

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

**INQUIRY INTO THE IMPACT OF COMMONWEALTH
WORKCHOICES LEGISLATION**

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At Sydney on Tuesday 18 July 2006

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. J. C. Burnswoods (Chair)

The Hon. Dr A. Chesterfield-Evans

The Hon. K. F. Griffin

The Hon. C. J. S. Lynn

The Hon. R. M. Parker

The Hon. I. W. West

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KRISTY RICHELLE DELANEY, Executive Officer, Youth Action Policy Association, 146 Devonshire Street, Surry Hills, and

JOHN CARL FERGUSON, Policy and Training Officer, Youth Action Policy Association, 146 Devonshire Street, Surry Hills, sworn and examined:

CHAIR: We have a submission. Would you like to make an opening statement about your submission or other things? Then we can ask some questions.

Mr FERGUSON: I would like to make a brief opening statement that supports our submission. A lot of the details that we will talk about will come out through the questions, hopefully, for us. I want to start by going through some of the general principles that we believe in and that guide our work and our response to this issue. We believe that young people in their work should benefit from their work not only financially but in their lives overall. They should be able to do this in a safe and supportive atmosphere, and their work during these years should give them the experience, knowledge and confidence to enable them to function successfully in the work force throughout their lives.

Generally speaking, we feel that WorkChoices goes against these principles for young people and places them at further risk of exploitation, harassment and injury. Finally, I think it is becoming increasingly the case that young people are just viewed as simplistic tools, only available as a means to an end in the economic system without regard for their actual wellbeing and what is best for them during this time.

CHAIR: You mentioned the importance of regarding people not only as workers but also of having regard to the rest of their lives. Can you expand on that a bit and how you see WorkChoices impacting on that for young people?

Mr FERGUSON: From our survey that we have submitted as part of the submission—we will talk about that later—when we asked young people what they value the most about being in the work force or being in a job, there were two things clearly above all others. We had nine or 10 options, and the two options that came out above all the rest were rate of pay, which is understandable for all of us, and, maybe surprisingly, having a friendly workplace atmosphere. I think that is indicative of how young people see their work as well. They do it for money, and it is important for them to earn some income, but it is also part of their social development. They hope that their work is enjoyable, and they make a lot of friends through their work. With WorkChoices and with what I would assume to be an overall reduction in pay and conditions that may result from this legislation, I would see a lot of those things being put in jeopardy—longer hours, greater stress, greater risk of injury and these sorts of things. That is not what is best for young people.

The Hon. KAYEE GRIFFIN: In connection with training for young people and apprenticeships, do you have some comments about issues in relation to the lack of training and the issue of apprenticeships? You may or may not wish to comment on the guest worker visas.

Mr FERGUSON: Maybe not but I would like to comment on traineeships and apprenticeships. As we all know, we have a skills shortage. Looking at the available statistics, we see that each year even in this State we have a larger number of young people starting these traineeships or apprenticeships, and two years down the track a lot of them are dropping out. So by the end of it we only have maybe about 50 per cent completing their traineeships and apprenticeships. That is a problem overall. One of my reactions to this legislation would be in terms of how we can protect young people through traineeships and apprenticeships. Again, one of our findings in the survey was that young people felt that one of the only things that would give them power in negotiations is to have a specific skill that they could offer the employer. I see things like traineeships and apprenticeships as giving young people some actual power in this and giving them some safeguard against being taken advantage of and that sort of thing. Not only should we be encouraging young people more into traineeships and apprenticeships and making sure we encourage them to complete those in general but also in relation to this legislation I think it will offer great protection for young people as well.

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The Hon. KAYEE GRIFFIN: I have two questions in relation to that. First, you said that probably 50 per cent of young people who went into traineeships and apprenticeships did not complete them. So the first question would be: what are some of the reasons why they do not complete traineeships or apprenticeships. The second question is: Have you had comments from young people in relation to having to negotiate directly with an employer without some form of assistance, either just to give them information or just to look at whether it is an AWA or what they are being offered in terms of conditions of employment?

Mr FERGUSON: Firstly, I think one of the main reasons why young people are dropping out of these traineeships and apprenticeships, from our research and from our general comments through youth workers or young people, is that the rate of pay that some of these people are working on is really low. I had a young woman write to me recently and say that basically she was doing a child care traineeship, which is something she was very passionate about and wanted to do as a career—it is not just a job to her; it is a career option. The pay she was experiencing was so low—she was living by herself, she had a lot of financial commitments—and she was pretty much having to leave that traineeship to go to work, I think it was somewhere like Woolworths because the pay was a little better for her. I see that as a perfect example that some young people are choosing jobs that may be more beneficial in the short term because the pay is a little better, because in these traineeships and apprenticeships they are so low. That would be my response to the first question.

Ms DELANEY: On that financial issue, I think there are other financial implications of being in a traineeship or an apprenticeship. One is the cost of TAFE fees, which have steeply increased over the past couple of years. A lot of young people simply cannot afford to pay their TAFE fees to complete their traineeships and apprenticeships. The other issue is around concession fares. On government buses you can get a concession fare but on private buses you do not get any concession if you are an apprentice or a trainee. Basically, all those young people who are outside the Sydney and Newcastle areas have to pay full fare for their transport to get to and from work even though they are on a wage that might be \$250 a week before tax.

The Hon. IAN WEST: I assume, just going on from that, where the TAFE is situated would have a large bearing as well.

Mr FERGUSON: That is right.

The Hon. IAN WEST: The ability to take up an apprenticeship.

Ms DELANEY: That is right, and particularly in some of the smaller rural communities a lot of young people are saying that they intend to leave that community to pursue more employment or training opportunities. It is a real struggle for a lot of young people.

CHAIR: Someone at Penrith yesterday mentioned that they had to go to the Ultimo TAFE to do their course. Ultimo is a fair way away from Penrith.

Mr FERGUSON: It is.

The Hon. IAN WEST: And on many occasions that means that they have to live away from home, which means more costs, et cetera.

Mr FERGUSON: My general impression is that this will be very detrimental to young people, but in particular it will be even worse for young people in rural areas. Coming back to your second question, what we have received from young people is that they do most of these negotiations on their own. There is not much support. They do not seem to have many people supporting them or offering them advice. Something I may as well mention now is that in Queensland they have a young workers advisory service, which has been going for quite a few years and is very successful. I want to talk about labour—I will just quickly mention that now.

CHAIR: That is one of the two recommendations you made.

Mr FERGUSON: Yes, it was, for New South Wales. The young people we have spoken to would appreciate this sort of service. They talk to young people or help young people with

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employment contracts, unfair dismissals, discrimination at work, workplace bullying, apprenticeships, harassment, workplace bargaining and occupational health and safety. So when we mentioned to young people that this service is not currently in New South Wales and would that be beneficial, the young people sort of thought that it would be because at the moment they are doing a lot of these negotiations on their own.

Ms DELANEY: A lot of young people are not really sure where to go for advice because a lot of these young people are not in a union. If you look at the research, for example, the Commission for Children and Youth People and the Office of Industrial Relations did a lot of research about young people and work and they asked young people where they would go for information about whether their boss is doing the right thing and overall the largest place they went to was their boss. I think for a lot of young people just being able to ask someone, "Is this right? Am I required to do this", they actually need someone to speak to and that is where an advisory service is really useful. If their employer is doing the right thing they can say, "Yes, that is right. That is what you actually need to do" but if something is going wrong, they can get some support to address that issue.

The Hon. KAYEE GRIFFIN: So they are relying on information from their current employer, who may or may not be telling them what their rights and responsibilities are?

Mr FERGUSON: Yes, what is fair.

Ms DELANEY: Yes. Some of the research talks about the fact that 12 per cent of young people have done unpaid work trials and they are not supposed to be doing that in New South Wales. If a young person asks the boss if they should be working in that kind of capacity, and they say, "yes", they are just going to take the word of their boss.

The Hon. KAYEE GRIFFIN: I have anecdotal evidence of young people applying for jobs and having been tested supposedly as work experience to see they can do the job and that becomes unpaid work for a day or even longer. Do you have evidence of that?

Mr FERGUSON: Not on that particular issue, no.

Ms DELANEY: We have some research at work on that.

CHAIR: Can you take that question on notice and get back to us.

Ms DELANEY: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There has been a user-pays type system in all education that has hit youth particularly hard. One now must pay for university and TAFE is more expensive and you cannot get HECS for TAFE?

Mr FERGUSON: No.

CHAIR: The Federal Government is talking about extending HECS to TAFE.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But it has not done so yet.

Ms DELANEY: We have a situation already where a lot of young people from poorer backgrounds will not go to university because they will no longer be able to pay off the fee, not when they are supporting other members of their family, and unfortunately what we have seen in the New South Wales TAFE system over the last couple of years is that the fees have rapidly increased so that a lot of young people not only cannot afford to go to university, they cannot afford to go to TAFE either and that is a big shame because those young people are being pushed into the lower paid jobs that do not have a career outcome to them.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Previously there were jobs that paid you as you learnt, such as nursing and various apprenticeships. The Government had 150 apprentices at Sydney Water but it simply closed the apprenticeship school. Has that been a universal trend? Do

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the big government utilities train apprentices still? What training schemes are run by significant employers?

Ms DELANEY: I do not know the answer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are there fewer now?

Mr FERGUSON: I would not be able to comment regarding the government departments.

CHAIR: We can get the figures from the Department of Commerce, if necessary. It fluctuates. RailCorp has introduced new apprenticeships recently because of a shortage of skills and making a clause in contracts but to get a global picture we would have to go to the government agencies.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I think we should go to the major quangos and ask them. I know that Sydney Water for no apparent reason shut its apprentice training school. I do not know whether Elcom did as well.

CHAIR: Part of it is what used to be called creeping credentialism; everything that used to work that way got replaced by university degrees followed by on-the-job training and experience.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Nursing became a university course instead of on-the-job experience.

CHAIR: We are showing our age. You were not born when nurses went into hospitals and lived in and trained on the job.

Ms DELANEY: The other thing that has really changed over the past 20 to 30 years has been the step from school to work. We had a situation where the majority of young people finished school and were not really working very much during school and then went into a full-time job. That is not the employment market that we have at the moment. More and more young people are combining school and work and then combining further study and work or being in casual and part time work. For young people there has been a rapid increase in the jobs that are available; they are more casual and part time. Again you do not get that on-the-job training if you are between a couple of different casual jobs because you are constantly moving from employer to employer.

CHAIR: I was struck by the figures in your survey. For instance of the question: "At the same time as your current or last job are you" and the first one is "at school" and the figure is 43.8 per cent.

Mr FERGUSON: That is right.

CHAIR: The days when people went to school and did not have a job as well, and then you continue "full-time TAFE, uni, 21 per cent, part time TAFE uni, 14 per cent". Something like 80 per cent of people in your survey are working whilst studying?

Mr FERGUSON: That is right.

Ms DELANEY: It is not really an option of study or work; for a lot of young people it is a combination. For young people that are at school I think the number of young people combining school with work has doubled over the last decade and for young adults it has tripled. It is a lot of pressure on people, particularly if they are doing full-time study, to also support themselves as well at the same time and of course if they are being paid low wages they have to work longer and longer hours to support themselves in that study.

Mr FERGUSON: Which means it has an effect on their school lives as well, so this is where it branches out into their long-term future as well because it will be a detriment to their education.

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The Hon. IAN WEST: Therefore, in the negotiation process, if there is any such thing—and whatever that word might mean—it is not top of their priority whether or not they get 9 per cent or 15 per cent superannuation?

Mr FERGUSON: That is right. It is really important to know, when we have been discussing with people and people have been talking to us about these issues, that there are some young people who are supported by mum and dad at home and their casual job may not be that critical but a large number of young people are dependent on every dollar they earn and they have to do this work. For some of them it is not a choice. They might be living by themselves or supporting mum or a sister and they are dependent on every dollar. If we are going to force them to work longer hours because they need this money and they need to make financial commitments, they will be going to school less or they will be less attentive at school. They need this money. It does have an overall effect.

The Hon. IAN WEST: You mentioned two issues that were most prominent in the minds of young people when going for a job: The hourly rate of pay and a friendly workplace. In terms of a friendly workplace, is there any discussion that you are aware of with respect to the ability to get remedies to issues that arise other than pay and conditions, such as occupational health and safety, a difficulty in the workplace with a workmate, et cetera.

Ms DELANEY: In terms of occupational health and safety a lot of people in the workplace take for granted occupational health and safety. When they start a new job they are the kinds of things they looked out for; they ask their employer about safety precautions and risk. Young people, because it is not built into the school curriculum enough, it is not practised at school in a practical way, they go into the workplace and they will follow instructions and take risk because they want to perform well in their jobs. Even things like lifting procedures, for example, they will do whatever it takes to get the job done and they do not have a good awareness of occupational health and safety. If you look at the statistics of who is actually injured in the workplace, young workers are overrepresented in those statistics.

The Hon. IAN WEST: In terms of the negotiation process, whatever that word might mean in the eyes of the beholder, because they have little or no knowledge, where is it expected that they obtain that knowledge?

Ms DELANEY: What we really need to do is to look at it in the school curriculum so that young people, before they even enter the workplace, have some awareness of the principles and what they should be doing. At the moment I do not think young people are negotiating around some of those things because they are just not aware.

Mr FERGUSON: It is almost unexpected that there are expectations of getting education by the boss about occupational health and safety and that sort of thing. I do not think there is an expectation in the first instance.

The Hon. IAN WEST: Do you think they have any comprehension of just how weak their position is in terms of the bargaining process, or do they go into the process of negotiating with the employer with a concept that they are equal partners in this process?

Mr FERGUSON: I think they are starting to become more and more aware. We do not have research of this kind from six years ago but, as there are more media and we are talking about it and other services you spoke to yesterday, they are learning more and more how weak they are becoming, particularly now. I also want to comment on the interaction between the welfare work legislation and WorkChoices. I think that is extremely dangerous. You made me think about it when you said, "Are they aware?" I think the young people in the welfare system are going to become more and more aware of how weak they really are when they may be unemployed and if they are offered a suitable, whatever that is, job they would realise how weak they really are. Even if they know it is not great, if it is deemed suitable they have to take it or they face financial penalties. Similarly, when these young people, who are aware of the new welfare system, are in the job if they are experiencing harassment or exploitation, or maybe they are not confident enough to speak up on a lot of these issues, which is something else we found, and they do not have someone to support them if they leave the job they would know that if they leave the job of their own volition they may again face financial penalties.

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Again, the awareness of the weak bargaining position will be ever increasing, particularly for young people relating to the welfare system.

The Hon. IAN WEST: In terms of additional weakness is there any talk about gender pay issues?

Ms DELANEY: I really believe that young women are going to be the most disadvantaged in the situation. I think we still have that socialisation happening where young women are not taught to be assertive enough. At the moment a lot of young people are on the award system and at least they know they are being paid the same amount as the person next to them who is doing the same job. But if people have to negotiate, a lot of young women will just accept what is offered and be grateful to have a job. I think young men will be in a better position to negotiate, when that is possible. If you look at research coming out at the moment, women are still earning only 85 per cent of the income that men earn, and that is true for every single occupation. That is the situation now, and it is only going to get worse.

CHAIR: I notice your survey suggests that 21 per cent of people are members of a union and a very high 29.5 per cent are not sure, which is a bit of a worry. I suppose the figures reflect the general drop in union membership over the years, but even more so. In terms of their bargaining position it means that young people are even more vulnerable than older workers. If you look at who they can turn to and what sort of skills and experience they have, the answer is that there really are not many options for them.

Mr FERGUSON: That is right. Over the past few years when talking to young people through youth work or through this work, I have been really surprised by their perceptions of the unions. Maybe it represents the overall perception, but four or five years ago or more young people said that unions are a good thing or whatever, but now young people say to me that they are not good for you because they take advantage. I assume that some of the employers and bosses are saying these things, but I have been surprised in the past two years to hear young people say more negative things about unions, which is difficult.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Why do you think they are negative about unions? Do you think it is a media perception or do you think it is the boss saying, "If you are in a union, you get the bullet", or do you think that unions are seen as taking your fee and not helping you when you are in a jam?

Mr FERGUSON: I think it is all of that. I do not want to put bosses and employers down too much, but I think a lot of that is happening, that unions only cause a hassle and, particularly in sectors like the building sector, the employer-employee relationship is, "You are my mate. I'll take care of you. You do not need them." I think there is a lot of that going on because I do not think employers necessarily want unions involved and they do not want their staff in unions. I think it comes from a lot of places—all those places you just mentioned—but I have been really surprised that the perception is turning around.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You think that it is getting worse, that the attitude to unions is getting more negative or less negative?

Mr FERGUSON: I think it is getting more negative.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In the last five years?

Mr FERGUSON: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is a perception. You have not done a survey to produce that opinion? It is an anecdotal observation?

Mr FERGUSON: Yes. I should make that clear.

Ms DELANEY: But if you look at the community there seems to be a real push that everyone looks after themselves and this notion that it is not about community or assisting each other,

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it is every man for himself in a way. I think that has shown up in people's attitudes towards unions. They are being fed a message that you just do it the best for yourself and you do not necessarily worry about other people.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You think there has been a selling of that ethos by certain groups?

Ms DELANEY: I think the Federal Government particularly has been pushing the right of individuals to get on with their own thing. That has come particularly from the Federal Government and it has come particularly through the media.

CHAIR: Somewhat to my surprise you have 46 per cent of people in jobs where the employer at all branches has fewer than 20 employees. You say that from what you can check your survey reflects patterns fairly accurately. That came as a surprise to me because I suppose there is a perception that young people, particularly those still at school and the younger ones post school, work in some of the large retail chains or the large food outlets. Do you have any comment on that? Are they family businesses, given that retail and hospitality have been revealed as the biggest employers? Where are young people working? In relation to a fair dismissal and so on, I presume that the smaller the outfit the more vulnerable they may be.

Mr FERGUSON: That is right. I grew up in country New South Wales and particularly for all those young people there are fewer and fewer big organisations. In a town it would be family-run cafes, locally owned businesses and that sort of thing. But out in the country areas I think that is the case. There will always be young people working for the bigger organisations—McDonalds, KFC and so on—but a lot of young people are working in cafes and these businesses that are small.

CHAIR: And where union representation would be non-existent in most cases?

Mr FERGUSON: Yes, I think so.

The Hon. IAN WEST: The ethos of the individual has developed in cousin countries such as America and Britain. When I look at England from 1987 through until now that ethos is becoming stronger and stronger. Do you find that loyalties by the employer and employee also are changing, that they are becoming loose and looser and more individualistic?

Mr FERGUSON: Yes, I do think so.

Ms DELANEY: I think we are looking at the fact that a lot of the work that is available is casual employment. It is not necessarily that young people do not want to make that commitment, but if the only opportunities they have to work are casual they will not stay around in that workplace for a long time so, of course, they will not feel as loyal as someone who has a permanent, full-time job.

The Hon. IAN WEST: But not only loyalty in terms of longevity, but in terms of the actual job they do, are you finding that they are not as enthusiastic or that they do the amount of work they feel corresponds with the amount of pay they get?

Mr FERGUSON: I think the ethos thing is important. I did some consultation in rural New South Wales over January and I was talking to some people in the Young, Gundagai and Temora area, and when I asked questions around this ethos they said how blown away they were that young people said the most important thing to them for society was that the economy was going well. I will not get into economics because I am not an economist, but they were really surprised that young people were not mentioning things like health or education, things that represent the greater good, if I can say that, but as long as the economy was strong that is what mattered, that was more important than health and education. I think that is now the big ethos that is growing, individualism and this sort of thing.

The Hon. IAN WEST: It may be a reflection of just how powerful the box in the corner of the lounge room might be.

CHAIR: Could we discuss your second recommendation about the WorkChoices legislation and your suggestion that workers under the age of 20, presumably because you would regard them as

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particularly vulnerable, should not be forced into an individual work contract? Yesterday the Hon. Dr Arthur Chesterfield-Evans initiated this discussion with the South Penrith Youth and Neighbourhood people, so he may want to take up some of that. Could you expand on your recommendation and why you chose 20?

Mr FERGUSON: It was difficult to choose the age after the survey. The age of 20 seemed logical, 19 or 18 would also be logical, but there was something about giving young people enough time and how important it was to give young people time in the work force to be excluded from these things. That was the main reason why we pushed for 20. I think that any protection would be valuable. If it came down to 19 or 18 I would not be that upset, but our impression with these initial discussions was that 20 would give young people enough time. Some young people start work at 14 and 9 months, some start at 16 and some start at 17. It was more about making sure they had enough time to gain knowledge of and experience in the work force before they were fed to the sharks.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you protect people up to 20 with wages and conditions, which is what you are asking, if they get a better deal at 20 than someone is going to get at 21 will not all the 21-year-olds get the jobs? Will you not institutionalise disadvantage because you have made the under 20s more expensive? You cannot protect one group, whether they be young people, old people or middle-aged people. If you have one group that is getting a better deal and the employers are looking for a cheap deal then you disadvantage them, do you not?

