REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO THE IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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At Sydney on Monday 19 June 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. Lynn
The Hon. I. W. West

CHAIR: I declare the first hearing of the Standing Committee on Social Issues inquiry into the impact of the Commonwealth WorkChoices legislation in New South Wales open. I welcome our first witnesses appearing on behalf of the government agencies involved. I have a statement that deals with an issue that may arise, but I do not believe will arise, in relation to the Government's submission. The statement deals with submissions naming individuals and making allegations against individuals. As I said, I do not believe it applies to the evidence that will be given by these witnesses. Therefore, I will hand the statement to witnesses if the issue arises. To summarise briefly, the Committee firmly believes that a hearing should be open and public as much as possible, which is part of the intention of a Parliamentary inquiry. We are conscious that if allegations are made against individuals that, according to equity and fairness, they may be eligible to a right of reply. However, we do not want to unnecessarily take evidence confidentially.

I remind the media that Committee members and witnesses may be filmed or recorded but people in the gallery should not be the focus of any filming or photographs. When reporting on the proceedings of the Committee the media must take responsibility for any published material and the interpretation they place on evidence. I remind those in attendance that under Standing Order 224 any evidence given before the Committee and any documents presented to the Committee that have not yet been tabled in Parliament may not be published except with the permission of the Committee. I advise people in the gallery that any messages should be delivered through the attendant on duty or the Committee clerks.

PATRICIA MANSER, Deputy Director-General, Office of Industrial Relations, Department of Commerce,

CHRISTOPHER JOHN RAPER, Assistant Director-General, Public Employment Office, New South Wales Premier's Department, and

VICKI TELFER, General Manager, Strategy and Policy Division, WorkCover Authority of New South Wales, affirmed and examined:

CHAIR: We have received your submission. Does anyone want to make an opening statement?

Ms MANSER: I would like to do so. You can see from our submission that the Government affirms its opposition, if you like, to the WorkChoices legislation of the Federal Government. The legislation represents fundamental changes to the settings for social justice which are important to Australians. We have accepted that the redistribution of wealth is important and we do it through our tax system, through our structures such as local government and in our labour laws. We have accepted there should not be too much difference between the rich and poor. Acceptance of this social contract in the workplace has been clear over many years in the reduction of disputes in workplaces. The fundamentals in both systems, Federal and State, were some form of collective bargaining, independent wage fixing for minima, and independent dispute resolution. In New South Wales the common rule application of awards has been an equally significant feature.

The Federal Government through WorkChoices and the Welfare to Work legislation is seeking to change these widely respected, accepted and effective parameters. Professor Ron McCallum, Dean of Law, Sydney University, speaks of it as the corporatisation of labour and, despairingly, of its impact on the dignity of working men and women. Professor McCallum speaks of the legislation turning workers into adjuncts of corporations. When you think of what the concept of incorporation was intended to achieve, this is nothing if not ironic. The worst aspect of it is the transfer of risk from the employer to the employee. Since the introduction of labour laws within Australia there has been an acceptance that risk was shared. In addition, choices have been removed. In previous eras we have seen companies and businesses able to choose Federal arrangements for their industrial relations over State or vice versa, depending on their business needs. Now we have David Jones, Rio Tinto and the corner store all to operate by the same rules.

The complexity of WorkChoices—in case you have not seen it I have brought it with me; this is it, 1,400 pages of it—compounded by no fewer than 12 Federal agencies involved in administering it, has already got businesses and workers alike totally confused. We have seen this already in the press. For a Government that, theoretically anyway, espouses low levels of regulation, especially in relation to business, WorkChoices is microregulation with the choices removed. You have to get it right. In regulatory terms, in the labour market terms, you would describe WorkChoices as poor public policy. That is the end of my opening statement. I am happy to take questions.

CHAIR: Have you received the prepared questions?

Ms MANSER: Yes.

CHAIR: You will note, in essence, they address the various terms of reference of our inquiry. In that sense they are fairly broad and open-ended. We have tried to break them down into groups. The first question asks you to comment on the effect the legislation will have on the ability of workers to bargain, particularly groups such as women, young people and casual employees. I will invite other Committee members to ask follow-up questions.

Ms MANSER: In relation to WorkChoices, in effect, the right to bargain has disappeared. The employer can choose to have a collective arrangement of some sort if he wants to, but the employees have no right to have a contrary view, in a sense. They might want to say they want to collective bargain, either industrywide or in their own workplace, but they have no right to have that if the employer wants something different. So the push is towards individual contracts of various kinds,

most particularly, Australian workplace agreements, and the right to any kind of collective approach has disappeared. This is contrary to all the received wisdom in virtually every comparable country in the OECD. Nobody has this elimination of the workers' right to say they would like a collective approach. That does not mean they will always get what they want out of a collective approach, of course, but the process has been removed virtually entirely from their grasp.

What that then does to people who may be in vulnerable groups, people whose negotiating skills are not particularly sophisticated, is fairly obvious when you think about it. They will not be in a position to stipulate what they want and then when they get into a situation of negotiating individually, which is where they will be, their skills will not be up to working with the big companies. We have seen some examples of this already in the Boeing situation, which preceded the WorkChoices' commencement. It was a very interesting example of a group of workers who were put in a position of having to negotiate on their own and said very openly and very publicly that they were tool men, they were people who worked with their hands, they were people who worked in trade; they were not negotiators and they did not want to negotiate in that way.

That will happen to large sections of the work force. It is obviously particularly the case with people who are in positions where they want something. I am thinking here about women who may want flexible work practices because they need to pick up children or, increasingly, they need to care for older members of their family; and young people who do not have the skills to negotiate and do not have the capacity to say, "I don't want it that way; I want it another way." I think that is where the impetus for removing workers' rights and placing power in the hands of employers virtually totally is so evident in this legislation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are we likely to see shortages of workers in unskilled jobs, such as cleaning, in inner-city areas because the cost of commuting plus poor wages will mean that nobody will do those jobs?

Ms MANSER: It is possible although one of the things the welfare to work legislation does is create a pool of workers, or potential workers, who have previously been on some kind of income support from the Commonwealth who will be looking for 15 hours a week work because their income is being reduced by the new rules. So a pool of people is being created at the bottom of the heap and they will be in competition with the usual people who are at the bottom of the wage-earning scale, such as students who want some part-time work and women who can only work part time. Those groups will be in competition with each other fairly savagely.

I assume that the Federal Government has taken into account the notion that we are going to face in the next few years labour shortages because of the demographics of Australia. What is happening is the creation of this pool of people who will be looking for the kind of work that you are referring to. They may not be able to do it but they will be looking for some sort of work at the bottom end of the scale. People with low-level skills and people with skills that are not particularly in demand will be the ones most affected—as they always are in this new labour market.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are we likely to see a rise in the tipping culture? If you try to leave a restaurant in New York without tipping 20 per cent, you are virtually crash tackled as you go out the door. The wages are so low that workers cannot live without your tip and so, effectively, the tip becomes the wage.

Ms MANSER: That may be one response to it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is certainly what happens there. Is it likely to happen here?

Ms MANSER: I do not know, but it is entirely possible. I have certainly made the same observation myself about getting a meal or a taxi in New York. Australians are not particularly favourably regarded because they are not into tipping. When you see the level of wages in America and the kinds of minimum they have, you would worry that that kind of approach will happen here—equally, the prevalence of people at that bottom end who need to have second jobs in order to make enough money simply to pay the rent or the mortgage. They will be the sorts of phenomena we see coming out of these changes.

People who are doing well now—I think someone from the Mining Industry Council was talking the other night about contracts being good for miners—and people with high-level skills who are in high demand will still manage to get what the market will bear. They will be able to work the market for themselves. They are people who have always negotiated and who have always been able to do that. But the rest of the populace, who are looking at more ordinary sorts of work with less highly qualified packages of skills in their kit bag, will find themselves at the bottom of this particular heap. They will also find that there are other people there as well with whom they are suddenly in competition for this work.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The Government let all the cleaners go from the public service some years ago and has a head contractor. I know that some of those head contractors do not pay too well. Is the Government not paying someone else to lower wages for it? Would the Government not be better off having each small contract done by a small contractor so that less is done by a head contractor, who is then in a very strong bargaining position? Because the Government wants to deal with only one entity is it not reinforcing the situation?

Ms MANSER: It does not quite work that way because of the fact that head contractors who tender for government cleaning contracts then subcontract. It is a bit like outwork: they subcontract down a chain.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Exactly, and the people at the bottom of the chain get less for each level presumably.

Ms MANSER: Chris, can you comment on that? As this is a Government issue, it might be more in your bag.

Mr RAPER: It was the previous Government that contracted out the cleaning service.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you could have reformed it—you have had a decade.

Mr RAPER: Unscrambling eggs is pretty difficult. The government procurement contracts require the holders of those contracts to pay the appropriate award for that particular service. Obviously the introduction of WorkChoices will take some of the enterprises that have those contracts outside the State award system and will provide the opportunity for a number of the things that Ms Manser referred to in terms of individual bargaining and driving down wages through Australian workplace agreements [AWAs].

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But if wages were maintained at that level, which they may have been—I was a public servant at the time—the number of cleaners employed was driven down. So they had to sprint to do roughly twice as much work and the place was not as clean. The Government has benefited from this arrangement. Presumably there are performance contracts that places will be cleaned to the standard of X and the cleaners must work very hard to do that.

CHAIR: We seem to be straying a fair way away from the WorkChoices legislation.

Mr RAPER: I am not in a position to comment on that. I might have been in a past life but, as the letting and management of those contracts is not within the purview of the Public Employment Office, I cannot comment on what you are suggesting.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you are saying that because they are obliged to meet the current award the Government is protecting the workers involved in those subcontracting arrangements.

Mr RAPER: In terms of their hourly remuneration, yes.

CHAIR: Ms Manser, returning to a general comment you made, you mentioned people working multiple jobs—different casual jobs—to make ends meet. Does the WorkChoices legislation have any particular impact on those people over and above the general impact that you described?

Ms MANSER: No, it does not refer specifically to that kind of phenomenon but I suppose I was predicting that we might see an increase in that kind of phenomenon. You would be aware that in the newspapers we have been reading about students who say they were counting on the penalty rates that they get for working at night, on weekends, public holidays or whatever to pay their university fees or simply to get through the week. If they can no longer count on it—and abundantly obviously they cannot—they will need some other way of bolstering their income to work their way through that. So while WorkChoices does not specifically address the issue of two jobs or multiple jobs, it looks as if it will create a group of people who need to do that in order to make ends meet. I guess, picking up on Dr Arthur Chesterfield-Evans's comment, it is a very American pattern for people at the bottom end of the labour market to have to do that in order to manage their livelihoods.

The Hon. KAYEE GRIFFIN: A number of years ago the Federal Government changed their award system and pared it down to a number of allowable matters. In terms of the award system as it stood before the introduction of WorkChoices, what were the changes to the award situation? How many matters are still under awards—whether State or Federal—and how does that impact on workers, on their penalty rates and other conditions that were formerly protected? How many matters fall within awards now?

Ms MANSER: Prior to the implementation of WorkChoices, in the State system you could put anything you liked in an award as long as there was agreement about it and as long as the Industrial Commission regarded it as an industrial matter. So State awards have never been limited to any particular bag of issues. They have not strayed very much, it has to be said, from very predictable patterns. They are about wages, how we might increase wages down the track if we want it, how many hours we work and so on. It is a predictable collection of issues. Prior to the implementation of WorkChoices, Federal awards were stripped down to 15 allowable matters and we are now down to five, in effect, which are the ones required under the Australian Fair Pay Commission's standard. I have a list of them with me somewhere.

In the standard there is a minimum wage and there is provision for annual leave. The minimum wage is not specified of course that that will come out of the Fair Pay Commission's decision about what the minimum wage will be. Four weeks annual leave is specified, some of which, of course, you can cash out; an amount of unpaid parental leave—one year—is permitted; 38 hours a week plus any reasonable additional hours that your employer requests is the provision in the Act and 10 days paid carers leave, and that includes sick leave. Those are the minimum now and then there are some other provisions for things like jury leave in the Act as well. We are right down to the basics of how people manage their workplace.

The Hon. IAN WEST: My understanding is that the 38-hour week is averaged over 52 weeks?

Ms MANSER: It can be, yes.

The Hon. IAN WEST: It is not a 38-hour week requirement?

Ms MANSER: That is right. It can be 38 hours one week. It can be 45 the next and 30 the next. I do not know how you manage your finances when that is the case.

The Hon. IAN WEST: And I do not know how you manage if you are only employed for six months?

Ms MANSER: That is right.

The Hon. KAYEE GRIFFIN: The other question was in relation to the definition of "reasonable" hours over and above the supposed 38 hours per week. How are reasonable hours defined in WorkChoices?

Ms MANSER: They are not and so it will take a number of court cases probably to work out what reasonable hours actually means. Somebody will have to take the issue to a court, which will say, "Yes, that was reasonable" or "That wasn't reasonable" and that is very difficult for people to manage because it means that, as you know, courts look at particular instances of a particular case. It would depend on the industry, the type of work and circumstances of the people involved, the employer and the employee. Waiting for court cases to determine what reasonable hours actually is will be a very tricky thing for people to manage because "reasonable" is one of those words that courts have defined over the years in many different ways. They normally mean what you or I, ordinary laypeople would think of as reasonable, but what that means in a particular workplace is going to be up to the courts to decide.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is there not a huge amount of literature of what hours people can safely work? My background is occupational medicine. There is a huge amount of literature of what shifts should and should not be done and how much sleep people should have and the way they should rotate. There is literature on attention spans, risk behaviours and mistakes made with time. Surely there must be a regulatory framework that exists to define reasonable hours?

Ms MANSER: No, there are practices within industries and awards contain hours, which have been agreed upon between workers and employers as reasonable but there is nothing to stop an employer, except his own commonsense and wisdom, from changing that now in the current environment. One of the attributes of the Spotlight agreement that we have seen discussed so much is just the stripping away of any breaks, any rest periods for people. Those sorts of issues may not be terribly critical in retail, although you would have to say that tiredness and fatigue get in the way of everybody's safety at work, but in particularly critical industries where tiredness and fatigue are a big issue, presumably good employers will still use those sorts of things you are talking about but there is no obligation on them to do so.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: We know about that in legislature.

CHAIR: The WorkChoices legislation, correct me if I am wrong, leaves the area of occupational health and safety to the States and Territories. In an issue such as the one that the Hon. Dr Arthur Chesterfield-Evans has raised, is New South Wales able to use occupational health and safety legislation to step in?

Ms MANSER: It has to be said that we have raised occupational health and safety legislation with the Commonwealth specifically to clarify the position of it. Section 16 of the WorkChoices amendments talk about what is in and what is out; what is taken away and what is not taken away. Occupational health and safety specifically is not taken away, so the New South Wales rules and regulations about occupational health and safety would stand. There was a discussion about this at the last Ministers meeting and Minister Andrews indicated that if there was any lack of clarity about that he would go back and look at it again.

CHAIR: Does Ms Telfer have more to say on this issue?

Ms TELFER: What my colleague Ms Manser says is absolutely correct. The WorkChoices legislation seeks to specifically exclude it covering the field of occupational health and safety and workers compensation, but that is not the end of the matter. One of the things that WorkChoices does is it actually limits the constitutional corporations unfair dismissal provisions. One of the concerns that WorkCover has is that someone who raises a legitimate health and safety issue such as hours of work, patterns of work and fatigue issues, that may be considered in our terms from WorkCover's point of view, an occupational health and safety matter, but, of course, that could lead to victimisation and the uncertainty of whether or not someone who raises those kinds of issues and is then dismissed then has access to unfair dismissal provisions.

What WorkCover sees as one of the problems under WorkChoices legislation is some of the hidden and around the edges kinds of complexities that workers in New South Wales will have if they try to raise an occupational health and safety issue; it may mean that they think they could be dismissed or they could be threatened with that because of the complexity and confusion that is around the legislation, so we are very concerned about that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I have been interested in the definition of reasonable hours for all sorts of industries. There was a recent change to ferry rostering; long distance truck drivers have had a lot of attention in the past; State Rail employees getting up very early and working when tracks are not busy with passenger trains on freight nights: is it not possible for WorkCover to define what reasonable hours are, given the literature, and would that not set a floor under which the courts would be forced to find that the regulation based on good scientific data was a reasonable definition of hours?

Ms TELFER: I would like to say yes, we could do that but the literature tells us that there are variables; the type of work you are doing, where you are actually doing it. WorkCover would intend, for example, that long distance truck drivers should probably work less hours than someone who is working in an office or at a computer terminal because of the kinds of risks that they face. The New South Wales Government brought in regulations last year to try to protect long distance truck drivers.

There is a body of research that tells you various things. The most recent research that I have looked at tells us that it depends on the type of work that you are doing, where you are doing it and the other kinds of risks that are present. But I would go back to the basic premise, that is, even if that was in the New South Wales occupational health and safety legislation, someone who raises an issue around the fact that they might be working outside reasonable hours may still, through WorkChoices, face victimisation and the threat of unfair dismissal which, of course, will lead them to not raising those particular issues because, in the end, they need to have the pay that is coming in to pay their bills and feed their family. That is our concern. It is not a lack of legislation in occupational health and safety. We do codes of practice; we have got regulations for long haul truck drivers and a whole range of protections. It is fact that the WorkChoices then comes in and raises the spectre that people will not raise issues about health and safety.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But is not WorkCover able to inspect industries to see that they have reasonable hours of work?

Ms TELFER: Yes, and we do that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you could do that if there was the slightest suspicion that an industry was giving bad rosters, long hours or imposing changes on people at short notice that made them work very long hours? The fact that falling asleep at a computer is not as bad as crashing a truck does not mean that all people in front of computers should sit there until they fall off their chairs.

Ms TELFER: I do not think anyone is suggesting that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, but left without regulation all these things are possible. There is no reason WorkCover could not set up guidelines, so that these are reasonable, have them based on evidence and then go about enforcing them, is it not?

Ms TELFER: One of the things that we have in our occupational health and safety regulation is a series of factors that employers should take into account when they are assessing workplace risks, and one of those is the risk of fatigue. If someone was raising those issues with us, that is one of the things that we would be looking at, but I want to go back to the point about WorkChoices, that is, that whilst WorkCover may be able to take action, given its comprehensive Act and regulation that covers those kinds of matters, the question is whether or not someone will, in practice, raise it now if they are covered by WorkChoices because they may be very reluctant to raise it and have the New South Wales regulatory authority there on the very basis that it might lead to their being dismissed and the fact that they do not have protections about unfair dismissal.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you do not have to have a call from an employee to inspect an industry, do you? If you have a suspicion that a certain segment of industry, for example, has been exploiting people, you could select significant employers in that industry and go through their books, could you not, or inspect their workplace?

Ms TELFER: We do inspect high-risk industries as a matter of course. We have a regular program about that.

CHAIR: Can we move on to some of the other areas and we can return to this if we have time. We have questions that reflect our terms of reference to explore particular sections of the community, the first being rural communities. We also want to deal with the impact on employers and small business, people with family responsibilities and injured workers. What is the impact on rural communities and is that different to metropolitan communities?

Ms MANSER: The situation with rural communities is much the same only worse. The sort of social disadvantage by location is a pretty well-documented phenomenon in Australia and labour market participation and unemployment rates vary dramatically from location to location. The WorkChoices Act is actually silent about social inequalities and regional inequalities, assuming that workplace bargaining will take place on a level playing field across Australia and any employee has the choice to accept new conditions or take another.

Those of us who have lived in rural communities will know just how hard that is. There will also be reduced job mobility for people because their social and family circumstances might very well mean that they cannot simply up stakes and go to another place in order to look for jobs. This, of course, will further reduce their bargaining power, so the whole thing is cyclical. You may be offered something, which is less than you are currently getting. You may want to protest about that or to try to negotiate but you know that there are not any other jobs in the town. Perhaps your spouse has a job which is already anchored in that place, so your ability to move is going to be very limited.

I think that social impact in rural communities of the WorkChoices is also going to be large. Employees will be bargaining not only with their employers but also they will be competing against family members and friends for what available work there is, including, of course, the ones we spoke about earlier, people who are moved off welfare provisions to welfare provision-plus work. They will be contesting those opportunities altogether. It seems that a situation which we were already aware exists in country towns and country communities is likely to get worse—I cannot say that it has because we have not seen enough of WorkChoices to be able to measure that impact yet but you would have to think that it is going to make those disadvantages, which are very real, worse.

The Hon. IAN WEST: If I am in a regional area in Googletown and I am going to look for a job, I am trying to visualise how I actually initiate a bargaining process with the employer.

Ms MANSER: As I said before, all the bargaining power is in the hands of the employer. For example, if you see a job advertised and you go for it, if the employer says, "We put everybody here on Australian workplace agreements. Here is yours", you look at it and it does not contain penalty rates—and, let us face it, penalty rates were introduced because people are working often antisocial hours; they are working at times when their families are not working, and this puts huge pressure on families—if you say, "Gee, when I did this job before I used to get penalty rates for working Saturdays and Sundays or during evening shifts", whatever, the employer will simply be able to say, "Well that does not apply anymore. What is here in your agreement is what you get". And you have a choice: your choice is to say, "Okay. I do not want the job on those terms", and go away and look for another one. That is the only choice you have.

The Hon. IAN WEST: Negotiation conjures up in my mind a concept of two people discussing a possible agreed outcome.

Ms MANSER: It need not happen. Good employers will still do it because they are human beings and they have some good will in this, but instead of there being a safety net under that so that if it did not happen for you you had somewhere to go and complain about it or somewhere to go and ask about it and get help, it is now up to the employer. So if a good employer can see that he would quite like you and your skills in that workplace and to do that he might have to pay penalty rates, then he may do that. Interestingly, of course, he does not have to then extend it to the other workers. So you can be doing whatever you are doing and getting paid more for it because you have asked for it and the others are sitting there not getting paid the same penalty rates. Imagine how long that will take to get out and what sort of divisiveness that will breed in workplaces?

Your only choice really is to say, "I do not want to do it under those terms", and go away and look for another job. I do not know about you, but that sounds like Buckley's choice to me, particularly in rural communities where there is not another job at the place next door. It seems to me that that sort of dissension and divisiveness—one of the great expenses of WorkChoices will be in the churn that it creates in the workplace as people realise what is happening to them and move away from these sorts of arrangements—or try to.

The Hon. IAN WEST: So once this negotiated agreement is put in place how is it actually interpreted or enforced?

Ms MANSER: It is interpreted, obviously, by the employer, who has the upper hand. You can do all the interpreting you like but if he does not like your interpretations then he does not have to keep you there. He can now sack you for any kind of operational reasons. All he needs to do is change the way the work is done slightly and say, "We do not need you anymore", if you are being too troublesome. It is enforced through the Office of Workplace Services, which is one of the 12 Federal agencies that deals with industrial relations now, and it has an inspectorate. The Federal Government is increasing the numbers of people in the inspectorate to try to look after these sorts of issues. At the moment it has about 200 inspectors across Australia.

