve those employment conditions and nothing else for an outworker. The most obvious way is through the making of an AWA. It is said that that will not happen

because employees may bargain for better conditions. The committee has heard what the outworkers here today have had to say about their bargaining power.

In relation to the second category of laws, the monitoring or regulating of the supply chain, those laws are found in various places in state or federal awards, state laws and federal laws. To give an example of what they consist of, an employer has to register if it is going to give out work; an employer has to provide lists of who work gets given out to; and an employer has to keep detailed work records, give them to the worker and have them available for inspection. They provide that a contract cannot be made below the conditions under which an outworker should be paid. They provide for a facility for outworkers to claim unpaid wages up the contracting chain, not just from the party they are directly employed with or related to. They provide for the development of a mandatory code. They are also supported by the existence of an industry voluntary code. Many of these provisions—for example, the provisions allowing for recovery of unpaid moneys up the contracting chain, the provisions in both South Australia and Queensland facilitating a mandatory code and the provisions for union inspection powers—are simply abolished or overridden by Work Choices.

Other protections are claimed to remain or be covered in the bill, but an examination of the bill indicates that this in fact is not the case. The Department of Employment and Workplace Relations in their submission to this inquiry have said that outworker conditions would continue to be allowable in awards and agreements. They say:

This means that some unique features in awards relating to outworkers such as provisions governing the relationship between parties in the contracting or production chain, detailed record-keeping requirements, and union inspection mechanisms, would continue to be regulated in awards..

If one looks at proposed section 116(1)(m) of schedule 1 of the bill, it is apparently consistent with his commitment. But, if one then looks at 116B(1)(g), that is entitled 'Matters that are not allowable award matters' and it says that the allowable award matters are effectively conditioned by the contents of that section. One of the things that it says cannot be an allowable award matter is 'restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement'. Clearly, a great number of the category 2 regulatory protections for outworkers fall within that category. Insofar as outwork remains an allowable matter, it is to be read down by the effect of that provision.

Senator JOHNSTON—Says who?

Ms Fawcett—Says the bill.

Senator JOHNSTON—Where?

Ms Fawcett—In 116B.

Senator BARNETT—That is your interpretation of the bill.

Ms Fawcett—Proposed section 116(1) sets out allowable matters and then 116B(1) says:

For the purposes of subsection 116(1), matters that are not allowable award matters within the meaning of that subsection include, but are not limited to, the following ...

Then it says a number of things, including the provision that I have read to the committee. It is pretty unambiguous. I would be interested—

CHAIR—I do not wish to delay matters, but we will take that up with the department on Friday. Please finish.

Ms Fawcett—It flows through in that the bill is claimed to protect award conditions in agreements, but the only award conditions that get protected in agreements are those that are allowable. The restriction in terms of allowable matters flows through to protected award provisions. However, there are worse problems when it comes to protected award conditions in agreements, because the bill expressly allows them to be contracted out of. So, in fact, they are not protected at all. That opting-out provision can be found in proposed section 101B of the bill. The same outcome is achieved through different mechanisms in relation to current state award protections. I will not go through those mechanisms now because of the time we have.

In relation to the unions' work of prosecuting for breach of the award, the bill contains a restriction of the unions' standing to do that, which is that a union must have a member employed by the employer that it is intending to prosecute under the award. What happens in fact is that, where the union has members in workplaces, the employer is generally much more likely to be meeting its award obligations. The union has had an extensive practice of prosecuting employers where there has not been a member in the workplace. The effect of that provision is going to severely curtail that activity.

In summary, we are concerned that the bill attempts to give the appearance of providing protections but in fact does not deliver. We think there needs to be one or the other. We hope the committee will recommend, and we strongly urge the committee to recommend, that the government amends the bill to reflect an actual protection for outworker conditions.

CHAIR—Is that all?