Mr FERGUSON: Possibly. When we have awards and this sort of thing, young people can still negotiate up. Some young people can negotiate up and they can use those skills to get more value. In terms of disadvantaging and entrenching a disadvantaged group who wants to break that barrier, I would think that may be a small price to pay. Young people at 15, 16, 17 and so on would be greatly disadvantaged by the legislation. We have spoken already about injury, exploitation and harassment, and I see those things only increasing. If that is the price to pay when they break the barrier at 20 versus 21, I would think that is better for young people overall than putting them through at 15 or 16.

CHAIR: In the major awards we are talking about, most of them still have a youth wage. Where do the major cut-offs occur? Where does the adult wage cut in? Traditionally certain employers have favoured young workers because they are literally cheaper.

Ms DELANEY: I could not comment on all the awards. I know that there are differences between the awards. There is no standard of when you stop being a junior employee. We already have a system that is unfair. The assumption is that if someone is younger they need more training, but you do not need a whole lot of training to say, "Do you want fries with that?" and to be paid a lesser wage for four years. You have some training, but the whole system of junior wages can get a lot of young people into a lot of disadvantage, especially young people who are living independently at the moment. However, I could not comment on the different awards or where the cut-off is at the moment.

CHAIR: It is relevant to the question asked by the Hon. Dr Arthur Chesterfield-Evans relating to the competitive principle. If younger people were on lower pay it would be in an employer's interest to employ them.

The Hon. IAN WEST: Has any thought been given to the fact that any system that is instituted has to have a process of remedy? Are young people aware of the time involved in evolving a process in which they are able to negotiate but more so to receive a remedy? Are they aware that irrespective of the rates of pay they supposedly have legally unless it is enforced and they are able to get a remedy it is not worth the paper it is written on? Are they aware of those things?

Mr FERGUSON: No, a lot of them would not be. Referring to that comment about talking to their boss, I think there is a great unawareness about a lot of these issues. If they think that is what they deserve that is what they will take.

The Hon. IAN WEST: They think it will just jump out of the woodwork. They go into their boss and say, "Excuse me, I am entitled to another \$20 a week", and the boss says, "That is a good idea, John, I will give it to you." Is that what they think will happen?

Mr FERGUSON: Yes.

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The Hon. KAYEE GRIFFIN: You said earlier that they relied on information their current employer gave them. Apart from issues that are currently in awards—and occupational health and safety is an example—let us say that an employee has a number of responsibilities. Do employees understand that as part of being in a workplace they have responsibilities? Do they know where to get that information? Are relying on their current employers to provide them with information about their responsibilities, as that information might be lacking? Do young people have an understanding of that?

Mr FERGUSON: Anecdotally, I would definitely say not. Again there is that unawareness. Perhaps a small percentage have that awareness, but that might have come from parents or someone else who said, "Do you know that you have rights and responsibilities regarding occupational health and safety?" The vast majority would not. When you come into a workplace you just want a job and a few dollars. They would not expect that; they would not know.

The Hon. KAYEE GRIFFIN: Clearly those are the sorts of issues an employer would use, for instance, to dismiss someone. If they are not aware of their rights and responsibilities obviously their employers are supposed to tell them. All this information is included as part of an award system, regulations and so on. Clearly, from an older person's point of view, if young people are not aware of their responsibilities, unscrupulous employers could use that to dismiss them, for whatever reason.

Mr FERGUSON: That is right. I agree.

The Hon. KAYEE GRIFFIN: Another factor that is missing relates not just to what you are eligible to receive as an employee but also to what are your responsibilities.

Mr FERGUSON: Occupational health and safety is an excellent example. The service up in Queensland provides other things that are currently lacking in New South Wales. I would put harassment into the same category.

Ms DELANEY: Young people face a lot of harassment. We have heard a lot about what happens in apprenticeships. A lot of that has reduced over the last few years because there has been a lot of awareness about initiation ceremonies and so on. But research is still showing that an awful lot of people are being harassed at work by customers, employers, or fellow workers. A lot of young people have not been taught what to do about that. If they have a supportive boss they can take steps to address that issue, but if their boss is not supportive a lot of them do not know where to go to solve those issues.

The Hon. IAN WEST: You are saying that they have no comprehension that cost-effective access to a quick remedy through an industrial commission with an independent umpire is no longer an option. Do they understand that they now have to go to the common law remedy, which is extremely expensive and time consuming? Do they have any comprehension of that?

Ms DELANEY: I do not think they understand that.

The Hon. IAN WEST: Do they think that a remedy will just appear before them?

Ms DELANEY: I think at the moment people go to their bosses or to their friends to try to work out a situation. They will put up with harassment if they are leaving a job and they cannot get another one. It has come through in the surveys as well that if things are not working out at work people will leave their job. I do not think a lot of young people think about outside services that can assist them with that.

The Hon. IAN WEST: Are you saying that, for good of the economy, they would take lesser pay or leave their job if their bosses said there was a problem in the workplace? For the good of the economy they would leave and go?

Ms DELANEY: John might be able to tell you what the survey said about what people would do if they were unhappy with their pay and conditions.

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CHAIR: I was struck by the last paragraph of your summary, "Young people are considerably more likely to put up with poor pay and conditions, 77 per cent, than simply quit and look for another job, 22 per cent." Is that true across all geographic locations? It is an astounding statistic of passivity, confusion, or lack of knowledge.

Mr FERGUSON: It is. In response to some of the proponents of the legislation people undertaking the survey said that when they were asked whether someone was not happy with the pay and conditions their response would be, "Just leave and get another job." Just from our general understanding of young people and work we know that it is not that simple. That is why that question was in the survey. I did not think it would be that high either, but it really shows that young people need the money and they stay and put up with this. I think their answers were that they would stay until they had more education and more training. So they would not just leave, particularly if they were part of the welfare system. But they do need that money. These young people are not just doing it on the side for some pocket money; they need the money and they will put up with poor pay and conditions and other negative aspects until they get enough skills or training to move on. They will put up with these negative situations.

Ms DELANEY: If you need to pay the rent you will keep working; you will not give up your job. We need to be clear about the assumptions.

CHAIR: You can look for another job quietly without giving up your job. Does that show a set of attitudes, does it show a perception of the job market as it is pretty hard to find alternatives, or does it show a bit of despair about local jobs being any better? There seems to be a lot behind what struck me as an amazing statistic.

Ms DELANEY: I think it is really hard for a lot of young people to get work in particular because some regions have a higher unemployment rate than others. We still have a youth unemployment rate that is three times higher than the average. So it is even more difficult for young people to find other work. A lot of young people are out there looking for work. For the past 10 or 15 years we have had a lot of comments about dole bludgers and all types of things. I disagree with the basic image that is given to the community that young people do not want to work. Young people do want to work but there are not enough jobs for them.

I think a lot of young people will not leave because they cannot get another job; they are grateful for the job they have. Even if they are looking for another position there is no guarantee they will get one. There is no guarantee that things will be better in a new job, particularly for people working, for example, in customer service industries. If they are not taught how to deal with customers having a go at them and they go to another position where they have to deal with customers and they still do not have that training, they are faced with the same situation.

The Hon. IAN WEST: Do you think young people have a comprehension about what is good for the economy, that is, good pay and conditions and a fair workplace for them and not just a 16 per cent return on their superannuation?

Mr FERGUSON: I think the majority of young people do not necessarily think about the overall economy in their jobs, but they do want a good rate of pay and a positive workplace to work in. If we directly ask them, "What is better for the economy?" maybe we would get some results. I really do not think a lot of young people think, "Should I take lower pay so my boss can create more jobs? Is that better for the overall economy?" I do not know whether they think like that. They think more about what is better for them, what is their rate of pay and whether they have a friendly workplace.

The Hon. IAN WEST: Hopefully they believe that their rate of pay and a friendly workplace form part of a good economy.

Mr FERGUSON: Yes.

CHAIR: To what extent did your findings reveal that the young people about whom we are talking regarded the jobs they were in as a temporary stage of their lives? They and their family

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needed the income but they were still at school, TAFE, university, or whatever. Does that encourage them to put up with more because they do not see it as a job for life?

Mr FERGUSON: Yes.

CHAIR: They do not see it as the industry, the company, or the boss that they are going to stay with for life? Is there a different set of attitudes between 22-year-olds and 25-year-olds?

Mr FERGUSON: Yes. There is a big attitudinal difference between when you are a full-time employee to when you are part-time or casual. You are that much more removed from the business or the organisation and your attitudes might be a little more like that. You might be willing to put up with more. With the high rates of casualisation you might feel that you deserve less and that you should not complain about those sorts of things because you might be removed. Whereas I think the majority of young people who are in full-time positions would have more confidence. I know from my experience that there is a huge attitudinal difference between what you expect when you are a full-time employee and what you expect when you are casual. People are more likely to put up with these things and they are less likely to ask for the things that they would be entitled to.

Ms DELANEY: There is a general community attitude that young people are just working for a bit of pocket money. For a lot of young people who are not studying that there sole income. It is not good enough to tell those young people to put up with lower pay and conditions. They need to receive enough money to be able to live from that income.

CHAIR: I do not think we asked any of our specific questions but we have probably covered most things. Is there anything you would like to cover that we have missed? We also invite you to tell us what you want to see come out of this inquiry.

Mr FERGUSON: I think we have covered the major things that we wanted to talk about. We want to see come out of this inquiry the things we have already discussed—the New South Wales young workers advisory service, more awareness of these issues, maybe through the school curriculum or through careers advisers so that young people have an expectation and more awareness when they enter the work force. Just to reiterate what I said earlier, as not all young people can go to university, it is great to get young people into traineeships and apprenticeships and to ensure that they complete them. That gives young people an inherent and implicit safety net. It gives them a specific skill that they need. I think that is a great way to protect them from WorkChoices, not only for their own benefit through work, but also in relation to this legislation. Traineeships and apprenticeships is a great way.

CHAIR: Obviously you would include your second recommendation about excluding young people from the ambit of the new system?

Mr FERGUSON: That is right.

The Hon. ROBYN PARKER I congratulate both of you on your presentation today. I have sat through a lot of inquiries and you are great representatives for young people. I do not necessarily agree with all your recommendations but your presentation to this inquiry was carried out in a balanced and considered way. All power to you and keep on doing what you have been doing on behalf of young people.

Mr FERGUSON: Thank you. It has been nerve wracking but it has been enjoyable.

CHAIR: You are also taking on notice one question. Thank you for your submission, for your evidence today and for volunteering to supply that information.

The Hon. IAN WEST: Could we have a quick comment about injured workers?

CHAIR: Yes. That is an area we missed. We talked about occupational health and safety.

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The Hon. IAN WEST: I am extremely concerned about the effect of an injury on casual or part-time workers and the ongoing effects of an injury on such workers, particularly the young. Do you have any experience of that?

Mr FERGUSON: Is it possible to take that question on notice as well? We could provide a much better response.

CHAIR: Yes. Thank you very much for your attendance this morning.

Mr FERGUSON: Thank you for the opportunity.

(The witnesses withdrew)

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DAVID JOHN GIBSON, Workplace Solutions, Local Government and Shires Associations, 28 Margaret Street, Sydney, and

GREGORY PATRICK GOLLEDGE, Industrial Officer, United Services Union, Level 7, 321 Pitt Street, Sydney, sworn and examined:

LYN FRASER, Research officer, United Services Union, Level 7, 321 Pitt Street, Sydney, affirmed and examined:

CHAIR: We have received your submissions. Are you happy for any of you to respond to our questions or should we get responses from both organisations? Can we do it together rather than focus on the view of the associations or the union?

Mr GIBSON: I am happy to do it together but it might be better if you get views from both organisations.

CHAIR: Where necessary make it clear if you have a difference or, indeed, that you agree.

Mr GIBSON: Yes.

CHAIR: Would you like to make an opening statement?

Mr GIBSON: Perhaps I could lead. I have some more information, which I would like to tender to the inquiry.

CHAIR: Yes. The Committee accepts the tendered documents.

Mr GIBSON: I will briefly go through a bit of the history of the introduction of WorkChoices in local government today. I know some of the specific questions that you have asked us to address can be applied more generally to industry.

CHAIR: We have given all of our witnesses basically the same questions. They more or less reflect the terms of reference. Some are more relevant to particular organisations but we have gone through the terms of reference and put them all in.

Mr GIBSON: To give a brief history, the Local Government and Shires Associations is a representative body of councils and represents the 152 councils and 12 out of the 14 county councils. Councils employ a total of 51,600 employees. That is obtained from the Australian Bureau of Statistics 2004 statistics. Also, those 51,600 employees translate to 42,000 full-time equivalents. The associations provide specialist services to councils, including industrial relations, legal and policy advice. We also promote and publicise the views of local government. The associations are also registered industrial organisations.

Madam Chair, we made a submission to you dated 29 May. If I could briefly take you through the submission with reference to the document I have just tendered. On 6 July the associations' industrial panel resolved to oppose WorkChoices basically on three grounds: firstly, the complexity and legal nature of the proposed reforms; secondly, the limitation of the dispute resolution powers vested in the commission under the reforms; and, thirdly, a view that WorkChoices would expose councils to a variety of claims in other jurisdictions such as common law, discrimination and the like.

In terms of the document I have tendered, a letter to the Prime Minister is under tab 1. A similar letter was also sent to the Minister for Employment and Workplace Relations. I have not copied that necessarily but it is in the same terms. The response from the Prime Minister is tab 2. His response, if I could summarise it, in the third paragraph of the first page basically says to keep Australia strong we must continue to improve the way we work together, et cetera. The response from the Minister is tab 3. The Minister addressed the issues where we were opposed. I reiterate that I represent two associations—the Local Government Association and the Shires Association. The Local

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Government Association at its conference held in October of last year strongly opposed WorkChoices on the grounds listed in the submission we made to you. I can go through those grounds if you like.

CHAIR: You can assume that we have looked at the submission. The grounds will come up when we ask you questions. You do not have to go through them at this stage.

Mr GIBSON: Subsequent to that conference we again wrote to the Prime Minister and the Minister for Employment and Workplace Relations. The letter to the Prime Minister is under tab 5 and a similar letter went to the Minister. Their responses are outlined under tabs 6 and 7. Around that time there was a Senate inquiry into WorkChoices. The associations made a submission to that inquiry. That is under tab 4. I think it is fair to say for a variety of reasons the impact of WorkChoices to date has not been felt in local government. So WorkChoices has not had an immediate impact on the working conditions of council employees. I think there are a number of reasons for that.

If I could outline those reasons, firstly, councils in New South Wales have had a strong State award. That State award under the WorkChoices legislation became a notional agreement preserving the State award—a NAPSA. So those terms and conditions insofar as they are allowed under the legislation still apply to councils. Secondly, the Minister for Industrial Relations and the Minister for Local Government wrote to all councils and advised them to defer consideration of WorkChoices until after the completion of the High Court challenges to it. That letter appears under tab 8 of the documents I have tendered. Following that letter, the associations sent out to all councils an advice, which is under tab 9.

Basically our advice to councils was that WorkChoices at the moment is a fact of life and if you are a constitutional corporation you must comply with the aspects of it. We basically said that in the second paragraph. In the third paragraph we said that councils implement the changes relating to the relevant instrument, being the NAPSA, governing the terms and conditions of employment of staff and defer consideration of other aspects available under WorkChoices until the High Court has handed down its decision. I think we are a little bit more cautious than the two Ministers by saying, yes, it is a reality, it is a law, so you need to comply with the law, but do not at this stage take any further steps to implement some of the more radical aspects of the law.

CHAIR: Does that situation still apply?

Mr GIBSON: That situation still applies.

CHAIR: Nothing has changed since March?

Mr GIBSON: That is correct. The High Court has not handed down its decision yet. That is still, I think, the advice of the two Ministers and the advice of the associations. Further to that, the associations and the industry unions have met and have agreed to maintain our industry arrangements in connection with dispute settlement. We have availed ourselves of some amendments to the Industrial Relations Act that were passed subsequent to WorkChoices, in particular, section 146A which allows a consent jurisdiction, if you like, to the Industrial Relations Commission of New South Wales to handle disputes. There is a letter from the associations to councils—I am sorry about the heading but that has gone to all councils—on 5 May talking about the referral agreements and saying that the associations have developed and endorsed those two referral agreements. One relates to general disputes, the other relates to unfair dismissals. They are attached to that letter. The other part of the advice to councils was to talk about a common law deed. The associations, I think, are a little bit cautious at this stage about a common law deed. We are certainly not recommending at this stage common law deeds to councils. The reasons for that are also set out in that particular letter. For those reasons I think it is fair to say that the impact of WorkChoices on local government at this stage is fairly minimal.

CHAIR: That may change depending on the High Court decision.

Mr GIBSON: That will change depending on the High Court decision. I think one of the first aspects for local government is to determine whether it is, in fact, caught by the WorkChoices legislation—that is to say, where the councils are constitutional corporations. I think that will provide a question for lengthy legal debate in various courts and probably including the High Court over a

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period of time. As we see that status, it is very much an individual council basis. You cannot simply say that all councils are constitutional corporations or they are not. It depends very much on the level of trading activities and financial activities that the councils do. We have obtained legal advice, which is to the effect that most councils probably will be caught. That still needs to be tested.

CHAIR: Will that vary according to a council's size or its historical involvement in various activities or how it has structured its financial arrangements?

Mr GIBSON: All those things. It is not necessarily size. Some of the smaller councils in New South Wales, some of the shire councils also have water and sewerage services. It is our view that water and sewerage services, for instance, are a trading activity. So that would make those small shire councils constitutional corporations. It really depends on the trading activities each council is involved in and they can be many and varied, of course. That is an argument for another day. I rather suspect the lawyers are looking forward to that argument. The issue about councils being constitutional corporations is an Australia-wide issue. So it might not be resolved with councils in New South Wales; it could be councils from other States.

CHAIR: We will hear from the union by way of an opening statement and any comments on Mr Gibson's statement.

Ms FRASER: The United Services Union made a submission to the Committee in May. The United Services Union is the major union covering workers in local government. We cover workers in clerical and administrative areas, as well as energy, airlines and utilities. We have approximately 40,000 members. The United Services Union is very concerned about the profound, radical and complex changes put forward by the Federal Government through the WorkChoices legislation. The initial announcement by the Federal Government about the need for such changes stated that the purpose was to remove confusion and reduce costs and complexity by excluding State employment or industrial laws. We question such goals and motivation. WorkChoices will result in a system that is incredibly complex and its implementation confusing and litigation costs will go through the roof.

However, it amounts to an attack on the ability of trade unions to organise workers to collectively bargain and their ability to maintain and improve fair and equitable wages and conditions for workers in this country.

By contrast, our union favours the New South Wales industrial relations system for a number of reasons. A few of them include the system of conciliation and arbitration for the New South Wales Industrial Relations Commission, which has effectively enabled conflict resolution, providing for fair and equitable outcomes for our members. It recognises the rights of workers to organise and bargain collectively and, as such, meets the Industrial Labour Organization standards to which Australia is a signatory. It has provided workers protection against unfair dismissal. It is a system based on the provision of a genuine safety net of common rule and enterprise awards, with wages and conditions based on fair and reasonable conditions determined by an independent tribunal. Those with less industrial muscle and vulnerable members of the work force are able to receive some protection from the excesses of market forces.

Unlike WorkChoices, the State system does not impose overly restrictive limits on the content and, as such, provides the flexibility that benefits both employers and employees. The New South Wales system proves the equal remuneration principle, enables advancement to be made in the achievement of gender equity. Indeed, an application by the United Services Union under this principle resulted in a change to the award that enabled professional female workers to achieve parity with their male counterparts in hours of work. Basically, the New South Wales system is geared to provide commonsense and practical outcomes and has served our members well while assisting in creating a relatively harmonious industrial environment.

Bearing these points in mind, we are not happy to slide into the WorkChoices scenario, which will create impractical levels of complexity, create uncertainty and insecurity for workers, particularly by increasing the role of market forces, attacks on the ability of workers to collectively bargain, while threatening punitive measures from industrial action. It tips the balance of power well and truly in favour of employers, effectively eliminating the setting of wages and conditions by way of reference to concepts of fairness and equity. Basically, it is unfair and legally flawed.

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The United Services Union has joined with other unions and the State Government to challenge the constitutionality of the Federal industrial relations legislation. Even if the High Court upholds the constitutionality of legislation there will continue to be the doubt as to whether it should cover local councils. The Solicitor-General told the High Court that the law may not apply to local councils, charitable institutions or religious organisations. The United Services Union does not believe that local councils are constitutional corporations. Even the Federal Minister for Local Government, Jim Lloyd, said in November 2005 that councils may not come under the new system as they are not constitutional corporations. Further procedures, as my colleague has indicated, may be necessary, perhaps into 2007, in local government.

In the meantime, the United Services Union argues that State awards and agreements still form the foundation of our industrial relations wages and conditions for New South Wales local government. However, because of some uncertainty in the industry, the union encourages employers to enter into referral agreements and continue to negotiate with bodies such as the Local Government and Shires Associations concerning the implementation of common law deeds. The State Government, as has been noted, has encouraged councils to work within the industrial relations policy of the State Government. We agree with the moves of the State Government. Thank you.