In my office, which also, of course, has a strong enforcement function, we have 110 inspectors across New South Wales. They are kept extremely busy. They deal with something like 65,000 workers a year and 5,000 others who actively complain. 65,000 are done through the kinds of processes that Ms Telfer mentioned in terms of looking at low-complying industries, and then there are another 5,000 people who actually complain to us and we pursue their complaints. The Federal Office of Workplace Services is going to be very busy indeed if the same level of dialogue comes out of the workplace for them.

The Hon. IAN WEST: If I take the job under the conditions offered to me, if I wished then to initiate an issue in the workplace how do I initiate an issue with the employer?

Ms MANSER: The only thing you can do is go and talk to him about it. If he is a good person he will listen and if he is not he won't.

The Hon. IAN WEST: The employer will decide whether or not to talk to me?

Ms MANSER: That is right. In addition, of course, there is no purpose in you talking to your colleagues and trying to get a collective approach to it because if he says he does not want a collective approach then that is the end of that as well. Of course, by then, you may well be regarded as a troublemaker and find yourself out the door. There is no mechanism for you to do those things. If you want to contact the union—maybe there is a union that covers this workplace that you are in—you will have to meet the union outside of the workplace because unless the union is authorised by the Federal Government—

The Hon. IAN WEST: But won't the employer have to talk to the union?

Ms MANSER: Only if he chooses to, and he may. Again, not all employers will be exploitative of these arrangements, but I have got enough experience to have seen many who do. The imbalance is stark in terms of the employers versus the employees now and, as I said, I think we had an arrangement before where we shared the risk.

The Hon. CHARLIE LYNN: Ms Manser, are you aware of any employers that have not employed people in the recent past because of current regulations regarding unfair dismissal, occupational health and safety, WorkCover, and all the requirements they have got to comply with?

Ms MANSER: We have had a number of employers ring our phone service and say things like, "If it were not for X I would employ three more people", but the evidence is not there that that actually happens. If you look at the surveys what you find is a big discrepancy in what people imagine will happen with WorkChoices. If you are getting at the idea that WorkChoices was meant to extend employment to more people—and certainly that is one of the things the Federal Government has been saying in justifying WorkChoices—you are going from a research study, which said it would create

77,000 jobs, which is then disputed by people a number of times, and then another research study which says at the most it will create 6,000, and those are national figures, it seems to me that neither 77,000 nor 6,000 are particularly big figures nationally.

We have had people say that they find workplace regulation a problem with red tape. One man's red tape is another man's safeguard, as the Minister said recently. If you think in terms of red tape, what would you say about this small Workplace Relations Act versus this very large volume on the WorkChoices legislation and the 12 government agencies that are going to deal with it? If I were a small business person I would find this large volume extremely intimidating and I think I would also find the 12 government agencies intimidating—and I might have to relate to four or five of them, not just one or two. If I am in the construction industry I am quite likely to have to deal with all of them. That seems to me to be an abdication of the notion that "simpler" was what we were going to get. It is also not unitary, of course, so it does not cover everyone.

There has been a fair amount of discussion about how this would lead to a simpler, fairer unitary system across Australia. It cannot cover all employees because it is based on corporations and not all organisations are incorporated. In agricultural fields there are very few employers who are incorporated. So, again, there is a mismatch of the rhetoric as against the achievement. I think people will find this impossible to apply off their own bat; they will need a lot of help, probably from lawyers, which will be expensive, and at the end of the day you wonder where that will lead people. It has been possible for people both in the Federal system and the State system to get help: there are web sites, there are phone services, there are inspectors, there is staff from the government's end of things who will assist you to understand what you need to do to employ people in any given industry. My service does that with 400,000 phone callers a year and any number of visitors. The Commonwealth has a similar system.

It is going to need an extraordinary amount of that kind of energy and effort for people to understand it, and even when they do, if we get to the point where we are in dispute about something, the issues wind up in courts; they do not wind up in an industrial relations commission, which understands the issues, they wind up in a court, and you are going to need representation and you are going to need lots of money to get heard. I think those are the sorts of things that get in the way of the implementation of this. One can only wonder why they are in there.

The Hon. CHARLIE LYNN: But if you wheeled in all the regulations and so forth applicable to WorkCover, to occupational health and safety, it is a thicker book than that.

Ms MANSER: But they are also still on top of this.

The Hon. CHARLIE LYNN: It has been said to me, and I would like your comment on it, that it is actually impossible for employers in New South Wales to operate legally if they comply with all the regulations. They say it is just impossible to do that.

Ms MANSER: It depends. I do not dispute that that is something that sometimes people say. Small businesses find the whole area difficult. We have an equal amount of feedback from our hotline and from our contacts with businesses that says that small businesses enjoyed the award system because what it meant—and this is the most crucial thing to them—was that they were not required to learn to value work. So if they wanted to know, "How much am I supposed to pay a florist? How much am I supposed to pay a clerical assistant in a legal firm in Dubbo?" those pieces of information are as simple as pie: a two-line answer out of an award. We have a system on our web site which will pull the information out for you.

So you go into the web site, you say you are a legal firm, you are about to employ a clerk, what should you pay this person, and it comes up with the answer. That kind of service to small business has, in the past, answered a lot of the issues you raise. I think what is happening now is that that person in Dubbo with the law office and the clerk turning up is not going to know how to go in with that person's work. They do not have time to do that.

The Hon. CHARLIE LYNN: Is that not what chambers of commerce are for?

Ms MANSER: Yes, they can get advice from those people too. There is no doubt at all there has been plenty of advice from them and from other umbrella organisations of the type: AIG and ABL, a lot of those employer groups provide similar information. What is happening at the moment is that they are still struggling with this as well, and working out what to tell people can be quite difficult. But, as I say, even if you get it right, even if you have worked your way through all the bits or you have been advised about which bits are relevant to you and you have taken those on board, when you get into any kind of difficulty with an employee you will wind up in the courts, and that is an expensive answer to what is often a human relationship problem. An issue about a person's performance or a person's behaviour in your workplace should be able to be solved lower down that tree.

The Hon. CHARLIE LYNN: I have had many examples where employers feel that, particularly with the unfair dismissal legislation, they are going to lose every case and have to pay out anyway. So it does not matter what system is in place, they have to pay out. Are you aware of any abuse of the unfair dismissal legislation as it is operated?

Ms MANSER: Not specifically. I hear that story, too, so I assume people have had that experience.

The Hon. CHARLIE LYNN: My brother is one. I have come across a lot of examples of that and I just wondered what your thinking is.

Ms MANSER: I would not dispute that with you, that there may have been instances where it has been abused. For every story where it has been abused by an employee, there is one where it has been abused by an employer, but 9 times out of 10, of course, you do not see those because the employer has got away with dismissing somebody unfairly, and it had not reached the point where it has gone to an industrial commission.

The Hon. CHARLIE LYNN: I was interested also in your opening comments where you were talking about the transfer of risk from an employer to an employee. I know a lot of employers from south-western Sydney who have everything they own on the line. Their houses are mortgaged to the hilt, their overdraft is to the hilt, and these people work virtually seven days a week. They are carrying an enormous amount of risk and WorkCover forces them to carry the risk as well. I am interested in your statement that this risk is somehow being transferred to employees.

Ms MANSER: Well, it seems to me that it is not essentially the same risk. Again, I do not really dispute that that is exactly what is happening with employers' risks.

The Hon. CHARLIE LYNN: It is a ginormous risk.

Ms MANSER: What I am saying, though, is that those people who have that situation are working with employees who have exactly the same situation. Their houses are on the line, too. Their capacity to pay the rent or the mortgage is as much on the line as is the small business person's. That risk is shared. For many years it seems to me, since we have had labour laws in this country, sharing the risk has actually been very sensible. No-one says the risk is the same, but the risks are shared, or were. But it seems to me under Work Choices now the employer, the person you are speaking about, is in a much better position than they were a few months ago.

What has happened to make a difference is that Work Choices has given them the capacity to wade their way through employees in ways that they were not able to do before. It has also reduced their commitment to their employees in relation to their pay. So, you know, hard-won gains like being paid extra for working unsocial hours are just disappearing. It is not an unreasonable proposition to pay a person some extra compensation for working at a time when the rest of their family is at home or off at the beach enjoying themselves. Those sorts of gains have been worked through and hard fought in two systems. We have effectively 200 years of experience of this, 100 in the Commonwealth and 100 in the States. They were not easily given things. They were not easily worked through things.

It seems to me that the risk for people and the idea that if you do not like it, you can go somewhere else and get another job is an astonishing proposition, given that the people we are talking

about have exactly the same needs to pay out as the employer does. They have rent to pay, they have children to feed, they have kids' school fees to pay—all those things are the same.

The Hon. CHARLIE LYNN: My experience would be that most employers, and I say "most" as a generalisation, are good employers with very good relationships with their employees, and they are concerned for their development and success as well. What proportions would you say are good employers and bad employers?

Ms MANSER: I can tell you exactly. When we conduct targeted campaigns in particular industries, what we find is when we go in the door—what we do is we tell people we are coming, so they have warning that we are coming. We give them a contact for fixing things up, if they feel the need to fix things up before we get there. We go in and we talk to them. We tell them about the situation that exists in the industry, if they do not already know. We then give them three months to work through what that means. For example, if they are underpaying people, they have three months to fix it. We go back, and it is when we go back that is the pointy end, I suppose, that can lead to prosecution.

When we go in the door we find that a third of the employers that we encounter are actually paying people properly. Fully two-thirds are not. Another third will fix it on the way through, so they may have not understood or not realised and it may be ignorance that we are talking about rather than malice. The other third are the third that we deal with through fines and prosecutions. Because of the way we organise and manage our targeted programs, that pattern comes up consistently every time. You are not wrong at all: there are many good employers out there who will use this legislation effectively and well, just in the way that they used the old legislation effectively and well. What I am hearing is a lot of people saying, "I can't cope with this. I am just going to keep doing what I was doing." Eventually that will put them in breach of this. We have to hope that that will not happen, that they will get on top of it and they will be able to use it. But an awesome number of people are saying, "It's too hard. I can't cope with it."

The Hon. CHARLIE LYNN: Employers or employees?

Ms MANSER: Employers.

The Hon. CHARLIE LYNN: Employers?

Ms MANSER: Yes.

The Hon. CHARLIE LYNN: This is the new legislation?

Ms MANSER: Interestingly in the Office of Workplace Services there is an array of inspectors. They will not—they are saying they will not: I do not know that they have begun yet, really, because they are just being appointed as we speak—accept settlement on the way through, if you like, or a sorting out of the arrangements on the way through. They will prosecute. So, again, you know we will be spending a lot of time in courts.

The Hon. CHARLIE LYNN: Those employers who say that they cannot cope, do they not have the option or the choice of going to the eclectic system or consulting with you or the union or someone?

Ms MANSER: They can certainly ask for help. There are plenty of people to ask for help in some instances. As I say, with the Commonwealth, you need to work out which of the 12 agencies you actually ask because the issue may be dealt with by someone else. That can be very frustrating for people. We get a lot of phone calls from people who have already rung the Federal service and have found that they cannot get the answer they are after. I guess, to be fair, the people in those services are at the front end of this issue as well as us. So what the answer might be and how it might pan out may not be abundantly clear to them either. All they have got is the words to go by at this stage.

At the same time, if you create something that is overly complex—I mean, I have been in the public service a very long time—it has always been my view, and the view of the New South Wales Government, I think, given what is in here, that an ordinary person ought to be able to read an Act of

Parliament and know what that means for them. They might need help finding the bit. They might need to be pointed at section X, not section Y, but once they read it, it should be clear to them what their obligations or their rights are. You cannot say that with this. It is constructed in ways that are very, very unclear.

The definition of employer and employee, making it clear that we are only talking about corporations, is in schedule 15 at the back of the Act. Anybody else puts the definitions of the front so that if I do not have to read the rest because I am not a corporation or I am not covered by that Act, I can put it down immediately and go away and find the other bit. This Act is not constructed like that so I believe it is unhelpful to people in business, actually, in that sense.

The Hon. CHARLIE LYNN: Given it is a Federal issue, what do you think we will achieve at the State level here?

Ms MANSER: What I hope the Committee can achieve is a kind of snapshot, if you like, of the impact of Work Choices in its early days. We have seen a lot of press comment about particular cases and instances. We are all aware, I guess, that being very tentative about what the press tells us is wise. Hearing it from people themselves would be better. This is an opportunity for people to do that. I think it is important to know that the Commonwealth has not displayed recently any interest in gathering information about systems. We used to have a national survey of industrial relations and workplace arrangements called the Australian Workplace Industrial Relations Survey [AWIRS]. They disbanded that survey some years ago. The sadness about that was that it was a longitudinal survey. We were actually getting information every five years.

Three of the States, Queensland, Victoria and New South Wales, have tried to take up the role of asking those questions and finding out those things. We will have some data on basic things like what people's workplace arrangements are and what sits underneath and so on, whether they think they are casual, and a lot of information that the Bureau of Statistics gets the tip of the iceberg on, but it does not drill down very far—those sort of information-gathering systems. We are now seeing an attempt to redefine poverty underneath another survey which we all call HILDA, which stands for the Household, Income and Labour Dynamics in Australia survey. That is happening at the Commonwealth level.

We will not be getting very much information from the national levels at this beginning point of Work Choices. That is not to say that that will continue, that it certainly does look like it will. That, to me, is sad because what we will miss is this impact that we are talking about and that your Committee has concentrated on in its terms of reference about how Work Choices affects individuals. I think it would be a very valuable contribution for the New South Wales Government to have some indicators from you about how Work Choices is making changes in actual workplaces. I believe it has created a level of potential uncertainty and even intimidation for people, which is unknown in my 36 years of experience. To dig that out and to get that out into the open will be important.

It is also important to know what the other side of the ledger is—who is using it, who is making it work, and who actually thinks it is a better set of arrangements than the ones that were in place before. We need that balancing of the ledger. We are getting the papers talking about the more outrageous or, you know, extreme versions of events. We are not hearing what is happening to ordinary workers.

The Hon. KAYEE GRIFFIN: I want to go back to a point you mentioned in your opening statement which related to the balance between work and family responsibilities and perhaps how you think the legislation will impact on that. One of the things you mentioned was looking after parents. Are there statistics around at the moment to say that people now are having more responsibility for caring for parents? If so, is there something around that says what happens when the baby boomers start to retire because that is a fairly substantial part of the work force and obviously has the potential to impact on people currently in the workforce in terms of their care?

Ms MANSER: As a baby boomer, I feel very responsible for this sort of question. I think there is beginning to be evidence that more and more people are involved in both the care of their children, who may be old enough—some of them, anyway—to be off their hands, in a sense, or not dependent any more but are turning their minds to the care of elderly parents. That impacts more

oppressively on women that it does on men for fairly obvious reasons. I have colleagues in my age group who leave work in a hurry every second afternoon because this is the afternoon that they go over to Mum and Dad's and cook the tea. They have a sister who does it on the other nights. Those sorts of family support systems are increasingly getting to be a set of issues for Australian workplaces.

I do not know how much evidence is around in statistical terms but we certainly keep trying to ferret it out and will keep doing that and perhaps will pass it on to the Committee, if you are interested to see that statistical information. The problem will be that in the past some of those questions have not been asked at a sort of level where you could get a feel for the impact on the community, for example, through Bureau of Statistics surveys. But everybody is more aware now, so perhaps that will start to occur. I guess the way that works in most workplaces is through flexibility. I am able to say to the person I am talking about, "Yes, by all means, dash off early at five o'clock on Tuesdays and Thursdays because you have those responsibilities" because I know that person gives me 150 per cent at other times, so that is fine.

That is me as an employer, not someone else, and also of course that person is not creating widgets. She is not in a factory. I can do that with the kind of work that my organisation generates, whereas someone else may have difficulty with that. So there are difficulties with flexibility on both sides. In New South Wales recently we had a secure employment test case which would have allowed people a bit more flexibility about asking for arrangements like that.

That has now disappeared under the weight of WorkChoices and will not really be very applicable except to people who are still covered by State arrangements. The first taskforce will be for people to work out which is which so I think those issues—the work and family, and vulnerable workers issues—are simply magnified many times by an Act which takes no cognizance of them.

For example, there is no mechanism any more for raising issues of pay equity and the actual pay for women in the workplace. There is an injunction to the Fair Pay Commission to take that into account when it makes its decision. We have not seen what the Fair Pay Commission will do yet or how it plans to manage its work. But, for example, where once upon a time people could take a case down to the New South Wales Industrial Commission and say "We believe we have been disadvantaged because our workplace is largely female" and be able to show that through the kind of pay they have been receiving and the kind of conditions, that avenue is now closed off. So we do not know how anyone is going to be able to put together again a case—again it is a collective case so it is not approved of, if you like, by WorkChoices—and say "We are not being paid according to our training and responsibilities" and all the other things that people take into account when they work out what a salary should be.

The Hon. KAYEE GRIFFIN: Presumably another impact is that with an AWA an employee is not supposed to give out information about what their agreement says as opposed to other people in their workplace?

Ms MANSER: Exactly.

The Hon. KAYEE GRIFFIN: That would be another impediment to try to look at inequality in a particular workplace or inequality as to how people in a particular classification may be paid?

Ms MANSER: Yes, the secrecy is extraordinary. You are actually to be punished if you do that. There are gaol terms attached to discussing the contents of your AWA.

The Hon. IAN WEST: I am sorry I could not hear you.

Ms MANSER: There are penalties, including gaol, for people discussing the contents of their AWAs. So, yes, the secrecy element is extraordinary. Mind you, there are a very tiny number of AWAs actually out there at the moment. Whether WorkChoices will increase by volume the number of AWAs is still to be seen. But, of course, the other important thing to remember about AWAs is it is not the only kind of individual contract you can have. You have always been able to have a common law contract so AWAs are only one form of individual contract. But what they do, of course, is subvert awards. They are designed to subvert awards and create situations where you can get below

the award. In a common law contract in New South Wales you are obliged to take into account the terms of the award in the industry. So you can go above the award, you can do things alongside the award but you cannot go below it but in an AWA you can do what you like.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you have any hard data on the effect on the economy? Presumably we can never compete with the Chinese $2-a-day manufacturing jobs no matter what we do?

Ms MANSER: I do not think so, no.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In terms of competitiveness of a company, for example, if you are running a cleaning company presumably the price is passed on to the people who are doing well? To say that a company is more competitive because it pays less would seem to be in the sense that there is no international competition? How then does the lower wage help international competitiveness?

Ms MANSER: I do not know that it does. I certainly think that the Federal Government thinks that it will and it thinks that productivity will increase and that workplace participation will increase—the numbers of people in the workplace. The productivity arguments are undermined fairly extensively by the experience in New Zealand which deregulated totally its labour markets. The productivity in New Zealand over a period of 10 years grew by 5 per cent and at the same time Australia's was 23 per cent growth in productivity. I understand, and this is just from conversations—I do not have any data for it—that it has been said by a number of people that in New Zealand it was the employers who asked for the structure back. Now with WorkChoices we do not have a totally deregulated work force for this: it is not deregulation but it is going to come close to it, I suspect, because I suspect what is really intended to occur is that people will say "I can't cope with this. I am just going to do what I think is the right thing" and that way we will end up with a free labour market. There will not be any rules because people will find them too hard to obey except for the large employers.

So productivity looks like it is not really an argument and I suppose it is certainly the case that when Minister Andrews has been asked about it he has mentioned China and India in dispatches as the people we need to compete with and certainly my Minister has said to him "Well, if we think we can compete with them on majors we have got another think coming. We have to compete, but we have to do it on innovation and technology and better ideas and different niche markets as opposed to directly, and certainly not in relation to wages." That would be a reduction in the standard of living for Australians that I think would be intolerable to everybody. But that is what is behind WorkChoices: that is what at its core it is attempting to affect those things. I do not think it is a particularly clever economic proposition but they did not ask me.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Some years ago I went around the world to study workplace absences. In America I spoke to some of the unions who were very threatened. They were excluded from workplaces altogether and had voluntary unionism so they were surviving with great difficulty. Will that happen here?

Ms MANSER: It is not quite as severe as that. The unions are involved, if you want, or can be involved I should say—again it is at the employer's discretion—if the employer agrees to do that in the collective bargain.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But if the employer simply says they cannot come in that is the end of the matter?

Ms MANSER: That is the end of the matter, exactly. And people will need to meet their union delegates down the road at the pub or somewhere else because they will not be able to meet them in the workplaces unless the employer says they can. I think that will change the landscape significantly for unions in terms of how they organise and how they get members. Ross Gittens famously said a little while ago that it does not matter much what is in WorkChoices because it has sent everybody into the arms of the unions. There has certainly been an increase in union membership. Whether that continues is another matter.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The other aspect of my studies in workplace absences was that the more self determination an employee had the lower the workplace absence was likely to be. In the United States of America whenever I asked anybody about conditions he or she immediately pulled out from their back pocket a special contract book. Everyone basically worked on the letter of law and there did not seem much give and take. It was like quick draw McGraw. They had it in their back pocket and they pulled it out. At every question I asked they pulled out their contract and I never got a vague answer. Are we likely to get to that legalistic situation? Presenting the contract I thought was, in a sense, very confrontational.

Ms MANSER: Yes, I wonder, did you find out whether it was obeyed in the breach or the observance?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Certainly I asked how many days absence they were allowed, what happened if they were sick, what the workers compensation situation was and it was all very cut and dry. If they took more than X-many sickies per year they could get sacked. The contracts were very clear in all those areas.

Ms MANSER: What will happen now is that people who are still covered by awards will still have that information. They may not have it in their back pocket but they certainly have access to it. Every employer is obliged to display the award in the workplace and most people would know the contents of their award either from actually reading the award or from being told by their employer what their situation is in relation to things like sick pay, for example. Other things like flexible work practices will be a lot more fluid and that would be the case now. In terms of WorkChoices if the employer decides to put people on AWAs he has to remember to get hold of the award that applies, whether it is a Federal or State award and actually discount each of the clauses of the award that deal with the things that we are talking about.

So if he wants to change the arrangements in relation to sick pay and just have them the same as the Australian Fair Pay Commission standard he will have to specify that. He cannot just say "Everything that was in the award has gone and now we are going to have this". He has to actually discount the specific clauses in the award in order to change the rules. That does not mean that the rules that are in the award will still apply because most of them, of course, will be stripped out by the Award Review Task Force which is currently working through awards. So what you would have to say is the certainty that was created by awards for both employers and employees is gone. The complexity of contracts, or AWAs particularly, is what they are facing and if you do not set it up right well you are going to be held to it at some point, or you may be held to it at some time if there is a dispute, either employer or employee.

