REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO THE IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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At Sydney on Friday 15 September 2006

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The Committee met at 2.30 p.m.

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PRESENT

The Hon. J. C. Burnswoods (Chair)

The Hon. Dr A. Chesterfield-Evans
The Hon. K. F. Griffin
The Hon. C. J. S. Lynn
The Hon. I. W. West

VICKI TELFER, General Manager, Strategy and Policy Division, WorkCover NSW, 100 Donnison Street, Gosford, on former affirmation.

CHAIR: I thank you for not only coming today but for being able to change your time when the Committee heard that Gillian Calvert is ill. I have received an apology from Committee member, the Deputy Chair, the Hon. Robyn Parker. Do you want to make an opening statement?

Ms TELFER: No I do not propose to make an opening statement. I thought I would make myself available for the Committee to ask questions. I have some indicative questions.

CHAIR: A key issue that has emerged is the interaction between the State and Federal systems as a result of the WorkChoices legislation and occupational health and safety is obviously a very important aspect of that. Will you tell the Committee if there have been any further developments in the area since you last appeared before the Committee?

Ms TELFER: Since I last appeared before the Committee in June there have been no further developments in the legislative front between occupational health and safety and WorkChoices per se. I thought to it would be useful to let the Committee know of some other kinds of developments which, whilst they are not WorkChoices in the Federal arena, do impact on the industrial relations environment for occupational health and safety in particular. Recently the Commonwealth Parliament passed some legislation which would allow an organisation that self-insures with the Commonwealth—and there can be a range of organisations who it allows to nationally self-insure—to opt out of the State occupational health and safety regime. Instead, they would be subject to the Commonwealth occupational health and safety regime.

Why would that be of concern? The concern is that whilst it is claimed that those legislative changes will give greater national consistency and reduce duplication, one of the things that will happen we know is a diminution of occupational health and safety. We are very confident about that because what will happen is that there will be an overlap of both Commonwealth and State occupational health and safety legislation in particular work sites which have both Commonwealth-covered employees and State-covered employees which is going to mean that there is a total state of confusion in those work sites. Employers will find it difficult, workers will find it difficult and we believe that they will be shunted by any employer who is unscrupulous—we hope employers are not unscrupulous—who will say "That is not what the law says. The law says something else" or "No, that is not the case at all" and it will lead to total confusion and a lack of occupational health and safety in those particular workplaces. Of course it will also have an impact on any investigations.

The other concerning part of this, and we think it does go to a broader agenda about deregulation of industrial relations—and in that I do include occupational health and safety and workers compensation—is that the Commonwealth agency that has all very good people does not have an inspectorate to speak of. It has around about 20 inspectors across Australia for all of the workers that it covers. We are very concerned that that will lead to what we call a safety gap. In New South Wales we have more than 300 inspectors. Comcare has, as I said, around about 20. It does not do very much enforcement activity and this will mean that for those employers who go into the Comcare scheme to be nationally self-insured under Comcare are then going to be covered by the Commonwealth occupational health and safety provisions, and it means that there will be very little enforcement and compliance activity of occupational health and safety.

That has an impact in New South Wales on those other employers who are covered by the New South Wales occupational health and safety legislation who will say "Why do we need to comply?" Or "The bloke down the road does not have to do this. Why should we have to do this?" And so we have a great deal of concern about not just what happens to those workers in those particular workplaces covered by this new legislation, or by the changed provisions, but what it does to the occupational health and safety regime within New South Wales altogether. The other part of the legislation that is currently before the Commonwealth Parliament, and we are not sure when it will be considered, it has been read in the House Of Representatives and only introduced into the Senate, is a bill that would, in fact, change the Commonwealth occupational health and safety legislation to remove the automatic right of unions to provide occupational health and safety representation.

So we are very concerned that those two pieces of legislation together will lead to a diminution of standards, not the removing of mandatory union intervention in developments of occupational health and safety policy in agreements, we think is not a positive step to improving safety in the workplaces. Whilst it is not about WorkChoices per se as far as legislative developments though, we think there is a broader agenda which is not just straight industrial relations as we commonly like to think but also includes this broader agenda of occupational health and safety and injury management which is about a deregulation or voluntary regulation or self-regulation of these kinds of matters. It is happening across the field in that kind of way.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The Federal Government abolished WorkSafe, did it not?

Ms TELFER: It abolished WorkSafe in 1996—I remember this very sad history—and replaced it with the National Occupational Health and Safety Commission [NOHSC]. It abolished NOHSC in 2005 and established instead the Australian Safety and Compensation Council [ASCC]. The members of that council, unlike what they were under the NOHSC, are not commissioners and do not have any statutory rights. It means that the powers of the ASCC have been diluted.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Who sets standards for employers to meet? Are they set by Standards Australia, do they grow up like Topsy or are they set up by legal precedent? Do people like you set them? There was a national standards body and now there is not, is that the bottom line?