The Hon. KAYEE GRIFFIN: Mr Gibson mentioned the argument about whether or not councils may be corporations. He said something that would obviously happen in the future. Do you have the number of local councils across Australia? How many councils, not just in New South Wales but across Australia, may be affected by this?

Mr GIBSON: As I understand, there are some 800 councils across Australia, but I will need to check that.

CHAIR: You can take that on notice. There are 152 in New South Wales.

Mr GIBSON: There are 152 in New South Wales; that is a fact we are assured of. The other States have a different form of regulation to what New South Wales has had in the past. In Victoria, of course, the Government gave away its industrial relations to the Federal Government and has operated under the Federal Act. I think in South Australia, Western Australia and Queensland it is largely Federal awards with some specific state awards dealing with various occupations, mainly blue-collar occupations. The situation leading to WorkChoices across the States in local government is different. We are the only State where there was predominantly only one local government award that covered both blue-collar and white-collar workers, and that was in the State jurisdiction. The balance has been for the other States in the Federal jurisdiction. While the Act was on a different premise, based on the industrial relations power of the Constitution, the constitutional corporation issue is still very much alive in the other States.

Ms FRASER: It is certainly an issue for further legal work to be done. But the union still considers the St George County Council case in which it was considered that the nature and purpose of the organisation helps to define whether or not it is a constitutional corporation. We would argue that that still stands although there have been other cases since then that relate to whether or not an organisation has a significant portion of its activities being trading or financial activities. While there has to be extensive study on the activities of each individual council, even a preliminary look suggests that there could be an argument for a large proportion of them not being considered trading corporations based on the test of the level of activity being significantly or not significantly considered trading activity.

CHAIR: You can see why Mr Gibson referred to the picnic for lawyers, which may be for years.

Ms FRASER: The other thing with regard to the complexity of it all, you can imagine a situation where some councils are considered trading corporations and some are not. You have some, maybe, on the Local Government State Award and some on Federal awards, some on agreement and some with lots of AWAs. The complexity and uneasiness of it all would be quite extraordinary. Then you may have some which at one time were considered trading corporations, depending on whether or not they contract out a whole swathe of services, the next day they might not be trading corporations.

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CHAIR: That would apply, I assume, where councils have gone into shared services? They might share, say, a water and sewerage service with one council and might share something else, road plant or something, with someone else. It might be deemed to be different depending on the mix?

Ms FRASER: Yes.

The Hon. KAYEE GRIFFIN: That would also have an effect on some of the county councils with water undertakings, some with weed eradication.

Mr GIBSON: A number of county councils operate to eradicate noxious weeds. They also do a lot of private works. The question about private works is about a trading activity, which puts them over the line for WorkChoices. That question is not clear either.

The Hon. KAYEE GRIFFIN: They work on people's problems to eradicate weeds rather than on what we deem to be public areas?

Mr GIBSON: Correct.

Ms FRASER: Something that relates to the rights of workers in what can be called a very messy industrial relations environment. At present there is a continuity of service. If a worker goes from one council to another he or she does not lose their accrued long service leave or sick leave: they take it with them to the next council. Under this scenario, for example, they would lose that continuity of service, that accrued entitlement. There are so many ways. Perhaps with further questioning we can delve into the impact on workers.

The Hon. KAYEE GRIFFIN: Are there any cross-border agreements, particularly Albury and Wodonga?

Mr GIBSON: Not to my knowledge. In connection with the issues about portability of services raised by Ms Fraser, that is something which industrial parties collectively decided to take to the Minister for Local Government, to see whether there can be a variation or an amendment to the Local Government Act to provide for that. We are in agreement.

CHAIR: To provide for it to be ongoing, regardless of High Court decisions?

Mr GIBSON: Yes. In other words to have portability of service for long service leave and to a more limited degree to sick leave, to be contained in the Local Government Act. That would give it an ongoing stance. The parties agreed to approach the Minister, and have indeed approached the Minister for Local Government with that.

CHAIR: Of all the issues we have discussed so far, are you all in agreement with the issues and the situation?

Mr GIBSON: I think we are more in agreement with the situation; it is a matter of degree about other issues.

The Hon. IAN WEST: However, that goes to the issue of whether it is the conciliation and arbitration powers in the Constitution or the corporations powers as to whether a worker is covered by the Federal or State commission, what industrial instrument provides cover. What about injured workers, discrimination, occupational health and safety and any other State and Federal Acts? Would injured workers be covered by State or Federal legislation?

Mr GIBSON: In connection with injured workers, WorkChoices only purported to cover the industrial relations side of it and left the occupational health and safety and workers compensation legislation intact. In connection with injured workers a recent decision by Deputy President Harrison of the New South Wales commission decided that there was no impediment in jurisdiction for a constitutional corporation, or employees of a constitutional corporation, to make a claim under the injured worker provisions of the State Industrial Relations Act. In that, it was dealing with

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occupational health and safety and workers compensation. Already there has been some movement with injured workers in connection with that.

The Hon. IAN WEST: However, if I were on workers compensation and from my point of view I was unfairly dispensed, where would the unfair dismissal jurisdiction go? What complications would that cause to State and Federal jurisdictions and legislation?

Mr GIBSON: I think Deputy President Harrison was saying that in that scenario the employee would be able to apply under the injured worker provisions of the New South Wales Industrial Relations Act. Those provisions are somewhat different from the unfair dismissal parts of the New South Wales Act.

The Hon. IAN WEST: What is that?

Mr GIBSON: Under the injured worker provisions of the Industrial Relations Act, a worker has, amongst other things, up to two years to apply for reinstatement. In other words, if a worker is terminated, and subsequently within a two-year period he or she is fit to resume work, he or she can apply for reinstatement under the injured worker provisions. My understanding of what Deputy President Harrison said in that case was the fact that WorkChoices might apply is no bar to an employee in that situation applying for reinstatement under the injured worker provisions of the New South Wales Act. Already there is some movement. That is from a deputy president, it has not been subject to appeal. He was saying that this provision relates to people on workers compensation and because it is workers compensation it is excluded from the WorkChoices legislation. There is still a lot of uncertainty about it, but it is probably a move in the right direction.

The Hon. IAN WEST: What if the argument from the employer was that the worker was dismissed for bad work performance?

Mr GIBSON: If they were dismissed for bad work performance, squarely they would come under the defence.

The Hon. IAN WEST: Sorry, the defence by the employer was that, but the application was by the worker for our unfair dismissal in the New South Wales commission.

Mr GIBSON: If it is in the commission, the reasons for termination would need to be resolved. If it was for work performance, obviously it would not come under that section of the Act.

The Hon. IAN WEST: So there are complexities?

Mr GIBSON: Yes, no doubt about that. There are complexities into a whole range of issues, including annual leave, which appears quite simple but has a number of complexities brought about by WorkChoices regarding annual leave.

CHAIR: For instance?

Mr GIBSON: Under WorkChoices and the Australian Fair Pay and Conditions Standard—and annual leave is one of those standards—the more generous test applies. The Act says that if the award or the State Act is more generous than that applies instead of the standard. They have defined under the regulations were the quantum is equal to four weeks the standard is more generous. The problem with that argument is that brings in a whole lot of other complications that the standard sets in the way of accumulating annual leave. For example. The standard accumulates on completed months at 1/13, whereas the State Act is on 1/12, so a whole new accounting regime comes in.

It also has a different definition of ordinary pay top under the State Act ordinary pay includes shift allowance regularly received. That is specifically excluded from pay under the standard. There are all those convocations as well which local government is facing to some degree now.

CHAIR: Does the union wish to comment on those issues?

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Ms FRASER: There are concepts in WorkChoices of "more generous" taking on Orwellian terms. Something that can be considered more generous, like annual leave, actually restricts workers. It means they receive less pay.

CHAIR: Because of the examples given by Mr Gibson?

Ms FRASER: Yes. Allowances, et cetera, might be considered as part of ordinary pay currently in the award.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Speaking of the Orwellian nature of this, I have commented on their letters from the Prime Minister to the shires, handed to the Committee by Mr Gibson. Are you familiar with those?

Ms FRASER: I do not have a copy, I think I would have seen them in the past.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It comes to what you are saying in terms of Orwellian promises. It is a plane to safeguard workers, it is a letter dated 29 August 2005 and it is tab 2 of the documents. There is another letter from the Prime Minister in the same vein and one from Andrews that, effectively, it cannot get any worse off. The benchmark was said that the award and it can go up but it cannot come down. If there is no award it can go down, because the worker was on some award before?

Ms FRASER: Yes. The whole thing about WorkChoices is it also encourages employers to set up AWAs which can strip workers from a whole of entitlements. I have a summary of what we consider protected.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The letter says, "minimum wages cannot fall below those set by the 2005 safety net review decision, but they will rise". I understand the safety net decision was not the Governments land anyway; it was imposed on it by the court, was it not?

Mr GIBSON: The safety net was imposed by the Australian Industrial Relations Commission [AIRC].

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, it was not a Government initiative in any case?

Mr GIBSON: From what I understand the Government is saying that would be the benchmark to start from. Of course we have not seen a decision yet from the Australian Fair Pay commission.

Ms FRASER: The current time the minimum rate is \$12.75 an hour on the minimum rates. There is usually a flow-on from the Federal wage case minimum rates to the States, that is applied to awards. We are concerned that the WorkChoices, in terms of clerical and administrative workers, threatens their minimum wage increase. Women are particularly dependent on minimum wage increases in the awards. The Australian Fair Pay Commission, with all due respect, does not seem to have the independence nor expertise that the Australian Industry Relations Commission has in setting minimum wages. We are very concerned about the future of minimum wages, particularly for the more vulnerable sections of the work force such as women and part-time workers and those people who rely on those minimum standards.

CHAIR: We understand the Fair Pay commission will hold hearings in New South Wales in mid August.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am a bit confused. If the safety net is set by the 2005 decision, does that set a base rate? If not are we waiting for the Fair Pay Commission to set a base rate? All, do AWAs set their own rate? What determines the lowest rate to be paid, if anything?

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Mr GIBSON: I will have a stab in answering that. It is not an issue for local government, because we have awards which moved, and have traditionally moved every year, in terms of wages. My understanding is that the legislation sets the minimum wage to be that as last determined by the Australian Industrial Relations Commission in 2005 and the Fair Pay Commission will handed down its decision on minimum wage and other things. They also have a broader brief than just the minimum wage; they look at all wage levels and classifications as well as casual loadings. As I understand it they will hand down a decision in spring this year. Currently the minimum wage was set by the AIRC in 2005, which is \$12.75 as Lyn said. I am not in a position to argue that. I understand that is the minimum.

The Hon. IAN WEST: It is a minimum hourly rate, not a minimum wage.

Mr GIBSON: A minimum hourly rate and that is what it translates to per hour.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In a sense that minimum hourly rate may or may not include sick pay, holiday pay, superannuation, and so on. If it does not, effectively the hourly rate as a minimum is a much worse hourly rate than if it were incorporated with all the other benefits which prolong through holidays or whatever, would it not?

Mr GIBSON: Those other benefits are set by industrial instruments at different levels. Normally in the minimum wage concept, you are quite right, it is normally a weekly wage. If the instrument that you work under provides for one week, two weeks or three weeks, say, sick leave, that is something exclusive of the minimum wage.

CHAIR: We might perhaps take up these issues with other witnesses because, as Mr Gibson said, these things do not actually apply to local government.

Mr GIBSON: They are things we have not delved into deeply because our award is substantially above the minimum wage and our leave provisions are substantially above the minimum leave provisions.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In a sense I was asking the union because the Prime Minister himself has set out our plan to safeguard wages and conditions. It is pretty central to our inquiry if the Prime Minister himself says, "We will safeguard wages and conditions, and this is how we will do it", and we have the United Services Union here which has a number of vulnerable employees—admittedly, only some of them are in local councils. This letter sets it out, "We are looking after you, mate". If it is Orwellian and if it is nonsense, then I think this Committee should know about it.

CHAIR: Ms Fraser, would you like to comment?

Ms FRASER: Certainly, the salaries in the Local Government (State) Award are superior but I did want to mention that, as we have members who are in the clerical and administrative area. The New South Wales Industrial Relations Commission handed down the State wage case decision, which my colleague Mr Golledge has been making application to have it applied to our various clerical and administrative awards. But those increases are considered under threat. The employers still consider it appropriate that those awards be increased according to the State wage case, and those applications are going through.

CHAIR: The point you are making is that the employers, as an act of grace, so to speak, are currently letting those awards remain.

Mr GOLLEDGE: We do not know that as yet. This creates a problem, this mess. I put the clerks award through for the State wage case; I had to vary it. That was varied, but you have to imagine that it was varied in the sense for all those places that are not captured by WorkChoices so you have a ghosting effect. You have the award sitting here for that minority of people who are not affected by WorkChoices and then you have the NAPSA that moves across. The NAPSA is affected by WorkChoices. All those corporations caught by WorkChoices, it will be open slather. They will be AWAs. I know for a fact that lots of those places have AWAs now. When I put an application to the commission again to vary the other clerical awards, maybe people will be jumping up from the gallery

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saying they object, the New South Wales IRC does not have jurisdiction in these matters. These awards are now Federal agreements. They have moved across. So I will face that, and I am sure those companies will drive down wages and conditions for those people covered by those NAPSAs by way of AWAs and by way of certified agreements.

CHAIR: To return to the Hon. Dr Arthur Chesterfield-Evans' question, will they be able to drive them down via the 2005 minimum wage?

Mr GOLLEDGE: We have had the 2006 minimum wage.

CHAIR: No, the Federal one, the safety net one. I am getting back to the Hon. Dr Arthur Chesterfield-Evans' question about the prime Minister's letter.

Mr GOLLEDGE: I am sorry. I am afraid I do not work in the Federal area at all.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Your union does not deal with Federal awards—is that the bottom line?

Mr GOLLEDGE: We work with State awards. We deal with Federal agreements. We deal with a Federal certified agreement because that is what they have become. We have almost wholly and solely dealt with State awards.

CHAIR: As I said earlier, your questions are important but I think we are asking the wrong witnesses.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you deal with Federal AWAs?

Mr GOLLEDGE: AWAs are agreements between individuals. I am dealing with an AWA on Wednesday. That is the first one I have ever had to deal with. I will have a look at his conditions under the AWA. I have not had a chance to look at it; I will look at it tonight. Then I have a teleconference tomorrow.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So it is not a fair question in a way.

Mr GOLLEDGE: No.

CHAIR: It is a very important question but we need to ask it of unions or other witnesses who have more experience in the area.

Ms FRASER: Certainly, if this award is considered a NAPSA—the Local Government (State) Award—it remains frozen virtually for three years. According to this, we have a wage increase on 1 November of this year. What happens for the two years after that? Basically, there is an attrition of wages. The point is that under WorkChoices the value of their salary deteriorates.

CHAIR: And we as yet do not know what the brand new Fair Pay Commission might or might not do to address that issue.

Ms FRASER: Exactly. It depends on the makeup of the Fair Pay Commission.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What is NAPSA?

Ms FRASER: The notional agreement preserving a State award. Under WorkChoices, the Local Government (State) award becomes a NAPSA. although I have already made it clear that as far as the union is concerned WorkChoices does not cover local government in New South Wales—

CHAIR: Mr Gibson went through that initially in terms of the interim period while we are waiting to find out.

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The Hon. IAN WEST: And the Federal minimum pay case and the Fair Pay Commission talk about hourly rates of pay only. Am I right? You are comparing apples and oranges if you try to compare trade-offs of annual leave with an hourly rate of pay, and the Prime Minister knows it.

The Hon. KAYEE GRIFFIN: Could I perhaps just try to clarify a couple of things because people are getting confused?

CHAIR: Let us get back to local government and the areas that these witnesses can tell us about.

The Hon. KAYEE GRIFFIN: In terms of local government, a lot of it related to other increases that came through the State commission and negotiations between the Local Government and Shires Association and the USU as to what happened with local government awards in New South Wales. I think some of the things you are referring to are agreements that have been between the parties to the local government award but there would be increases on a yearly basis over the life of the award. That is a little in limbo at the moment in terms of what happens in this intermediate time between what happens with the High Court case, what local government entities are deemed to be in the future if there is an issue, even though you have an award that says there will be increases in November and possibly next year—is that correct?

Ms FRASER: No. There are three lots of increases in the current award, and this year will be the third one. So there is no more in the award after this one.

The Hon. KAYEE GRIFFIN: So pre WorkChoices or pre this year the parties would then be sitting down to negotiate a new award.

Ms FRASER: Yes.

The Hon. KAYEE GRIFFIN: But that clearly is very different to what happens with the State awards that the union covers for clerical workers.

Mr GOLLEDGE: That is right. The clerical workers rely on the State wage case every year. This year it was 4 per cent and there are movements in several other allowances. That is correct.

The Hon. KAYEE GRIFFIN: With the union's submission you included a number of submissions that went to the Senate inquiry and it particularly related to women and family leave and family responsibilities. Can I ask both parties to maybe make some comments on that?

Ms FRASER: First, I would like to provide a bit of context, if I may. I have these leaflets I would like to have distributed. The information in these sheets is based on data obtained from the Australian Bureau of Statistics from census data, which is different to the ABS's more recent data which Mr Gibson has referred to. The census data, the yellow sheet, you will see on employment information series, that sheet for later references highlights the fact that gender segmentation in terms of occupations is still very strong in New South Wales local government.

CHAIR: Is it ever!

Ms FRASER: Sorry?

CHAIR: It looks as if it beats the construction industry.

Ms FRASER: Yes. If you run your eye down page three, the occupations that are predominantly male, you see the last column, "males as a percentage of employees in each occupation", 99.16 per cent, 99.7 per cent, et cetera. Over the page on the back of the yellow sheet it has occupations which are predominantly female. You have secretaries and personal assistants, 99.09 per cent female; general clerk, 73 per cent; child care workers, 96.4 per cent. So although there has been an increase in the proportion of the work force in local government, increasingly female proportion, there is still very strong gender segmentation in terms of occupations.

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The green sheet has a look at pay equity. On page three you will see that there has been a decrease. In 1986 the gap between male and female full-time earners was 18.4 per cent. Based on the 2001 census it came down to 4.4 per cent. So there has been a dramatic reduction in the gap between male and female full-time earners and there are reasons for that. Basically, a lot of the reduction was attributed to the early 1990s when there was the consolidation of awards and the introduction of the Local Government (State) award, which is a skill-based award.

CHAIR: So child care workers, librarians and so on came up, the female dominated ones came up.

Ms FRASER: Exactly. Indeed, some of the increases that came to child care workers and community workers were so large that the introduction of those increases had to be staggered. So gender evaluation of skills and classification structure is very important in resolving pay equity gaps. The other thing is though that as well as the import of the award and it being structured so as to give recognition for skills use and pay reflecting skill descriptors, there have been a number of campaigns since the introduction of the Local Government (State) Award which have resulted in such things as paid maternity leave, which we did not have in the Local Government (State) Award before. The equity decision which I raised earlier about female professionals areas has made their hours the same as comparable male professional areas.

These gains, which involve the New South Wales Industrial Relations Commission in conciliation and arbitration, have been very important in terms of pay equity and the collective bargaining system. The award has been essential for providing women with security and entitlements which many of them, as you know, men and women who have provided statements made it very clear that they are very nervous about the loss of collective bargaining entitlements under WorkChoices.

They are extremely concerned about the possibility of having to individually negotiate. At this point I would like to note that Mr McIlwaine from the Office of the Employment Advocate noted in front of the Senate estimates committee that a sample of the AWAs have indicated that 100 per cent of AWAs removed at least one protected award condition, 64 per cent of AWAs removed annual leave loading, 63 per cent of AWAs stripped out penalty rates, et cetera. I refer you to the white sheet, which was distributed, page 40, the right-hand box, non-allowable award matters. If the local government State award were to be considered constitutional corporations, the NATSA, which contained many although not all of the current local government State award provisions—if it was replaced by a Federal award, then a lot of matters would not be allowable.

These matters were raised by people who made statements. These people were concerned about the loss of paid maternity leave. In fact, WorkChoices is a misnomer. It should really be called the No You Can't Have It legislation because if they were to look at a Federal award scenario and if they were to say, "Can I continue to have my skill based career path because it has really helped with pay equity?" "Well, no you cannot have that as an award provision." "Can I have the long service leave provisions?" "In the local government State award you can have long service leave up to five years. "No, sorry, you can't have it." "Can I have the personal carers leave provisions" that are quite generous that are in the current local government State award. "No, sorry, you cannot have that in a Federal award." "Paid maternity leave, "No, you can't have that." Union-based dispute resolution, "No, you can't have that."

Vulnerable workers have made it very clear to us, Aboriginal workers, female workers, casual workers, part-time workers, over and over again they say that they want the union involved in negotiation. Collective bargaining is very important to them. A genuine safety net in an award is very important to them. You do not get a genuine safety net under the WorkChoices legislation.