Ms Carstens—I have a final statement. To deal with the complex issues that Lilian and Helena have described of their reality and to deal with the inconsistencies and conflicting parts of the bill that Kathryn has highlighted, Fair Wear recommends that the government introduce a new section to the Work Choices bill to deal specifically with regulation of outwork in the clothing industry and that this section should override any conflicting provisions in the remainder of the bill. The object of the section would be the elimination of the exploitation of outworkers in the industry. It would include a definition of outwork that also encompassed sweatshop workers, who are currently not covered by the bill. It would deem all outworkers to be employees for the purpose of the bill and other federal and state laws. It would incorporate the existing federal award provisions, ensuring they applied to all workplaces and people in the clothing industry, with no employer able to opt out. It should also include existing union rights of entry and inspection in relation to outworkers under existing state and federal awards and laws.

We have come to Canberra with the weight of expectation of thousands of outworkers on us. They await the news that this government is hearing their concerns and will act to close the gaps in Work Choices which will allow exploitation to flourish. We do not want to live in a country that legalises the hardship, low rates of pay and appalling conditions Helena and Lilian have outlined today, and I am sure that you do not want to either.

Senator WONG—Thank you for coming here today. I particularly thank Ms Nguyen and Ms Chong for telling us their stories. I do not think there is anyone in the parliament who would argue that the exploitation of outworkers in a civilised country like Australia is acceptable, and I commend the FairWear coalition for the work you have done over the last 10 years to try and improve the lot of women such as those here today and women acting on behalf of each other. I want to explore a couple of things. I understand that your concerns about the effect of the bill and your assertion that the bill will in fact increase the exploitation of people in this industry relate to two primary factors. The first is the fact that the award provisions in the relevant clothing award will not be continued because of the allowable matters issue and, more importantly perhaps, because the bill does allow an AWA to be entered into which basically removes all such entitlements and protections. Is that correct?

Ms Carstens—It would remove not only the entitlements and protections but also the monitoring mechanisms that would allow that whole supply chain that we have shown you there to be checked out to reach the point of establishing where people are not being paid properly.

Senator WONG—The second issue I understood you to have raised was the deeming provision issue. Can you explain that a bit? I have some understanding of that in South Australia. As I understand it, the primary problem is that there is an argument that an employer may put that an outworker is not an employee and therefore should not be given the benefit of the protection of award provisions. Can you tell us how the Work Choices bill as it currently stands removes the current protections in state laws for this group of workers?

Ms Delaney—What you have said is correct. If the deeming provisions are overridden by the Work Choices bill, if outworkers have a claim of underpayment or nonpayment it is our understanding that they would have to first prove they are employees in a court to then make a claim regarding their minimum conditions. It puts another hurdle in front of them. Also, the reality at present is that very few outworkers are willing to make individual claims. Lilian already mentioned that they are scared of going to court. It is very difficult in terms of money and the steps required to undertake that. But they have some assurance at the moment, because in most states in Australia they are deemed employees. So they know they have a legal right behind them. If that is removed, we believe there will be no chance for them to make those kinds of claims in the future.

Senator WONG—Can you explain in a little more detail why the provisions in the bill that relate to the restriction and engagement of independent contractors will worsen the position of women such as those here before us today?

Ms Fawcett—The restriction on independent contractors operates to restrict what can go in federal awards and what can go in state awards that get converted into notional federal agreements. The second category of regulation, which I outlined, is largely dependant on making conditions on and restricting the way in which an employer can contract, either to another subcontractor or to an outworker. The precise extent is a question of degree, but because the vast number of those protections relate to regulating the contractual change, which is in fact acknowledged in the department's submission to this inquiry, we are very concerned that it will have the effect of wiping out a large chunk of the monitoring and regulatory process that is in place.

Senator WONG—You refer in your submission to the Homeworkers Code of Practice, which I understand a previous Senate inquiry has endorsed as a policy mechanism. What would be the effect on the code if the bill goes through in its current form?