It seems to me that it is not quite the same as the American situation because WorkChoices is really about loosening up the rules for employers to the point where they can very much do what they like and it has got, you would have to say, a slow start of that because people are having to take into account the transitional arrangements for awards and so on before we get to the point where you can just say you can go. A lot of employers, from the papers at least, like Spotlight, do not seem to having much trouble with that as we speak.

CHAIR: We only have five minutes left of the time set aside. It may be that Ms Telfer or Mr Raper may want to add something specifically. The question we have not covered is the effect on injured workers. I also ask what would you like to come out of our inquiry?

The Hon. IAN WEST: I was interested in the Government's position in terms of the Fair Pay Commission in light of the fact that it now appears that the Minister has appointed five part-time people as opposed the previous judicial structure we had where the national wage case was presented each year before the Australian Industrial Relations Commission. I understand that before the Fair Pay Commission the registered organisations of employers and employees and State governments do not of their own right have the right to appear and that the Fair Pay Commission has no responsibility or obligation to meet on any regular basis. Has the State Government got a position on that?

Ms MANSER: Yes it does. The State Government has made a submission to the Fair Pay Commission. You are right about the looseness, if you like, of the way the Fair Pay Commission is set up to operate. It can choose its own timing and as you know it has said that its first decision would not

be until the spring of this year. Now what that does, of course, is it puts people on minimum wages right across the country 18 months behind everybody else. I think it is a bit staggering that when asked about this Minister Andrews says things like "Well, the Fair Pay Commission will take that into account when it makes its decision". Well it might but people who are living on minimum wages are usually living from salary to salary, from pay packet to pay packet. The idea that I can wait 18 months and get a top-up, depending, of course, on what that will be does not help with the petrol charges now, the possibility of interest rises, the way the rent and mortgage go right now.

People on minimum wages are particularly vulnerable to that. So there is an issue about that. There is no requirement in the Act for the Fair Pay Commission to meet within any specific timeframe, whereas the national wage cases were held every year and the State industrial tribunals met immediately afterwards and, generally speaking, flowed on any increase to State workers. As you know, the New South Wales Industrial Relations Commission is hearing an application from Unions New South Wales to deal with those issues for State workers. As we speak, the hearings are ongoing. That has happened all round the country, not just in New South Wales. The State commissions are attempting to ensure that workers who are at the bottom of the pay scale will actually receive something before the Fair Pay Commission brings down its first decision.

The other thing is that one has to question an organisation that has no requirement to be transparent. In respect of the Australian Industrial Relations Commission or the Industrial Relations Commission, I can walk in the door, sit at the back of the court and listen to proceedings. As a citizen, I am entitled to do that. It is a courtroom, and I can go into it and listen to the arguments if I want to. Not only am I not able to do that under the Federal legislation—certainly, the Act does not say I am able to do that, though Mr Raper may have different ideas—but there is no requirement for their processes to be transparent. Also, as you say, nobody has any right or entitlement to present a case to the Fair Pay Commission. There has been an invitation for people to make submissions. Doubtless, those of us who would have made submissions in the past at a national wage case will be doing so again, but that is by invitation; it is not a requirement of or any obligation on the part of the Fair Pay Commission to listen to me or to workers.

The Hon. IAN WEST: And you cannot initiate anything?

Ms MANSER: No.

CHAIR: No.

CHAIR: Mr Raper or Mr Telfer, do you want to add anything before we wind up?

Mr RAPER: As far as its own employees are concerned, the New South Wales Government had made it clear that it will continue to adopt a consultative and inclusive approach to industrial relations with its employees and union representatives. It will continue to collectively bargain. It will continue to work within the New South Wales industrial system as far as is possible, and has legislated to achieve that. It certainly has no desire to take any steps that will disadvantage its staff through the implementation of WorkChoices. It is a policy position that has been adopted by Government in respect of its own employees and has sought to effect that legislatively.

Ms TELFER: I wanted to briefly highlight some of the concerns about injured workers and their rights. I will not go through the Government submission to this inquiry in detail, but it is worth highlighting the fact that one of the impacts of the WorkChoices legislation is that it excludes occupational health and safety and workers compensation as State industrial matters. However, we have received a number of inquiries from injured workers, as I know has the Office of Industrial Relations, expressing concerns that employers have sought to say to someone who has had a work-related injury that they can now be dismissed. This is in contrast to the provisions of the New South Wales Industrial Relations Act, which says that an employee who has a compensable, work-related injury cannot be dismissed within the first six months of sustaining that injury, and in fact has a right of reinstatement. This highlights the impact of WorkChoices in creating confusion, where people are now being told that if they have a work-related injury they can be dismissed within the first six months of incurring the injury, despite the fact that those State provisions are supposed not to have been overridden by WorkChoices. What is happening to injured workers is a matter of grave concern to us. That could impact return to work, good injury management, and shift the cost burden onto the

New South Wales health system, and ultimately the taxpayer, where unscrupulous employers try to dismiss an injured worker within the first six months of the injury occurring. This is another example of the confusion.

CHAIR: To Ms Manser, or the three of you if you like, do you want to run through anything you have not said so far about what you would like to come out with of this inquiry?

Ms MANSER: I would reiterate that it would be good to see some recommendations or some advice to the Government about the impact that WorkChoices is having, so that Government can consider what it can do.

CHAIR: Earlier you stressed the need for a snapshot of information on how it is going, given that it is relatively new, and particular its effect on individuals. If there is nothing else, we thank you very much for coming and opening our inquiry. If something comes up that we need more information on, we might contact you afterwards. But as there is nothing on notice, at this stage anyway your role is completed. Thank you very much for coming.

(The witnesses withdrew)

CHAIR: Ms Peters, I understand the secretariat has given you a copy of a statement that we have prepared which, apart from welcoming you and thank you for coming, basically deals with the possibility that allegations may be made about individuals, and there are issues obviously of serious allegations and how we handle them and giving people right of reply. I imagine that, in talking on behalf of Unions New South Wales, you will not be going into very detailed case studies anyway, but you have that statement. We just want to warn people that we need to be careful, and we have various procedures in place whereby, if we feel we need to, we can refer something to a person complained against. On the other hand, we want to do everything we can in front of the public, rather than confidentially.

ALISON PETERS, Deputy Assistant Secretary, Unions New South Wales, Level 2, Trades Hall, 4 Goulburn Street, Sydney, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee?

Ms PETERS: As Deputy Assistant Secretary with Unions New South Wales.

CHAIR: We have received a submission from Unions New South Wales. Before we go to the broad questions that we sent you, would you like to make an opening statement?

Ms PETERS: I would like to make a very brief opening statement. As Unions New South Wales is the peak trade union body in this State, it is probably no surprise to anyone that we are opposed in principle to the Commonwealth's WorkChoices legislation. This is not just because we are a State based body, but mostly because in our opinion WorkChoices is bad law. Unions New South Wales believes that economic prosperity needs to be equitably distributed and shared throughout the community. We do not see that WorkChoices achieves this. As a result of the introduction of WorkChoices legislation, Unions New South Wales commissioned two pieces of research, one by what was then know as the Australian Centre of Industrial Relations Research and Training—although it has now had a name change to the Workplace Research Centre—at Sydney University, and one by Professor Don Edgar.

These pieces of research work to assist us in understanding what the impact of this legislation might be. They form the basis of our submission to the Committee. We see very much that this research confirms that those who are relatively well off already within workplaces will be largely unaffected by WorkChoices but that those who are the most marginal in our work forces will be worse off, resulting in growing inequality. This, we say, is bad for the entire community. We also say that the legislation does nothing to improve the skills gaps that are currently emerging within our labour market, nor does it do any thing to address overall economic prosperity or, indeed, guarantee it.

We would contrast the WorkChoices regime with the New South Wales Industrial Relations Act 1995, which was built by consensus between the Government, employers and employees. It provides a system that has minimum standards through industry and occupational awards; it has provisions for agreement-making in the workplace; and, most of all, it has provisions to test the fairness or otherwise of dismissals and other contracts relating to work. We see this as providing a sound base that ensures that economic prosperity in this State is shared equally between the employers, the employees and the community more generally. That concludes my opening statement.

CHAIR: Our prepared questions are general and basically run along the same lines as our terms of reference, except perhaps for the first one. Would you tell us more about the membership base of Unions New South Wales and the activities of the organisation?

Ms PETERS: Unions New South Wales is a peak trade union body in this State. We also act as a branch of the Australian Council of Trade Unions. We have 60 affiliated unions as members and those unions have a combined membership of 650,000 members. Our affiliates cover both blue and white collar workers, public and private sector workers and workers in large and small workplaces, and we operate in both the State and Federal industrial relations jurisdictions—so the full coverage of workplaces in this State. The role of Unions New South Wales is to advance the interests of union members and represent workers and their families. We do this through research and advocacy before

tribunals, governments and anyone else we think might be able to assist us in our goals. We provide advice on representation, not just for the unions but for their members as well. Obviously, we are involved in education and training within the broader community about the role of trade unions and we have some media and publicity functions as well.

CHAIR: I am sure that other Committee members will ask you questions. I will start by asking you in broad terms to tell us about the effect that WorkChoices legislation will have on the ability of workers to bargain, particularly some of the more vulnerable groups such as women, young people and casual employees.

Ms PETERS: As our written submission indicates, bargaining under WorkChoices is very much constrained both for individual workers and collective organisations or groups of workers. This is very much achieved as a result of promoting Australian Workplace Agreements, if you like, as the prime method of bargaining. Australian Workplace Agreements—I will call them AWAs—essentially can be offered on a take-it-or-leave-it basis, which means that workers will not be necessarily in a position to bargain at all. It will be more or less take this or leave it. There are provisions in the legislation that go to transmission of business and greenfield agreements, which again allow the employer to set the terms of conditions, with workers having to cop this or else. There are restrictions on trade unions and the taking of industrial action, which again affect bargaining ability. There are restrictions on what can be in agreements, most of all.

There is no compulsion on employers to bargain in good faith or for them to agree to a collective agreement. We highlighted in our submission the example of one workplace where the workers very much want to enter into a collective agreement with their employer—they currently are on such an agreement—but the employer has responded by providing AWAs that they want the workers to sign. The workers are in a position now of not being able to negotiate a collective agreement and not wanting to sign the AWA and there is nothing much they can do to force the employer any further in that regard. That is just one example we are aware of at the moment. We also think that the legislation when taken in conjunction with the Welfare to Work reforms that will take effect from 1 July and the independent contractors legislation—which although we have not seen the bill we understand from remarks and public comments made by the Minister will allow individuals to essentially declare themselves independent contractors and effectively take themselves out of the industrial relations regime, if you like—all of these make it very much harder for workers to bargain in good faith with their employer, either as individuals or indeed as collective groups of workers.

Women, young people and casuals are already disadvantaged within the workplace with poor bargaining power now. These changes, we would say, actually reduce further their bargaining power. So the impact on those workers will, in fact, be greater. The fact that women and young people are far more likely to change jobs more frequently than men and older workers means that they are more likely to be put in a position where they are offered an AWA on a take-it-or-leave-it basis. As a result, these workers will further find that their bargaining capacity, either as individuals or collectively, will in fact be worse. The Australian Centre for Industrial Relations Research and Training [ACCIRT] report, which is Annexure 1 to our written submission, gives examples in Victoria and Western Australia where similar legislation significantly reduced the ability of these categories of workers to bargain with their employers. In fact, many of them had reduced pay and conditions as a result of these sorts of changes.

The Hon. KAYEE GRIFFIN: Ms Peters, would you expand on the Welfare to Work reforms and their impact in relation to WorkChoices?

Ms PETERS: The Welfare to Work reforms largely are designed to get more people into the paid work force. Unions New South Wales does not have a problem with that. However, within those reforms there are certain criteria to maintain welfare provisions if you are unable to get employment in the paid work force. Part of our concern is that this means that people who are being encouraged more strongly perhaps to seek paid work face, as someone who has been on welfare, the dilemma of going to an employer and being presented with what we would call a take-it-or-leave-it AWA.

If they do not take up employment with those provisions it can have a quite dramatic impact on their family income through the welfare system as well.

The Hon. KAYEE GRIFFIN: So, basically, they would probably have to go on an AWA and the legislation does not allow them a lot of choice in terms of the employment that they take up.

Ms PETERS: That is correct. In particular, the welfare to work reforms that will be introduced from 1 July will affect single parents whose children are at school. They will lose the current payments they get and are being encouraged into paid work when the child is much younger than was previously the case. Previously the single parenting allowance cut out at 15 but the age has now been reduced. Also there are stricter tests for those on disability pensions to ensure that they are genuinely seeking work. Again, we do not have a problem with that but for people who have been on welfare and who are trying to break into paid employment the employers have a great advantage anyway. Now, with the WorkChoices legislation, they are able to offer Australian workplace agreements at fairly minimal standards. If those agreements, as genuine offers of employment, are not accepted by that person, they may suffer quite significant financial disadvantage to their welfare payments as a result.

CHAIR: Correct me if I am wrong, but it seems from what you are saying that it will work in two ways. Because your welfare payments will be in jeopardy if you do not genuinely seek to take up work, you are more likely to accept an unfavourable AWA, which obviously means that you are not earning the income that you would earn otherwise. But presumably it will also introduce a competitive element with other workers.

Ms PETERS: That is correct. Our concern is very much that these workers will be on very basic AWAs. When WorkChoices was first introduced into Parliament the Federal Government's literature referred to the example of Billy, who was a long-term unemployed person who took an AWA that was below the going rate of pay because he would get a job. People were saying that that was a good thing. It is a good thing in that he might be in employment but it is not necessarily a good thing if he is losing benefits as well and has no real choice in terms of his employment.

The Hon. IAN WEST: Historically—for the past 100 years or so—we have had a situation where registered organisations of employers and registered organisations of employees have had certain standing before independent judicial tribunals with regard to right of entry and the ability to initiate bargaining and negotiations. What does WorkChoices do to that arrangement?

Ms PETERS: As far as registered organisations of employees or trade unions are concerned, there are significant impediments to the right of entry into workplaces. These build on the restrictions that were in the previous Workplace Relations Act. You have to give notice and you have to identify a union member that you are going to see. There is a whole host of paperwork and bureaucracy in terms of this. It just makes a whole host of things more difficult. In some workplaces where workers may not want to identify to their employer that they are union members obviously privacy and confidentiality are issues. When provisions are being breached notice to get into a workplace makes it more difficult to find out whether those breaches are happening. That is just part of the process. One of the bigger problems in terms of collective bargaining is that there is absolutely no compulsion on an employer to accept that their workers might in fact want the representation of a trade union, or indeed anybody else, to bargain collectively on their behalf. That is a very significant impediment to workers negotiating collectively with their employer by using someone like a trade union.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My experience in the United States of America was that unions simply were not allowed on the premises in many cases. My impression was that, with voluntary union membership, they were surviving pretty marginally. I gathered that there were three-year contracts and there was a flurry when the contract was coming to an end but in between times they had pretty lean pickings—not to put too fine a point on it. Have you been excluded from any workplaces since this legislation has come into force? Have unions been actively excluded from any workplaces?

Ms PETERS: There are some examples that I am aware of where unions have been excluded from workplaces. There is one example in our submission. It refers to a stationery products firm, Esselte, where the workers are seeking to renegotiate a collective agreement with their employer and the union that represents those workers has been excluded from that site. That is just one example. We expect this to happen more and more. I have to say that excluding unions from workplaces has been happening for sometime now. Unions have been using different ways to get access to workers. It still

means nothing if you have union membership—as indeed is the case at this workplace—if the employer refuses to recognise the right of the union official to represent those members in the workplace. Whether you have access or not is irrelevant if the employer can say, "I'm just not negotiating with the union."

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So, effectively, the employer may allow the employees to choose a representative to negotiate a benchmark and then have the relative scales above and below that or they may simply choose to take people one at a time. Is that the bottom line?

Ms PETERS: Essentially, that is correct.

The Hon. IAN WEST: Can an individual determine whether or not the offer that has been made to them—which they have no ability to refuse—is good or bad? I understand that there are secrecy provisions. How can workers know what is happening in terms of comparative wage justice in the community generally? Historically, a fairly important part of the industrial world is knowing what is happening in the rest of the community. What is happening in that regard?

Ms PETERS: AWAs are confidential documents. They are supposed to be between the individual worker and the employer in terms of how they are signed. We know from the AWAs that existed prior to the introduction of WorkChoices that most AWAs within a workplace were identical. The only difference was the name of the employee involved. But, for all intents and purposes, they were identical. I guess one concern we have very much is that now it is absolutely clear that new employees will be made the offer of an AWA before they start work and, in order to start work, they must sign the AWA. So essentially before they are even in the workplace—where they might get a sense of the prevailing conditions of the other workers—they are asked to sign up to a set of pay and conditions.

Workers have to take it upon themselves to find out whether that is a good or a bad deal. In many cases they will not even be given a great deal of time to make that sort of consideration or examination. We are aware of examples where people have basically been told, "Sign this now or we'll just offer it to the next person." We are very concerned, in particular, about the fact that not only will people in a workplace not be aware over time of what everyone else is earning but new starters will certainly have no idea of what may or may not be the prevailing pay and conditions in those workplaces.

The Hon. IAN WEST: So my rather quaint concept and understanding of choice, negotiation and an agreed outcome in the context of the community at large seems to be on the wane.

Ms PETERS: That is correct.

CHAIR: What explanation or justification has the Commonwealth offered for the secrecy provisions? Do you know?

Ms PETERS: I guess it is the old concept of privity of contract. These are agreements entered into freely—supposedly—between two people of equal bargaining power, and that is their business. That seems to be the only justification for it. We certainly believe it has more to do with trying to ensure that people cannot be comparing their pay and conditions and perhaps collectively saying, "This isn't right; this isn't fair" and trying to do something collectively about that. In most cases in most workplaces I think it is fair to say that most people have a fair idea of the pay and conditions of most of their colleagues, but we have a particular concern about people who may be coming into those workplaces.

CHAIR: Our next question asks what you think will be the effect on workers' bargaining power with respect to wages but also conditions and security of employment.

Ms PETERS: We refer in our submission to the evidence given before a Senate estimates committee by the Office of the Employment Advocate regarding AWAs that have been lodged since the introduction of WorkChoices. It shows that in those circumstances 100 per cent of agreements lodged had removed one award condition. By changing the no-disadvantage test in WorkChoices from

one where you took the award conditions and almost weighed them against the conditions in the agreement, the test is now against the Australian fair pay standard, which is based on a minimum rate of pay, annual leave, a standard working week of 38 hours, and personal carers, sick leave and unpaid parental leave, which is a very minimum provision.

As the ACIRRT report, which is part of our submission, suggests, things like penalty rates and overtime—things that make up people's take-home pay—are being removed, certainly at the lower end of the AWA provisions. It is these things that we think, because they are no longer protected by the no-disadvantage test, are most vulnerable for people who do not have bargaining power and will be removed. These are some of the things that we are most concerned about. Add to that the significant changes that WorkChoices makes with respect to unfair dismissal provisions—that is basically the right to have your case heard, if nothing else, as to whether you have been treated fairly. There is no unfair dismissal protection for an employee in workplaces with fewer than 100 people, where employees have been dismissed for "operational reasons"—and the definition of that is quite wide—or where a person has been in the workplace for less than six months. We would say that the bargaining position of workers, particularly at the lower end of the labour market, is significantly worse as a result of WorkChoices.

The Hon. IAN WEST: Can you clarify the 38-hour week provision in light of the average out-of-52-weeks provision?

Ms PETERS: The 38-hour-a-week provision essentially allows the hours to be averaged over a year, which may well mean that workers work quite long hours in peak times and much shorter hours at other times, provided it averages out at 38 hours over a 52-week period. This is a quite difficult thing to administer; 52 weeks is quite a long time to have to average out. What it also means is that where people are still entitled to overtime, they may well wait some substantial amount of time before it is actually adduced that they have in fact worked overtime, so some of these sorts of arrangements are quite difficult.

However, I have to say too that the evidence from Mr McIlwaine, the Director of the Office of the Employment Advocate, is that overtime provisions are one of the things most likely to be removed in AWAs anyway, so you may well work more than your 38 hours per week averaged over 52 weeks and still not get any extra remuneration as a result of doing those additional hours.

The Hon. IAN WEST: So it can be very misleading to say that one of the five provisions is the 38-hour week.

Ms PETERS: That is one of the concerns that we have. I have got to say that it will take us until March next year to know whether our fears in that regard are justified but, in the meantime, workers could be working quite long hours without the benefit of overtime or penalty rates to compensate.

CHAIR: What happens at the end of 52 weeks if the average has not been kept up? Is there a penalty on the employer or does the employer then have to pay the worker some missing money? What will happen next March in the cases you mentioned?

Ms PETERS: I imagine that there would have to be a reckoning about exactly the hours. There is, in fact, a regulation in place—it has just recently been changed—that requires employers to keep quite strict accounting of the hours worked by people. It was recently changed when employers realised it would apply to senior managers as well in large companies and they were not too happy about having their hours accounted for. So it has been reduced to people on, I think, annual pay rates of $80,000 per annum or less, so there is a penalty if those records are not kept. But at the end of the year I guess there would have to be an accounting as to whether people had, in fact, worked more than the 38 hours per week and whether or not they were then entitled to some payment under whatever arrangement they had in place. As I said, in some AWAs any penalty payment for working overtime has been removed.

CHAIR: There is a conflict there. If the 38-hour rule, which is in the five minimum conditions, is breached, then it is technically not overtime; it is actually a breach of a fundamental hours-of-work provision and presumably there would need to be a reckoning?

Ms PETERS: I guess that is the case. I am not entirely sure what the process would be for doing that reckoning.

The Hon. KAYEE GRIFFIN: You mentioned March next year. We do not know who would oversee as to whether or not the 38-hour-rule was being breached?

Ms PETERS: We do know that the Office of Workplace Services is technically the body that is responsible for ensuring that the legislation in this regard is adhered to.

The Hon. KAYEE GRIFFIN: Will they have right of entry to check the employers' books?

Ms PETERS: They do, I believe.

The Hon. KAYEE GRIFFIN: They will possibly be the only ones who do, or there would be very few?

Ms PETERS: They certainly do. I think the Tax Office might also have the same sorts of powers, but I am not an expert in that regard.

The Hon. IAN WEST: Are we making an educated guess as to who would have the ability to make that prosecution? It would be the office or the individual, but not a representative of the individual?

Ms PETERS: I am not entirely sure whether a representative would be prohibited from raising such a claim but the prosecution power lies with the Office of Workplace Services, so they would have to do an investigation.

The Hon. KAYEE GRIFFIN: Have any guidelines been issued in relation to what happens after March next year when WorkChoices has been running for 12 months and there is this opportunity presumably to check that an employee has not been used, that they had been paid for the 38 hours that have been averaged, and what happens with the extra hours?