CHAIR: Mr Gibson, I assume that in addition to the groups you are talking about, women, people with families, responsibilities and so on, people in rural areas or people working for small cash-strapped councils would find it more difficult than people working in metropolitan areas and for larger councils?

Mr GIBSON: There are a number of things that affect the rural economy, things like the drought, the loss of commercial undertakings and services to that area, high unemployment levels. They all go together to set up a situation, which means that potentially under WorkChoices, I suppose,

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that employers can bring people on workplace agreements or AWAs at varying levels. That is the one side of it. On the other hand, being able to do that potentially keeps industry alive whilst we are going through those particular periods of drought or economic recession in rural communities, so there are two sides of looking at that, but that potentially is the case.

Also, in terms of councils in rural areas, normally they are the smaller councils and those councils have the Shires Association or the Local Government Association to rely on in terms of advice about WorkChoices and some of the complexities that it contains and red tape it has in it where some of the small employers in rural areas, such as farmers and small business, could be paying large amounts of money for that type of advice and they have to introduce new red tape for things like record-keeping.

CHAIR: What would be the minimum number of employees for a small shire council?

Mr GIBSON: Probably excluding county councils because they might only have half a dozen employees, a small rural council would have 30 employees. When we have a look at the effects of the unfair dismissal provisions we found that some 40 councils had under 100 employees. That gives you some indication.

CHAIR: Although we have not officially gone through our questions we have covered most areas in some detail. Does either group wish to put anything to the Committee that has not already been covered?

Mr GIBSON: No. I think the areas have been covered.

The Hon. KAYEE GRIFFIN: I would like the United Services Union to comment on the effects on rural New South Wales?

Ms FRASER: Certainly the consequences of stripping away conditions from workers as a result of WorkChoices and reductions in pay would mean that people in rural and regional areas would have less economic power to purchase goods, which would have a negative impact on businesses. Also, a lot of the changes would result in people working longer hours. This would mean that there is more stress on families and people would have less time available to invest in their local community. The inequalities which could widen as a result of WorkChoices could also add other stresses to communities, which could cost other levels of government dearly, so social consequences is a whole new area and sometimes they are more evident in regional areas. WorkChoices could have both an economic and social negative consequence for rural areas.

CHAIR: The point has been made before that if you look at the adverse social consequences the bill for providing the services for picking up the pieces will be faced by the State Government or by the community not by the Federal Government?

Ms FRASER: Yes.

CHAIR: So in terms of the impact of changes, if there are the sorts of social consequences that you are talking about, there is a certain amount of cost shifting going on?

Mr GOLLEDGE: WorkChoices does not do anything for small rural communities. The idea that if you force down wages you keep people in jobs—I think that is one of the premises the Prime Minister is bouncing off; it is better to have a job and still be at work than have no job—and Mr Gibson touched on downturns in the rural community due to droughts and floods. We have had droughts and floods in New South Wales for the 50 years that I have been alive. I do not think WorkChoices coming along will benefit rural communities in that sense. I think the rural communities have got on quite fine for all these years and they will continue to do so. I also do not think that it benefits rural communities if the largest employer in town is paying less and less money to its employees, who are spending less and less money in town. That is an important issue; I do not think it does any good for small rural communities.

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CHAIR: I notice your submission refers to period in the past when there was an argument about penalty rates and the importance of the fact that penalty rates were restored for rural and regional areas?

Ms FRASER: Yes. It highlights the importance of industry awards and the award covering local government as a whole, as a State, means that people who are in areas where there is high unemployment and do not have as much bargaining power get the benefit from the safety net of the local government State award and provisions for penalty rates; for example, those gains made through negotiations mean that workers in less bargaining positions still get those benefits.

CHAIR: I think Mr Gibson expressed a slightly different view in terms of flexibility for areas that are struggling or have high unemployment.

Mr GIBSON: Correct. There are potentially two ways of looking at it.

CHAIR: And there may be difference between the union's perspective and the association's perspective on that.

The Hon. IAN WEST: In terms of local government, are job opportunities increasing or diminishing?

Mr GIBSON: The statistics that I have looked at have been relatively constant over the last little while; they are around 40,000 to 42,000 full-time equivalent for the last five to six years and it has been relatively constant, and there are things which mitigate that as well. If you look at the legislation, which brings in amalgamations and things like that where you cannot reduce staff numbers for a period of three years and, indeed, in smaller communities you cannot reduce core numbers at all, so there are things, which lead to that conclusion, but I think it has been relatively constant over a period of time.

CHAIR: Has there been a great deal of contracting out of local government services?

Mr GIBSON: Not necessarily in recent times. It is an area which does come up from time to time. Again, that has been relatively controlled over a period of time. We have the odd dispute about it every now and again.

CHAIR: Waste services is the one big exception?

Mr GIBSON: Waste services is a big area and always has been a big area where councils contract out and the majority of waste, particularly in the metropolitan area, is contracted out. If you go to some of the smaller councils they might do it themselves because it is not viable to contract it out because it is just too small. Can I just mention something that has not been raised? Local government, as in other areas, is suffering a skills shortage, and that needs to be mentioned. Skills shortages, in terms of some of the skilled occupations and professions, and by professions we are looking at town planning, environmental health, engineers and the like. We have been grappling with that over a fairly long period of time but more intensively lately.

That is an issue for us and WorkChoices may impinge on that. We have probably covered this issue but you talked about the effect on small business and I include small councils amongst that, but what I do not think has been said is that whilst WorkChoices heralds more red tape and complexities, the Industrial Relations Commission has been a reliable and inexpensive way of those businesses resolving disputes and that is something which local government, I think it is fair to say, over a long period of time has availed itself of the industrial commission to help resolve its disputes and I think we are the better for it, and that is why we have no hesitation at all in recommending the referral agreements. But I think small business also would benefit from that inexpensive and very practical way of handling disputes.

CHAIR: Ms Fraser, tell us what you want to see come out of this inquiry.

Ms FRASER: I had written skills shortages. There are opportunities lost as a result of WorkChoices in terms of placing an emphasis on developing skilled work forces as opposed to

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cheaper work forces—competitive advantage. I do not have a copy here, but there was a third information source, which was about areas of local government work force that have been shrinking and areas that have been growing.

CHAIR: If you would like to get it to us as a question on notice that would be useful.

Ms FRASER: I would like to do that because it shows that some areas have shrunk considerably, and we consider some of those areas are as a result of contracting out. Some of the data may differ from the data of my colleague from the Local Government and Shires Associations in that ours is based on census data. We have a number of part-time workers who work for three different councils. Each of the three councils will count them as a worker on their books, whereas the worker who does the census sees himself as only one worker so there are differences in some of the statistics. Our statistics indicate that over the census period there has been a shrinking of the work force in local government.

CHAIR: What do you want to see come out of the inquiry?

Ms FRASER: Certainly we would like the Committee to highlight to the public and to the Government concerns about WorkChoices and its impact on local government—in fact on all workers in Australia, and the fact that it will have a detrimental effect on people's wages and conditions. It amounts to a stripping of conditions from workers. Therefore workers need to be protected and we look particularly to the State Government to assist with that protection and raising these issues. We also think that the Committee or the Government should continue to monitor the effects of WorkChoices on local government, indeed workers generally in New South Wales. At this point perhaps I should mention that the United Services Union [USU] has been involved in roundtable discussions called a Local Government WorkChoices Protection Committee, which involves representatives from the Minister for Industrial Relations, the Minister for Local Government, the Public Employment Office, the Department of Industrial Relations, the Department of Local Government and various local government unions.

We are concerned that if WorkChoices is applied to councils in a way that undermines collective bargaining, and the rights and entitlements of workers and union rights, it would appear that the community reserves as an issue a strategy for the restructure of local government to a degree of corporate employment in its entirety, similar to what the Government has done in the health sector. There are some concerns about this approach and the USU has some concerns about it. Our relationship with councils has been a good one, including elected members. But it may be the approach that is needed to protect workers of local government.

CHAIR: Mr Gibson obviously has some comments on that last proposal.

Mr GIBSON: I would think that the Committee, before it made any recommendations to restructure local government, would probably need to have a whole round of further hearings. As Ms Fraser has said, there is a committee, which the LGSA is also on, looking at how the effects of WorkChoices can be minimised and dealt with in local government. Wholesale restructure of local government is something that my association is very nervous about.

CHAIR: I do not think the Committee would see its terms of reference as extending so far as to examine the restructure of local government.

Mr GIBSON: I would hope not.

CHAIR: Nevertheless, it is relevant to our inquiry in the sense that the impact of WorkChoices, if it goes so far as to have people looking at those sorts of things, it is a big impact indeed.

Mr GIBSON: The things that the associations would like to see out of this inquiry were to have the inquiry identifying the social impact of WorkChoices. I will not be as bold to say what that should include, that would be a matter for the Committee, and making recommendations to various people—it could be the Federal Government—on how to mitigate those of social impacts. As you pointed out, Madam Chair, there could be a need for the Government to look at funding in terms of

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some of the disadvantaged groups in the community. I am thinking of rural communities, apprenticeships and trainees, and the skills shortages. Some thoughts about how those issues can be dealt with and perhaps funded.

(The witnesses withdrew)

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RATHANA CHEA, Youth Chair, Ethnic Communities Council of New south Wales, 221 Cope Street, Waterloo, affirmed and examined:

CHAIR: Would you like to make an opening statement or do you want us to go straight into questions?

Mr CHEA: I will make a brief opening statement. Our main concern about the WorkChoices factors relate to participation in society, particularly social, political and economic participation. What we are looking at in terms of the social, political and economic participation is affording minority communities, and culturally and linguistically diverse communities some sort of dignity in work in terms of an occupation. Essentially the three key points are about ensuring some sense of work and dignity in terms of secure employment, which then translates into participation in society or the security to actually feel like communities can participate in society. Our fear is that if those instruments that protect these things are lost all their powers are lessened that creates a situation in which people who will already feel marginalised feel further marginalised. Today I will present mostly experiential knowledge, actual knowledge and evidence through consultation with our communities we have experienced in the past in terms of producing statistical data that sometimes some people in society would like to use against us. The tricky thing these statistics with culturally linguistically diverse communities is that they can work either way. A lot of times we like to speak on experiences in our communities.

CHAIR: You said that the statistics connected sometimes work against culturally linguistic and diverse communities, so you want to give your own presentation.

Mr CHEA: If Committee members believe that further evidence is needed, we are happy to go back and get that evidence. As I have already said, the tricky thing is that sometimes people say, "Eighty per cent of migrant workers do this or that " and others say, "That is bad", or "That is good." Issues involving multiculturalism are quite contentious, particularly given the current climate.

CHAIR: Tell us a bit about your organisation. Who do you represent? Do you represent all the culturally and linguistically different communities in New South Wales?

Mr CHEA: We aim to through our membership structure. Currently we have nearly 300 membership organisations in our organisation. In the past, membership has fluctuated, given different political issues coming to the fore, more groups joining and things like that. Obviously, our organisation attempts to represent the widest number of ethnic groups, which is quite difficult, as you can imagine. However, we are able to speak on behalf of many communities in New South Wales. The organisation is still recognised as the peak representative body for ethnic communities in New South Wales.

CHAIR: Do you carry out your own research and collect your own statistics, or are you reliant on the Community Relations Commission or the Australian Bureau of Statistics?

Mr CHEA: We use both and we use external resources. We have engaged with the Community Relations Commission as well as non-government organisations and other government services to produce joint research, such as the Department of Ageing, Disability and Home Care, the Community Relations Commission, NSW Health, et cetera.

CHAIR: How would you describe the people you represent in relation to the WorkChoices legislation? Would you describe them generally as amongst the most vulnerable, or does it vary from group to group?

Mr CHEA: On the whole I would say that our communities are vulnerable, given the experiences of many of them in relation to displacement and re-establishment in Australia. It places a lot of stress on them in their reintegration into society, their stability and security, and all those things. If it looks as though a piece of legislation will take away their security in employment, obviously that is a matter of major concern for them. Within the category we look at culturally and linguistically diverse communities and at smaller and emerging communities. Communities that number fewer than 12,000 obviously are far more vulnerable because they do not have the established networks that the

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more established communities have. So on the whole I would say yes. However, the experience is quite different for each community as well.

CHAIR: Has the Ethnic Communities Council adopted a formal position in relation to the WorkChoices legislation—either one of opposition or one of concern?

Mr CHEA: So far we have set up a research working party that was established only a fortnight ago. Our initial concerns were raised through multiple press releases. A lot of information that was being distributed was beyond the reach of ordinary Australians, let alone Australians who had difficulties such as language barriers, or they did not have the social capital to access that kind of information.

CHAIR: When you say "beyond the reach", what was wrong with the material?

Mr CHEA: The language that was used in a lot of the media. There were two sides to the stories in the media and a lot of people were confused. Anecdotally, many of our communities did not know exactly what was happening. Some people thought that they could be in a spot. A lot of people thought that employers could change wages automatically. There was a lot of confusion relating to clarity of information. When someone has a language barrier, clarity of information becomes even harder.

CHAIR: Is that better now?

Mr CHEA: No.

CHAIR: Is it worse?

Mr CHEA: We set up the committee to look into that. Anecdotally, we have received a lot of information about their concerns. It came to a point where we realised this was something we needed to put a fair amount of effort into, for example, community education and developing knowledge in the community about whether or not it agreed or disagreed with the legislation.

CHAIR: Given your position as youth chair, are young people from the communities you represent at particular risk? Do you want to make specific comments about younger people?

Mr CHEA: Yes. Referring to younger people, casualisation is occurring. A 1999 report showed that 20-year-olds to 24-year-olds were amongst the highest in casualisation but they were also the highest in being reliant on casual jobs for their survival. Look at it from the ordinary experience of a young person and attach to that the experience of migration, parents relying on them to translate information, or any of the other stresses that I could go into, and the experiences of a family from a culturally and linguistically diverse community are further compounded. I understand that representatives from the Youth Action Policy Association spoke to you this morning. We have worked with them on projects before. Our main concern is the fact that it creates a situation for young people.

There is a culture of casualisation. Let us take young people's experience from the age of 16 when they get a temporary or casual job. At the age of 18 to 19 they are still in casual jobs. At 20 to 24 they are still in casual engagement in the workplace and that filters through their experience. The idea of secure employment seems far off. If their parents were migrants to this country and they did not have secure employment themselves, that idea would be even further off. The idea that they are entitled to secure employment and that they could participate in society becomes a big issue.

CHAIR: Apart from security, it has big implications for job satisfaction, their sense of a career, a future, interesting employment, and all those things?

Mr CHEA: It relates to a sense of participation in society. It also impacts on whether or not young people become disenfranchised with society and whether or not they feel disengaged or further marginalised, which creates a raft of other problems.

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The Hon. IAN WEST: What is good for them is good for the economy and the community. The economy and the community should not be seen as different entities.

Mr CHEA: Exactly. Those are the three points—social, political and economic participation. If we had those three points I would like to think we could move a step closer towards the harmonious and cohesive participation of all people in Australian society.

CHAIR: Do you see the WorkChoices legislation as contributing to disharmony, particularly in relation to discrimination or divisions based on ethnic perceptions?

Mr CHEA: There is a potential for the WorkChoices legislation to create situations in which certain communities feel further marginalised. If we look throughout history we see when people felt marginalised, disassociated or disenfranchised. It often leads to the need for government services to provide programs and projects that help to foster community harmony and development.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If there is a problem in getting jobs and achieving equity would it lead to a scapegoating of those who are willing to take jobs at lower pay and conditions?

Mr CHEA: Definitely. This is part and parcel of survival. Let us take, for example, the migration experience. At the moment quite a number of the African communities are settling in Tamworth because of the seasonal work that is available in abattoirs and in other industries. Members of a family that arrived here with very little are willing to take jobs that are not necessarily seen as attractive, or choices that they would have made had they grown up here. They have that survival mentality and that need for stability and they will take up jobs for a lesser amount of money. They will take up roles in organisations that do not necessarily give them the same amount of pay as somebody who has been given the same social capital, not necessarily the same working conditions and not necessarily the same guarantee of long-term employment, because there is that mentality of survival. If you have nothing very little seems like a lot.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So the latest wave of migrants will usually take jobs at a lower benchmark. That is an historical fact.

Mr CHEA: Yes. I would try to rephrase it as survival. The idea of survival then creates a need for you to take anything that is available to you.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That might lead to prejudice. Someone might have done that job if the pay had been increased due to the lack of someone to do it at a lower rate.

Mr CHEA: I agree. That situation can occur.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That might lead to a conflict based on race against the person who took the job?

Mr CHEA: It will create certain perceptions in different communities. It will create certain perceptions around communities that are migrating to particular regions. At times those perceptions can be negative. Historically, experience has shown that those perceptions are negative right from Eureka through until today. Those things have been noted throughout history.

The Hon. IAN WEST: Blaming the victim is not a new thing.

Mr CHEA: Exactly.

CHAIR: There have been positive examples, for instance, the Afghan refugees, who got jobs in the abattoir at Cowra. The community welcomed them because they were jobs that other people would not take; therefore, they were welcomed as people in the community doing something that was needed. But it is still a very segmented and stigmatised result for a small community.

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The Hon. IAN WEST: I refer to the children of people who have come here, survived and done appropriate jobs that were needed for them to survive. The parents of those children tended to have great expectations for them. Anecdotally, there are many examples of children achieving the appropriate skills and knowledge and being able to participate. Are you able to give us some insight into that issue? Is that a proper perception?

Mr CHEA: I think it is in some communities. We put in a recent submission on young to the Community Relations Commission. The outcome of that was the realisation that in a lot of South-East Asian communities there are two areas in second generations of young people—high achievers and on the other extreme people who felt disenfranchised. That is the amount of pressure that is placed on anybody, or any family who is going through survival. They are placed in a position where they need either to be superman or to be nothing. Placing that amount of pressure on a young person will have an adverse effect.

The Hon. IAN WEST: Is there a big difference between age groups in their expectations, aspirations and skills development? In other words, would the effect of WorkChoices on a 50-year-old be different to that on a 20-year-old?

Mr CHEA: Completely. There is an assumption in the community and it is an assumption amongst a lot of young people that "I can navigate this. I am smart enough, I am confident enough, I am capable enough to navigate this." I do not think there is enough community knowledge or community education about what the impact actually is and potentially what the impact can be in terms of bargaining position. Obviously the situation for a young person is going to be very different to someone who is 60 years old and probably facing retirement shortly—maybe not, maybe 75 is the new age. If we are talking about a second-generation or third-generation young person and how WorkChoices would affect them in terms of engagement of any institutions or instruments which often have projections such as trade unions and different advocacy agencies, that kind of information is not filtered through often. In terms of looking at the standard of protection in things like awards and agreements, they often become invisible to these young people because they are not at the fore of socialisation.

CHAIR: That is true of second or third generations?

Mr CHEA: I think it is safe to say that. It is really difficult to speak about a lot of communities because the experiences of the various communities and migration patterns have been very different. A lot of southern European communities that came out were politicised in terms of union involvement, workers protection and things of that nature. For a lot of the African communities that have come over from Sudan, Eritrea, Ethiopia, the Horn of Africa, their experiences have been roughly different in terms of the education system, the political system and the social system. I cannot make a blanket, sweeping statement that this is going to affect young people pan-ethnically the same.

CHAIR: I interrupted you because you mentioned the third generation. The African groups you are talking about have been recent arrivals. They would not be third generation yet, as a generalisation. We would assume that most of the groups that would be into a third generation have the education, knowledge and networks in Australia and the knowledge of Australian conditions. Do you suggest, at least for some of them, that is not the case?

Mr CHEA: Yes, and it is highly dependent on the community itself. If I can use my personal example, my family is nearing a third generation, or we are at that third generation. I would say in relation to my peers, in terms of my cousins, nieces and nephews, the knowledge base sits with me and I have to explain things. That is simply because I have chosen to engage in political discourse and I have chosen to participate. Whereas I can easily see for other families that is not the case at all and the whole idea of survival clicks over into the next generation and the next generation.

The Hon. IAN WEST: I am sixth generation Scottish-Irish. A similar situation occurs amongst the various nieces and nephews in my extended family. Can I complicate it by asking about gender? When you throw in gender, how does that affect the mix?

Mr CHEA: I cannot speak on behalf of all the communities. I can speak on the experiences on the whole historically. It is often perceived to be a cultural issue in terms of women from certain

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communities being "passive". I would like to think it is not necessarily all based on cultural issues because I think that lends itself to distortion and to unfair criticism of various practices. However, in noting that, I think we also need to recognise that many migrant women work in industries that are lowly paid and often labour orientated which do not offer necessarily positive conditions. It is really difficult to describe.

CHAIR: The cleaning industry is often given as an example of consisting largely of migrant women.

The Hon. KAYEE GRIFFIN: Is part of that to do with family responsibilities?