Ms Delaney—Currently the Homeworkers Code of Practice is a voluntary industry scheme. It is supported by the Retailers Association, each state's employer organisation and jointly with the Textile Clothing and Footwear Union. The role accepted by the industry is for the union to monitor the supply chain. There is an accreditation process—employers must provide evidence of their supply chain and that outworkers are getting the minimum requirements to meet an accreditation standard. We believe that if unions cannot access workplaces and the supply chain cannot be monitored, that will make that code, which has been in place since the Senate inquiry in 1997, ineffective. It would make it inoperable.

Senator WONG—If the bill goes through in its current form can you tell me whether you think the exploitation of the sorts of workers that we see before us today will get worse?

Ms Carstens—Outworkers are really concerned that it may become worse. They understand that the deeming provisions that are in state laws will be overruled by Work Choices and therefore they become independent contractors. They are very concerned that this legalising of the pay and conditions that they currently receive will lead to employers in this industry going further with the exploitation that is currently experienced.

Senator JOHNSTON—Ms Carstens, I want to assure you that we share your concerns. This committee has a long, and I think quite a proud, record of getting stuck into disreputable employers in this outworker field.

Ms Carstens—That is fantastic to hear.

Senator JOHNSTON—Can I follow up by asking Ms Nguyen who has advised her about Work Choices. How does she know about Work Choices?

Ms Nguyen—I know about Work Choices from community media.

Senator JOHNSTON—Is she currently employed?

Ms Nguyen—No.

Senator JOHNSTON—Is she aware of friends of hers who are currently employed as outworkers who are on less than $5 or are on $5 an hour?

Ms Nguyen—Yes.

Senator JOHNSTON—In which state does she live?

Ms Nguyen—I live in New South Wales.

Senator JOHNSTON—What are we doing about this, Ms Carstens and Ms Fawcett? This is not the future; this is now.

Ms Carstens—Sure. In December last year the New South Wales government announced the Ethical Clothing Trades Extended Responsibility Scheme. That came into force from 1 July this year. It requires all retailers in the clothing industry who are not part of the voluntary code of practice to provide the New South Wales Office of Industrial Relations and the Textile Clothing and Footwear Union with all of their supply chain information in terms of where

they are giving out work, what quantities they are giving out, what price and so on—a lot of commercial contract information. The union needs this information to add to the information they have from other monitoring mechanisms that exist to be able to say to the fashion houses, subcontractors and other people in that chain that you have in front of you, 'We know that you are not telling us the truth when you tell us that you have five employees doing all your work.'

As a result of that information they are now able to pursue that down the clothing contracting chain. The Office of Industrial Relations in New South Wales and the Textile, Clothing and Footwear Union since 1 July have been very active, within the limit of their resources, in pursuing these contracting chains. In Victoria the government has made a promise of a mandatory code and the framework is there. I am not sure when that is expected to be introduced. I understand that in South Australia and Queensland the state laws that were introduced this year also allow for this kind of monitoring mechanism to be introduced, but they have not done it. They are in the process of developing them. The South Australian and Queensland legislation will be completely overruled by the Work Choices bill, so those mechanisms will actually not get to exist. In Victoria and New South Wales it is as yet ambiguous as to whether Work Choices overrules this completely or just undermines the monitoring mechanisms, as Kathryn outlined.

Senator JOHNSTON—It is all very well for the unions to come in here time and time again and tell us about these grandiose state schemes that were put in place last July. We hear stories like the ones we have heard today. We have been hearing these for five or 10 years. I ask myself: what are we doing in terms of resourcing inspectorates? The Commonwealth is not going to resource inspectors. The Commonwealth is not going to go into the workplaces. The Commonwealth deals with rates of pay and things like that. But the inspection—

Senator GEORGE CAMPBELL—Hang on, the minister has announced he is going to appoint 200 inspectors!

Senator JOHNSTON—that you say is taking place now should have been going on for a very long time and nothing has happened, and you blame the Commonwealth.