Ms PETERS: I am not aware of any guidelines. All I am aware of is the regulation that requires the records to be kept. Good employers will obviously be keeping an eye on that but then good employers probably are not going to worry too much; they already have overtime provisions, they will be doing it in a slightly different way. I guess what we are worried about is those circumstances where overtime and other penalty rates have essentially disappeared and what that might mean for those workers covered by those arrangements.

The Hon. KAYEE GRIFFIN: It sounds as if it is going to be difficult enough for people to be able to have someone check on their behalf if they feel that their AWA or working conditions are not as they are supposed to be, but where do outworkers stand, given that they have always been a group people have expressed concern with respect to their rates at pay and conditions of work? Where does WorkChoices leave them?

Ms PETERS: With respect to clothing outworkers, it is my understanding that there are particular provisions intended to be introduced in the independent contractors legislation that would allow clothing outworkers to be able to rely on the provisions of the old clothing award, which is a State-based award, to ensure that they are fairly treated. It is a rather unusual and unique circumstance. I am aware of this because of a statement that Minister Andrews made with respect to this. However, the legislation governing independent contractors has not been introduced to Federal Parliament.

We had understood it would have been so by now, so I am not quite sure of the mechanism that they are going to use to do that, but according to his statement, they were looking to have particular provisions to our allow clothing outworkers to be able to rely on their existing award provisions under the State jurisdiction and to be able to take action, I imagine, within the State jurisdiction to enforce those particular provisions. It is a rather unusual circumstance.

CHAIR: So that award will be given a life beyond its expiration in that it will be updated as time goes on, even though it technically should not exist. Is that what Minister Andrews is suggesting?

Ms PETERS: Until we see the legislation we are not entirely sure exactly what mechanism they would use but, essentially the clothing trades award—which is the recent Federal award but there is also a New South Wales State award—has particular provisions for clothing outworkers, so not people who are working in the clothing industry who might be in factories as such but for outworkers and the protections contained within those instruments would carry on for clothing outworkers under the independent contractors legislation. However, because that bill has not yet been introduced to Federal Parliament, I am not entirely clear myself how they intend to do it, but that is certainly the impression left by the Minister's statement of about month ago.

The Hon. IAN WEST: Can you expand on page 21 of your submission with respect to the impact on gender equity and the rather stark examples in Western Australia given in the Plowman and Preston report?

Ms PETERS: There has long been an understanding that one of the reasons the pay equity gap, as it is called, between men and women in Australian has been relatively low compared to other similar nations has been our centralised method of wage fixing, so largely based around the awards. At the time that enterprise bargaining took on greater prominence within the Australian context, there was a slowing down of the pay equity gap. It had been narrowing quite significantly. The introduction of enterprise bargaining caused that narrowing to slow down and that is largely because women do not have the same bargaining power as men because of the jobs they do and their poorer levels of unionisation rates.

This was a finding of the pay equity inquiry that the New South Wales Industrial Relations Commission conducted in 1999 and 2000. In Western Australia they introduced workplace agreements, which are very similar to AWAs, in 1993 and Plowman and Preston have looked at those agreements and the impact on pay rates for men and women in Western Australia as a result. They found two things: in particular, they found that the gender pay gap between men and women in Western Australia increased quite substantially, so it is now the largest pay gap of all of the Australian States. They also found that the relative pay of women in Western Australia compared to women in other States also increased. As a result, they came to the conclusion that the introduction of individual workplace agreements actually reduced quite significantly the ability of women to achieve pay equity.

The Hon. IAN WEST: Was that a similar situation in Western Australia with the national wage case in terms of the State wage case submissions and the falling behind with the national minimum wage in Western Australia; it fell by some $50?

Ms PETERS: That is my understanding. During this period of time there was not a substantial increase in the minimum wage in that State compared to other States and, indeed nationally as well, so as a result the minimum wage fell relative to the other States and the national minimum wage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can I ask you about injury in workers? Will it affect workers compensation entitlements and how vulnerable will people be if they are injured?

Ms PETERS: It should not, in theory, affect workers compensation entitlements because they are governed by State legislation. However, it is fair to say that injured workers are already vulnerable workers within a workplace and they may feel themselves threatened by particularly AWAs and the need to do more than they need to, particularly with respect to return to work and that as a result their job security will be less secure. I am not aware of particular figures in New South Wales that would show there would be an increase in injured workers being dismissed, however I am aware that workers with long-term workplace injuries in Victoria found it harder to re-enter the work force once they were out of it because of their injuries and, as a result, when you coincide the workplace agreement regime on top of perhaps some concerns that they may be more vulnerable and under threat, you may well have workers accepting AWAs to try to keep jobs which may be contrary to proper rehabilitation for them in terms of their workplace and their injuries.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: We had some evidence from the Government this morning about rosters and unfavourable hours. There seems to be a rise in unfavourable hours of work in terms of occupational health and safety requirements with respect to adequate sleep and rest between shifts. I understand this is only governed by the term "reasonable" at the moment.

This would seem to be a huge step backwards in the sense that there is loads of science about what the performance characteristics of people are when they have sleep deprivation or have worked excessively long hours. What would you say about workers getting reasonable hours when they do not have maxima and they do not have the penalty rates to discourage excessive hours worked?

Ms PETERS: I think it goes to the point that I was making before. Because of this extraordinary long period of time that you can average out standard hours, 38 hours a week, you can in fact have people who are working very long hours for part of the time and much shorter hours later on. Again, the State occupational health and safety laws should act as a brake on that, but there is a problem if you feel that you are under pressure for your job to continue working these hours, you are not going to raise these sorts of issues and concerns. Certainly, the fact that penalty rates in particular appears to be one of the conditions that is most likely to be removed from any workplace agreement, then there is not such a barrier on those sorts of hours being worked, and I think there are some concerns there.

Australians already work huge amounts of hours. We have, on average, some of the longest working hours, despite being called the land of the fair go. People regularly work 44 hours a week or more, and in some industries and occupations they are working significantly in excess of that now. So, yes, this is a major concern for us to keep an eye on.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My understanding of the law is that you can devise any system of work you like but there are standards and so on which set what a reasonable rate is. In other words, the law simply says you must meet adequate standards, and then the standards exist separately and you have to know about them and meet them. If WorkCover sets guidelines on what hours are reasonable in each industry then surely that would become the legal benchmark for reasonableness. Has WorkCover set such benchmarks and, if not, could they?

Ms PETERS: I am not aware if WorkCover has set benchmarks in a range of industries. There are certainly occupational limits in some industries. For example, long-distance truck drivers have a certain amount of time that they can drive before having to take a compulsory break. Those regulations come not so much from WorkCover but from the Roads and Traffic Authority and a national body dealing with this particular issue. Likewise, airline pilots have similar sorts of standards. So I certainly think it is feasible, and given that the whole basis of our occupational health and safety laws is that of risk assessment, where excessive hours are quite clearly a risk to the health and safety not only of workers but to other people, as they would be, for example, in long-distance truck driving, then I think certainly WorkCover would have an obligation to look at setting some standard that might moderate the impact of excessive and long hours.

I would also say too that it is not just the total number of hours that is an issue here, it is also when they are worked. There is a lot of scientific and medical evidence that shows that working eight hours at a particular time of day is likely to be safer than eight hours at another time of day. So shiftwork, for example, night work, evening work, early-morning work, have substantially higher risks than work during the middle of the day as a result. So it is not just the total number of hours, it is the pattern of hours and when they are worked as well that join together to make hours safe or unsafe.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is no reason why WorkCover could not set guidelines for this. I am aware that there is loads of shift rotation literature and length of time literature that could be incorporated into schedules for different industries. I am also aware that the enforcement has been a problem in long-distance truck drivers and that hours are under threat for pilots with the new cut-price airlines and so on. Has WorkCover actually set these schedules of hours, and if not, why not?

Ms PETERS: I am aware that WorkCover has done a lot of research on this in different industries. I am not aware that they have actually set minimum standards or guidance for different

industries and occupations. I think that is largely as a result of the evidence being a bit of a moving feast. This is an emerging area of concern and I suspect that because WorkCover also has industry consultative groups that they would be working through a process for that. I think it is the case, however, that they have been working with trade unions and employer bodies in certain industries to look at the impact of hours and what guidance they might be able to offer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you believe they should come up with such guidelines if there is a problem, in the sense that the definition in the Act is merely to be reasonable? Surely someone has got to put some scientific form on that vague notion?

Ms PETERS: In some areas where there is a clearly identified risk I think it would be entirely appropriate for WorkCover to issue such guidance, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Has WorkCover been diligent, in your opinion, in enforcing regulations like this?

Ms PETERS: To be honest, this is not my particular area of expertise.

CHAIR: Would you like to take the question on notice and get some expert commentary back?

Ms PETERS: I could take the question on notice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I certainly would like to hear from the union movement as a whole as to whether they are happy with WorkCover's investigation of workplace safety.

CHAIR: That is a much broader question than the one you first asked.

Ms PETERS: I will undertake to get some additional evidence to you in written form, or if you would like me to come back on that particular matter.

CHAIR: Take the question on notice and the answer can come back in written form. You can ask Unions NSW experts in this field. I might also add, even if more of what Arthur is talking about was done, I am not sure what the legal situation would be in terms of the power of WorkCover and the New South Wales legislation vis-à-vis the power of the Commonwealth and WorkChoices. It may well be that a lot of work could be done in New South Wales in this area but it may legally not stack up against the WorkChoices legislation. I am not sure if anyone knows the answer to that.

Ms PETERS: I will undertake to look into that as well. One thing I would say at this point is that the Commonwealth Government has also opened up its own workers compensation system called Comcare to employers who operate across State boundaries. As a result, what that might do is actually undermine any sort of regulations that WorkCover might seek to introduce for New South Wales-based employers, if those employers, indeed, operated across State boundaries—and many of the larger companies do. Leaving aside the legal issues, the practical issues of the opening up of Comcare to become the workers compensation provider for larger national companies may well undermine any attempt by WorkCover to institute such standards. But I will look further into that and provide a response to the Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I would certainly be interested in terms of hours and jobs—hours generically, because even if one is working and the worst one can do is fall asleep and fall off one's chair, there is an inherent risk. But, obviously, it is worse if you are an airline pilot or long-distance truck driver. Firstly, does WorkCover do that? Do the unions believe that they should do that? I would be interested in the unions' legal opinion as to whether the definition of "hours" by WorkCover is likely to affect a Federal court deciding or a Federal body deciding what is reasonable. If Standards Australia sets a standard for something and then the question is asked in court if a behaviour or a practice in that area is acceptable, a lot of weight is put on what Standards Australia would say, and if WorkCover had an evidence-based research project that defined what hours were safe, on the basis of good research from science, surely that would have some weight in terms of that definitional process?

CHAIR: To make it easier for you, the Committee staff will be able to give you the transcript to clarify the sorts of things we are asking you to take on notice. We have got about five minutes left of the time we allocated and there are a few areas we have not covered. Do you have any comments on the impact WorkChoices might have on rural communities; the impact on the balance between work and family responsibilities; and also whether Unions NSW has any views on the impact on employers in small businesses? They are three separate areas but they are areas we have not covered at all.

Ms PETERS: Very briefly. Most of this is included within the submission, so I will essentially just summarise it. With respect to rural communities, the AWIRS report showed that, using Victoria for example, there was a much larger growth of low paid jobs in rural and regional areas compared with metropolitan areas as a result of the introduction of changes in that jurisdiction. The concern of Unions NSW is that, again, in rural communities there is not any real alternative for jobs. So that if jobs become low paid jobs, unless you actually leave the area then you do not really have much choice in terms of alternatives.

One of our concerns is that as people leave the area the result is it is ever more likely to be even lower paid jobs that are offered as a result. So essentially you draw out your skilled work force leaving behind those who are perhaps more vulnerable and less able to negotiate decent pay and conditions. So we have some grave concern that the impact of WorkChoices will again highlight the difference that is already there between rural communities and those perhaps who are working within the Sydney labour market.

With respect to the balance between work and family, most of our concern in this area relates to the increasing hours and what is called the fractured working time that we now find ourselves in. It is hard to balance your work and family responsibilities if you are required to work long hours. It is hard to ensure that you have adequate time to meet your family's needs if you have to work additional hours, particularly that are not receiving penalty rates. We would also note that WorkChoices provides no protection for hours predictability, something that is incredibly important for workers with family responsibilities, particularly for younger children. It is not so much when the hours are worked it is knowing that those will in fact be the hours worked and that you can be asked to chop and change your shift roster. Particularly for those people who have children at school or in childcare, predictability is far more important than so-called flexibility in terms of hours. They are some of the concerns we have in that regard.

With respect to the impacts on employers with small businesses, we are concerned in particular that the legislation is exceedingly complex. In making presentations to different groups about WorkChoices, I have quite often produced the legislation and the former legislation, the Workplace Relations Act, and the New South Wales legislation. If I can just give a graphic illustration: the New South Wales Act weighs in at 400 grams, the old Workplace Relations Act weighs approximately 800 grams, WorkChoices weighs 2.2 kilograms. So we are dealing with weighty matters here all round. For anyone who believes this is about deregulating the labour market, this is just not the case. This is a regulation to the nth degree.

The red tape and complexity, particularly for small business, is just mind boggling. We also see that Work Choices is a fairly ideologically driven piece of legislation. As a result, there is more likely to be conflict, particularly as employers, or indeed employees, seek to assert their respective rights under the legislation. We do not believe that this is in the interests of employers, whether they are large or small.

I also indicate that in some areas employers who seek to take the high road by skilling their workers and providing training for those workers may well find themselves pulled down to the lowest common denominator by the bad employers. Unfortunately in labour market economics, it is not the good employers who set the pace, but the bad ones. Obviously we have some concern that any new employers who may not want to use the laws to the utmost may well find themselves, because of competition with other employers in their product markets, in that very same boat. Those are elaborated on in our submission.

CHAIR: Finally, what would you like to see come out of the inquiry?

Ms PETERS: That is always a dangerous question to ask a union official.

CHAIR: We will accept an ambit claim in the spirit in which is offered, I guess.

Ms PETERS: One of the things that we think will be important is ongoing monitoring of what the impact is. In essence we have had 2½ months of the Work Choices regime and we have been a little surprised by how many examples have come to light already. We had not quite predicted that the impact would have been seen so quickly, so we believe that ongoing monitoring of what the real impact is certainly is required. We think that the New South Wales Government has a role to assist employers achieve best practice as opposed to work practice, that is, providing support for those employers who want to train their workers as opposed to cost cutting. That would be very useful.

I guess what we would be most interested in is how we can promote the values of the State system which is based on an independent tribunal hearing from both sides and making a fair determination, not just for the parties involved but for the economy and the people of New South Wales. We think that recognition of those values would have perhaps led to a very different legislative framework Federally as well, and we certainly think that promotion of the New South Wales State system would be a very useful thing to do to assist people in New South Wales.

CHAIR: Thank you very much for giving us that evidence. As I said, the secretariat will contact you about what the transcript reveals to clarify those matters you have taken on notice and will explain how you can get back to us and so on. Thank you very much for attending.

Ms PETERS: Thank you.

(The witness withdrew)

ANNIE OWENS, Branch Secretary, Liquor, Hospitality and Miscellaneous Union [LHMU], Level 7, 187 Thomas Street, Sydney, and

MICHAEL LYONS, Senior Lecturer, University of Western Sydney, School of Management, Locked Bag 1797, Penrith South DC 1797, affirmed and examined:

JANE ELIZABETH LEE, Member, Liquor, Hospitality and Miscellaneous Union [LHMU], Level 7, 187 Thomas Street, Haymarket, sworn and examined:

CHAIR: Thank you very much for attending. I understand that Merrin Thompson has given you a copy of the statement we prepared in relation to evidence that might include allegations or other material adversely reflecting on people. That can be done, but we are keen as much as we can, obviously, to avoid allegations of serious conduct in respect of which we would then feel obliged to invite someone to have a right of reply. But on the other hand, we are also anxious that this inquiry be conducted in public as much as is possible. I guess some of this applies to you in particular, Jane, but I think that as long as you are happy with your name being used and the company being used, then that is fine, but we just need to be cautious in relation to naming individuals and making unnecessary details about people's lives public—obviously, in particular, any allegations of serious offensive or criminal conduct. That being said, it is not said to frighten you but to play fair to you and to play fair to other people who you may think have behaved wrongly.

We have a brief submission from the union. Would any of you like to make an opening statement first? We understand that you, Jane, want to tell us your story. Annie, would you like to start?

Ms OWENS: What I would like to do in terms of this submission is make some statements in relation to the evidence we wish to bring and then go to Jane's evidence and then to Dr Lyons's evidence. I will begin by saying that the LHMU has a wide range of concerns about Work Choices, but today we seek to bring two particular matters to the Committee's attention; that is, our role as the union covering workers who work in the contracting industry and the particular issues in relation to contracting industries and bargaining in contracting industries, and the second issue that we wish to specifically raise is in relation to gender equity and that aspect of the Committee's terms of reference. I want to go through the context in relation to both those matters for about five minutes or so and then I will come to the other evidence that we wish to bring.

The LHMU covers a wide range of industries. It is a general union so we cover manufacturing workers, service workers in child care and home care and in hospitality, and also a large number of workers who work in contracting industries, cleaning, security and catering. But today we wish to bring the Committee's attention in particular to some aspects of Work Choices that impact on contracting industries and specifically on the contract cleaning industry in New South Wales. I want to talk about that context in relation to gender equity. We wish to talk about the gender equity issues in relation to child care. We do not seek today to provide the Committee with a full account of the remedies we seek because in fact there are broader concerns which we have. We would seek to bring a later submission in relation to remedies to the Committee.

I will begin by outlining the context in which the contract cleaning industry operates in New South Wales because it is relevant to our concern. Historically how wages are set in contract cleaning are through industry-wide consent settlements in a common rule State award, the Contract Cleaning Award. How they are arrived at is by negotiation between the union and around three peak bodies in the cleaning industry. There is a long history of that being the case in New South Wales. That system of setting wages has survived earlier legislative changes which have created the capacity for there to be individual agreements in contract cleaning. Why that has worked with the industry and for the employees is because contract cleaning works on very small margins. When a contract cleaner bids for a contract, they will win or lose that contract on about a 1, 2 or 3 per cent margin. Years ago there might have been a margin of 5 per cent but that is very unlikely now.

Given that the cost of labour in contract cleaning is at least 70 per cent, and in some contracts more, this means that if there is not a floor for wages, there is a huge temptation to bid by driving wages down. How this has worked in the industry is that currently the bids in New South Wales are

not based on that because the contractors are obliged to pay the common rule State award. What they win contracts on depends on the quality of their operation. It depends often on whether they have a dedicated person to bring in the new business and chase it. It may depend on other services which they are able to offer their clients in terms of their facility management and perhaps their infrastructure as well as the experience of the company in the particular kind of cleaning that is being bid for. However, what they will not be bidding on is the price of labour.

In contract cleaning, everyone is paying the award except there are two situations pre Work Choices in which there may be subcontracting. One is where there is specialist cleaning to be done. Say a cleaning company has a contract that involves some very high windows of a skyscraper or it might involve occasional carpet cleaning or sanitary disposal. The cleaning company may subcontract those aspects to a specialist cleaning company. Other than that, they are not going to subcontract because cleaning is a very low cost industry to get into. You can get into it with very little equipment, a little bit of money, and you do not have to go through a licensing process or buy a crane, so why would you subcontract out ordinary cleaning work that is always going to be more profitable for your company to do it for itself? One way in which you would have subcontracting currently is if it is specialist, and the other way it is if it is in illegal.

That certainly occurs under pre Work Choices where a company would win a contract, subcontract part of it either to individuals or to another company, and they know that the price they are paying will not pay the award rates. Where that happens, and it does happen, it is obviously illegal and there are a range of legal mechanisms by which it can be chased—often inadequately, but nevertheless it is sitting outside the box of the normal arrangement. That means that pre Work Choices in contract cleaning in New South Wales, a contract cleaner employee will almost invariably get the award rate. They will not get more than that, but they will get that rate. Those rates are currently between $14 and $16 an hour. The reason that system survived, even though there was a capacity for individual agreements before Work Choices, was because if you wanted to do something different, you had to weigh it up against a comprehensive no-disadvantage test which meant that you could offer something different but, in effect, it had to be on better terms than the existing common rule award.

What changed from 22 March is that there is now nothing to stop a new operator or in fact an existing operator offering an employee simply the minimum pay and conditions standard. That is, they have to offer them 38 hours averaged over a year—there are big implications in that—unpaid parental leave, 10 days personal carer's leave, four weeks annual leave and $12.75 an hour.

That then creates a real dilemma for an employer who wants to continue to offer a fair rate and to compete on quality and efficiency because if they do that, given that it is so cheap to get into the cleaning industry as a contractor, they are very likely to lose their work to a competitor who is offering, when you think about 1 per cent or 2 per cent margins, wages any way lower than the award amount, and they are going to win the bid. Even if the whole industry under WorkChoices decides not to adopt that low road approach, and decides to continue to make arrangements across the industry as they currently do because of the particular nature of contracting, and as they have in the New South Wales industrial system, they are not allowed to do that. They are not allowed to do that under WorkChoices.

There is a very limited capacity under WorkChoices to make agreements that go across multiple employers. It has to be specifically okayed. It is limited to companies with fewer than 70 employees. It is actually useless as a method, in the way it currently stands, to encompass the contract cleaning industry. If the union tries then to negotiate hundreds of separate agreements with all the different contractors the union is acting illegally under WorkChoices. It is pattern bargaining and that is not allowed. So I would in summary echo the submission that is made by Unions NSW that the dilemma this faces a good employer is that it is almost inevitably that the good do not rise to the top but they get dragged down to the bottom. We would like to make a more comprehensive submission later about remedies that there might be a capacity for in the New South Wales system but I would also leave with the Committee a LHMU publication which outlines this problem in some detail.

I just now wish to make some comments about the other area we wish to bring to the Committee's attention which is gender equity. The child care industry is a relatively new industry. The first award was made in 1969 so it is less than 40 years and it came out of volunteer work. It is historically underpaid and there has been really a 10 year process in New South Wales to address that

through a pay equity principle that exists in the New South Wales Industrial Commission. A long running case in relation to that finished this year and after 16 days of hearing and 37 witnesses, and having convinced in August 2005 the New South Wales Full Bench of the Industrial Commission, which included the President and the Vice President of that commission, found in favour of the child care workers that there was a pay equity problem, and awarded quite large pay increases to address the historical undervaluing.

Now because that happened prior to WorkChoices that remains the common rule award situation in New South Wales and, in fact, even though those increases are to be phased in to take account of capacity to pay they remain the legal minimum. However, there are two things that we wish to raise with the Committee today as particular concerns. The first is that under WorkChoices that can never happen again. No other group of undervalued women have a capacity under WorkChoices to bring a similar claim, and child care workers are not the only group of women with that kind of claim. Dr Lyons will provide a paper and some evidence in relation to that. The second thing is that there is actually two ways out of this for employers. Those increases are not safe.