Mr CHEA: Definitely, and the pressures of family responsibilities and the pressures placed on them either by their grandparents or the community. As much as personally the idea of a career might be an option, at times that choice is often cut away by the expectations of other people. At a personal level I think that is unfortunate and not necessarily a good thing—not necessarily a good or bad thing, but more so in terms of perceptions of self-choice and ideas around self-choice and opportunity. If we are talking about opportunity for young people, I think we should also be talking about opportunities created for women who are part of culturally and linguistically diverse communities. There are quite a number of community projects that work on developing confidence and skills. But when you are faced with legislation that drips away at certain standards and protections, then what we are coming up against is a community who feels it is quite unfair almost and unreasonable.

What I want to get across in terms of women from various communities is that I do not attempt to speak on behalf of women. I do not attempt to speak on behalf of women in general as a male, but I do not want it to get distorted through the cultural frameworks or for the cultural frameworks to be distorted. Often there are different expectations from different communities. If we look at the Southeast Asian experience in terms of a lot of people being outworkers for manufacturers producing clothing pieces at 10¢ an hour, these are stories we hear all the time. Prior to this legislation there was very limited protection. With this legislation there continues to be very limited protection, more so. So what we are seeking from the Ethnic Communities Council perspective is not simply public education about this piece of legislation but also programs, policy, something that actually aids the community on a day-to-day level.

CHAIR: Should the Federal Government provide the programs, information and translation and all the rest that you are talking about?

Mr CHEA: Yes, I would like to think whoever develops the policy needs to promote the policy and educate the community about the policy.

The Hon. KAYEE GRIFFIN: You said a task force had been set up in relation to the misinformation or inability to understand information about WorkChoices. What does the task force hope to achieve within the community?

Mr CHEA: We want to start a conversation within the community that is grounded in fact and not myth and rumours that are going around. Whilst we are conducting research and consulting the community, we are also educating the community about the actual facts of the legislation. In doing so, that empowers the communities to look at how it affects them and the choices they want to make. Do they want to support it or do they want to oppose it?

The Hon. KAYEE GRIFFIN: What sort of research are you doing? I suppose you are undertaking research at all levels of the communities and all age groups about the issues we have been talking about—young people and family responsibilities. You also mentioned a family in Tamworth, so you are also looking at issues in rural and regional New South Wales.

Mr CHEA: Yes, we are. In terms of the experiences of communities that are already culturally or socially isolated, compounded with that we are also looking at geographically isolated. A question still remains about the push by smaller emerging communities in the smaller regional areas, whether or not it is temporary based on the employment opportunities available to them at the present time or whether they are permanent choices as well. If the work is seasonal and the work changes, will

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we see a flow back to the cities? There is a big question mark we are still grappling with. We are not going to make the decision for them and tell them this is the best place to get a job or this is where the best outcome is. But in terms of supporting them while they are there, we would like to know what their needs and concerns are. We know roughly and anecdotally what they are, but unless we provide hard evidence a lot of services like to turn a blind eye. They do not necessarily turn a blind eye but they feel they need more evidence before they can move.

CHAIR: Returning to my earlier point, would you give us an assessment of the adequacy or otherwise of the information that the Federal Government has provided on WorkChoices legislation for people with language difficulties? I am speaking from some ignorance about what the Federal Government has done in relation to a package that came into effect in March this year. How adequate has it been? How much of an effort has been made? How much of an effort are they making now that it is in place? Can you give us an assessment of that?

Mr CHEA: Firstly, I have not personally seen any translations, nor has anyone on our board seen any translations.

CHAIR: Does that mean they do not exist?

Mr CHEA: This is the thing. We have made contact saying, "Can we have this in X, Y, Z languages?"

CHAIR: As far as you know that translation process has not been done?

Mr CHEA: It could be in the process.

CHAIR: You have not seen anything?

Mr CHEA: We have not seen evidence of it.

CHAIR: Failing that, what access to translation services or other information networks is available to a person or group of people who need assistance with English? Is there anywhere they can go or do they rely on unofficial assistance?

Mr CHEA: They probably rely on unofficial assistance through other programs. There is a Federal Government program, the Community Service Grant Scheme, now the Settlement Grants Program which assists refugees and humanitarian entrants to settle. The Settlement Grants Program provides a wide gamut of services. Unfortunately, there is nothing specific out there in terms of educating the community on the impact of WorkChoices.

CHAIR: That applies not only to people who are new arrivals but also to people who have been here 10 or 20 years and for whatever reason still have language difficulties?

Mr CHEA: Exactly. To answer the question before about women, it is mostly women who end up with greater language barriers because of lack of access to education or interfered access to education through pressures in relation to family life. In that situation we are talking about who is further marginalised, not that it is a competition. We kind of break it down in stratas, which I completely disagree with. We can say that overall women who are from culturally and linguistically diverse backgrounds are going to be worse off.

CHAIR: Has the Ethnic Communities Council lobbied or approached the Federal Government seeking change, assistance or resources to spread information and assist people?

Mr CHEA: When the original education package came out we looked at it. We requested that translations be made. We also made a public statement to all of our members saying that we feel that education information regarding this piece of legislation is beyond the reach of ordinary Australians, in plain English levels, and we feel it is potentially beyond the reach of many of the members in our communities. In doing so, there is a danger that a lot of our members will become vulnerable and our communities will become vulnerable in not accessing the correct information. So, that is the situation we are finding ourselves in now.

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CHAIR: So, you are saying you have effectively no response to the requests that you were making, and you are talking about what you did when the first pamphlets and things appeared last year? Has the situation changed since or is it still a mystery?

Mr CHEA: I need to check up on that, simply because when I was involved in the ECC back then I was in a different capacity. I have only taken up this position three weeks ago.

CHAIR: We would be grateful if you could take it on notice. As you say, if it was a serious set of requests made last year and the situation is unchanged, that gap still exists on the part of the Federal Government. We would like some more information on that.

Mr CHEA: Okay. I suppose the question is whether it is translated into the major languages or into languages which are part of the most vulnerable of the community as well.

CHAIR: And there are services. It is not just translation. It is places where people can go for assistance, whether it is physical places, or a phone number or a web site to look at.

Mr CHEA: I do not think a web site would be very helpful in our communities.

The Hon. KAYEE GRIFFIN: This probably needs to be taken on notice as well. Information translated into major languages, how many would that be and how many communities would you deem to be vulnerable in your communities? I do not think this Committee has really any idea of how many communities the Ethnic Community Council serves and I think it would be good for the Committee to know how many groups you are talking about as a whole, what are deemed to be major communities as opposed to the ones that the Ethnic Communities Council deems as newer, more vulnerable and probably smaller communities?

CHAIR: If you would take that on notice. It is probably impossible to answer in full, but whatever assistance you could give us would help.

The Hon. KAYEE GRIFFIN: It would be helpful in gaining a better understanding how many communities your organisation tries to serve and also getting information to those communities, if the Committee had a better understanding of the numbers.

CHAIR: I am looking at the questions we ran through. We have probably covered most of them in various ways. The Hon. Ian West usually asks questions about injured workers. We know from some other evidence that the rate of injury tends to go up in more vulnerable communities and with people with language difficulties, and so on. Have you any comments about particular groups? We have talked about women and rural communities, but injured workers is another example. Is there any specific comment you would like to make?

Mr CHEA: About injured workers?

CHAIR: Or anything else we have not yet touched on?

Mr CHEA: What I wanted to get across today was an acknowledgement that a lot of the migrant community, say first or second generation, are often shift workers and it is something that is widely acknowledged. It is also hard to produce statistics on, what WorkChoices does to the rights of shift workers, and that affects families and that affects women and that affects young people and the entire gamut of the social fabric of a lot of our communities. We expressed deep concern on the impact this will have on the most vulnerable of our communities. The more established of our communities are doing quite well in business or doing quite well in their careers. Their experience would be far different to the bulk of our communities which, at the moment, are not necessarily wholly established in Australia or sufficiently established. That is why constantly there is issue after issue about racism and the needs of multicultural communities. In that sense, what is needed from this legislation is not simply further education about the impact it has, although that would be very useful, but an assessment of how that will affect these communities in New South Wales and how the Government will attempt to address those issues. It is hard when you have hundreds of various communities. I can give an example of the Cambodian community, which is my community. There

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are seven separate communities, and you have the same experience with the Afghans and the same experience with the Sudanese. An organisation like ours becomes helpful in consulting the communities but it is difficult servicing the communities and generally they need to be provided by government.

CHAIR: Which level of government should be attempting to assess the impact and looking at the services that might be needed? Is it something you would expect the Federal Government to provide because it is its legislation or is it something that might come out of our inquiry, something you would be asking the State Government to pick up because it so far has not been done?

Mr CHEA: I would like to think it is the responsibility of all governments to ensure the effective participation of all its members and all its citizens. In saying that, I recognise this legislation has come from the Federal level and the assessment of the impact should happen at the Federal level. Granted, that was produced to Federal Parliament, so in that sense I acknowledge it is a Federal Government issue. I am a little hesitant to say it is wholly a Federal Government issue because if the issue impacts upon the people of New South Wales it is an issue for the New South Wales Government as well.

CHAIR: That is one reason this inquiry exists. We need to assess the impact. The next question is what do we do about it?

The Hon. KAYEE GRIFFIN: You mentioned about people in established communities doing reasonably well. There would be a lot of small business people in those communities. Has there been any comment as yet about the WorkChoices legislation being so substantial? Also in that legislation there is a large part that relates to record keeping for small business. From evidence from other people before this inquiry, it is going to be much more onerous of than the current record keeping. Have any of your communities commented from the small business point of view?

Mr CHEA: I only heard that twice in the past three weeks in an official capacity. I do not want to make any assumption on it just yet because if I speak on behalf of them now and—

The Hon. KAYEE GRIFFIN: It is just that other witnesses gave evidence to say they had concerns about how small business people would be able to fulfil all the requirements of the legislation although it has not yet started. I understand it is a separate issue for small business apart from a number of other issues that come up?

CHAIR: Would there be any point in asking you to take that on notice, to ask anyone else in the Ethnic Communities Council?

Mr CHEA: Sure.

CHAIR: Perhaps you could do that. We respect your hesitation to speak given that you have been in the position three weeks. But if there are other people who can comment we would be grateful if you could get back to us.

Mr CHEA: Yes.

The Hon. IAN WEST: What would you like to see come out of this inquiry and, in particular, in the context of the question that the Hon. Kayee Griffin asked about employers and small business, because the legislation is complex and because they are affected quite substantially in terms of jurisdiction, the instruments they are able to use now that perhaps they were not able to use previously and the complexities of the legislation, and in that context? If you could let us know what you would like to see come out of this inquiry?

Mr CHEA: I will start with my hope that comes out of the inquiry. The best outcome, I would like to see recommendations providing government assistance to communities that are affected or impacted most greatly. I think in the experience of translations or the experience of a lot of other educational tools within established communities they get a receipt of those simply because they are lighter and more easily weakened. It is easy to say we print in this particular language and it has

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reached 20,000 people, whereas with the 20 or so Sudanese languages we have only reached pockets of people, but they are probably the most vulnerable.

So, the outcome, we would like to see some detail of an education campaign of some sort, whether it is through the Federal Government or the State Government. We would also like to see some sort of programs or initiatives or simply productions of pamphlets like education. I think a lot of our NGOs and community organisations at the moment are facing quite a number of issues, particularly funding issues, so their survival is under threat. This just continues to hit in that direction even when legislation like WorkChoices comes out and adversely affects our communities.

CHAIR: Have you any knowledge of the likely impact of the Federal Government's welfare to work changes that came into effect on 1 July? A number of witnesses have mentioned to us their fears about the interrelationship of WorkChoices and welfare to work. I imagine there are specific issues in relation to that?

Mr CHEA: A number of papers have been produced that the ECC can probably collate and summarise and hand over to the Committee.

CHAIR: We would be grateful if there is some extra information. As I said, the changes came into effect on 1 July. A number of NGOs have refused to take up the Federal Government funding to provide services. As we said, previous witnesses have expressed their grave fears about the way the two things were interrelated and create extra problems—WorkChoices and welfare to work changes operating together. Is there anything else you would like to say about what you would like to see come out of the inquiry? I think you have made it fairly clear. We would be grateful if you could get back to us with the questions you have taken on notice.

(The witness withdrew)

(Luncheon adjournment)

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HARRY WILSON, Senior Vice President, Waste Contractors and Recyclers Association of New South Wales, 31 Hallstrom Place, Wetherill Park,

MARK DIAMOND, Workplace Relations Adviser, Waste Contractors and Recyclers Association of New South Wales, 31 Hallstrom Place, Wetherill Park, and

TONY KHOURY, Executive Director, Waste contractors and recyclers Association of New South Wales, 31 Hallstrom Place, Wetherill Park, sworn and examined:

CHAIR: The Committee has sent you questions that reflect basically the terms of reference of this inquiry. Would you like to make an opening statement in addition to your submission?

Mr KHOURY: We are happy to address the questions to start with. To assist Committee members we have prepared a copy of our responses to the questions, which I will distribute. I have a copy of a calendar of what we do, which I will distribute also, it gives a bit of an understanding of the services we provide and how we interact with our members.

CHAIR: Does your document answer the Committee's questions about your organisation and its members?

Mr KHOURY: Yes. I am happy to talk to that as well, because the members will have to read the material I have handed out. The Committee will then have it as a record to keep. Our association is a registered industrial association. We represent employers in the waste and recycling industry. We are registered under the Industrial Relations Act 1996, and we have been around since 1948. We represent the overwhelming majority of waste contractors in the State. Currently we have 93 members and represent an estimated 4,500 employees and subcontractors who work for those members. We utilise an estimated 2,600 collection trucks in the performance of our waste and recycling collections.

Our members cover domestic and commercial solid waste and recycling collections, liquid waste, skip waste, transfer station operations, landfill operations, waste processing facilities, recycling centres, clinical waste, hazardous waste collections—the whole gamut of waste industry. Our members range in size from the very small to the very large. We are one of the very few industries that operate across the whole of the State. We have a representative in almost every town and city in New South Wales where a waste and recycling service is provided by one of our members. Almost without exception, wherever a council contracts out its waste or recycling service it does so to one of our members. That gives a broad overview of who we are and whom we represent. I can go through the questions one at a time if you wish.

CHAIR: Start that way and Committee members will ask questions when appropriate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I suppose I expected you to be pro the legislation; I suppose your image is that you have an unskilled work force, although presumably your work force is grossly up-skilling with the amount of recycling. When there were hundreds of blokes throwing garbage tins onto passing trucks that was fairly unskilled work. Now you must be much more selective in the way you manage the waste and the way you process it. Presumably you are up-skilling, but I suppose I would have expected you to be pro the legislation in the sense that it would allow you a better bargaining position in your work force. Do you regard yourself as a typical employer association—most employer associations support WorkChoices? Or are you an unusual employer association employer?

Mr KHOURY: I cannot speak for the other associations. We certainly would be more likely to employ the lower skilled workers than other typical associations. We invest a lot of money and time into training. As an industry, we have been besieged by occupational health and safety concerns and workers compensation claims, and training is a way to address those issues and improve the occupational health and safety record of our industry. We have spent a lot of money on that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have to deal with a lot of lifting and pollutant materials.

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Mr KHOURY: A lot of manual handling issues over the years. Some of those issues have been addressed through mechanisation, such as the one-arm collection trucks that traditionally had runners behind the trucks. Many of those jobs have gone. They have been replaced by other jobs and Mr Wilson will probably elaborate on that. In the materials recycling facilities and the transfer stations there are a lot more manual workers, unskilled jobs, that have replaced those runners.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have to sort the stuff.

Mr KHOURY: That is correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you sometimes use people with disabilities to do that?

Mr KHOURY: Sometimes, yes. It is not practical in all cases, for productivity reasons.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think you are unusual? It is probably unreasonable to ask you to speak for all other employer groups but I thought as you were in contact with some employer associations or meet with other groups—

Mr DIAMOND: I think your question is going, if I can paraphrase it, to whether it is valid to assume that all employers and all employer associations unremittingly support the WorkChoices legislative package. If I can turn it around that way, that is where your question is going.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am asking you to give the Committee some sort of idea of percentage.

Mr DIAMOND: I can answer the question this way: In answer to question 8, on the second page of the document we have handed out, we think it is not an unusual conclusion for employers and employer associations to reach, that the assumptions that lie behind the effective deregulation of the labour market that WorkChoices brings about are not assumptions that can validly apply in an homogenous way to all employers in all industries in Australia. We have said that we think there will be winners and losers and that the future is difficult to foresee. What WorkChoices does is completely deregulate the labour market.

CHAIR: The Federal Government is not really admitting that, but I do not think we are disagreeing with you.

Mr DIAMOND: I will come back to that. When you have such a complete deregulation, so suddenly and so fundamentally, what happens is that opportunities for people to exploit it are opened up. That can never be assumed to be an advantage for business in a wholesale way. If you have people who are providing certain levels of wages and conditions to their employees, and they suddenly find themselves confronted with a low-cost entrant and exploiting that sort of deregulated environment, it starts a race to the bottom.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That seems logical to me.

The Hon. IAN WEST: Would that be exaggerated in a labour-intensive industry?

Mr DIAMOND: Clearly. There is one caveat to that, Mr West: in a relatively unskilled and unschooled labour environment that is very much the case. You would be familiar with that because as you know it is a huge concern in cleaning and security.

It is also a significant concern in the waste industry. Although there is an enormous amount of effort and resources being spent by the very people we represent here today on training and upskilling, you are still driven to the conclusion that it is, in the classic sense of the Australian labour market, a technically unskilled work force, and it is ripe for that sort of incursion of which we spoke. I know that is a very long-winded answer.

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CHAIR: It clarifies it. Probably there are some similarities but interesting differences between what you have said and what the Motor Traders Association said and which also, as in your written submission, pointed to advantages and disadvantages, positive and negative impacts. But they probably have more of an emphasis on the negative impacts on small businesses because, as they pointed out, most of the people they represent are classic small business and an enormous diversity of different kinds of businesses.

The Hon. KAYEE GRIFFIN: Given some of the comments that you have made in your answers to our questions, can I assume that most of your members employ men rather than women in relation to waste services? Is that correct?

Mr KHOURY: The majority of workers in our industry are men but it is not uncommon in materials recycling facilities to have women. There are a number of women drivers. One thing I will say is that wherever women apply for a job and are given the job, they are paid at the same rates as men. There are no distinctions in our awards for different gender rates of pay.

The Hon. KAYEE GRIFFIN: And also from your answers there seems to be an assumption that you do not think there is a major difference between the impact on rural and regional New South Wales, in terms of your membership, as opposed to metropolitan Sydney or some of the larger centres. Is that correct?

Mr DIAMOND: I think that would be an accurate statement. We did not see the effects of WorkChoices as being particularly magnified in rural and regional Australia as such. What we saw was that the issues that it poses for work forces are posed most sharply in work forces that are unskilled, where they essentially only had their labour to sell rather than their skill, and that effect will be felt equally in metropolitan and regional areas, it seemed to us. You might have an argument that there is more evidence of unskilled labour in some regional areas but we do not think that it is a fair assumption to say that simply by force of the legislation that its effects will be greater in regional Australia. We could not come to that conclusion.

CHAIR: Is that speaking for your association, or do you think it is true generally?

Mr DIAMOND: I have a personal view about that but—

CHAIR: The comment you have made is meant to apply to your work force.

Mr DIAMOND: We speak for our work force and our members. That is what we are here to do.

The Hon. IAN WEST: Which would tend to be in regional and metropolitan areas similar in its intensity. There would be waste disposal job opportunities across both regions as opposed to job opportunities for a person working in a retail shop or whatever.

Mr WILSON: I think I can give an explanation. I operate in Sydney metropolitan, Central Coast and Coffs Harbour, and we have the same systems in the whole three areas. I have a similar requirement for labour, male or female, and we train the whole lot on an equal basis and they are under equal pay conditions.

The Hon. IAN WEST: So it may well be quite unique.

The Hon. KAYEE GRIFFIN: Could part of the your comment in relation to regional and rural New South Wales also be the fact that perhaps your membership does not operate as much in small rural towns? If you look at, for instance, household garbage collection and some of the recycling processes that occur, would they be mostly done by local government rather than having local government use a contractor?

Mr KHOURY: Approximately half of the waste and recycling services at the domestic level are done by our members across the state. One of our members actually specialises in the small towns across New South Wales, and probably has 30 or 40 contracts with councils across regional New

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South Wales. There is no hard and fast rule as to whether it is normally done by contract or day labour. That just comes down to a choice by the council to decide which way they go.

The Hon. KAYEE GRIFFIN: I think my question is aimed more at just how many small rural towns you are involved in rather than—

Mr DIAMOND: I think it is a pretty even spread. I think this industry in particular is probably, from a contractor's point of view, one of the most evenly spread across metropolitan and rural and regional New South Wales of any contract-based industry.

CHAIR: Are you getting into the fact that perhaps the association's members do not get into the smallest rural towns?

The Hon. KAYEE GRIFFIN: Yes, I am questioning whether—

Mr KHOURY: We are in the smallest towns. One of our members has a contract with NetWaste, which covers all the councils from Lithgow to Broken Hill. He provides collection services to all the small towns out that way.