Senator GEORGE CAMPBELL—What are you talking about?

Ms Delaney—I do not think anyone is just blaming the Commonwealth. I think we are making the point that it is a complex issue. Many of us in last 10 years have been involved in and part of building up these initiatives. What we are saying is that there are awards, there is state legislation and there is a voluntary scheme. The reason that those mechanisms finally got in place is that they complement and support each other to try to actually lift the standard in industry. We are talking about lifting the standard marginally closer to the minimum rate. We are not even talking about getting to the minimum rate yet. We are saying that, if people were getting near $10 an hour, we would be celebrating in Australia because they are a long way below that.

Senator JOHNSTON—We will take your concerns to the department.

Senator BARNETT—Just to clarify, the government's plans under Work Choices is to double the inspectorates in the Office of Workplace Services from 92 to some 200. I just want to assure Ms Carstens and all of the witnesses here today that the evidence you have raised

with us is very concerning, particularly that from Ms Chong. Clearly, in my view, it appears that it is contrary to the law. There is a breach of the current law. We are not talking about Work Choices; we are talking about the current law. This is unacceptable and it needs to be dealt with. We will certainly pursue it.

Ms Carstens—Thank you. I think that the additional inspectorate is very good news. We also hope that that inspectorate will be actively involved in going out and pursuing these supply chains because, as the outworkers have indicated to you, outworkers are unlikely to come forward and seek individual support because they are very fearful. They will need proactive activity from the government inspectors to address this problem.

Senator MURRAY—I will remind those of you who do not know it that I am the person who got outworkers into legislation and protected for the first time in the history of Commonwealth legislation. So I have a long history of concern. The difficulty is translating your problems into legal protections. As you know, your main problem is that your people are dealt with in a criminal fashion. It has long been against the law to pay and treat people this way under any law. I will do what I can to try to persuade the government to take into account your submissions and representations.

Ms Carstens—Thank you.

Ms Delaney—Thank you, we really appreciate that.

Senator SIEWERT—Today you outlined very quickly the amendments you want to see. Are you able to provide quite detailed amendments?

Ms Carstens—Our submission includes two pages of an outline of what we would like to see included in a new section of the bill, so that forms the basis of our recommendation. If you want us to prepare a detailed, word-for-word document on what that amendment would look like, we are prepared to spend the time doing that.

Senator SIEWERT—My concern is that you have really had only a week to look at the bill. The detail of the bill could have a lot of unintended consequences that, in the time given, you have not been able to articulate here. I do not think it is necessarily your job to go through and spell out the amendments, but if you still have issues that you find you have not raised you should get them in pretty quickly, because I suspect there are probably other things there as well.

Ms Carstens—Thank you for that opportunity. The concept of a new section of the bill that overrides inconsistencies throughout the rest of the bill is probably the simplest way of dealing with that; hence our recommendation in that direction.

Senator SIEWERT—I agree with you.

CHAIR—Thank you, and thank you very much for appearing before us today. We appreciate it very much.

Senator GEORGE CAMPBELL—I do not want to raise a question, just an issue. At the end of your submission you have some proposed areas that you think ought to be altered. Have you looked specifically at the bill and at drafting specific changes you think will cover your situation? We are meeting with the department on Friday, and it would be useful to have

what you think is necessary in order to protect the rights of outworkers. Even if it is rough, at least it would be something we could pass over.

Ms Fawcett—Senator Siewert has identified exactly the issue—that the bill is long and dense and that we have had it for a very short time. In some ways our proposal is a statement of intention rather than any particular amendments. We have had the chance to analyse the bill in a reasonable amount of detail so we could at least identify the provisions that are a problem.

Senator GEORGE CAMPBELL—Would you do that and fax it to one of us or to the chair of the committee.

Ms Delaney—We would appreciate that opportunity.

CHAIR—Thank you very much.

Committee adjourned at 5.16 pm