First of all, as per the contract cleaning example, a child care employer now only has an obligation to offer a new employee those minimum standards. So the ones that I referred to earlier—the 38 hours a week, $12-75—no obligation when a person is hired to take account of what has been awarded by the commission. If a new child care worker is employed on a AWA they will not benefit from these increases unless they are specifically encompassed in the AWA. There is also another way for these increases to be knocked out and that is that the employer can essentially offer either collectively or individually to existing employees agreements which do not take account of those increases because those agreements are simply tested against the minimum. If they can get people to sign off on the reduction they are in—bingo!

Now it is probably a fair question to say: "Why would anyone do that? Why would an employee agree to forego increases that are coming to them by law?" We would say that has happened and there is evidence from the workplace of Jane Lee of where that has happened. The first thing I would say about that is that we do not really know why people would do that because there is no scrutiny of the process, and that is a problem in itself. An employer can propose what is called a collective non-union agreement to replace existing rates. That collective non-union agreement can freeze current rates and, provided they are given an information sheet from the Office of the Employment Advocate and seven days, and told that they can bring in a bargaining agent, then the employer can hold a vote. The vote is not scrutinised. It is not necessarily a vote. It can be individual signing. The employer then provides a statement to the Office of the Employment Advocate that that has all occurred. There is no outside scrutiny of this, so that is a problem in itself.

The second problem is workers are now in an environment where there is no unfair dismissal rights in these kind of workplaces which are generally under 20 workers, so that creates an atmosphere of some fear. Employees often have a low level of comprehensive understanding of the specifics of their entitlements, and often a naïve belief that those entitlements are protected out there somewhere automatically. Often child care workers are geographically tied to their job by their own child care or family responsibilities. They need to stay in the same area. Often they also have a strong connection with the children that they care for.

The other more sinister aspect, I suppose, of why people might agree to forego conditions is the response of an employer who is pushing a reduction agreement and does not get their own way. I would like to quote from a memo that was provided to employees at the workplace of Jane Lee one year ago when they had the temerity to vote down a similar adventure to get up an agreement which failed. It is a memo to staff and states:

> Today the votes were counted on the proposed enterprise agreement—

It totals the results, which result was not in favour of the agreement, that the employers were proposing—

> The company is disappointed with the result. However, the ongoing disruption to centres caused by the agreement negotiations has negatively impacted on our child care services and we want the disruption to end.

The employer then goes on to say that they will apply the award—

> It is important that we all now focus back on caring for children in our centres. Negativity has no place in child care. Remember this when you come back to work.

I would also assert that staff in an intimate employment as child care is—very small numbers—who have the experience of the displeasure of their employer when they, in fact, do not vote for agreements may feel subtly pressured to, in fact, agree to things that are not objectively in their interest. We have grave concerns that the pay equity increases won over so long and at so much cost in New South Wales will be lost. Also, that workers will do that in an environment in which they fear for their own position and security and also that in contracting industries there is a particular dilemma for employers. I will ask Jane Lee who is a worker at a centre that has had that experience to talk to the Committee about her experience.

Ms LEE: My name is Jane Lee. I am a child care worker and I live and work in the Hills district of Sydney. I would like to tell you about two issues. The first affects me, my treatment which began on the first day the WorkChoices legislation commenced, and the second, about the new workplace agreement that now operates at my former workplace following my dismissal. I had worked for approximately 15 years for Cubby House Australia in its before and after school care programs. For more than 10 of those years of was co-ordinator of the after school care program at Kings Langly Public School working from 7.00 a.m. to 9.00 a.m. and then 3.00 p.m. to 6.00 p.m. Cubby House operates approximately 13 centres located in Pennant Hills, Baulkham Hills, Blacktown, Chatswood, Kellyville area and also on the Central Coast.

I estimate that in addition to my rostered hours I spent an additional four hours on the weekends and evenings on some aspects of the programming. I suffered a workplace accident in 2002 when I fractured my ankle and I have had six operations with another two to come. I was forced out of the supervisor's job and on to light duties in an administrative position in the head office of Cubby House Australia. As a member of the union I am concerned about my rights and I have often helped younger workers understand their rights. I actively encouraged my fellow workers to vote against a proposed certified agreement because that agreement would have reduced our working conditions. A majority did vote against the agreement and after that our conditions went back to the award.

As you know, the Federal WorkChoices legislation commenced on 27 March 2006. I was informed that I was to start in a new position on this day called "staffing officer" and I was given a new job description. The job description contained some tasks that I had assisted in but I had not performed all of the tasks and I had never had sole responsibility for them in the past. Some I had never done. I did not receive any training for the new tasks. On my second day in this position I received two written warnings for unsatisfactory performance of those duties on my first day. I was summonsed to a meeting to explain, and I received a third written warning later that day. That is 15 years with no discipline whatsoever and three in three days.

The following day, due to severe anxiety about these events, I sought medical attention and I was advised to take sick leave. My doctor was so shocked to see the treatment I had received that week. My husband rang and told my employer that I was sick and that I would be off for a few days but we did not know exactly how long. He had a 19 minute conversation with my employer that morning and yet I was dismissed four days later for being absent without explanation. WorkChoices just made it easier for them to dismiss me. Because my workplace employs less than 100 employees and has mainly casuals there is simply nowhere for me to argue the unfairness of the treatment I received in those first few days. They even admitted to the organiser that it was WorkChoices that gave them the opportunity.

My dismissal was filed in the Federal commission as an unlawful dismissal but I cannot argue the unfairness. However, pursuing this will be very expensive because it must be transferred to the Federal court. After my dismissal, my work mates were offered a new workplace agreement. Under WorkChoices workplace agreements do not have to provide conditions as good as the award, and it did not. The agreement took away all future pay increases achieved in the pay equity case, removes all breaks, overtime, casual conversion as well as a host of award allowances. This was not the first time Cubby House Australia had tried to reduce conditions below the award. Cubby House Australia has had several attempts to get AWAs and non-union agreements into the workplace. I would have lost $89 per week of the wages to be phased in. WorkChoices means I am out of work

with an injury and my work mates, all hardworking child care workers, have much worse conditions than the award.

CHAIR: Did your work mates accept the new agreement?

Ms LEE: Yes, there was a vote and it was accepted but there was no policing of how that vote was counted. So the ones that I have spoken to are not aware that the vote was taken fairly. I only know five people that voted "no". I do not know all the other staff members in the other centres. They say only four voted against, whereas I personally know at least five who voted against.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think that that staffing position, as you call it, was created for you to fail in it?

Ms LEE: That is what I said to them. They did not like me saying that. I could work only four hours a day because of my injury, and what they presented to me was more like a full-time job. Maybe a full-time person in a full-time capacity could do all those duties, but I had only four hours. All those jobs were not done by one person; everyone did a little bit of that job description.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you think an impossible job was created so that you could not or would not be able to do, and the next day more or less you were told, "You have not done it so you are out, lady"?

Ms LEE: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So it was a pretext, you think, to get rid of you?

Ms LEE: Most definitely.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It was a clever technique of defining the impossible, and thus saying you had failed to perform?

Ms LEE: Yes.

The Hon. IAN WEST: Ms Lee, you said the employer initiated and controlled the ballot?

Ms LEE: Yes.

The Hon. IAN WEST: There was no-one from the employees there when the ballot was collected or counted?

Ms LEE: No.

The Hon. IAN WEST: The employees merely gave their ballot papers back to the employer, and the employer went away and counted them in a room somewhere on their own?

Ms LEE: Yes.

Ms OWENS: Could I add that there is no requirement under WorkChoices for any other procedure than that.

CHAIR: Should we hear from Dr Lyons first before we ask questions of all three of you?

Dr LYONS: Most of my comments will elaborate on some of the remarks of Ms Owens and relate to some of the issues that Jane mentioned. Essentially, what I will talk about today is an adaptation of a paper that I and a colleague have written for presentation to a conference in Berlin in September. With the indulgence of the Committee, I would like to table that paper.

Documents tabled.

Ms Owens mentioned in her opening remarks that, as far as the concept and practice of gender pay equity is concerned, the Federal WorkChoices Amendment Act essentially eliminates that from the industrial relations landscape. I pretty much endorse those remarks. The decision in March this year of the Full Bench of the New South Wales Industrial Relations Commission in granting those significant pay increases to child care workers covered by the New South Wales award was based on the pay equity principle that the commission adopted in 2004 as a response to the pay equity inquiry.

The advantage of making an award variation application under the pay equity principle, as opposed to a work value or other wage fixing principle, was that it was particularly sympathetic to the concept of labour market segregation, which impacts significantly on female dominated workplaces and historically has retarded their wage levels. You can make the argument—the Commonwealth Government has made it—that the amendment Act makes no significant change to the Federal system as far as equal pay for work of equal value is concerned. That is probably true. The Keating Government's reform Act in 1993 implemented what we call equal remuneration provisions in that Federal legislation. But, for constitutional reasons, certainly back in 1994, those provisions of the Federal legislation were based on the external affairs power, and therefore there are certain restrictions in the wording of those provisions in that they have to mirror, almost word for word, the particular international treaty that they follow.

Though the Federal so-called equal remuneration provisions have been in operation for about 12 years now, I understand that in those 12 years only one case has actually gone to arbitration, and that was the HBM case. It was essentially thrown out because the wording of the Federal legislation requires the Australian Industrial Relations Commission—and the WorkChoices legislation does not change that provision—to essentially apply a test of sex discrimination, which is almost impossible to prove given the concept of gender labour market segregation, where women tend to be concentrated into occupations such that you cannot find a comparator with males because males generally are not employed in those industries or occupations. Child care or children's services are a clear example. The Full Bench of the New South Wales commission specifically mentioned that in its decision. It said that trying to find a comparator of a male dominated industry upon which to make an equal pay for work of equal value case is difficult if not impossible, particularly in the case of child care but probably also in the case of many other occupations or industries dominated by women.

Another aspect of the current Federal legislation is that, in addition to it overriding State legislation, State awards and State tribunals—I think under section 7 it specifically mentions any tribunal that tries to perform equal remuneration or pay equity decisions—even if you were successful in mounting before the Australian Industrial Relations Commission an argument that there is some equal pay for work of equal value, the legislation says that the Australian Industrial Relations Commission must make its decisions consistent with the Australian Fair Pay Commission's decisions. When you look at the objects and responsibilities of the Australia Fair Pay Commission, that is almost ridiculous. One of its jobs, as part of this process of award rationalisation, and of the award review task force, is to apply the concept that what used to be called awards do not have any geographical boundaries, and that only one award applies to a particular workplace.

If you look at the submissions from the employers to the award review task force, and specifically from the employer associations representing employers in the children's services industry, their approach is what might be called the lowest common denominator approach. That is, in respect of workers in New South Wales covered by the New South Wales award, except where it has been varied by an agreement, the employers are arguing that, after a phasing-in period, those workers essentially will be the highest paid children's services workers in Australia, and that the award rationalisation process should go to the lowest paid award in the country. That in effect means, after the three-year transition period of the Federal legislation, a significant pay cut for workers in New South Wales.

The Hon. KAYEE GRIFFIN: The ballot that Ms Lee referred to was supposedly for a collective agreement, was it not, for all the employees of that particular employer?

Ms OWENS: Yes. AWAs are the famous instruments, but there is another agreement called a non-union collective agreement. Under WorkChoices, that is an agreement that a union is not involved in, and it is that agreement that was voted on at Cubby House. For that kind of agreement, the employer has to put a proposal to their employees, who have to have that proposal for seven days,

and they have to have information about their rights, and they have to be told they can have a bargaining agent, and then not earlier than seven days the employer must ascertain whether they have consent or not. They can do that by getting individuals to sign. They may conduct a ballot. In this case, the union was told that a ballot was conducted and was told what were the results of that ballot. In terms of those results, the employer submitted that 36 people had voted. Our understanding is that there would be upwards of 100 employees at Cubby House. That vote then, under WorkChoices, is submitted to the Office of the Employment Advocate. The employer says, "I had this vote. Thirty-six people voted, 32 voted for it, and 4 voted against it." That new collective agreement then becomes the terms on which everyone at that establishment is employed.

The Hon. KAYEE GRIFFIN: How long do those agreements last?

Ms OWENS: They can last up to five years. The agreements that we have seen so far usually do. They may contain a capacity to vary wage rates. The Cubby House agreement contains a capacity to vary wage rates when the Australian Fair Pay Commission standard minimae is varied. What it does contain, of course, is the scheduled phase-in of the pay equity increases.

The Hon. KAYEE GRIFFIN: Does the employer determine the life of the agreement?

Ms OWENS: That is a term of the agreement that is put out to employees at the time they vote on it. So, had Jane continued to be an employee at Cubby House, and had she voted against the agreement, her conditions would have been gone because the agreement then applies to everyone in the workplace. So the guarantee that you see in the yellow advertisements on television is not just about new starters—and child care has a turnover of probably 30 per cent in many areas—it is also about existing employees. If your employer can convince your workmates in some fashion—either by not voting, or by voting—to vote up an agreement that takes away something that may be important to you, or which may not be important to you but may be important to others, then your conditions are gone too.

The Hon. KAYEE GRIFFIN: Under the WorkChoices legislation, when a collective agreement comes into being by a ballot like that, there is no opportunity for the employees who vote in the ballot to even see what the ballot looks like, or to be there when it is conducted?

Ms OWENS: No. That is so particularly at a workplace like this, where there are a number of locations of this employer. At the end of the day there is an added plus for the employer, because under WorkChoices once there is an instrument to which the union is not party, then the union's right of entry into such a workplace is much more limited.

CHAIR: So that agreement now applies compulsorily in effect to more than a hundred workers at a number of different sites, even though 36 people voted and perhaps, according to Jane's evidence, an unknown number of the 36 voted in favour of it?

Ms OWENS: The figures that we have are that 32 voted in favour of that, from upwards of a hundred.

CHAIR: Jane queried that figure, because she said she personally knows five people who said that they voted against it.

Ms LEE: I do. I know many more people who said they would not vote for it. So it surprises me. It all happened after I had left, but it surprises me that there are only four against, because I know a lot more who said they were voting against it.

Ms OWENS: But there is no-one to take that matter to.

The Hon. KAYEE GRIFFIN: Now that that agreement is through, the union has limited entry rights?

Ms OWENS: Yes.

The Hon. KAYEE GRIFFIN: What are the entry rights that you now have?

Ms OWENS: I would need to take that on notice.

CHAIR: You can take the question on notice.

Ms OWENS: I need to take the question on notice, because I am not certain of the arrangement. But it is more limited than if there is an agreement.

The Hon. IAN WEST: And it applies to all new starters for the term of the agreement, irrespective of whether they vote on it or not?

Ms OWENS: That is right.

The Hon. IAN WEST: As to the ability to revert to the award, what is the process?

Ms OWENS: Once you come off the award you cannot go back to it.

CHAIR: There is something of a contradiction, is there not, between the compulsory collective agreement that you have just described and the notion of work choices?

Ms OWENS: There is no choice in WorkChoices, apart from the choice, as you can see here, for the employer to finally get up an agreement that they have been trying for many moons to get up. But the choice for employees is very stark. It is the classic choice: to keep your job or to get the job sign up. That is the choice.

CHAIR: If the workers from Cubby House, for example, chose to leave and go elsewhere, is the driving down process that is under way there occurring in other parts of the child care industry?

Ms OWENS: We are aware of one other large provider who floated a similar agreement. In terms of their work force, there were a reasonable number of union members. The union communicated information to those people and that has not been pursued at this stage. However, we are aware of organisations promoting this capacity through the child care industry. We do not expect Cubby House to be the last adventure.

The Hon. KAYEE GRIFFIN: Were the people involved in the agreement with Cubby House employed in before and after school care only or also long day care?

Ms LEE: She does have long day care centres. I cannot answer that question, I am sorry. I am not too sure.

The Hon. KAYEE GRIFFIN: Specifically the centre you are talking about was before and after school care?

Ms LEE: Yes.

The Hon. IAN WEST: Ms Lee, were you on workers compensation?

Ms LEE: Yes.

The Hon. IAN WEST: Under the New South Wales Workers Compensation Act there are unfair dismissal laws that apply to people who are on workers compensation. What is the effect of the new legislation on that Act?

Ms OWENS: If I can refer to one specific effect, had Ms Lee been terminated because she was unable to do her full range of duties—which was not the case; she was terminated allegedly for her performance—under the New South Wales legislation existing prior to 27 March at the time that she became fully fit in the future she would have a right to make an application under a specific part of the New South Wales Act to get her job back. That has gone because of WorkChoices. It is a specific provision. In fact, the reason given for her termination was performance issues, not the inability to return to a full range of duties.

Ms LEE: I was on sick leave and I did not appear for a meeting they wanted me to go to.

The Hon. IAN WEST: The job you were doing was because of your injury?

Ms LEE: Yes, I was doing suitable duties in the office. It was not difficult; I could do it all. It is just that they asked too much of me and I could not do it in the four-hour span.

The Hon. IAN WEST: So you have had your rights under the New South Wales Workers Compensation Act cut off?

CHAIR: In a technical way.

The Hon. IAN WEST: You cannot say you were dismissed because of a work injury. Because of a technicality, they say you were sacked for non-performance, not because of the injury?

Ms LEE: Yes.

The Hon. KAYEE GRIFFIN: Given that most awards have either disciplinary procedures or performance clauses that relate to an employee's performance, I would assume this collective agreement or other agreements would not necessarily include those sorts of procedural matters. How does the employer determine performance? Is there a provision in WorkChoices that relates to an employee's performance or an opportunity for a procedure for both the employer and employee, if there is an issue, to deal with a performance issue? Is there such a provision in WorkChoices or is it left up to an employer to determine that an employee is not performing properly?

Ms OWENS: In WorkChoices there will be a disputes settling procedure. What is contained in that will depend on how it is written by the employer. In relation to performance, there is no specific obligation to set out in an instrument a standard of performance or a standard that must be met. In that way it is probably not unlike an award, in the sense that the process often relied on in the award system would be the right to be represented by a union in a disputes settling procedure or access to the cheap, quick jurisdiction of the New South Wales Industrial Commission, which had powers to arbitrate disputes in more extreme cases.

Under WorkChoices the procedure may be set out in the collective non-union agreement but it will be a procedure written by the employer. The lack of real remedy for unfair termination makes the argument sort of superfluous in most cases because there is nowhere to go with the argument. Most terminations are not unlawful. They are about different perceptions of performance, not generally because the worker is pregnant or of a certain ethnicity. It is normally an argument over performance or conduct in the workplace.

The Hon. KAYEE GRIFFIN: Although there may be a performance clause in an agreement, it is strictly written by the employer and there is no recourse if an employer uses that clause against an employee?

Ms OWENS: That is right. That clause may or may not make reference to the Industrial Commission but it will be in terms of conciliation and mediation, not in terms of arbitration.

Dr LYONS: Can I also add, prohibited content of both awards and agreements precludes unions from being involved in any disputes settlement, even if that is the desire of the employee.

The Hon. IAN WEST: Dr Lyons, you may wish to take this on notice. In the paper you wrote with Meg Smith on gender pay equity, which you have presented to us, you say that in terms of world's best practice we are well below the par in International Labour Organisation [ILO] standards and what is happening in the United Kingdom, North America and Canada. Are you able to give us any further advice as to where we are in terms of world's best practice and gender pay equity?

Dr LYONS: When you look at the aggregate or broad data, these things are difficult to measure. The best measurements are the ratio of the earnings of women workers and men workers. Australia is one of the highest in the world—Scandinavian countries are the only ones that have been

consistently higher—particularly from the early 1970s when the concept of equal pay for work of equal value was, at least in principle, if not in practice, reflected in industrial awards. There was a closing of the gap between the earnings of women and the earnings of men. That started to plateau in the 1990s when agreement making became a significant part of the Australian industrial relations process.

A significant difference between Australia and other English-speaking countries is that English-speaking countries like North America, the United Kingdom and New Zealand tended to adopt the concept of gender pay equity as a human rights issue and treated it in human rights law, just like our antidiscrimination laws, to the point where an individual makes an individual complaint and it is remedied at the individual level. Australia had the concept of unfair pay equity embedded in industrial law with award making, which essentially meant that all it required was not necessarily an individual complaint but an application by a union to vary an award. For example, the result of the Full Bench decision on 7 March this year affects the 15,000 or so workers covered by that award in New South Wales. If you individualise the process, you require the issue to be dealt with workplace by workplace, employer by employer or individual worker by individual worker. Up until 27 March that essentially separated the practice in Australia and the practice overseas. Essentially the Federal legislation individualises the concept of gender pay equity. You can still make an individual complaint to the Human Rights and Equal Opportunity Commission but you can no longer make a complaint and expect a collective remedy.

CHAIR: Many of the workers you have focused on today, cleaners and child care workers, work split hours—such as Jane's example of seven to nine in the morning and three to six in the afternoon—which clearly has implications on their place of residence and travel time to and from work. Do any of the awards or agreements we are talking about take into account that situation or does WorkChoices exacerbate the disadvantage suffered by people who work split hours?

Ms OWENS: There is a whole range of conditions encompassed in both awards that takes account of the particular way in which the work is carried out. Both cleaning and out of school hours care are areas where it is very common to arrange the work basically three hours in the morning and three hours in the afternoon. Those awards make provision for broken shift allowances or split shift allowances—for instance, in the cleaning award—for there to be a span in which employees do their work over 14 hours of the day, not over 21 hours of each day and so on. There are many, many provisions in both awards that are set up to take account of the nature of the industry and how people work and to fairly remunerate them for the particular pattern of work.

Part of that setup also gives them some predictability of employment. As Unions New South Wales indicated, people with family responsibilities—child care workers are 95 per cent women and cleaners, probably even in commercial cleaning in the central business district, 60 per cent women—need certainty over their hours. A lot of the award provisions will create that certainty by saying employees have to be given their roster with so much notice and it can only be varied within a range and by agreement and so on. They are actually very important provisions. WorkChoices is so stark and diabolical that you tend to focus on the hourly rate, given that the hourly rate can be reduced, which is very antithetical. In fact, much of the disadvantage to employees, and to women in particular, in both these award areas will come from losing some of the more subtle benefits in awards that will not be encompassed in an agreement.

For instance, in the agreement that applies to Jane's former workplace, under the award in child care, employees, even casuals, when they sign up for a shift are guaranteed three hours. If they work out of school hours, which is very much more sessional, it must be at least two hours. The Cubby House agreement creates, in fact, a capacity to send them home if enough kids have not turned up, even on the day. That is quite a subtle change.

CHAIR: It is like the old days on the wharves.

Ms OWENS: Yes. Overall that can have a big impact on certainty. For instance, a woman in that situation may have made arrangements for her kids that she has paid for and gone to do that work. The Cubby House agreement specifically allows the employer a capacity to send her back if the kids are no show.