The Hon. KAYEE GRIFFIN: It was more a question of whether you are into the smaller towns.

Mr KHOURY: I know that that member, who is a large member, also has depots in just about every small town in the Hunter Valley.

Mr DIAMOND: Is that not the issue though? If you have a deregulated labour force, is the effect of that deregulation going to be sharper in rural communities? That is the essence of the question. I think our point is that simply perforce of the legislation we did not think you could draw that conclusion. At different stages in the economic cycle that might be so because you might find that the effects of unemployment in an economic downturn are sharper in rural communities and therefore the corollary is that the effect of the deregulation is sharper. But that is not to say that simply because of the legislation itself it will be sharper in rural communities. I am not trying to split hairs with you but it is an important point. We just did not think it was a valid conclusion to draw based on the experience and views of our members.

CHAIR: But some industries or representatives of unions have had a different view. It may well reflect, for instance, in certain industries the ability of someone in a rural area to get in touch with a union or other advice or advocacy. There are for some industries clearly differences but we are here to get your view, not to ask you about other people's views.

Mr DIAMOND: For pastoral industries, that may be so, if you have remote workers, be they shearers or farmhands or whatever. I think you could say that their difficulties which exist now will be somewhat magnified by this legislation. For the employees of our members, though, given the broad spread, it is a fairly consistent response.

CHAIR: Are you a highly unionised industry—your association?

Mr DIAMOND: Significantly—I think that is the word we would use.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So most of your members would negotiate contracts with the relevant union and the ones who are not members of the union would still get that award.

Mr DIAMOND: TW has a strong involvement in the industry.

Mr KHOURY: The two awards that govern the operation of the industry were negotiated by consent with the union. We reached consent with the union.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And then you pay on that?

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Mr KHOURY: Yes, but many of the employers in the industry pay above that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But that is your base line. You are not getting into AWAs and going below that.

Mr KHOURY: No.

The Hon. KAYEE GRIFFIN: The major union your members would deal with is probably the Transport Workers Union.

Mr DIAMOND: Absolutely.

CHAIR: We were originally going to have them this afternoon but they are unable to come. We will have them next week or later because there are a number of different issues we want to take up with them.

Mr DIAMOND: I think our principal issue in any event flows from that. We say in point nine that our major concern with WorkChoices is the removal of the capacity of an industry to establish effective minimum rates and conditions which will stick and which will provide a decent base for the industry. That has been taken away.

The Hon. IAN WEST: Can you explain why you would want that?

Mr DIAMOND: We say exactly why actually. I might quote from our answer to paragraph 8:

The waste industry is both a rapidly changing and a rapidly developing industry. It will need to draw on employees to an increasing extent in the future. If the effect of WorkChoices is to create a downward spiral of wages and conditions then the capacity of our members to find good people to work in the industry may be severely compromised.

That was the conclusion that we reached. In paragraph 9 we go on to say:

In the view of WCRA the best result which this inquiry could deliver is that it strongly recommends as an amendment to the legislation which would mandate for the Australian Fair Pay Commission to establish and legislate for minimum rates of pay and conditions across specific industries (such as waste & recycling). At the moment WorkChoices prevents this and WCRA believe that wholesale and unfettered deregulation is undesirable for Australian business and for Australian society.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You obviously have fairly high start-up costs in your industry to get the equipment, depots and so on, but once you have those start-up costs, a fair percentage of your costs would be labour costs, would they not?

Mr DIAMOND: I think that is a fair statement.

Mr WILSON: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So if someone like Macquarie Bank funded somebody to come in and then they were ruthless in wages terms, that would obviously disquiet your industry in terms of the existing players, would it not?

Mr WILSON: Correct, in the short term.

Mr DIAMOND: We were having this discussion yesterday, but we were just wondering whether you listened to it, except we did not name Macquarie Bank.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I probably should not have.

Mr KHOURY: We have just had an American merchant bank that has just bought Cleanaway in recent times, which is one of the largest operators in our industry.

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The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If someone were to go along that path and take maximum use of this legislation to drive wages costs down, that would have a huge impact on both the employers and employees in your industry?

Mr DIAMOND: Absolutely.

Mr KHOURY: And it would force the existing employers to also drop their wages to ensure that they kept a portion of the work.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Otherwise they would go broke.

Mr KHOURY: Otherwise they would lose work and they would go out of business.

CHAIR: Does this imply that you are assuming that when the Fair Pay Commission sets a new minimum award to replace the 2005 one that wages in your industry, because of what you have just been talking about in response to Arthur's question, will basically race to the bottom and therefore that is why you are making the point about the need for a specific award for an industry. Because you see your industry's needs as being people with more skill and more commitment and therefore you need a higher minimum award than lots of other industries?

Mr DIAMOND: Absolutely. The jurisdiction and the charter of the Australian Fair Pay Commission, as is spelled out in the legislation, is to develop and then maintain a limited series of very bare minimum rates and conditions in headland type industry delineations and we are extremely concerned that that whole minimisation process will result in some arbitrary low rate being assigned to our industry, which will then leave open the field to the race to the bottom, which will become a much-used phrase we suspect, to occur.

The Hon. IAN WEST: In terms of the hearings before the Fair Pay Commission have you, as a registered organisation of employers, got the right of appearance?

Mr DIAMOND: There will be no hearings. Those days are gone. There will be a series of "inquiries". We have been invited to put in a written submission and we are working on that at the moment. As far as we are aware there have been no scheduled formal hearings where there will be argument.

CHAIR: What are these four days they have listed in August in New South Wales. Mr West came across this first. There is a day in Campbelltown, a day in Dubbo, a day in Sydney and a day in Penrith.

Mr DIAMOND: We had understood that those days were for commission members to do almost like a tour.

The Hon. IAN WEST: By invitation.

Mr DIAMOND: Yes, and the occasional person may be invited to come along and make a submission.

The Hon. IAN WEST: Not dissimilar to this.

Mr DIAMOND: Not unlike this forum, but the sort of hearings that we have been used to in the industrial commissions at both the State and Federal levels, they are not happening. There will be no argument.

The Hon. IAN WEST: As a registered organisation of employers and employees under the various State and Federal industrial relations instruments you do not have any right of appearance?

Mr DIAMOND: No.

Mr KHOURY: One of the problems that we have and all associations tend to have with this whole process that WorkChoices is going through is that we invariably only find out about these

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things by accident such as when I am reading the *Daily Telegraph* on a Saturday morning and I happen to catch something on page 32. There is no formal process from the Department of Employment and the Workplace Relations and WorkChoices to communicate with bodies like ourselves, and I made this point with them yesterday. We find out by accident.

CHAIR: Did you have an opportunity to talk to them yesterday?

Mr KHOURY: Over the phone.

CHAIR: To ring up and complain?

Mr KHOURY: Just to say, "Can we register so that we can get regular information so that we have got an opportunity to participate in all the decision-making processes that take place."

CHAIR: And the answer to that is no, there is no process.

Mr KHOURY: There is no real forum. They have taken my name. It is not the first time they have taken my name and details. It is the first time they returned my call though.

The Hon. IAN WEST: You are saying that registered organisations under State and Federal industrial instruments or the conciliation and arbitration Act in New South Wales and federally in terms of registered organisations have become a non-entity. You may as well not be registered?

Mr KHOURY: That is right. We have not been properly consulted with.

Mr DIAMOND: I think we have been cast into the role of advocates for hire rather than having any guaranteed statutory rights of appearance or weight.

The Hon. IAN WEST: Does that leave the registered unions of employers and employees under the New South Wales State and Federal jurisdictions in the same position as they are in Britain, where they are effectively in a position to act independently as they wish?

Mr DIAMOND: I think that is right.

The Hon. IAN WEST: If an organisation of employers or employees took appropriate industrial action, whatever that might be, they are really outside the law?

Mr DIAMOND: I do not think that is right. Obviously there are strict sanctions under WorkChoices in respect of that, but largely your comparison of the role of industry associations and registered unions of employees with the British position is pretty spot-on.

The Hon. KAYEE GRIFFIN: Would a number of your members be deemed to be small business under WorkChoices?

Mr KHOURY: All of our members are corporations.

The Hon. KAYEE GRIFFIN: But in terms of the number of employees, for instances, less than 100?

Mr KHOURY: Absolutely, yes, probably two-thirds of them.

The Hon. KAYEE GRIFFIN: Have you looked at the parts of the WorkChoices legislation that relate to the record-keeping process by business?

Mr DIAMOND: Yes.

The Hon. KAYEE GRIFFIN: Do you regard the new proposals as onerous for your members?

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Mr DIAMOND: Before the regulation amendment that was made in May I think that would have been a fair argument in relation to the keeping of start times and finish times for everybody. They amended that. There was some debate about this very point a couple of months ago but, fairly looked at, I do not think that you could conclude that record keeping under WorkChoices is onerous. I do not think that conclusion is available.

The Hon. KAYEE GRIFFIN: Does your association have any comment in relation to the welfare to work legislation in relation to your membership looking for employees and registering as having positions open for people through Centrelink?

Mr DIAMOND: I think the key to that lies in part of our answer to question 2, which I will quote:

The apparent presumption which lies behind the diminishment of the bargaining capacities of workers is that employment in particular and economic activity in general will be stimulated in an economy where employees have a relatively free hand.

Although it has not been announced in any formal sense nor debated in any wider forum the conclusion must be that the Federal Government intends, with its welfare to work legislation, to force as many people into the labour market who may not be in that labour market at the moment as possible and with the intent that to make those people who would otherwise be unattractive to employers more attractive because they can utilise WorkChoices to put them on pretty cheap rates.

CHAIR: Is yours an industry where you struggle to get workers in some areas?

Mr WILSON: Yes, it varies on where the contracts are. A good example is central Sydney. To draw workers to drive trucks in central Sydney you normally drive them from Blacktown or the Central Coast. That is where you are pulling your work force from.

CHAIR: Because lower paid workers cannot afford to live in central Sydney.

Mr WILSON: They cannot afford to live in those areas.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So they have to commute?

Mr WILSON: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably some of your trucks start very early times in the morning?

Mr WILSON: That is the one advantage, as a matter of fact, of commuting. Our trucks do start early in the morning, normally between 5.30 and 6.30 so they miss the traffic.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But if they start at Gosford to get to you by 5.30 for a start, they must have to leave by 3.30?

Mr WILSON: Correct.

CHAIR: And they have to therefore use their own transport?

Mr WILSON: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So they effectively do night shift work.

Mr WILSON: They are paid accordingly.

CHAIR: I am not sure how the hours work. Do people have second jobs? What is the average?

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Mr WILSON: The industry has changed. If you recall, waste trucks used to come around at night and empty your containers. Some say we have advanced, I am not quite sure about that, but most contracts now start at 5.30 or 6.30 in the morning. Local government decided noise issues were too much to combat so they changed the contracts to a daytime job. That immediately cut the second job out. Very few people in the industry have second job. The hours on the trucks, because you have a higher capital investment in the truck itself—you are now talking around \$300,000 a truck—the trucks are on the road longer, whereas at night they were only on the road for about five hours. Now they are on the road for 9 or 10 hours to finish the day, so there are no second jobs.

CHAIR: And there are no means of combining domestic waste with other forms of waste so that you can lengthen the day, in effect?

Mr WILSON: No.

Mr KHOURY: They are different collection systems.

Mr WILSON: The hours that they are working now are suitable with the other issue that we were just talking about, them driving to and from the job in metropolitan Sydney. You would not want them working any longer.

CHAIR: One of the reasons why I asked that now is because, in relation to the welfare to work changes, a lot of people are suggesting that will usually mean people getting very casual and part-time time jobs, which may be very few hours a day, for instance?

Mr WILSON: No. That will not be suitable.

CHAIR: What about in terms of the material in recovery centres and recycling centres?

Mr WILSON: That has worked overseas where they have had four-hour shifts that suit mainly married women. I have not seen that work in Australia at this stage because the shifts normally are 8 to 10 hours, which are suitable for the Australian worker. Those hours are set around the waste that is being collected, not about whether it is better to have someone for four hours or six hours. Everybody knows the amount of waste, recyclables or green waste that has to be collected and you program your trucks and labour to suit. You do not send out a \$300,000 truck to do four hours work.

CHAIR: It is an integrated industry in the sense that you have to look at it as a whole?

Mr WILSON: Correct. The other limitation we have where you cannot utilise your truck for more than one shift is that you have limitations on disposal or processing. They are also limited by local government and the hours they can operate. There are very few transfer stations and landfills that we can go into after hours. They close at 5.30 or six o'clock in the evening. Even if you could collect it you have nowhere to dispose of it.

The Hon. KAYEE GRIFFIN: We have three collections now in most local government areas, which is household garbage, recycling and green waste, usually on opposing weeks. I presume that a lot of contractors have extended their runs to cover the later starting time, and that fits in with when you can go to a transfer station.

Mr WILSON: Correct.

CHAIR: To what extent does the role of the New South Wales Government and regulation of your industry prevent the kind of deregulation that you are talking about that is at the heart of the WorkChoices legislation. Is yours an industry where the term "deregulation" cannot really apply, or do you see it moving in and perhaps picking the eyes out of the more profitable sections of the business, for instance?

Mr DIAMOND: I do not think there is anything of which we are aware that is contained in the regulation of the waste industry by the State Government that would prevent or hinder the deregulatory effects of the labour market that WorkChoices has brought about.

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CHAIR: Yet, it would be amongst the most highly regulated industries? Obviously there is a spectrum.

Mr KHOURY: There are more regulations that affect our industry than most. We are affected by environmental legislation, and occupational health and safety legislation. Road rules affect our industry.

CHAIR: Local government rules?

Mr KHOURY: Yes. There is a domestic waste code of practice that WorkCover has put out that governs how the industry is to conduct its collections, the assessments and risk analyses that need to take place before those collections can take place.

The Hon. IAN WEST: And the disposal?

Mr KHOURY: Yes. As Mr Wilson said, all landfills close at five o'clock. There is no point having trucks that start after five o'clock if they have nowhere they can tip.

CHAIR: Landfills cannot open after five o'clock, because that is part of the State Government regulation.

Mr KHOURY: They cannot. Unless you are going to floodlight the landfill, and I do not know any landfills that are floodlit. The transfer stations open about midnight and the trucks can start accessing the transfer stations in the early hours, but the transfer stations have to be able to access the landfills. The trade waste starts about two o'clock in the morning and the domestics, for noise reasons, start about 4.30 onwards.

Mr DIAMOND: There will be only two factors that effectively determine the fate of employers long term with respect to their wages and conditions under WorkChoices—supply and demand. You can argue until you are blue in the face about the fairness, but on any fair reading of WorkChoices as it is currently drafted that is an unarguable fact.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can I come back to disability and the welfare to work system? What percentage of your employees are people with a disability? The reason I ask that question is that we get good news stories on the evening television where disabled folk are sorting out different sorts of plastic and you think that there must be a lot of work in that type of industry for people with intellectual or physical disabilities. I suppose you have the image that you are making good use of people with these difficulties.

Mr DIAMOND: Mr Wilson can give you the facts on that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What are the facts on that?

Mr WILSON: There are applications where that will work, and it is mainly in rural areas. I use the Challenge Foundation in Coffs Harbour and I employ six handicapped workers amongst a staff of about 15. I also operate a material recovery facility [MRF] on the Central Coast, but I have no choice there but to hire in the labour market. When I started in 1998 we worked with the State Government to develop a program for training handicapped and underprivileged youth, but that support fell apart in 12 months and it has not been rekindled. I employ staff there. If we take the industry around New South Wales I would suggest that most probably around 50 per cent of the rural material recovery facilities have some handicapped people working within them.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What is the total number out of the percentage of your work force? Is it an absolute number? How many people are employed?

Mr WILSON: Your collection work force is normally twice the number that you employ in the materials recovery facility and your major work force is in the metropolitan areas. The amount of handicapped people working in the total waste industry would be very small.

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The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are not employing that many people with disabilities?

Mr WILSON: Not in \$300,000 trucks.

Mr DIAMOND: We think probably around 1 per cent.

Mr WILSON: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: As low as that?

Mr WILSON: Yes.

CHAIR: Why can you not employ these people in the metropolitan area? Is it because it is more mechanised or more complicated?

Mr WILSON: The material recovery facilities are controlled by two companies in the metropolitan area, Waste Services New South Wales, a State Government-run body, and Visy. They are larger MRFs, but you would have to speak to them about their ability to investigate that market in the metropolitan area. I am not aware of them using any.

CHAIR: Is Visy not a member of your association?

Mr KHOURY: Visy is, yes. But they are hugely mechanised facilities as well.

Mr DIAMOND: And also the presumption that you can just thrust a disabled person into that environment is not an assumption we would lead to because there is, of course, depending on the nature of the disability, quite often an enhanced risk of injury. I think you would have to conclude that by and large the people who are, to use a neutral term, released into the labour market as part of the welfare to work changes are most likely to be absorbed in either retail food or general retail industries where the hours and relative low risk of injury will suit people of that nature.

The Hon. KAYEE GRIFFIN: Could you explain what an MRF is?

Mr WILSON: A material recovery facility that receives co-mingled recycle and sorts it into its different product ranges.

CHAIR: That is why I said earlier that people who have given us evidence about the welfare to work changes had tended to stress relatively short shifts, and it seemed as if the industry you were describing was unlikely to get many of those people.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I noted that Mr Wilson said that schemes that were successful had been supported by the Government and basically had collapsed when they were not.

Mr WILSON: And that was in 1998 though we started the first materials recovery facility on the Central Coast. The local education facility started a course for training in the materials recovery facility and we contracted them for approximately 12 to 18 months until they identified that they could not keep the work force up and we had to go to the open market.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Was it a problem of people volunteering?

Mr WILSON: No, it was keeping them on at the job.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: They could not do the work because it was too hard, they could not do the hours or was the training too difficult? What was the practical problem?

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Mr WILSON: I would suggest an attitude to the work force. The hours are only 40 hours a week. The sorting of recycled material is not the nicest of jobs because people do not always put recycled material in their recycling bin. I would suggest it was just getting the support of the individuals that the teachers had difficulty with. I had to front with a work force of 16 people every day. It is a team effort for a materials recovery facility, so you need to have a work force every day.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Was that mainly people with intellectual disabilities?

Mr WILSON: A whole range, including a lot of street kids who have difficulty with education. We had a whole range.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Because people with intellectual or physical disabilities tend to have quite a high work ethic and street kids may not.

Mr WILSON: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You had a mixed work force.

Mr WILSON: It was more on the street kids and trying to educate the street kids.

Mr DIAMOND: There is a distinction between employees with a disability and employees with a disadvantage. What Mr Wilson is saying is that he was compelled, for various reasons, to draw on the latter, that is employees with a disadvantage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am looking at the situation that people with disabilities will be impacted on by the welfare to work scheme, which might raise the bar as to what a disability is and the possibility of finding work. Obviously, seeing people taking off a piece of plastic and putting it into a bin or whatever as it goes by seems to be boring work, but able to be done by someone who is trained.

Mr WILSON: The system at Coffs Harbour has been working with a Challenge Foundation for 15 years. It started off exactly the same way, as an attempt to run the whole of the materials recovery facility themselves and supplied staff of 15. In about a period of 18 months they identified that they could not supply that number of staff on a regular basis, and cut it down to half.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And that has continued?

Mr WILSON: That system is still working.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It can be done in limited numbers in limited areas?

Mr WILSON: Depending on the area and the support, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And, presumably, with a fair bit of energy input from the disability association?

Mr WILSON: And the contract as well. The new MRF has been designed to fit those handicapped people. They cannot fulfil every job in the MRF.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But WorkChoices will not be the wonderful facilitator of this situation in the sense that it is very much market driven rather than a welfare-integrated system.

Mr DIAMOND: I think that is a valid conclusion.

The Hon. IAN WEST: As I have raised this on numerous occasions, I should raise it with those giving evidence now. In terms of what you presented to us today, point seven refers to the fact that WorkChoices does not affect the rights of injured workers. Could you comment on the unfair

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dismissal provisions under the Workers Compensation Act in New South Wales in light of the changes WorkChoices has made in relation to corporations provisions in the Constitution as opposed to conciliation and arbitration provisions, and the complexities that arise when someone takes a case to the New South Wales commission for unfair dismissal because of injury?

Mr DIAMOND: As you are aware, there is a section in the New South Wales Industrial Relations Act 1996—unlike some people, I do not profess to have a photographic memory and I cannot remember the number of that section—which enables employees who are dismissed by reason of injury to make an application to the commission for reinstatement if they become fully fit within two years of the date of dismissal. That portion of the New South Wales legislation is not replicated under WorkChoices.

If an employee of a corporation with 100 employees has his or her employment terminated by reason of injury, that is, incapacity to do the job because of a long-term workers compensation injury, and should that employee recover full health within two years, the added protection of the New South Wales Act is denied to him or her. If an employee of a corporation with fewer than 100 employees is terminated by reason of incapacity to do the job because of long-term injury, effectively that employee has no rights under WorkChoices.

The Hon. IAN WEST: Without wasting too much of your time today, I refer to a corporation that has fewer than 100 employees and that corporation unfairly dismisses a person that is 100 per cent fit to do the job. If its defence were that the person was terminated for operational reasons, where would be the jurisdiction?

Mr DIAMOND: If it is fewer than 100 employees it is arguable that the employer would have any rights at all. The decision to terminate for operational reasons might be an invalid one. You can test that in the Industrial Relations Commission. Sadler's case, which was decided last month, makes that clear. Because the hypothetical corporation you referred to has fewer than 100 employees, the employee would not have been able to test it in any event. So the employee has nowhere to go. I think you probably knew that, but that highlights it.

CHAIR: In your original submission you referred to the negative aspects of this legislation, as distinct from your document today. Apart from the specific comments about your industry, would it be fair to say that you see as the most worrying impact of the legislation its social effects. You make comments about our traditionally egalitarian society and what might happen to our society at a time of economic downturn. Would that be a fair statement of your overall view of the impact of this legislation?

Mr DIAMOND: In the debate we had at executive level in the Waste Contractors and Recyclers Association it would be fair to say two things in answer to your question. None of our representatives put themselves forward as experts, or even qualified commentators, on society. However, in the debate each of them expressed concern about what this will mean for Australian society going forward. As parents and as people who function in society that concern has been voiced. Where that goes we do not know.

CHAIR: I guess your perception of that is sharpened by the nature of the industry in which you work and your consciousness of unskilled workers, their choices, what might happen to their wage levels, and so on?

Mr DIAMOND: I think that is a fair conclusion.

Mr KHOURY: Hence the strong recommendation we made in answer to question No. 9, that is, we would like to see some specific minimum rates legislated by the Fair Pay Commission.

CHAIR: You explained to us why you believe that should be done for the waste and recycling industry. If we asked you to nominate the kinds of industries that would need to be identified in that way, how would you describe them? Would they be dangerous industries or unpopular industries?

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Mr KHOURY: Others come to mind. I have been heavily involved in transport over the years. That is open to exploitation if it is not regulated. I refer to long distance driving. We all know about and have seen the stories publicised in the media about what can happen there. So there would be transport and our waste and recycling industry. You could look at others such as manufacturing and retail.

CHAIR: Would the risk of exploitation be the common denominator?

Mr KHOURY: I guess it would be, yes.

Mr DIAMOND: The word "exploitation" is probably a bit of an emotive term. As we said earlier, if the assumption is right—and it must be right—the only two factors that will really operate in respect of employee wages and conditions going forward are supply and demand, given that WorkChoices is such a violent and fundamental deregulation. But look around and see what has happened elsewhere. Look at Britain today, which has had 24 years of complete deregulation in the labour market. Look at New Zealand in that period when there was complete deregulation, before it started to turn back the cycle. Look at the American market which, by the way, has a slighter degree of regulation than does WorkChoices, which will surprise some people.

If you look at those societies you find that industry is divided sharply into two categories. There are categories on the one hand that are called minimum rate industries and categories on other hand that pay well. The ones in the first category are industries where there is a low level of education and a relatively low level of training required for employees, and there tends to be access to an ongoing and fairly easy labour supply. At the moment in the various State capitals in Australia there is a high rate of employment and a low rate of unemployment. To some extent that will cushion the immediate impact of WorkChoices. But when an economic downturn occurs things will change and the minimum rate industries to which we alluded to earlier will start to come into sharp relief—retail, cleaning, security and transport.

The Hon. IAN WEST: Hospitality?

Mr DIAMOND: To some degree in hospitality, probably directed more to catering because they are in the front-of-house role, say, in accommodation. They have slightly more stringent requirements for the people they take on.

The Hon. IAN WEST: From your extensive knowledge of this issue, give me an educated guess as to the percentage. Are any areas in the economy subject to international or global competition?

Mr DIAMOND: Transport certainly is. I am trying to think of other areas.

CHAIR: Do you mean at the ownership or management end, or the import of overseas labour?

The Hon. IAN WEST: Would it be wrong to suggest that employees in your industry are not competing with waste disposal employees in Beijing?

Mr KHOURY: Very limited. Occasionally we lose a processing contract here or there, for example, some bales of cardboard or high ferrous material will go offshore, but very rarely.

The Hon. IAN WEST: Referring to employees that you do employ, do you have severe competition with employees in other countries?

Mr DIAMOND: No. It is purely domestic competition. The international competition that you are talking about can take place only when goods and commodities are sold offshore or imported.

The Hon. IAN WEST: I am thinking of industries that you talked about earlier and that first category of people affected by WorkChoices, or that type of legislation. Those types of employees do not appear to me to be the ones that are in direct competition with overseas labour.

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Mr DIAMOND: No, but factory workers will be. If you are an unskilled process worker there is no doubt that there will be extreme pressure on your wages and conditions from companies that to date have had to compete with offshore suppliers and that wish to increase their market share here. It will affect them.

The Hon. IAN WEST: Could you make a guess as to the percentage of the labour force?

Mr DIAMOND: No, I could not.

CHAIR: Mr Wilson, I think you mentioned earlier the difficulty in parts of your industry in central Sydney. You said that people could not afford to live in central Sydney and that there were problems in getting people. In the kinds of industries Mr Diamond just referred to presumably there is a growing problem in getting workers in retail, cleaning, security and transport in the more expensive parts of a city like Sydney?

Mr WILSON: It is not an area in which I have any expertise. I would suggest, just looking around, that a lot of those people look like family members who live in large family homes with 10 or 12 members, and they all work. That is not the type of person we would employ to drive a garbage truck. Employees have to have qualifications for the size of the truck and they have to have the physique to be able to handle the task. That type of individual is difficult to find in close proximity to the central business district.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said that the American Merchant Bank had taken over one of the larger players in the industry?

Mr DIAMOND: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If it hired under workplace contracts that would put a cat among the pigeons for members of your association?

Mr KHOURY: It could rarely do that when large contracts were being bid for. It could come to agreements with its labour force, provided it could find suitable workers. Remember that there is a skills shortage at the moment, so it is not easy to find good drivers. You still have to pay above award rates to get them. But, as Mr Diamond alluded to, that might not be the case in the future if there is an economic downturn.

Mr DIAMOND: Or if the Federal Government expands its temporary visa program. I note that that is being talked about.

CHAIR: So drivers, for instance, could be included. Thank you for giving evidence before the Committee today.

Mr KHOURY: If you think of anything later that you want to ask us, please drop us a note.

(The witnesses withdrew)

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MICHELLE PEDERSON, New South Wales State Advisor on Women and Employment, National Council of Women New South Wales, 280 Pitt Street, Sydney, and

MIMI ZOU, National Advisor on Women and Employment, National Council of Women Australia, Deakin, Canberra, and

KATHRYN SULLIVAN, Government and Community Relations, New South Wales Nurses Association, 43 Australia Street, Camperdown, and

RITA MARTIN, Government and Community Relations Officer, New South Wales Nurses Association, 43 Australia Street, Camperdown, affirmed and examined:

CHAIR: Obviously you will have similar and different points of views on various issues. We are particularly interested in your views on the impact of WorkChoices on women. The Nurses Association and the National Council of Women can both talk to that issue. Would you like to make an opening statement before we commence to ask you questions?

Ms ZOU: The National Council of Women New South Wales and the National Council of Women Australia are concerned about the impact that the Commonwealth legislation WorkChoices will have on women, a particularly significant yet vulnerable segment of the labour market. We would like to thank the Social Issues Committee today for the opportunity to hear our concerns. We wish to note that the focus with respect to the terms of reference of this inquiry will be on the impact of women. We believe that in the context of global economic competition and labour and skills shortages the participation of women in the work force is an essential component to enhancing Australia's productivity and growth.

Currently, women make up the majority of casual and low-paid workers in Australia. Australia has very high levels of casual work compared to other OECD countries. Research shows that casual work has a negative effect on gender equality, since it adversely impacts on the development of skills and provides workers with no long-term security to plan and contributes to a wider degrading of wages and conditions. A more efficient and fairer approach to the utilisation of women in the labour market requires the attenuation of existing barriers to their participation. These barriers result from the unequal outcomes for women workers, lower pay, fewer entitlements and less job security compared to their male counterparts, as well as the lack of support for women juggling paid work and motherhood.

Unfortunately, we do not believe that WorkChoices actually addresses these barriers to women's participation in paid work. On the contrary, the new reforms are likely to produce less favourable outcomes in wages, conditions and employment rights for women. The implications of lower wages and higher job insecurity emerging from these reforms will discourage the constructive participation of women in the labour market and worsen the position of women in the workplace. It will exacerbate the existing problem of a gender wage gap, which will have long-term, adverse repercussions for women, their families and communities, as well as the future prosperity of this country. We believe that WorkChoices tips the scales too far in the employment relationship by further weakening the bargaining power of an already disadvantaged group of workers.

CHAIR: Ms Sullivan, would you like to make a statement on behalf of the Nurses Association and then each of you can answer questions?

Ms SULLIVAN: I do not mean to sound facetious but I would like to say "Me too" to everything that has just been said. In fact, I would agree with the comments by the former speaker Mr Diamond. Even though our industry professions are very different, there were certainly strands of what he was talking about which apply to us. At this point I would like to say thank you for asking us to come along today and provide a submission to the Committee because we really do believe that this is an extremely important social issue.

CHAIR: Would you give us an indication of the number of women in the nursing profession and the variety of the industry, such as hospitals and other facilities?

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Ms SULLIVAN: That is a good idea to give you the context of where our concerns are. The New South Wales Nurses Association has approximately 52,000 members and 90 per cent of our membership is female. Of the 52,000, exactly 19,452 as at 30 March are employed in the private sector. What we call our private sector is what is not the public sector. So approximately two-thirds of our membership work in the public sector, which are the public hospitals, and the remainder, the other one-third, work in the private sector: private hospitals, predominately nursing homes, day procedure centres and medical centres. At the present time approximately two-thirds of our membership are protected from the WorkChoices legislation. It does not apply to them because the Lemma Government has taken action to recognise the nurses as a level of Crown employees, so they are not affected. The remaining one-third is and was affected as of March this year.

CHAIR: Do you say that most, if not all of the nurses in public employment work in hospitals and the private component ranges from small to large businesses?

Ms SULLIVAN: That is correct. There is a lot of variation but the overwhelming majority of employers in the private sector for the nursing work force employ less than 100 employees. So our members, particularly in nursing homes, are extremely vulnerable to this legislation. They were already a vulnerable part of the work force before the legislation came in, but the legislation has made it now that there is a capacity for them to be more vulnerable than they were before. They lose pay, lose conditions and it will affect employment particularly in the rural area. We see that it could be the source of a significant social dislocation over the years to come.

CHAIR: At the moment there is a considerable shortage of nurses in New South Wales and Australia as a whole?

Ms SULLIVAN: That is correct. It has gotten better. The shortage was acute at one point in time, not just in New South Wales but nationally and, in fact, internationally. But with the improvement in wages and conditions that has been ongoing for a long time but particularly over the last few years, we have seen that shortage starting to ease.

Our concern is that if WorkChoices has its effects, particularly again in the private sector, we will see a return to that crisis widening. Our colleagues in Queensland at the moment in the private sector are looking for a pay increase to match New South Wales rates. We are the highest paid nurses in the country at the moment. That has been refuted by the private sector employers and we have even had comments from the Minister for Ageing that are negative to the nurses receiving like rates on the basis of affecting capacities to pay and suchlike.

CHAIR: Thank you for that. It helps us to get a picture of the industry.

The Hon. ROBYN PARKER: The premise of the legislation was that a lot of small businesses said unfair dismissals were a disincentive to employing full-time or more permanent staff and therefore there was a casualisation of the work force. That was certainly promoted out there. To any of you foresee a position where more women may get more permanent employment because of the WorkChoices legislation?

Ms SULLIVAN: I thought the debate was the benefit of the WorkChoices legislation would be that employers can employ people at lower rates and therefore employ more people. That is the message I was getting from the debate in the community, but that is contrary to our experience. I will come back to the permanency part of your question in a minute. I will dwell on the nursing home sector. When the Howard Government was first elected it removes the compulsion of the nursing home proprietor who was not spending money on care. That proprietor had to send the money back to Canberra. That was removed 10 years ago. That would lead us to hope and believe if they are able to keep the money, it is all legal and proper and everything, we might see a growth in employment, we might see more money being spent on care, and that would be a good thing.

It did not happen. In fact, much to our great unhappiness, there has been a gradual downturn in the number of nurses employed in the residential aged care sector, which spikes when there has been a wage increase through awards. You expect that, it happens, but it usually levels out again, but it is not happening now. We say that argument about pay people less and you can employ more people is just not happening. Like Ms Zou before me was saying, female employment is quite high in the

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casual and part-time area because of lifestyle and life's—I was going to say decisions but sometimes they are not even decisions—imperatives. Again in the private sector, part-time employment—not so much casual, our members do not like casual because it can be very unreliable—something like 85 per cent of the residential aged care work force is part-time.

Where we found problems with the difference between permanency and casual in the past, and it might be that with this legislation it will change, is that it has really been an issue mainly in coastal, rural towns where people have gone to retire and work before they retire or to semi-retire or whatever their decisions are. Because the places have been popular to have our sea changes to there has been a tendency to keep casual employment as a way of being fair, giving as many people employment as possible. Again, sometimes that idea backfires. It does not work when people have been on a casual basis—what we would call permanent part-time because they have been working set shifts for years, but they are still deemed to be casual and therefore they can be terminated on less severe grounds than permanent employees and they do not get paid sick leave.

CHAIR: Would they normally be working a smaller number of hours per week?

Ms SULLIVAN: Definitely, yes. That is in the rural coastal areas.

CHAIR: The Port Macquaries and places like that?

Ms SULLIVAN: Coffs Harbour, and Lismore is very popular. But in the inner-city you see a bit of a difference. We have members who are currently working two and sometimes three jobs so that virtually all the time off they have is for sleeping. That is at the present time. Again that is our worry with WorkChoices. If the minimum rate of pay from the Fair Pay Commission becomes standard for our most vulnerable people, they would have no choice but to get two jobs and they will be virtually working poor. We see that as detrimental to our society.

Another thing, if I might go off on my hobby horse here, superannuation. We are getting mixed messages, particularly from women, who find it difficult to build up a big bank of superannuation, again because of broken employment usually—not everyone, but a lot of women. If the minimum rates continue into the future and much lower under AWAs, and they could for our members, and the trickle is starting to happen now, again we do not understand how that will encourage or allow anyone to build up a significant retirement fund for themselves as a self-funded retiree. They will be relegated to social security, and the queue will get larger. We cannot see that as assisting the prosperity of this country.

Ms PEDERSON: From some of the research we have done, we believe the unfair dismissal laws will unduly disadvantage women working in small and medium business enterprises, many of whom already have low paid security as casual and part-time employees. The reasons being as follows: The Government's claims that the new unfair dismissal laws will generate more jobs for Australians are based on dubious grounds. The July 2005 Dunn and Bradstreet national business expectation survey revealed that 81 per cent of businesses believe the Federal Government's industrial changes to unfair dismissal laws will have no impact on their intentions to employ more staff. In fact, the unfair dismissal exemptions will cause a decline in the quality of jobs in the small- to medium-sized enterprises as it would be more difficult for such employers to recruit high-quality workers who are reluctant to have precarious job security. On the basis of new empirical evidence we believe the unfair dismissal reforms will have significant detriment to the job security of women workers and their families. That is what we have researched in speaking to various union bodies and industrial relations experts. That is one aspect.

Ms ZOU: If I may add, just to answer your original question, whether WorkChoices is likely to provide women with any more permanent jobs, one of the concerns is basically the changes to the award system. In many current Federal and State awards there are clauses that allow casual conversion to permanent after a minimum length of time—for example, 12 months. Under WorkChoices a lot of these clauses will become redundant and opportunities for women to rely on these clauses in the previous award system in order to gain more permanency and security in their occupations, that has also been removed. That is a real grave concern in the trend towards casualisation of our work force, particularly the impact on women.

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The Hon. ROBYN PARKER: Would you explain to me—I know there are good employers and good employees and likewise in the negative—but in the private sector, if there is a shortage of nurses is there not a situation where some employers or companies or whatever running a hospital or a nursing home might provide better pay and conditions than in the public system to attract the best staff they can?

Ms SULLIVAN: We would like to see that happen.

The Hon. ROBYN PARKER: Are you saying it does happen?

Ms SULLIVAN: It has happened when we have had shortages in the past. Particularly the private hospital proprietors have offered over award payments to attract staff.

You have raised a very important point for us; in fact, there is still a nursing shortage, it has not gone away completely. It protects our members from some of the worst possibilities within this legislation. There are some subsets of our profession, for example, intensive care nurses, who are very highly skilled and would attract the open market—Mr Diamond mentioned supply and demand and that is extremely important. That is quite possible in certain pockets where you want those skills and are prepared to pay for them. In the overwhelmingly majority, and I will come back to the nursing home sector, that sector has found it notoriously difficult to attract staff under any conditions. That is because of the type of work involved, even though the nurses there are very specialised, some are quite specialised.

Currently the ones who are very specialised are better paid. That is what the awards have done; addressed the different skill levels. The New South Wales IRC is entitled to take the public interest into account, particularly with shortages. They have been able to not only recognise and measure changes in work value over the years, and reward that, but also take into account the public need services at various levels, not just one, public and private, and to award increases when there have been shortages to make sure that the pockets that needed them got them, so that type of employment will attract staff.

CHAIR: In relation to nursing homes, what degree of regulation is there to insist that a certain percentage of staff are trained nurses? Or is it a situation where proprietors, managers, have a fair degree of flexibility as to the level of skill that they seek?

Ms SULLIVAN: There is no regulation other than an assessment on a new resident being performed by a registered nurse, there is no other requirement. It is totally up to the proprietor, or administrator in a charitable organisation, to determine what level of staff skill mix there will be.

CHAIR: Do some of them have to have a basic nursing qualification?

Ms SULLIVAN: The staff themselves?

CHAIR: Yes.

Ms SULLIVAN: Absolutely. Basically there are three classifications. Under the Fair Pay Commission set up that could change in future stop there is a registered nurse, who has a degree, a three-year degree. An enrolled nurse has one year training through TAFE and public hospital employment while going through the TAFE course. The third level is an unlicensed worker. That worker is called an "assistant in nursing" in our industry. There are other classifications that other unions cover, but they do the same level of work. They do what is called a certificate three. There is some training. The training in certificate three is not mandatory on the industry, yet it certainly is growing. Employers are willingly undertaking it, or people who wish to be employed pay for it themselves. The TAFE training and the registered nurse training through universities is a different matter altogether. Naturally, the registered nurses are paid a lot more than the unlicensed workers and more than the enrolled nurses. The reason is training and experience.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You commented that when pays went up the number of nurses employed went up. Is that what you said?

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Ms SULLIVAN: No, I meant to say that when pay went up more nurses came back into nursing, but they came back to the public sector. Every time pay goes up in the private sector, I am really speaking about aged care, we lose numbers of staff, but not necessarily in a medical centre where there may be only one nurse and that nurse is getting paid more without loss of staff.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So when the pay for nurses goes up, they leave the aged care centre and go into the public sector?

Ms SULLIVAN: Some do.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said the number of nurses employed goes up. In other words, nurses who had left nursing and come back to nursing.

Ms SULLIVAN: That is the main area.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is the opposite to supply and demand. In other words, if the price goes up obviously there is a supply problem rather than a demand problem?

Ms SULLIVAN: There is a supply problem, definitely. Where we see that is with the registered nurse and the enrolled nurse. Unless university places increase we cannot get nurses through the training and they are leaving at a faster rate than they are coming through the training. Also TAFE places have been reduced dramatically. Again, we are losing the critical mass of enrolled nurses that we need.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So the market is not dealing with a skilled shortage?

Ms SULLIVAN: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: About half the number of trained nurses are not working, or an extraordinary figure like that.

Ms SULLIVAN: Correct. Or half, such as ourselves, are not working in nursing.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you are an ancillary service. The nurses association numbers are not blowing out because there is a shortage?

Ms SULLIVAN: No. I have been out of nursing for a long time, Rita has not so much. But a public hospital would not touch us with a barge pole.

CHAIR: Because you have lost your skills?

Ms SULLIVAN: Precisely.

CHAIR: Michelle or Mimi, would you like to comment on other areas in the female work force that are different from what the Committee has been hearing about nurses in terms of skill shortages or casualisation or the effects of lower pay on the number of people who stay in the profession?

Ms PEDERSON: I have not looked at it in that light. I have many looked at your questions. Generally I can speak on how WorkChoices will affect the ability of workers to bargain.

CHAIR: Yes, would you comment on that?

Ms PEDERSON: The question asked: can you comment on the effect that you believe the Commonwealth WorkChoices legislation will have on the ability of workers to bargain, particularly with respect to groups such as women, young people and casual employees? In answering this question I am mainly speaking on behalf of women, but I believe the same reasons could apply to young people and casual employees. These new reforms will make it more difficult for employees to

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engage in collective bargaining when negotiating wages and conditions with their employer. The reality is that most individual workers are not on an equal footing with their employers at the negotiating table. This is particularly true for many women in precarious forms of employment and at the lower spectrum of the labour market.