The Hon. IAN WEST: And the reverse—she can be asked to stay?

Ms OWENS: In fact, what is a real sleeper capacity in WorkChoices is simply to employ everyone as either casual or part-time. So that the certainty that full-timers have with their hours does not apply to anyone. So you are employed 37.5 hours a week, for example, and you are part-time. Therefore, your hours can be slid up or down at will, really. That is the real crunch for people who have other responsibilities or people like cleaners who often have other employers. It is very common for a cleaner to work for more than one employer.

If their hours are then slid without notice that may bounce them into a problem with their other employer. There are quite deep impacts. What might have been described as the lengthy and technical parts of awards provide real protections that we do not anticipate in the agreements that are put up under WorkChoices.

CHAIR: From what Dr Lyons said before, despite lip service being paid to the protection of equal employment opportunities and pay equity principles, these can easily be got around if the relevant language is not used.

Dr LYONS: That was the case certainly in 1994, when the Federal provisions were based on the external affairs power. The Howard Government, in its written and verbal comments, seeks to use the corporations power to have what is effectively a national industrial relations system. If that is the case, the Howard Government could, if it wanted to and if it thought the concept of gender pay equity was important, use the corporations power to free itself from the restriction of the problem of constitutional issues using the external affairs power. But it has chosen not to do that. I would say that is a deliberate policy choice of the Federal Government to, one the one hand, make no changes after 12 years to a Federal legislation that has proved to be woefully unsuccessful in remedying gender pay inequity; but, on the other hand, seek to end the operation of the State legislation and State tribunals that have been successful in remedying this. I think it is a deliberate policy choice.

CHAIR: So women and other disadvantaged workers lose both ways.

Dr LYONS: Yes, for the reasons that Annie and Jane have already mentioned. The only conclusion I can reach is that it is designed to increase profits. That would be about it.

The Hon. KAYEE GRIFFIN: In long day care you have fairly stringent licensing regulations about child to staff ratios across the whole period that a centre operates. Do you have examples of more casualisation coming in? Would you like to comment on the fact that the 38 hours or whatever it might be could be averaged out? How would that impact on long day care, for example?

Ms OWENS: All child care has certain staff ratios. That is a licensing requirement that exists outside the industrial relations system. However, there are obviously times in a centre—whether it is long day care or other types of service—where there may be a drop in the number of children attending. What we have seen is a major provider purport to put all their new employees onto part-time contracts. This means that even though the person may be working 38 hours they are technically, within their terms of employment, a part-timer. That means they are not owed the extremely weak WorkChoices guarantee of 38 hours over a year. Under the award there are protections for part-timers but we would see that as a recognition by the employer that there would be ways of minimising costs and, in fact, reducing full-year income because a part-time worker is not owed 38 hours over 12 months. You can imagine that in child care there are times of the year in the cycle when the number of kids drops.

However, this problem is bigger than just industries such as child care. Even a normal office business that is looking very carefully at costs will be able to identify days of the year, and even weeks of the year, when they probably do not need their full-time complement of staff. In fact, those staff are there at that time because they are owed 52 weeks employment. Today is probably a good example: there is probably a low level of business activity this morning for reasons unrelated to business. But this is a real sleeper in WorkChoices: you can hire all your new people part time, you do not owe them 38 hours, you regularly give them 38 hours and the right for casuals to convert and all of that sort of thing is gone. You will wind up with what is described as a "flexible" work force but is

really a way in which people will have much reduced certainty over their employment and the security of it.

The Hon. IAN WEST: Being mindful of the secrecy provisions of the new Federal legislation and of the fact that the trade union movement operates on the basis of having some sort of comparative wage justice and wants to know what is happening in the world, can you share with us any tactics as to how to avoid being prosecuted for not keeping silent about what is happening in the workplace generally?

Ms OWENS: In relation to AWAs?

The Hon. IAN WEST: Yes.

Ms OWENS: In fact, there has been a change in WorkChoices so that the person who is on an AWA is able to show that AWA to advisers or whatever. That means that when the union is aware of AWAs we can become aware of those terms. However, the real problem is that there is no overall public scrutiny. So apart from the Office of the Employment Advocate dipping into some agreements and looking at them, as was reported a couple of weeks ago, it is about being able to get the kinds of data to compare instruments. That will not be possible in the future. Returning to an earlier question, a lot of this data is needed systematically to look at the real disadvantage to employees—for example, someone who formally has a three-hour minimum start who now gets only two hours. You need public scrutiny of the document to be able to do that. That is not available at all and it is not intended to be available. But in terms of an individual who is confronted with an agreement, they are able to show that to an adviser.

The Hon. IAN WEST: But in terms of pursuing an agenda, I assume that the trade union movement's agenda has not changed in that it wants to ensure fairness and equity and to understand what is happening in the community in order to try to judge whether there is fairness and equity. Some documents must still be kept to make comparisons about what is happening in the workplace. Are you under any obligation not to keep those documents or to publish them in your magazines to reveal what is happening in different workplaces?

Ms OWENS: Where the union is aware of the issue and has the information, the union publicises it and is able to do that. However, as you can see from the two examples we have talked about today, in Jane Lee's workplace the union was not, for all intents and purposes, present and this agreement got up. In another major provider that sought to bring in such agreements, that was not the case—union members were present and that has not been pursued. When the union is aware of information, the union publicises it—including to non-members who may be faced with an agreement, for their assistance. But the lack of overall, systematic, public access to this data is a long-term problem. It is an intentional problem because it is intended that you will not be able to compare in the future what has unravelled through WorkChoices. Those provisions are not an accident. In fact, it is a term of WorkChoices that you are not allowed to include in an agreement the provision of information to unions. In the past that was not an uncommon term in agreements—it might be that the union got information about the safety data or all the information about new starters, part-timers or something. It is now illegal to include that in an agreement.

CHAIR: What would you like to see come out of our inquiry?

Ms OWENS: We wish to make a submission on this later because there is a range of other aspects that we have not addressed here that we would seek to make a submission in relation to.

CHAIR: We would be happy to receive a supplementary submission. Jane, would you like to comment now?

Ms LEE: No.

CHAIR: What about you, Dr Lyons?

Dr LYONS: I think the High Court will probably say a thing or two about it.

CHAIR: We look forward to receiving your submission later. Thank you for the documents that you tabled. I think you took a question on notice. We will check the transcript and give you the exact details of what we are seeking from you. The staff will talk to you about when you can get back to us with that information. Thank you for coming today.

Ms OWENS: Thank you.

(The witnesses withdrew)

(Luncheon adjournment)

MICHELLE BURRELL, Acting Director, Council of Social Service of New South Wales, 66 Albion Street, Surry Hills, and

DEV MUKHERJEE, Senior Policy Officer, Council of Social Service of New South Wales, 66 Albion Street, Surry Hills, affirmed and examined:

CHAIR: The Committee has received a submission under the signature of Gary Moore. Do you wish that to be included as part of your evidence?

Ms BURRELL: Yes.

CHAIR: The questions we sent you were fairly general and very much based on the individual items in the terms of reference. We found this morning that members of the Committee went off in different directions with those questions and I am sure the same will happen with you. Do you wish to make an opening statement?

Ms BURRELL: Yes. I would like to explain the questions already provided to us and Dev is here to assist in dealing with questions that may come from Committee members. The Council of Social Service of New South Wales [NCOSS] welcomes the opportunity to provide evidence today. We also note the work being undertaken by the New South Wales Taskforce on WorkChoices Legislation looking at impacts upon the community services industry and we are aware that that committee has not yet reported.

I think it is important to say from NCOSS' perspective that it is still early days and we need to see hard data on how WorkChoices is playing out in New South Wales. However, looking at the legislative package and the ideas about underpin it, NCOSS has several concerns about WorkChoices. Our major concern is that WorkChoices will result in increased hardship and disadvantage for unskilled and low paid and marginalised workers and their families. NCOSS takes the view that this population group is already significantly disadvantaged and WorkChoices could make that situation even worse.

NCOSS is particularly concerned about the capacity for WorkChoices to feed into a culture of increased job insecurity and reduction in pay and conditions, and I will talk more about that in terms of the questions that you gave us. We believe that this in turn will create additional demand upon community services in an environment where community services are already overstretched. We believe that the New South Wales Government should take positive measures to ameliorate the effects of WorkChoices and we have made some specific recommendations in that regard in our submission and I will also talk a little bit more about those later on in the questioning.

CHAIR: You have partly answered our first question, which was very broad, about the effect that you believe the legislation will have on the ability of workers to bargain, particularly those more vulnerable groups. We suggested women, young people and casual employees as being vulnerable for different reasons.

Ms BURRELL: Certainly, and I think if you look at the demographic characteristics of the lowly paid, the unskilled and part-time work force, it is those groups that you have categorised in that first question: it is young people, it is women, it is people from non-English speaking backgrounds. There are also issues about people living in rural areas and small urban centres. They are much more likely to be in low paid employment. I suppose it is just commonsense that unskilled workers are easier to replace and that places them in a significantly unfair bargaining position in relation to their employers.

I think that the focus of WorkChoices upon an individual bargaining necessarily, if you like, discriminates against lower paid and unskilled workers because they are in such an unequal position in terms of bargaining compared to a highly paid, highly sought-after worker. I think it is important to remember that unskilled workers may well have lower levels of education. That is one of the reasons why they are unskilled and low paid workers. Sometimes there is a spectrum. They may even have disabilities or not be familiar with complex legal documents and so operating in this new environment

where so much is determined by negotiation or your ability to get legal support to enforce your rights really puts these people in a situation of extreme disadvantage.

I think that necessarily, because the focus is so much on individual bargaining, it shuts out low paid people from the perceived benefits of what WorkChoices is suppose to deliver. It does not really deliver flexibility to those people. It could potentially deliver more disadvantage.

CHAIR: A couple of the witnesses we heard from this morning made particular mention of the forthcoming Welfare to Work legislation, referring to people affected by that and the disadvantages they might suffer but also the competition that those people may provide to other low paid workers. Do you have a comment on what you might expect to happen after that legislation comes in?

Ms BURRELL: I think it is fair comment. If you put WorkChoices and Welfare to Work together it can create quite a volatile mix. If the notion that people currently in receipt of benefit will be forced into work, there is a question of what sorts of jobs will be available to those people and one assumes that it is going to be at the bottom end of the market. There is also the issue about the effective marginal tax rates of going into that low paid employment, particularly when you think about the costs of child care.

There was information in our submission based on the Brotherhood of St Lawrence modelling, which I think showed that the effective marginal tax rate was something in the order of 70 per cent. I think when you put WorkChoices and Welfare to Work together you get a potentially very dangerous mix in terms of what it is going to be like for those families and for the children of those families. Dev, do you want to add anything?

Mr MUKHERJEE: It might be suggested that any job is better than no job, but if the choice of job means that you remain in poverty and not on a much higher income than you received with welfare benefits, there is not much advantage to being employed. The situation could arise with the combination of these two pieces of legislation of people doing exactly that.

Ms BURRELL: But we will have to see how things play out as well. It is difficult in such early days of WorkChoices and, of course, Welfare to Work does not formally commence for another couple of weeks, but we certainly have significant concerns about how those two things will play together. But, of course, our colleagues at the Australian Council of Social Service are taking a lead on the Welfare to Work issue in our sector.

CHAIR: What effect do you think there will be on workers' bargaining positions with respect to wages, conditions and security of employment?

Ms BURRELL: For NCOSS there are a couple of issues playing out around bargaining generally. The first is within the WorkChoices package there seems to be a "take it or leave it" approach to bargaining and I suppose the associated changes to unfair dismissal laws make that choice even clearer in some ways because you may not necessarily be able to gain an effective legal remedy if you feel that you have been unfairly dismissed by refusing to take it. NCOSS takes a very firm view about the unfair dismissal changes—the not for six months and the 100 employees. We do not understand why somebody working in a small business is less worthy of protection than somebody working in a large business. We cannot understand the policy rationale for that.

All workers should have the same level of comprehensive protection, would be our view. There has been a lot of talk that the unfair dismissal laws were overused, that it would open the floodgates to litigation and stuff like that. I suppose people come to that from a range of perspectives. My understanding is that there were about 5,600 to 6,000 unfair dismissal claims across the Federal and State unfair dismissal jurisdictions out of a work force of over two million people. I would not think that was large-scale litigation. The easy-to-use comprehensive protection that unfair dismissal laws at least gave workers a feeling of some security in their workplace and we are concerned that that has been taken away.

The next bit is the removal of the no disadvantage test in terms of workplace agreements. We consider that to be a step backwards. In terms of fairness and equity, it seems odd that you should be

bargaining for a position where you are worse off than you were before. We cannot understand why that should be enshrined in law; that it is okay to be worse off. It does not seem to make a lot of sense to our constituency or to us. I note that of course, as I said, it is really early days, but we saw the reports last week or the week before where the Office of the Employment Advocate had analysed 250 workplace agreements and my understanding of that research is that all of those 250 contracts removed at least one award condition; 16 per cent removed all; 64 per cent removed leave loading; 63 per cent cut penalty rates; 22 per cent had no provision for pay increases over time. I wonder if they would have passed the no disadvantage test under the former legislative arrangements.

We are particularly concerned about the movement away from awards for low paid workers because our understanding is that it was often low paid workers that gained the most from that level of protection. I am thinking particularly of people in the hospitality industry and those sorts of industries. We are concerned about the reduction in allowable matters under awards. I think it is now five you can have in your awards. We are particularly concerned about possible reductions in overtime and shiftwork loadings because for many low income people that is how you make the budget meet at the end of the week, by doing those extra shifts because your pay rate is so low on its basic level.

It will be interesting to see what happens with the Fair Pay Commission. Obviously we do not know how that is going to play out. We have a concern that we might see low paid wages or minimum wages grow at a small rate compared with other wages. That would be an inequity that we will be concerned about. But, once again, it is too early to tell. I make again the point about low pay and the impacts that has upon households and families and how low pay is a work force disincentive. We would not get up and go to work in the morning for a really low rate of pay, and I do not understand why other people should do it.

The Hon. CHARLIE LYNN: Who is "we"?

Ms BURRELL: I think people in relatively reasonably paid employment: professional people, people with a level of permanency in their employment.

The Hon. CHARLIE LYNN: How do you know that?

Ms BURRELL: I give that as a personal perspective, as somebody who has gone from very low paid employment to at least a small amount of security of my income. Mind you, the non-government rate is not particularly flash either.

CHAIR: You would include members of Parliament in that?

Ms BURRELL: I would always include members of Parliament in any discussion of—

The Hon. IAN WEST: Security of tenure.

Ms BURRELL: It is a different form of security of tenure.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is a contract. I am interested in the Welfare to Work situation. Some years ago when the welfare system was privatised in terms of job seeking, I was in medical practice and had a lot of people who came in to go on disability pensions. I gather you either get someone a job or get them a disability pension if they could not work. As a doctor I had a lot of people come to me with forms to go on to the disability pension. Now they are going from welfare back to work again and they are obviously under some pressure to do that. Presumably, as you say, they have to work a certain number of hours.

I do not quite understand, what is the deal if you, for example, have got some impairment that puts you on a disability pension—at some point you have been assessed by your own doctor or some other person and you have been put on welfare, a disability pension—how can it suddenly be decided that you are not disabled anymore and you have to go to into a job, say, as energetic as cleaning, which is very hard work. What safeguards are there? How does the system work?

Ms BURRELL: I am not an expert on Welfare to Work because it is a Commonwealth matter and, as I said, ACOSS has taken the lead on the analysis of that issue. But I think there is a

range of work tests associated with levels of disability and I think there has been some leeway given in that regard. Welfare to Work is particularly going to kick in on single parents and people with lower levels of disability.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So it is not disabled people in Welfare to Work, it is people who are not disabled.

Mr MUKHERJEE: They are trying to better match, I suppose, people's disability with ability to work. The problem that arises is if you are moving then into low paid work, as we would expect, the effective marginal tax rate is quite high because if you get part-time work then your welfare payments are reduced. The combination with WorkChoices means that you have then less ability to negotiate. There is less protection for you under an award and you have, presumably, less ability to negotiate a satisfactory wage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So presumably if you are a single mum and there is no one else to look after your children, or often there is no one else to look after your children, if you have a poor negotiating position in terms of hours and pay rates, and childcare is $65 a day, or whatever it is, you could not possibly afford that sort of money for child care, could you?

Ms BURRELL: For single parents the rules kick in in different ways according to how old your children are, whether you have got school-age children, et cetera. So there is some protection then in that system. But the high effective costs of child care mixed with the likelihood that you will probably end up in low paid employment—at least initially, given that you have been out of the work force for some time, et cetera—yes, it potentially has the capacity to be quite a dangerous mix. We would be really happy to come back with a written answer around the Welfare to Work stuff so that we can explore that, if you would like us to do that.

CHAIR: Yes. We will ask you to take that on notice then.

The Hon. CHARLIE LYNN: Is your concern for those people currently in the work force and having to negotiate new agreements or people entering the workforce and seeking work?

Ms BURRELL: Our concern is for both, or people currently in the work force, particularly in low paid and unskilled work, their capacity for increased churn, and the possibility that they may lose existing conditions or that they may have to trade conditions for wages over time. We are concerned about that, particularly as it impacts, as I said, upon the low-income people. In terms of people entering the work force, I suppose, once again, we will have to see what the workplace agreements look like over the next two to three years to see if there is any downward pressure on entry-level wages at the low end of the income scale. We are particularly concerned about young people moving into employment for the first time as they are already paid pretty poorly and are pretty marginalised in the market.

The Hon. CHARLIE LYNN: Surely, if there is competition for labour and they want to work and are keen and they have got a good work ethic and so forth, they are going to be seen as a very valuable commodity to an employer who, surely, will provide incentives and have the freedom to provide those incentives to attract them to the work force?

Ms BURRELL: We would certainly hope that that was the case, and that may well play out. But I am conscious that there are quite significant variations in unemployment rates in different parts of out State, and particularly in youth unemployment. Macquarie Fields, as you know, has a really high rate of youth unemployment and I think that those young people may well face some significant challenges entering the work force.

The Hon. CHARLIE LYNN: The current system has not worked too well for them, has it?

Ms BURRELL: Well, it potentially has not, but I suppose paring down even more on wages and conditions may not necessarily fix that problem.

Mr MUKHERJEE: Your hypothesis remains a theoretical possibility, but the experience of most people would be that they are not in a position where they can bargain and be valued by employers. If you are talking about low skilled workers, the very nature of being low skilled does not give you the ability to shift your work and perhaps move to a better employer.

The Hon. CHARLIE LYNN: If an employer advertises a job no-one is forcing them to respond to the advertisement. Surely they are responding to the conditions that are in the advertisement and they make a choice as to whether they want to work for that employer under those conditions or they do not.

Mr MUKHERJEE: If you combine that with Welfare to Work changes they are more than compelled to seek employment.

The Hon. CHARLIE LYNN: Who is compelling them?

The Hon. KAYEE GRIFFIN: The Federal Government.

Mr MUKHERJEE: The Federal Government—Centrelink.

The Hon. CHARLIE LYNN: I have been there. I have been unemployed myself and I have had to go through all that cycle. I know the feeling of insecurity, from personal experience. But I just cannot quite grasp the fact that there are lots of securities with occupational health and safety, with WorkCover, et cetera, all around protecting the welfare system, protecting the disadvantaged. But those who want to work and who have a good work ethic I would think would be in demand by employers. I come across cases time and time again where people advertise but they cannot attract workers. They say is it because they do not want to work or what? To me, they seem to offer good wages and conditions.

Mr MUKHERJEE: It seems to me there is a variation across areas. You have certain areas within Sydney or within New South Wales that have very, very low rates of unemployment—in effect, zero unemployment; you have other areas, such as Macquarie Fields, where unemployment is very, very high. There is a simple correlation in those areas between the skills and education of people of the outside average level within an area and the rate of unemployment. It is a negative correlation. The higher the concentration of people with degrees, for example, the lower the unemployment.

Geography plays an important role in labour markets. If it costs you a fair bit to travel from, say, Macquarie Fields to, let us say, St Leonards, that provides an added disincentive. If you do not have a car, or even if you do have a car, it still costs a fair bit, and that adds to the cost of being employed, which limits people's ability to take up those vacant positions in certain areas of Sydney or New South Wales.

The Hon. CHARLIE LYNN: I would think that the unfair dismissal legislation has also acted as a disincentive to employers from time to time to take on extra employees.

Ms BURRELL: You would need to get inside the minds of employers, obviously, to answer that question. I am an employer at the moment and it never got in the way of me hiring anybody, but I think it is important to acknowledge that there is a number of structural issues that operate in our economy that determine demand for employees, different skills levels and geographical issues that Dev has been talking about. But at the end of the day the people that we are particularly concerned about are low paid employees and our concern is that WorkChoices could have the effect of putting downward pressure on those rates of pay, particularly when compared with other parts of the market, thereby increasing inequity.

I really do believe that it is a matter of commonsense. The more in demand you are for your skill-set the better bargain you are going to be able to drive. I sincerely believe that for some of the younger people, women, who are on the margins of our work force on low pay at the moment, we should be very concerned if their rates of pay or conditions go down anymore because we have significant numbers of people living on the margins in terms of their housing affordability and other sorts of issues. The point we would make is that there are significant social flow-on effects of having more people as the working poor. That would be the position we would put to the Committee.

The Hon. KAYEE GRIFFIN: Ms Burrell, at the beginning of your statement you mentioned legal assistance in relation to one of the issues with WorkChoices. A previous witness spoke about the fact that if now, under the current system, she had to do something about the job that she has lost, that is very, very difficult for a person who would be deemed to be on an ordinary income or whatever it might be. Obviously, NCOSS sees that there is a problem with people in the future having to get legal assistance to deal with some of the issues with WorkChoices—unfair dismissals and so on.

Ms BURRELL: I should explain that as part of my previous employment I worked in a community legal centre that specialised in employment law, so I am very familiar with how the unfair dismissal system used to work—21-day time limit, et cetera—and it was, for our clients, quite easy to use and quite simple in a sense and relatively easy to navigate without necessarily having a lawyer to hold your hand all the way through the process. Our concern is that that simple, comprehensive system has effectively gone and that in order for people to assert the basic rights of their employment they may have to become more reliant on lawyers, and as soon as you have to become more reliant on lawyers there is a cost associated with that.

Given the current state of funding for, say, our community legal services in New South Wales, and indeed across Australia, there simply is not a lot of capacity left in those services to be able to pick up that work. As soon as you have a more complicated set of legal arrangements to navigate you raise the issue of access to justice. That is an example of one of the flow-ons that we are concerned about, about how that is going to play out over the next few years.

It is difficult to know what will happen, but we have a concern that people may not be able to assert their rights because they cannot afford a lawyer, and that is not in the best interests of our community.