In the absence of effective collective representation, the balance of power in determining the conditions of employment is tilted heavily in favour of the employer. Unions play a crucial role in the collective bargaining process. Average weekly earnings for union members are 17 per cent higher than for non-union members. Women workers, who make up the majority of part-timers and casuals, do best from the union effect, and have, therefore, most to lose from individualisation. The WorkChoices legislation makes it more difficult for unions to organise to represent workers. These new laws make it harder for unions to represent employees in negotiations with management by reducing their ability to take protected industrial action.

In other OECD countries, when employees went collective bargaining, employers are under a legal obligation to come to the negotiating table. There is no such requirement under the Government's reforms and the employer can refuse to negotiate. That is a concern we have, particularly when that situation does not happen in other OECD countries. I have looked also at the effect on workers' bargaining positions with respect to wages, conditions and security of employment. I can comment on that.

CHAIR: Yes, that would be fine.

Ms PEDERSON: That is what I have concentrated on. This is with respect to wages, and I will read my report. As you know, awards guarantee minimum pay and conditions for about 1.6 million working Australians. Having a strong award system also ensures that many Australians implore it on a collective or individual agreement can also rely on the safety net of awards to strengthen their basic wages and conditions. Many women work in occupations which are covered by awards but further weakening of the existing safety net will disadvantage more women than men, because the award system protects the wages of proportionately more women. By reducing the significance of awards these changes will have a particularly harsh affect on the 71 per cent of part-time and casual workers who are women.

Removing the minimum wage tax from the hands of the Industrial Relations Commission will have an adverse impact on many women workers who are reliant on a fair minimum wage adjustment made by an independent body. The newly proposed Australian Fair Pay Commission will have the power only to recommend changes to the minimum wage, so ultimately the Government will control whether their recommendations is implemented as well as appointments to the tribunal.

As to the proposed national minimum wage, there is no guarantee that it will be adjusted to keep pace with inflation. It is intended by the Government that minimum wages will rise much slower and less frequently under the new system. In a recent minimum wage adjustment decision, for example, the Federal Government advocated an \$11 per week increase for the lowest paid while the Australian Industrial Relations Commission granted a \$17 per week increase. With respect to conditions, unions play an important role in governing workplace practices, overseeing health and safety requirements and in ensuring that workers are paid correctly. For example, the union movement over the past decade has played an instrumental role in drawing political attention to the exploitation of clothing outworkers.

Restrictions on unions rights to enter workplaces will mean that those functions will be severely restricted. This will result in many women being unable to seek assistance and support in resolving poor working arrangements or protecting their rights at work. The Federal Government's push for a single unitary national industrial relations system will entail the significant weakening of the powers of the State's industrial relations systems. This will disadvantage a significant proportion of women workers, such as those in child care, cleaning and clerical occupations, who are reliant on State-based common rule awards to set their conditions of employment and wages.

With respect to security of employment, the Government's changes to unfair dismissal laws will affect more than 3.7 million Australians currently employed by companies with 100 or less employees, amounting to 61 per cent of employees working in Australian businesses. These laws will

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unduly disadvantage women working in small and medium business enterprises, many of whom already have low job security as casual and part-time employees. That is basically the research I have done for this.

CHAIR: You have mentioned a number of industries, predominantly the clothing industry with women employees.

Ms PEDERSON: That is what we have concentrated on.

Ms ZOU: In respect to a similar occupation, there is a real shortage of qualified child care workers in the country. That has implications on the question referred to in the terms of reference on the issue of pay equity. I believe the child care union has already presented evidence to the Committee, so I will not go into the recent child care pay equity case too much. I believe that is an important case, one that unfortunately under the new Federal system, WorkChoices, will become ineffective for a lot of child care workers who are employed under constitutional corporations.

The point I want to make is that under the Federal regime there is limited scope to pursue pay equity claims like the ones we have seen at the State level. In an industry like child care, which has significant implications for the broader work and family collision for a lot of working women, we need qualified child care workers and there is a real shortage of them and that is attributed to the fact that historically they have been lowly paid in an industry that demands a certain level of skills and qualifications which have been historically undervalued.

So in respect to that I think WorkChoices will basically erode the advances that have been made through State tribunals, and I think that is something that is of grave concern in terms of pay equity for other occupations which have been historically gendered undervalued. That was all I wanted to add to that. I am not sure whether you will ask questions about work and family.

CHAIR: We will get to it, we hope. If not, particularly where you have printed material prepared, we can always ask you whether you would mind giving that to us.

The Hon. IAN WEST: In terms of the work and family issue, are you saying that historically there has been a situation with State and Federal tribunals where emerging issues have been taken before those tribunals in terms of family working issues over the years, be it annual leave, sick leave, unfair dismissal, asbestosis, maternity leave, all those industry-wide issues, emerging issues that have occurred over the decades have been taken by registered organisations of either employers or employees before those tribunals? Are you saying to us that that is no longer the case, that cases like the pay equity case for child care can no longer be brought?

Ms ZOU: Under the Federal system there is a supposed equal remuneration principle somewhere in there but it is based on an equal—I do not know the legal technicalities but I believe it is almost impossible to run cases like the child care workers case in New South Wales under the Federal system because of the State tribunals recognising a more open definition of "equal remuneration" as opposed to just "equal pay for equal work value" cases, which is generally the principle recognised at a Federal system. But absolutely in terms of the other advances made in areas like maternity leave, parental leave, carers leave and the recent family test provisions that we saw handed down at the Federal commission, the fact that there is now a mechanism under that particular decision where people can actually extend their unpaid maternity leave. WorkChoices has said that it is 12 months, and under that decision last year the commission said that it can be up to 24 months. Obviously the new regime has overridden that decision of the commission. So in that sense I do not think there is much that can be done under the new regime in terms of bringing those sorts of cases.

The Hon. IAN WEST: So a case like the secure employment test case could not be brought?

Ms ZOU: Not to my understanding. I think it will be extremely hard.

The Hon. KAYEE GRIFFIN: To go back to the child care pay equity case, my understanding—I am not familiar with the ruling on this but I think there were several either bands or levels that were due to be given to child care workers depending on their expertise and so on—is that a lot of child care workers in the community in NGOs, the community-based sector and the private

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sector—I exclude local government because they are on a different award at present—but there was an expectation that these workers would get several pay increases in line with their expertise and so on. Given WorkChoices now, if there are AWAs signed or other things happening, even though that case went through before WorkChoices came in, these workers would possibly be liable not to receive a number of those increases that they were eligible to receive because of their work in that sector.

Ms ZOU: That is correct, and with the expansion of private operators in the child care sector—I suppose the child care union would have more statistics—I have seen in the news that there are already operators offering AWAs that have undercut the advances made in that recent case. So it is already occurring, from what I have read.

The Hon. KAYEE GRIFFIN: So the expectation that people had of receiving increases in terms of merit and to the level, because working with children is extremely important—

Ms ZOU: Absolutely!

Ms MARTIN: And people could even be afraid to ask for increases because their employment is not secure. So if you are seen as asking for too much, people are afraid. At the recent rally in Blacktown two weeks ago there was a child care worker who spoke at that who had been dismissed and she had been there for 20 years I think.

The Hon. KAYEE GRIFFIN: Another question was about not only the most vulnerable workers but issues of rural and regional New South Wales. Do both groups see any issues other than the ones you have spoken about because of the problems of isolation in some of those communities?

Ms PEDERSON: It is rather remiss of me particularly but with the research we have done with respect to WorkChoices we have not concentrated on the rural communities. It is not good that we just concentrated more on the gender equity basis. We have not researched that. We have not looked at rural communities so I could not comment on that, and it would be unfair of me to do so.

CHAIR: That is fine. We expected you to come and talk mostly about the broader pay equity and so on issues. What about the nurses association?

Ms SULLIVAN: Yes, we have a view. The main thing that we keep being reminded about by our members when we go out to see them in rural areas or when they come to see us is that there simply are not the same job alternatives in rural areas as there are in the metropolitan area. As Rita said, the idea now of, "If I am seen to rock the boat will I lose my job?" is quite real whereas before it was, "No, you can be difficult or speak up for patients and so on because you cannot lose your job on that basis and we will look after you." That is being whittled away and we do not like that at all.

Ms MARTIN: One role of nurses has always traditionally been as a patient advocate. So one area that nurses have spoken out about has been work loads. We know that many nurses leave the work force because of heavy work loads. They do it for a few years and then they say it is too difficult, it is too dangerous, they are risking their registration, they are risking a back injury, they are risking ending up in the coroners Court because an error was made and we do not have safe staffing levels. Recently we have managed to win a work loads clause in our public hospital nurses award, and there are 52 other conditions in that award. It gives nurses very good working conditions.

I have recently been on a regional road show where we have gone around the regions of New South Wales. As Kath said, there is usually only one hospital. That is the only place they can work. It is not like being in inner-city Sydney; if you leave one hospital you can go to another. So even for highly skilled sectors of the nursing work force they still do not have that choice. They are very concerned that the publicity that has been given to AWAs that have been publicised recently have shown that many of them do not have penalty rates. There is a stripping back of conditions and even the idea of having more permanent work. We have in our award after six months of being casual you have a right to be offered a job, and that is a recent win for us—you can apply for a permanent part-time position.

For many reasons because of caring, most nurses are female; many females have caring or family responsibilities. So at various times in their life they may go up and down. They may work part

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time or full time at various stages. They are particularly concerned about recent AWAs that have had no minimum shift length and an averaging out of their hours over 52 weeks. So if you turn up to a hospital and it was quiet for the afternoon they could say, "We don't need you today". Many of these people have children; they may have booked their mother to look after the children, or their husband is doing shiftwork and they juggle their shifts to look after the children or elderly parents but they will not be able to do that. Also, they would not be able to do the very long hours during such times as winter time when there is a heavy demand on beds. They will not be able to even out their hours over time, never mind meet their bills. Your bills are not averaged out over a year; they still come in on a fairly regular basis and you have to be guaranteed a certain number of hours to get them.

CHAIR: So your general point is that in rural communities there is effectively little choice for a woman who is not free to move elsewhere.

Ms MARTIN: We were amazed at the level of fear that there was out there. Nurses are well informed about the industrial relations legislation and extremely fearful.

The Hon. IAN WEST: Is that accentuated by the fact that you have roughly 52,000 members and that those who are covered by effectively the provisions of the State Government—

Ms SULLIVAN: Two thirds.

The Hon. IAN WEST: Two thirds, but of those one-third there would be I assume a disproportionate number covered in rural areas because most of the public hospitals would be in large regional areas but when you get into the regional areas that you are talking about they are more likely to be those one-third that are covered in nursing homes, private hospitals, ones who are subjected to AWAs, WorkChoices.

Ms SULLIVAN: I think that is correct. As Rita said, in most rural towns you will find a district hospital or what was known as a base hospital. That is still the case but you will find that there will be maybe two residential aged care centres somewhere in the town. In the past there would have been one, and this will be in most towns. There are still some towns without residential but you are talking quite remote for that to be the case. So now there would be at least two because of the growing ageing population that we are.

CHAIR: Then there might be a private hospital or a medical centre and so on.

Ms SULLIVAN: In the larger towns there are but certainly not in every town.

CHAIR: I think you said you had some comments to make on our question about the balance between work and family responsibilities. Do you want to move on to back?

Ms ZOU: Yes, I will be very brief. I am not sure whether it has come up at the Committee's hearings but we have real concerns that WorkChoices does not address much about the family and work collision that face a lot of working women. In fact, we think that it would worsen the balance with respect to the very likely outcome of longer and more unsociable hours for working women, and that has a huge impact on the quality of their family life, parenting and relationships. Further to that, we believe that with a lack of a national legislated paid maternity scheme in this country that also has implications in terms of the ability for working women to balance work and family. WorkChoices does not address that. Indeed, we believe that any right to this paid parental leave would be worsened because now women would have to negotiate this with their employers.

If the shift of this legislation is to awards, the individualisation of the employment relationship and the diminishing of awards, we fear that these sorts of rights that have been in quite a lot of collective agreements as opposed to individual agreements will disappear. It is an issue, and I do not think we have time to go into the impacts of the welfare to work reforms because that will also, combined with WorkChoices, leave a lot of women with little incentives to return to work or be forced into jobs that have low pay and poor conditions. They are some of the comments I wanted to make in that regard.

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CHAIR: We heard quite a lot of evidence yesterday in Penrith about the joint effects of WorkChoices with the welfare to work changes. Kathy, did you want to add to that? You have said quite a lot indirectly about work and family responsibilities.

Ms SULLIVAN: Not so much about that topic but I would like to address another one that is very important to us, that is injured workers, and the fact that it is very significant in nursing because, unfortunately, a lot of nurses have been injured and still, despite great progress with occupational health and safety, get injured. The injuries, when they occur, are often long-term injuries. As was mentioned earlier, there has been, under the Industrial Relations Act, provisions whereby an employer must re-employ an injured worker if they can do the basics of the job but they cannot simply terminate them just because we are two years down the track: end of story, goodbye. Under WorkChoices they can.

Our legal advisers who specialise in the field of workers compensation advised us that we are going to see some victims of workers compensation injuries not returning to the work force but appearing on the social security queues. We think that when the injuries are happening most of the time not through any contributory effort on behalf of the victim that it is extra cruel to then say, "We are not going to find a spot for you." And we are talking about large employers where there are many places where they can go, sometimes with a bit of creativity but at other times it is easy to place an injured worker.

CHAIR: Are you talking mostly about manual handling injuries, back injuries and so on?

Ms SULLIVAN: Yes, even though now under occupational health and safety there has certainly been an increase in awareness by employers, who want to keep their workers compensation premiums down as well as look after their employees, the improvements have been great, especially in the last 10 years, but the injuries still do occur. We have gotten away from manual handling in a lot of areas because of the dangers but even so injuries are still occurring, but not in that number.

Ms MARTIN: And many happen when people work on short shifts or when the shift is not fully staffed. It happens unfortunately quite a lot in nursing homes where the nature of the work is very heavy and demanding and while there might be lifting equipment there, maybe the staffing levels are down for a shift, people cut corners. It may take two people to manoeuvre a lift but you do not have time and you are so busy that you cannot wait for somebody else to come so you attempt to do it on your own.

The Hon. IAN WEST: Home nursing.

Ms MARTIN: Yes, home nursing is very high risk.

CHAIR: And there are similar problems in those areas where women predominate including cleaning, child care and clothing, with a higher level of injury.

Ms MARTIN: Yes.

CHAIR: Is there much awareness yet about the way in which the WorkChoices legislation will actually impact on these things that are actually under the control of the State?

Ms SULLIVAN: No.

CHAIR: But where the two things will cut across one another?

Ms SULLIVAN: No, there is a lot of confusion out there about what WorkChoices actually means for people, but there is a growing number of stories of people who are being affected badly by it. For example, in the nursing profession and in the private sector again, we have had collective bargaining for many years and we have got good agreements. We have even had come past our desk good AWAs and the reason why they were good was that there was a no disadvantage test in the past.

Since March that has been removed. We are starting to see dribbling in AWAs now that are less than the current award. The wages might be the same or they might even be better in some cases

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but there is a loss of public holidays and annual leave loading, and these are being signed freely by people because they want the job; that is why they are signing them.

CHAIR: Or because they do not actually realise that the losses over a longer period might outweigh the gains?

Ms SULLIVAN: That is right.

CHAIR: They have not actually done the calculations.

Ms SULLIVAN: We get advice but at the end of the day we have got to say, in all fairness to that member who is seeking the advice, "This is the advice. You get a bit more here; you lose a bit there and it might balance out or it does not balance; you are losing or gaining, but at the end of the day it is up to you as to whether you sign the AWA". We cannot tell somebody they cannot have that job and they are in woop-woop and it is the only job in town.

Ms MARTIN: People are seeing it with their children. That is very much the feedback we are getting. The nurses themselves are surprised that they are feeling the impact in the sense that a family member, while it has not directly impacted yet on themselves in the sense of their own wages and conditions, their 16-year-old child who is going to work at the local fast food store or is putting themselves through university is coming back and saying they have a AWA to sign. They are quite taken aback when they see that their own children have been affected by it quite quickly.

Ms ZOU: On the issue of awareness, people are beginning to feel the impact and understand a bit more about these laws and how it is going to affect them and their families. I think a lot of that has to be accredited to the union movement for actually running a very successful campaign that has reached the lounge rooms of ordinary Australian families so that they can see that WorkChoices is actually having an impact on them. It is probably an area that perhaps this inquiry could result in an outcome with the State Government playing a more proactive role in raising this awareness. I suppose I should come to the last question.

The Hon. ROBYN PARKER: In terms of awareness, you are aware that this is a State Government inquiry with State members of Parliament. We have no ability to impact on Federal legislation.

Ms SULLIVAN: Yes.

The Hon. IAN WEST: That is not correct. We do have the ability to impact.

The Hon. ROBYN PARKER: They said they were aware of that.

CHAIR: We are having a deliberative meeting afterwards so we can deliberate then. Mimi, what do you want to see come out of the inquiry?

Ms ZOU: As I have mentioned, we would like to see the State Government take action and take a proactive role in protecting the more vulnerable workers from the adverse impacts of WorkChoices. I think it can be done through a practical range of measures. Let me commend this Committee for actually having this hearing because it does have an impact. While at this stage we do not know because of the High Court decision, I think giving the citizens of this State an opportunity to voice their concerns, it is wonderful to be part of this democratic institution.

But in terms of practical measures, we could look at what the Victorians have done in terms of establishing an Office of Workplace Rights Advocate as an independent statutory body. Workplace rights advocates, from what I have been hearing, have been able to assist employees, employers and independent contractors to understand the new changes at the Federal level and also to promote fairer employment practices and assist them to negotiate decent pay and conditions. It has also given them the powers to monitor unfair, illegal and inappropriate industrial practices.

Two weeks ago we saw an investigation that is being commenced by the Victorian Workplace Rights Advocate into AWAs by a telesales company. I think at a State level the creation of

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such bodies can be a practical measure to assist people in understanding and especially protecting employees before they sign AWAs. Further to that, the New South Wales Government can actively promote the attributes and values in our system: for example, having an independent tribunal that has delivered fair outcomes for employers and employees and the New South Wales economy. It is obviously a system that is less complex and more efficient compared to its current Federal counterpart. That is hopefully what I would like to see come out of the inquiry.

CHAIR: Michelle?

Ms PEDERSON: No.

CHAIR: Rita and Kathy?

Ms SULLIVAN: We would like to see the continued protection of the nurses who are currently enjoying that, that is the public sector nurses, into the future. We would like to see that expanded to 100 per cent of the nurses but we realise, given your comment that this is Federal legislation that that is not going to happen at this level, but we would hope that as we talk to your Federal counterparts in all of the parties, that we hope to have some impact and influence along those lines to achieve what you are just mentioned. There are several elections next year and we will be hopefully seeking undertakings from all the parties along the lines of protection for not only the New South Wales work force—it is a national problem—but asking people to act in their capacity to do that.

Ms MARTIN: And the role of independent umpire is vital, as Mimi said. The system of arbitration that is there has served the workers in New South Wales very well.

One recent example for us, the Federal Minister for Health and Ageing recently said that increases for nurses would impact upon services in the aged care industry. Recently we ran an aged care wage case in the State Industrial Relations Commission and one of the arguments put forward by the employer bodies was incapacity to pay. The decision that was handed down rejected that conclusively. The decision said that even though a very unrepresentative and sector of that industry had been put forward as witnesses they still did not find that there was incapacity of the aged care industry to pay significant increases for nurses. That is just one example of how an independent umpire was able to win something for us that is already becoming lost in the national system.

The Hon. IAN WEST: Two thirds of your union is being looked after by the New South Wales Government by overturning the affects of the Federal legislation, is that not the case?

Ms SULLIVAN: Yes, it is and we are concerned because prior to our giving you the submission the honourable Leader of the Opposition said that, if elected, he would hand the employees over to the Federal jurisdiction, which concerns us greatly, because you are talking about a lot of employees, not only right or wrong, fair or not. But I understand now, since the inquiry has been going, that is that position has been changed a little. We have no detail. I would hope to think that that is a recognition that there is something wrong with the legislation. It is not just us and it is not just police, it is everybody in New South Wales and then for all the other States.

Ms PEDERSON: For Australians.

Ms SULLIVAN: For Australia, that is quite right.

CHAIR: As a union it has a large number of public sector workers but also a large number of private sector workers, you would have to worry about a situation where one group of your workers had much better protections than another group of workers.

Ms SULLIVAN: We are acutely aware that it is not just fair.

CHAIR: Ms Pederson, if you feel there is something you had prepared that you did not really get to give us, we would be more than happy to get something from you.

Ms PEDERSON: I have said what I wanted to say.

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CHAIR: If we want to ask you something, I hope we may contact your and do it that way.

(The witnesses withdrew)

(The hearing concluded at 4.34 p.m.)