The Hon. KAYEE GRIFFIN: One of the other comments you made—you have made it a couple of times, perhaps—is that because it is the early stage in the introduction of the Work Choices legislation, you need to see how it plays out in some ways.

Ms BURRELL: Yes.

The Hon. KAYEE GRIFFIN: Other witnesses this morning spoke about their concerns that there will not be a lot of information coming out because of the way the legislation has been written, such as some information about rates of pay being pushed down and other things like that. That information may not actually surface because of the changes that the legislation has brought. How would you deal with that if, a little further down the track, there is no information forthcoming? How would you look at trying to find out some of those things when the legislation itself is saying that the information is not made public?

Ms BURRELL: It certainly is a challenge. I suppose that, coming from the perspective of the non-government sector, one way that you could potentially try to track some of the impacts on our sector would be through demand for services where you might expect flow-ons associated with low wages and more poverty. For example, in the emergency relief network, which does not have a strong data component at the moment, that might be an area where you might try to pick up how many more people are going to the food bank because they are struggling to make ends meet. That might be one way that you would do that.

I should stress that emergency relief is a Commonwealth program through the Department of Families, Community Services and Indigenous Affairs [FaCSIA] so there would have to be a certain amount of co-operation between the State and the Commonwealth on wanting to pick up on that data. But you might be able to do some stuff through non-government networks, through housing support services, et cetera. That is only really going to give you, if you like, the second stage of the impact, but it may be useful to try to track how some of those hidden effects may play out. But in the absence of a really clear research agenda around that, it is difficult to know how that might work in the future. I accept the point that you make.

The Hon. KAYEE GRIFFIN: In terms of the work that NCOSS does, how long would you say it would be before you expect or you anticipate you would want to have some of this information so that you could try to work around some of the issues that may occur?

Ms BURRELL: There are some things that every year we do through ACOSS, such as a survey of the community sector and the sorts of issues that are driving demand and service levels. That could potentially be one mechanism through which to try to pick up some preliminary data about impacts. Then you could potentially drill down through some specific work. I would think that you would need to have a research agenda that would go over two or three years to start getting some sort of longitudinal look at the issue and potentially track how people are making their way through the human services system as time goes on. I think it is always good to start now and look a good three to five years ahead to get a decent picture of what is going on.

The Hon. IAN WEST: There is a view or a perception out there that because the access to unfair dismissal remedies will not be available, will be harder, or will be much more expensive, that will weed out all those people who are making unjust claims for reinstatement. Do you have any views on that, possibly from your former life?

Ms BURRELL: As I said before, if you just look at the numbers, I do not think that everybody was rushing off to the commission every five minutes with an unfair dismissal claim. I think with any legal issue, occasionally you get litigants who are trying it on. But that happens in all forms of legal contest. I am not entirely sure why employment law should be treated any differently. I think there was the capacity within the system to manage vexatious litigants or to weed out claims that are really ungrounded. I suppose there is also the issue that, just as a perception thing—and maybe this is where the employers' views are really worth exploring—sometimes the perception about our legal system is different from the reality, both from the workers' and the employers' perspective. I am sure that you will want to explore that with the employers. I can only say from my previous experience in legal services that when we assisted people with unfair dismissal claims, we put them through the wringer before we took their matter on because we had an obligation to take forward only matters that had merit.

The Hon. IAN WEST: I note on page 11 of your submission that you refer to the increased economic insecurity that has a ripple effect upon other social problems, such as depression, mental illness, substance dependency, homelessness, family breakdown, domestic violence and other social difficulties. Are you finding that even at this early stage, because people possibly are having difficulties in terms of the employment relationship, that the aggravation and the violence tends to increase when people are unable to gain a fair and just settlement of their problems?

Ms BURRELL: We have not received any specific reports of that from our membership, but nor have we actually surveyed our membership on that issue, either. The human services non-government sector, I am sure you are aware, deals with these issues every day. People live very complex lives. Often it takes a bit of time for those messages to flow through our sector. Certainly there is concern in our sector about what might happen and certainly among our rural members there is significant concern that there could be, if you like, a downward driving of conditions and wages in their areas, as employers follow each other's leads. But we have not done any detailed research on it at this point, so I really would not be able to give you a more specific answer than that, I am afraid.

CHAIR: The next question should be asked by the Hon. Dr Arthur Chesterfield-Evans because immediately after that on page 11 you go on to talk about the issue of housing stress, particularly in Sydney. I think that is an issue that the Hon. Dr Arthur Chesterfield-Evans can take over because he asked some questions about that this morning in relation to low-paid workers and in relation to casual workers or people who are working split shifts and so on.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When people cannot get workers, is it a regional problem in the sense that the wages are too low for rents in the area in which the jobs are offered? In other words, people have to come into that area and the cost of getting there actually makes the real rate of return so low as to make the job not viable.

Ms BURRELL: I think you are absolutely right. There are a couple of things going on. There are clearly the high costs of being able to live in a place like Sydney. I am constantly amazed at that low-income people can still live in Sydney.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes, I am too.

Ms BURRELL: I see the conditions that they live in because it is so hard to get by when paying high rents and the increase in mortgages now as well. As you would probably be aware, in the Sydney metropolitan area we have quite highly paid, good quality jobs through what we call the golden arc, which is from Chatswood down to the airport. There is that land and then we have that middle ring of suburbs, Auburn, Lidcombe, Bankstown where there are very low incomes and people living in very poor quality rental housing stock, and then we have south-west and western Sydney where there are loads of people living, and where there is really quite poor transport and poor housing-job transport connectivity.

The messages we hear from our constituents in western Sydney are that there are a lot of people in western and south-western Sydney who get in their cars and drive between their three low-paid jobs to pay their mortgage. That is the message that we are hearing over and over again from our constituents in that area. There are a number of things going on. Just trying to get by and pay the rent or the mortgage is a really big issue. It is the biggest issue in Sydney, probably, and then the concern would be that if there is any further downward pressure on those low level wages, that situation will become worse and people could tip from being housed to not being housed quite easily.

I always make the comment that people are one housing payment away from homelessness. The issues in Sydney around housing affordability once again really are quite a dangerous cocktail. The other issue I would say is that that issue is playing out in some major regional centres in New South Wales as well. Lismore is a town where the rents have gone through the roof in the last two years. A lot of people who have left Sydney because they could not afford to live in Sydney any more are now finding themselves in regional centres and struggling to be able to afford to live there as well. The issues around housing and the reason I put housing affordability into our submission is because a practical thing that the New South Wales Government could do would be to address those issues. If we get a mixture of low-paid, poor quality housing and poor transport connectivity, that is not good for those families or those individuals, but it is also not very good for our economy.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably, if you want a cleaner in Sydney, I am amazed that anyone can travel that far into Sydney. Presumably in the CBD the transport hub at least ends there, but that is at immense extra cost on coming there.

Ms BURRELL: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That comes off the wages.

Ms BURRELL: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you are very dependent and going close to the margin, you are in a very weak negotiating position. You just have to say, "Well, I will have to take the wage drop because I cannot afford to be unemployed, and therefore I have to work more hours", and therefore everything else gets pushed. That is the net problem, is it not?

Ms BURRELL: That is right. As before, when we were talking about the impact of child care costs on the ability to take up low-paid employment, transport costs are another significant hurdle for many people, particularly in the Sydney metropolitan area. A lot of our constituents are reliant upon public transport, which does not necessarily meet their needs and is becoming more expensive over time. You would be aware that the fares are going up on 1 July.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: With child care, I noticed the private sector is filling the void created by the lack of universal services, which is what we looked at during our inquiry into early intervention for children at risk of learning difficulties. One of the recommendations was the need for universal child services. Certainly, when we tried to have that in the city, the child care where my son went had great difficulty getting good staff. As soon as we got

good staff, they would get the reference and find accommodation nearer to home because they all came in a long way and they could not afford to stay there. We had a huge problem with turnover in terms of getting the kids to bind to the staff in the centre. I imagine that that must be a very common problem in the area of child care centres.

Ms BURRELL: There are significant work force issues across the range of human services, including childcare, that are associated with the way that market has been restructured and also the relatively low pay for some professionals in that field.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But the cost to the actual consumers is still very high.

Ms BURRELL: Absolutely.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is very difficult to afford child care.

Ms BURRELL: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I know of people who have had abortions because they cannot afford child care. Obviously many people simply cannot afford child care and presumably therefore they cannot work.

Ms BURRELL: I am not familiar with that particular circumstance occurring but I think that in terms of the interrelationships between child care and how Work Choices might play out in trading conditions for pay and family life balance, if you get unaffordable childcare into that mix as well, that also complicates the issue quite significantly. It may be that in order to keep your job, you have to trade some of your hours or other conditions affecting your work-family balance, which means that you have to put your child into child care which (a) is really expensive and (b) is often simply not available in some circumstances.

CHAIR: Also we had evidence this morning from the union about increasing difficulties for child care workers in terms of their pay being driven down, but also in terms of the growing tendency for unpredictability in their work. They may in fact be sent home and work fewer hours, particularly in the split shift, out-of-school-hours care, because, if not enough children turn up, they do not need as many workers there to meet the ratios. That was given as an example of possibly an increasing tendency towards casual, part-time and incomplete work, with all the effects they have in terms of transport costs and affordable housing and so on. Presumably you are nodding because you agree that that is a problem?

Ms BURRELL: I can understand how that situation might play out.

CHAIR: You briefly mentioned the effect in rural communities before, which is perhaps overlooked in an assessment of limited work and the marketing position. Can you add a little bit more about the impact you think that the legislation will have, or is having, in rural areas?

Ms BURRELL: I think, as our main submission states, there are probably three main things happening there. The first is that it needs to be recognised about the rural and regional variations in employment and the skills pool and how demand and supply for workers might play out in some rural centres. I think the example we gave in our submission is the unemployment rate in Wollongong is around about 8 per cent whereas New South Wales was 5.8 per cent at that time. You may well have heavy concentrations of disadvantaged people working at the margins or the working poor in some of those regional towns, and the points we were making previously about an equal bargaining position will play out.

As I also said, our members are concerned about a drive downward on wages and conditions and the multiplier effect in rural communities, like little towns with a few employers who may follow each other's lead. You can understand how that would happen in the market economy. The final bit that I would like to stress that in terms of the flow-on effects for additional demand upon community services and non-government human services is that we are very thin on the ground in some rural parts of New South Wales. In some places there is one community service doing a wide range of

service delivery and providing a wide range of services. NCOSS is concerned that if there is significant additional demand upon those services it may not be able to meet that need. I think that if we were to engage in a really robust research agenda that we would need to include rural and regional NGOs in that sort of process to really get a proper picture of what is going on out there.

CHAIR: The implication of what you are saying is that awards and rules about minimum wages and conditions are more important for rural communities than they are for metropolitan communities because the unemployment rates are higher, choices are less and so on? Is that flaw more important for a smaller community?

Ms BURRELL: I think that flaw is important for low-paid workers generally. I think you may often find significant numbers of low paid workers and people in the margins living in those communities. Some of that is because they have lived their all their lives or that is the community they live in and in other circumstances it may be that they have left Sydney or other unaffordable places to go somewhere where they can afford to live. Then they face the challenge of getting a job that pays a decent wage.

CHAIR: Like the example you gave before of Lismore?

Ms BURRELL: Yes.

CHAIR: Coffs Harbour is often given as an example of where people have gone from Sydney because they cannot afford Sydney but then find themselves with insufficient income to afford Coffs Harbour either?

Ms BURRELL: Yes, I could spend days talking to you about housing unaffordability but I will not do that now.

CHAIR: Do you have any comments on the issue of gender equity?

Ms BURRELL: We address this in the submission. My initial reaction is we are coming off a low base in terms of gender equity. It is interesting that already 31 per cent of female workers do not have paid leave entitlements so it is already a challenge for many women to be able to work and look after their families. Our concern is that there will be increasing pressure upon that. I suppose the most obvious thing is the double bind. Do I try to get my extra $10 per week and give up flexible leave, or should I work at night because my employer needs me? They are the sorts of issues that I would imagine women are facing every day now. They always have but now I suppose some of the more comprehensive protections look like they have been withdrawn, and it puts them in an even more difficult position.

We also noted in our submission that there was a test case on the right for women to request additional unpaid maternity leave, and I do not think that has been taken up in the WorkChoices legislation. In fact, I think it was deliberately left out. I also note that at the State level as well our anti-discrimination law has not been amended to include that principle, and that might be a practical thing that could be done at a State level to enshrine that principle.

CHAIR: Unpaid maternity leave?

Ms BURRELL: Yes. Of course carers are of all genders and we heard from some of our disability service members of a concern that quite often carers have got a relationship with their employer where they can get the flexibility they need if they need to do extra formal care hours. As we all know, there is probably not enough respite services et cetera. I think in that family work balance it is important to remember carers in that debate as well. I think we should all be very concerned if carers are faced with difficult choices about trading their conditions because those conditions may well be what they rely upon in order to care for their family member with a disability. I think we would all agree about the huge amount of unpaid work that carers do. That just may be one of the hidden effects that really was not necessarily thought through clearly at the time that the legislation was developed.

CHAIR: Do you have any comment about the likely effects on injured workers?

Ms BURRELL: No, it is not an area in which we have any expertise and we deliberately did not make a submission on that question simply because we do not have the relevant expertise. So we will decline on that one, if that is okay?

CHAIR: Does NCOSS have a comment on the impact on employers and small businesses?

Ms BURRELL: I suppose from two perspectives: first of non-government organisations as employers but also as people who provide services. As you know, there are about 7,000 non-government organisations in New South Wales and the majority of them are small to medium sized enterprises, and we are employers. NCOSS is of the view that the vast majority of the workers in the non-government human services sector are covered by the SACS award and continue to be covered by the SACS award. However, there is some legal debate about the status of some human services workers, depending upon the work that they do.

I would say that is causing some concern in our sector because people are confused about what they are supposed to do, and particularly for small non-government organisations, there is no human resources department, there is no in-house counsel. Just like other small businesses it is one or two people running a service. I think it has introduced an element of uncertainty into our sector and I do not think that is necessarily a positive development.

CHAIR: Has it potentially increased the amount of paperwork—form-filling, regulation abiding?

Ms BURRELL: I do not think that so much but I think it has created uncertainty. Non-government organisations are managed by voluntary boards of management and so they have a wide range of skills and expertise that they bring to that role. Yes, there are 7,000 little organisations out there all trying to work out whether they are covered by WorkChoices or the SACS award or what do they do? I suppose I would say we are busy enough getting on with delivering our services to people in need and so in some ways that level of uncertainty is not particularly helpful in our sector.

CHAIR: Would the larger non-government organisations, St Vincents de Paul, Mission Australia, Salvation Army, because of their size be much more affected by WorkChoices?

Ms BURRELL: They would certainly have much better access to specialist human resources and legal expertise. At the end of the day the definition depends on whether you were trading, and, as you know, that is a very complex legal question. I would not presume to tell you whether Mission Australia is trading or not. I think that in some areas it is going to play out in very interesting ways. We may well get a really wide level of divergence about who is covered by WorkChoices and who is not. I just make the point that for small non-government organisations dealing with that complexity is a challenge because we do not have the resources or the money to just go and get a lawyer to give us that advice.

The other point I would make is in relation to volunteers. In our submission we made the argument about concern that a lot of volunteers work. Once again if it turns out that people end up trading conditions for pay then we may well lose some of those volunteer hours. Perhaps that is another issue around the research agenda as we go forward. The final thing I would say, and the point I made previously, is that our significant concern is that we will have increased demand for non-government human services, particularly emergency relief food bank, the absolute bottom line for people living in poverty and particular demand around housing services and the tip-over associated with high housing costs, and the ongoing flows around mental health, depression, family breakdown.

If it turns out that WorkChoices delivers lower wages or lower growth in wages at the bottom end of the market, as we fear, then that will necessarily over time turn into more demand for our member services and they are already working pretty hard to meet existing demand.

The Hon. IAN WEST: Would that also co-relate with people who may be in full-time employment, not necessarily unemployed, but will still be eligible to access human services?

Ms BURRELL: I am talking specifically about the working poor and people working in marginal employment who already are often in contact with the human services system because they are already trying to make ends meet. It may just mean that that demand flows out a bit more.

CHAIR: What would you like to see come out of this inquiry?

Ms BURRELL: As we said in our submission, we think it would be really useful for New South Wales to consider, if you like, a practical range of measures to deal with WorkChoices, things that might make a difference, where you have policy influence. We have already talked a little bit about affordable housing. Once again that is an area where co-operation between the State and the Commonwealth is key. We think that there is also some scope around concessions policy in New South Wales so that people who are the working poor and part-time on marginal employment might be able to get some assistance in a range of concessions so that they can afford to get on the train and get to that job a long way away.

Obviously additional employment programs for people re-entering the work force so that they are more highly skilled, so that they are more competitive in the bargaining environment. The second final thing is legislation around human rights. I know that we do not have a Human Rights Act in our State at this stage. I am sure you are familiar that Victoria currently has a bill before its Parliament which includes a right to be in the trade union and rights of association. Obviously there are other human rights standards around just conditions of work. I appreciate that that cannot undo Federal legislation but it may just send a clear message about what is important in New South Wales.

The final point I would make is a pleading on behalf of the community services sector which is if we are to continue to meet demand, particularly if there is increasing demand, we obviously need to be funded effectively to do so. And part of that process is a comprehensive approach to indexation on our grants so that we do not fall further behind in our ability to pay our own workers, let alone to assist people that might be struggling to make ends meet.

CHAIR: To be the devil's advocate for the moment, some of the suggestions in your submission are, in effect, asking the New South Wales Government to pick up the bill for things which have historically been funded more by the Federal Government—housing, training opportunities, employment programs and the SACS Award involves two governments. One might say that it is a bit unfair given the current taxation and spending arrangements between the federation and the States to say "Here is a Federal change. Let us ask the State governments to put in the money to cope with the changes the Federal Government has forced on them".

Ms BURRELL: I understand the point that you make about cost shifting, and the backwards and forwards between the State and the Commonwealth is one in the non-government sector we are painfully aware of. Our position is that this inquiry has been set up out of concern about what the impacts of WorkChoices might be and that, despite those challenges around cost-shifting, there could be practical things, or leadership things that New South Wales could do in terms of going back to the Commonwealth around a better response around housing or employment. It does no harm to at least make that approach to the Commonwealth because systemic solutions to housing and systemic solutions to getting people good jobs is in the interests of the New South Wales economy, the Australian economy and in the interests of the people that we work with every day. So I accept the point that you are making about cost shift but at the end of the day our constituents are less concerned about cost shift as result.

[*Interruption*]

CHAIR: Thank you very much for your submission and for your evidence today. Did you take one question on notice?

Ms BURRELL: Yes.

(The witness withdrew)

JAMES LAURENCE McCALL, Chief Executive, Motor Traders Association of New South Wales, and

GREGORY JOHN HATTON, Director, Employment Relations Services, Motor Traders Association of New South Wales, 43-51 Brisbane Street, Darlinghurst, sworn and examined:

CHAIR: Thank you for coming and your submission. Merrin will have mentioned to you the statement that I have made to some witnesses in relation to naming of individuals and organisations. I suspect that you will not do that.

Mr McCALL: We will respect that absolutely, Madam Chair.

CHAIR: So I can probably skip reading out the statement.

Mr McCALL: Certainly.

CHAIR: It is an important issue for us. If witnesses make allegations people, in fairness we need to give those people the right of reply. And we need to be careful of what is said in public.

Mr McCALL: Absolutely.

CHAIR: You may feel you have very little comment to make in response to some of the questions we sent you, but we have sent almost identical questions to most of our witnesses because those questions reflect the terms of reference. Except for question one, in which we ask you to tell us about yourselves and your organisation, the others flow through. But we expect you will say a lot more about question eight, the impact on employers in small business. Would you like to make an opening statement?

Mr McCALL: I would, if I could. The Motor Traders Association of New South Wales has more than 5,000 small businesses as members. None of our members are listed on the stock exchange. So, while about 1 or 2 per cent of our businesses are quite large small businesses, the great majority of our members are sole traders or partners—mums and dads operating businesses and trying to eke out a living. In the retail sector of the motor industry, the servicing and repair of motor vehicles by motor vehicles—and by motor vehicles we mean motor cars, trucks, vans, motorcycles and farm machine, so virtually anything with a motor that propels a vehicle along—we have members in every nook and cranny in the State of New South Wales, and we represent them to the best of our ability.

I would like to point out that some 40 per cent of our members are not statutory corporations. So the impact on them is different from the impact on the other 60 per cent. I would also like to say that, in respect of any imbalance created by the Federal legislation in favour of the employer, the association would very strongly urge its members not to exploit or take advantage of any imbalance that that legislation may create. We would encourage, and do encourage, our members to the view that their staff are their most valuable asset, and they should treat their staff and their employees as the most valuable asset that their organisations have. We would impress upon our members the need to maintain the same quality management systems that they have maintained over the past decades; in other words, to treat their employees equitably and justly and, in cases where there are difficulties with their employees, to go through the same warning processes and remedial actions that they have taken and been required to take over the past decades. We would ask them not to do anything that would act in a manner that was unfair or inequitable in terms of their own employees.

Thirdly, in relation to the trade union movement, the major union that deals with our members is the Australian Miscellaneous Workers Union [AMWU]. I must say that the industry has had a very, very good, constructive and professional working relationship with the AMWU over all the years that I have been involved in the industry. In fact the union has made a very positive and constructive contribution to the growth and the development of the industry, particularly in education and training, apprenticeships and situations of that nature. Their local officer Garry Hingle has done a marvellous job, and the union and the association work very closely together on a number of issues, to the benefit I believe of our businesses and of their employees.

Having said that, you will see that in our submission we raise a number of issues, and we would put those before you. If there any questions that you might have in relation to any of those issues, we would be happy to answer those.

CHAIR: You have described the nature of your industry, and you were here for the evidence of the previous witnesses, who spoke very largely about low-paid and unskilled workers. I understand your industry contains quite a large number and variety of very skilled and highly trained workers.

Mr McCALL: Yes.

CHAIR: The balance is presumably different. You talk about the AMWU, which would cover people who have done apprenticeships and trained at TAFE and have a high level of training, but more at the retail end the skills are less easy to measure.

Mr McCALL: When you get into the sales area particularly you get a lot of unskilled workers. Our members employ about 80,000 people in New South Wales, including 5,000 apprentices. So they are a significant employer. They have amongst the sales staff, particularly an administrative staff not only in dealerships but in repair shops, quite a number of unskilled workers. In regional areas, for instance, if you run a panel shop you have to have people to do your administrative and clerical work, and that is half of your business, and your business will stand or fall on the ability of those people to carry out their work and to carry it out efficiently. By and large, they are what we would describe as unskilled people. The balance is about 50:50. Very few dealer principals are formally qualified people, although they are certainly skilled.

CHAIR: In terms of employment opportunities, does the industry in general struggle to get people with the necessary training through apprenticeships and so on?

Mr McCALL: We do. The association itself does a great deal of training. We have a very strong training department. We work very closely with government. This year we are trialling for the first time a system of training apprentices on the ground in the workshop, as opposed to them going to TAFE. That program is going along very handsomely. We have a group training company for apprentices, to try to get kids from school to see the benefits of coming into our industry and encouraging them into the industry.

We ran a significant program to try to get women involved in the industry. I was very interested in some of the remarks made by the last witnesses. There is a terrible gender imbalance in our industry. We have not got a lot of females working in our industry. But that is not because of low salaries. We ran a big program to try to get women involved in dealerships, because some of those sales are very lucrative and give very good returns. But, unfortunately, dealers are required to open on Saturday and Sunday. We are the only State that requires dealerships to open on a Sunday. For women who are trying to balance family responsibilities with work responsibilities, working Saturday and Sunday is not an option.

We had something like 80 women turn up for the initial program, and we put them through the program. At the end of the day I think we had three that actually lasted for any length of time in the industry. So there are things that government could do to help address that gender imbalance, and it would not cost anyone. The dealers do not want to open on Sunday because they lose money by opening on Sunday. Staff do not want to be there on Sunday. But, unlike any of the other States, New South Wales says: You have got to open up on a Sunday. Things like that make the industry an undesirable location. Some of the stereotypes that stick to our industry are the grease monkey stereotype for instance. And it is a stereotype because it is not that any more. Most cars are run by computer systems now. Within the next five years you will see mechanics working in white dustcoats and while gloves because it is becoming so technical. Really, the perception discourages young girls from coming into the industry, and that is a great tragedy. We want to encourage young girls leaving school to come into apprenticeships. We need them in there. We are trying our best to encourage women into the work force. But, by and large, as you said, there are in our industry a great many who are skilled and would not see a great need for a union movement. That is up to them. We always encourage people to join a union if it is appropriate to them.

CHAIR: The more skilled people would not be so affected by the WorkChoices legislation, as would be the unskilled people in the work force.

Mr McCALL: That is exactly right, by and large. I am sorry to be so long-winded on that one.

CHAIR: It is an important different. The difference in the nature of industries is something that I think we need to get straight.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I pick up on your gender equity comment. Surely you do not have to open on a Sunday, do you, if it is uneconomic? Surely no-one opens their door and loses money, do they? I would not know anybody who would do that.

Mr McCALL: Of course, Mr Chesterfield-Evans. Ninety-eight per cent of our dealers want to close on Sunday.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But don't people go and buy their cars on Sundays?

Mr McCALL: No, they do not, actually. It is a strange thing, but I can explain it to you. By and large, the pressure comes from the manufacturers. Manufacturers say to our members, "If you don't open on Sunday, we will take the franchise away." Whereas, in Victoria, the law says you cannot open on a Sunday, and that takes the pressure away of big business applying this pressure to small businesses and forcing them to open. You will always get renegades too. If 700 of our motor dealers were to close on Sunday, there would be two that would open in order to exploit the gap. And, once two of them open, the other 700 have got to open. So, really, that is probably the reason for it.

Do people buy cars on Sunday? No. They go round and kick tyres on Sunday, and they make their minds up during the week. People will always reorganise their shopping hours. I remember, when I was a kid, that banks used to open on Saturday morning, and there was a postal delivery on Saturday morning. But we do not have that any more; people have reorganised their banking hours, and the postal department has reorganised its delivery hours. It would be so easy, and such a sensible thing to do in my view.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The whole of the nursing profession runs with a predominantly female work force, and they work seven days a week. If you were offering much more money, though I do not know what the percent of those buying cars are women it must be a pretty high percentage.

Mr McCALL: The nursing profession is struggling to attract nurses.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is true.

Mr McCALL: I guess that is probably one of the reasons. I have enormous admiration for any girl that takes up nursing. I think they should be given a medal.

CHAIR: As well as a lot more pay.

Mr McCALL: Because the government has to pay that, we can say that quite freely. But it is very difficult for young people starting off a family. We have a lot in our membership of 80 who are just starting off a family, and it is very hard to juggle that Saturday and Sunday work. Honestly, that is the reason they gave for not pursuing a career in that area—the weekend work, but particularly the Sunday work.

CHAIR: In relation to the WorkChoices legislation, we note your comment that your submissions are limited to the clause about the impact on employers and small businesses. But, in your opening statement you make some comments about rural communities, for instance. So, clearly, you have some useful things to say about that.

Mr McCALL: Quite right.

CHAIR: You might want to take us through the transition issues that you mention in your submission, such as the fact you feel the legislation is impacting quite severely on your members.

Mr McCALL: Certainly.

Mr HATTON: The transitional issues primarily relate to changes in work conditions. For a lot of small businesses the standard introduces new work conditions for the employees of those businesses. I suppose the challenge for the small business is to understand those changes and to try to apply them. That comes at some sort of cost, I suppose. With small business people, the person doing the bookwork is often one partner of the business and often the female partner for that matter. I suppose the costs associated with that are often extrapolated from the fact that they must work many more hours to apply to that work. A lot of them are having trouble getting their mind around all the changes and how they should set up their systems. Where it is not a partner in the business and they are employees, there are obviously additional labour costs in setting up those systems.

CHAIR: Does this happen with any legislative change or do you suggest that the WorkChoices legislation and regulations are particularly complicated and because of the difficulty in transition the costs are much greater?

Mr HATTON: Certainly from the workplace relations perspective there are additional costs associated with not only setting up the systems but providing benefits to employees. The other issues associated with the transition impact on the way the systems work. A lot of the new systems limit, reduce or take away the management capacity of employers. Annual leave is a very good example of that. Under the award standards employers could direct their employees to go on annual leave. That assisted members who needed to manage and move on annual leave by having employees take leave at certain times.

Mr McCALL: I can give you a very good example of that. In a recent dispute that we had with IAG Insurance, which I suppose you are all familiar with, the smash repairers had no work coming in because they were so dependent on the insurance company. The way they survived during that protest that they put up was to be able to say to their staff, "You have to go on leave for three weeks because we have no work and the business has diminishing money." Smash repairers were able to survive through that period because of the co-operation of their workers and their ability to be able to say to them, "You have got eight weeks annual leave. You have got to take four weeks of your leave." There are numerous other circumstances where you will see a very big seasonal downturn in the amount of work that is coming into the business and the employer can say, "Look guys, there is no work here, you need to take your holidays. I know it is July, I know it is inconvenient but I want you to take two weeks of your leave at this particular point in time." That ability has been taken away from employers under this legislation. That is, in our view, a retrograde step that makes it difficult for many of our members to manage their businesses effectively.

CHAIR: In that respect the WorkChoices legislation has become much more inflexible?

Mr McCALL: Yes, absolutely.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Could it be written into your workplace agreements?

Mr HATTON: The standard allows an employer to direct employees to go on annual leave in two situations. The first of those is where there is an annual close down. The second of those is where employees have accumulated two years' worth of annual leave, so eight weeks. So an employee must have eight weeks' leave before an employer can direct the employee to go on two weeks of that leave, or a quarter of that.

Mr McCALL: If they have seven weeks' annual leave you cannot direct them to take any leave at all, whereas you could under the old system. Even if they have eight weeks due to them you can only direct them to take a quarter of that. So you can direct them to take only two weeks of that. You could not direct them to take three weeks' leave, for instance.

Mr HATTON: In response to your question, you cannot put into a workplace agreement provisions that reduce the standard.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is that a transitional provision or a permanent provision?

Mr HATTON: That is a permanent provision.

CHAIR: You have referred to the expense of changing and updating your management system for leave accrual and so on. I am not clear about your second dot point. After the five-year transition, the 40 per cent of your members that you said are not constitutional corporations will come out of the Federal system and back into the State system, which will result in more changes again.

Mr McCALL: Yes. Our members work under a Federal award at the moment. I must say, our industry works very happily under a Federal award. This new system simply means they will be blocked out of the Federal award after the transition period.

Mr HATTON: There would not be a need to change again in five years' time for those businesses that are partnerships and sole traders. The new standards do not apply to the 40 per cent of businesses. It applies only to the 60 per cent of our membership that are proprietary limited entities in the main. It is those 60 per cent that are going through the process of adjustment and upkeep and changing their systems. The 40 per cent continue to apply the award as it has applied prior to the WorkChoices changes on 27 March. Those businesses, because they are not corporations, will at the conclusion of that transitional period—despite their membership of MTA, which is a federally registered organisation—then slide into the State system. Then those 40 per cent of businesses will need to readjust their operations to apply various State wards that apply to their businesses. In some cases some of our members will have one award or maybe two awards that apply to their business when they move into the State system. They could have five, six or seven awards because those State awards are a little bit more narrow and occupational based. So potentially there will be increases in the varying costs and different conditions of employment and obviously a lot more complex arrangements from an industrial relations perspective.

The Hon. IAN WEST: On my understanding, possibly putting it another way, currently the 40 per cent of businesses or a number of them that are members of the MTA have respondency to the Federal award through membership of the MTA.

Mr McCALL: Absolutely, yes.

The Hon. IAN WEST: Not because they are corporations.

Mr McCALL: That is correct.

The Hon. IAN WEST: Most of those businesses will stay in the Federal award until the expiry of the Federal award.

CHAIR: The five-year transition period.

The Hon. IAN WEST: At the end of the five-year transition period membership of the MTA will not be an automatic respondency to the Federal award.

Mr McCALL: Correct.

The Hon. IAN WEST: They are in a slightly different category to the norm.

Mr McCALL: Yes.

CHAIR: Potentially those people will be up for the costs and inconvenience of adjusting the systems again.

Mr McCALL: Absolutely.

CHAIR: Whereas the bigger members will be able to sail through the end of the five-year transition period.

Mr McCALL: Correct. We have a different status amongst our members. They might be in the same business doing exactly the same thing, yet they are going to be thrown into two separate arenas.

CHAIR: Is that likely to lead to amalgamations or a tendency towards a smaller number of operators?

Mr McCALL: There may be a tendency for smaller mum and dad businesses to become proprietary companies. They do not want to, but they may well see some economic advantage in not going through that transition and incorporating.

CHAIR: That would involve legal costs.

Mr McCALL: Absolutely, and the ongoing administrative costs of running a proprietary company which, I must say, are considerable for a small business.

CHAIR: What do they get out of it to counterbalance those costs?

Mr McCALL: Nothing, absolutely nothing.

CHAIR: It seems to fit in with evidence from other witnesses that the system, which perhaps the public thinks is a simplified one, is for many businesses a complex one.

Mr McCALL: For many it seems to be.

CHAIR: That would be the case for your smaller members?

Mr McCALL: Yes, we believe so for our smaller members.

Mr HATTON: Certainly in the short term for all businesses it is more complex.

CHAIR: For all?

Mr HATTON: I think so, yes, because of the changes they must adjust. There will be some who, no doubt, will adapt and there will be others that will not.

Mr McCALL: Of course, there is the uncertainty of the whole thing. As the lady from NCOSS said to you about being an NGO, we are in the same position. We are a non-profit organisation registered under the Federal Workplace Relations Act. That is where we derive our corporate status. Will we be a statutory corporation within the meaning of the new legislation? Quite honestly, we have got no idea and we have sought legal opinions. If you get three lawyers in the room you will get four different opinions. It really is very confusing. Of course, the State Government's appeal is yet to be determined by the High Court. The whole thing is very confusing for us as an association, let alone for our members.

The Hon. CHARLIE LYNN: It has been said to me that small businesses in New South Wales find it difficult to operate or cannot operate legally because the occupational health and safety, WorkCover and unfair dismissal laws have a major impact on the way they operate. Would you comment on that?

Mr McCALL: I think there is some disquiet amongst our membership over the occupational health and safety legislation. We had an ongoing set of discussions with Government over some proposed amendments. I must say that the Minister was attentive and he amended the draft bill in a way that made it more satisfactory. But there are some aspects of that legislation that our members are concerned about and it does make it difficult. There are other things that make it difficult. It is interesting what was said about rural New South Wales. I know rural New South Wales very well.

One of the biggest difficulties is, for instance, if you take farm machinery dealers. They sell machinery to farmers. That is what their business is. We have got the worst drought in 100 years. Farmers are getting benefits from the Federal Government, as they should during this period. When we go and ask the Federal Government on behalf of farm machinery dealers to extend the same benefit to them as is extended to the farming community, you might as well go and talk to a tree. They are not the slightest bit interested in listening to you. Yet they are just as much affected by the drought as anybody on the land. Yes, they should be doing something in rural areas that is fairer and equitable too.

The State Government—we cannot let them off the hook completely—have this great raft of payroll tax. Come on, small business survives by the skin of its teeth. But these laws are not the worst enemy that small business has got. The worst enemy small business has got is big business. When you have an insurance company that pays you $30.90 an hour to repair a car and you have to employ people and pay them a decent wage, you tell me how you do that. I know how they do it, but they cannot keep on doing it that way. It is the same with the payroll tax. There are businesses out in the country struggling to survive by the skin of their teeth. They are able to pay a decent wage to their employees if they can get income from their business. They cannot do it if their income is under stress and at the same time they have a government sitting over them with its hand out saying, "Give us, give us, give us money." That is my message for the day.

The Hon. CHARLIE LYNN: We heard this morning that this legislation transferred risk from the employer to the employee. Would you like to comment on that?

Mr McCALL: Only in the case of an unscrupulous employer. I would say if you have got unscrupulous employers that seek to exploit some new provision in the law that could well be the case. What I saying about our association, I believe that associations, like trade unions—and we are a union in the same way as the AMWU is—are under an obligation to ensure that our members do not unfairly exploit any opportunities that this legislation might present for exploitation.

Mr McCALL: We have a code of ethics that our members are required to abide by. I assure you that if we find instances of exploitation on the part of our members we will expel them from our association.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are in a very competitive business, with a handful of big companies giving you most of your work.

Mr McCALL: In the smash repair area, yes, and in the dealership area too. If you think the insurance companies are bad to repairers you should see what the manufacturers do to dealers. You are quite right, Dr Arthur Chesterfield-Evans.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you have got them squeezing your price down.

Mr McCALL: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you have a couple of highly competitive people willing to squeeze wages down because they think they can get someone to work for less, surely the whole system will then squeeze down. The insurance companies or the manufacturers will say, "Thank you very much" and they will put it down.

Mr McCALL: You are right: big business would be the ultimate beneficiary of any pressure that was applied in that area. But I do not believe that is likely to happen for the very good reason that, fortunately for the average worker, there is a great skills shortage—an enormous skills shortage—in our industry. Take apprenticeship wages, for instance. I look at them and think to myself, "How on earth could anybody live on that?" You are going to offer them $240 a week and they could walk down the road and get a job as a storeman and packer and take home $600 in their salary. How can we get someone into an apprenticeship? I suppose the answer is that none of our people are paying award wages. The great bulk of our people have to pay well above award salaries in order to attract people to the industry.

The Hon. IAN WEST: Flexibility up.

Mr McCALL: Yes, flexibility up.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you are still short of people, are you not?

Mr McCALL: Yes, absolutely. There are all sorts of wizard programs to import migrant labour—which is not the solution, and never has been. If you look through the history of manufacturing or any other sector of the Australian economy you will see that importing labour is not a solution to the problem. The solution is to skill our people up and to encourage kids into our industry. But, by and large, fortunately for the workers in our industry, there is a skills shortage and we believe that over the next five years that skills shortage will continue, and probably grow.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you are very much in the market already in the sense that the award is less than the going rate.

Mr McCALL: Than what the market demands, yes. There would be very few apprentices working for an award wage in our industry, I can assure you of that. And good luck to them.

CHAIR: I guess that is the reason why you focus on the way the WorkChoices legislation adds to your costs without necessarily hurting your workers because the workers have a better bargaining position than the people whom the representative from NCOSS was talking about.

Mr McCALL: Absolutely—more as a result of the current economic climate than as a result of anything the Federal Government has done.

The Hon. IAN WEST: Is that the case across the whole State?

Mr McCALL: The skills shortage? My word!

The Hon. IAN WEST: Is it across the whole State?

Mr McCALL: Even in little places in the bush. Kids are leaving the country in droves. I think that is a great tragedy. I am sure we would all agree about that. It is very hard for our people to encourage them into an apprenticeship in a country town.

The Hon. IAN WEST: So regardless of whether it is the city or a regional country town; whether it is Parramatta—

Mr McCALL: Or Warren, Bourke, Nyngan or wherever.

CHAIR: What about Newcastle and Wollongong? Is it the same there?

Mr McCALL: Yes, it is the same. We are doing an enormous amount of work in schools in Newcastle at the moment. We are conducting programs up there to try to attract kids into the industry. We have had some success but it could be better. There are still skills shortages there. In the metropolitan area I could give you 16 or 17 examples this afternoon of companies that have been looking for an employee for weeks and weeks and have not been able to get anyone.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Where have they been looking geographically?

Mr McCALL: They are in the western suburbs, in particular. I was with a member in Silverwater on Friday who asked me to put an ad in our journal, which I was happy to do. He has been looking for somebody for a couple of months.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is that to work as an apprentice or to work as a motor repairer?

Mr McCALL: No, it is to work in a brakes business.

The Hon. CHARLIE LYNN: Skilled or unskilled?

Mr McCALL: It is skilled.

CHAIR: Mr Hatton, did you wish to add something?

Mr HATTON: Yes. Big business is also a competitor for skills. In regional areas the mines pay very big salaries and we find that those sorts of companies tend to take skilled workers out of our industry and other industries as well. That is also a dilemma for many of our small businesses.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So motor mechanics go off to fix mine machinery.

Mr McCALL: Yes.

CHAIR: So the skills are transferable.

Mr McCALL: Very much so. You find heaps of auto electricians in the mines.

The Hon. CHARLIE LYNN: In Western Sydney we have pockets of fairly high unemployment and we have demand for labour—

Mr McCALL: For skilled labour.

The Hon. CHARLIE LYNN: Yes. Is there a mid-term or longer-term solution somewhere?

Mr McCALL: Get people skilled up. I believe that is the long-term solution. We are going to start a program next year. Our incomes are very limited. Like ACOSS, we struggle along on the sniff of an oily rag. But we are kicking off a program next year to try to get people back into the industry. If you have been out of the industry for five years you could not do any more under the bonnet of a car than I could—and all I know about cars is how to turn them on. We are trying to get people who have left the industry to come back in. We will offer them a short-term program to get them skilled up and back into the industry. We would say to those people who are out there looking for jobs: Why don't you do an apprenticeship? It doesn't matter how old you are. No-one will pay you to go to university. At least if you do an apprenticeship for three years we will pay you. It might not be a fortune, but it will certainly be enough to keep food on the table for the three years until you are qualified and, when you are qualified, the world is your oyster.

CHAIR: What is the entry level in terms of schooling for an apprenticeship?

Mr McCALL: You do not have to have an HSC; that is for sure. In our group apprenticeship company we get apprentices in and sign them up. We give them aptitude tests in mathematics and English. You do not have to have an Oxford education in English. As long as they can communicate and have basic mathematical skills, most people, if they apply themselves, can pass the course.

CHAIR: Would they normally have completed year 10?

Mr McCALL: No. That used to be the case. There is a four-year apprenticeship in the motor industry. They do three years in TAFE or three years under our training system. They have then got to do another year. When I was at school, as a rule, kids left at their intermediate certificate to do a trade—and most of them finished up with more money than I have got. It was a very good career move on their part. They would leave at intermediate, go and get their trade by doing a four-year apprenticeship. But they were only 15 when they left school. They spent their first year in the trade sweeping floors, getting the morning tea and so on. So they got some social skills in mixing in the workplace. I had a leaving certificate and I had to do it.

The Hon. IAN WEST: Going and getting the sky hook.

Mr McCALL: That is right—all those silly things. But at the end of the day the kids who are going in now are going in from the HSC. The great bulk of them do their HSC so they are going in at 17 and 18. They do not need that extra year. In our view, it should not be a four-year apprenticeship; it should be a three-year apprenticeship. To answer your question, the bulk of the kids coming in now have finished year 12. Next year we are going to offer year 11 apprenticeship in schools so that kids can go out two days a week and work in a shop. Our people will train them on the ground and they will then do three days of HSC subjects. So we are trying to get around that, yes.

CHAIR: What would you like to see come out of this inquiry? I think that is our favourite question.

Mr HATTON: I suppose from the MTA's perspective, at the very least an awareness that there are businesses out there and it is not all anti-employee legislation. Maybe there is a bit more balance in it in that I think all businesses and their employees have got to try to come to grips with the new laws. James McCall referred to issues associated with gender and trading arrangements. The Committee could look at those issues and consider them. Sunday trading, for example, might be an issue that could improve gender issues. Certainly it could provide balance in working arrangements. It is just a greater awareness that there are small businesses out there and they will struggle through this change. There is a cost to it. Some understanding will arise out of that.

CHAIR: Would you like to see changes in the legislation?

Mr HATTON: I think we would like any changes that would go towards facilitating the capacity for management to manage. The issue of leave was referred to earlier and the challenges that small businesses face. You talked about seasonal work in regional areas. That was one question. When business is quiet you can better utilise leave arrangements and that is a much better outcome than putting people out of work—especially in areas where skills are very difficult to acquire. If you put somebody off and they leave, you may not get anybody back again. It is a last-ditch decision to terminate an employee, especially in regional areas. Those sorts of things are very important. Flexibility can work for both parties—not necessarily going into workplace agreements, but the arrangements that are there need to be flexible to allow the parties in the workplace to really resolve issues. Then you get productivity. Without that, when you lose the capacity to manage, you lose the capacity to build on working relationships.

CHAIR: Given what you said when we talked about what will happen at the end of the five-year transition period for smaller members, would you like to see changes in the legislation to address that transition period?

Mr HATTON: I suppose from our end the ultimate outcome would be for the State Government to refer the powers to the Federal Government and allow consistency in relation to the application of Federal law. That would be an ideal arrangement. An alternative to that is that the Federal Government looks at utilising its IR powers as well as the constitutional powers, if that is what it must utilise, to make it a more inclusive system.

Mr McCALL: The other alternative would be for the Federal Government to refer its powers across to the State. That would be a novel arrangement, I would think. So then at least you would have one, consistent system. Clarity is the other thing that we would like to see as an outcome of the Committee's work because there is not a lot of clarity in the situation as it stands.

CHAIR: Thank you very much for appearing before the Committee today. We did not put any questions on notice but if something strikes us later we would be grateful if we could contact you about it.

Mr McCALL: We will be happy to answer.

CHAIR: Thank you for your evidence and for a very lively presentation, which has woken us up at the end of a long day.

Mr McCALL: Thank you.

Mr HATTON: Thank you.

(The witnesses withdrew)

(The Committee adjourned at 3.42 p.m.)