Ms TELFER: No, the ASCC after a lot of work by State and Territory jurisdictions, the Federal Government finally agreed that it could sets standards so it does sets standards. However, one of the issues that has arisen is that the NOHSC used to work on a consensus basis so there could be debate and then when people thought that the standard was right, it would be agreed. What has happened with the ASCC is that it now works on a majority basis. You can have one or two parties on the council who can say "yes" or "no" to a standard and, even if the majority of jurisdictions do not like it, it will come in place. We have that classic example at the moment where we have great concerns about some where we will be doing certificates of competency with the new standard. New South Wales had a great deal of concerns because it did not think there was probity. The standard will come into effect next July, despite our concerns. We now have to work our way through that. It is not that there is not a standard setting body, it is the way that it operates; the fact that they will not agree that it is tripartite; they will not agree there will not be a diminution of safety standards; and that you do not get a consensus. So when people get to an outcome that everyone can live with that you can have a large jurisdiction like New South Wales which raises very legitimate concerns about a particular process, they can now be ignored and it puts New South Wales workers and their families in some peril.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: NOHSC was government, employers and unions, was it not?

Ms TELFER: No, it was tripartite.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is that not tripartite, the three elements?

Ms TELFER: Yes, governments at the national level and also at the State and Territory level, employer associations, primarily the Australian Chamber of Commerce and Industry and the ACTU. That is the same on the Australian Safety and Compensation Council.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you said it does not have to have consensus? Does that mean if the unions do not like it tough luck or if the State governments do not like it tough luck?

Ms TELFER: Yes, exactly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you have to have a majority on that council?

Ms TELFER: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If one-third did not like it—?

Ms TELFER: Tough.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are the Government representatives all Federal?

Ms TELFER: No, there are State and Territory representatives. There is one from each State and Territory. In New South Wales, generally it is WorkCover. I have to say—and Minister Della Bosca has put out a media release about this, so it is no secret—we have had a lot of concerns about the operation of the Australian Safety and Compensation Council [ASCC] because they will not agree that their work will be subject to what we think are four very important principles: that it is tripartite, so everyone needs to be involved; that there is, most importantly, no diminution in safety standards or benefits for injured workers.

They will not agree to have their discussions subject to that. We also think that any of the discussions that happen at the ASCC also have an eye to the compliance and resource costs for both employers and governments who have to implement that. So at this stage we have withdrawn from going to the ASCC, because we do not believe that we can be part of a body that will not have regard to particularly making sure that safety standards are not diminished.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So the State Government has pulled out of this standard-setting body for the whole nation?

Ms TELFER: On a temporary basis. We are working very hard, and Minister Della Bosca has written to Minister Andrews on several occasions now seeking a meeting so we can get this resolved.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So there is a not inconsiderable internal bunfight over this?

Ms TELFER: I think it would be fair to say that most State and Territory jurisdictions have a great deal of concern about how the Australian Safety and Compensation Council is operating.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You mentioned competency standards and the setting of those standards. There were some dodgy practices, I gather, with forklift driver approvals some time ago. Are you saying that things like this, where competency is not being properly accredited, are likely to happen more often?

Ms TELFER: What has happened in New South Wales is a matter of public record. There were some corrupt practices, which WorkCover and the New South Wales Government have worked extremely hard to eradicate. We have put in place some really robust processes within WorkCover to make sure, for example, that third-party assessors are not selling certificates of competency any more. What we are concerned about is that the new national standard will hand some of the accreditation of the assessors to the VET sector and we will then not have the rigour and the robustness of an audit process about that. A lot of the problems arose in relation to third-party assessors. We want to make sure that we do not go backwards on this, that given the work we have done in the last couple of years we make sure we keep those high standards that we have put in place.

CHAIR: It is difficult to tie this to an inquiry into the impact of WorkChoices.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I was coming to the next question. Are people getting sacked if they express concerns about safety?

Ms TELFER: There have been a couple of cases recently in the Industrial Relations Commission. We do not often see many cases in the Industrial Relations Commission about people who have been victimised because of raising occupational health and safety issues. There have been a couple of cases recently. We think that is the tip of the iceberg; we think there are more cases out

there that are not coming forward to the Industrial Relations Commission. I can give the Committee the details of the two case numbers separately. We think they are the tip of the iceberg; we think there is a lot more victimisation going on. These two cases, which are reasonably high profile, have been determined by the Industrial Relations Commission.

CHAIR: You might put on the record the names or numbers of the cases and we can get the details from you.

Ms TELFER: The first case is Hayes v. Network Kitchens Pty Ltd, 2006 New South Wales Industrial Relations Commission 1122, in which judgment was handed down on 8 August 2006. The second case is Twentieth Superspace Nominees v. Transport Workers Union, 2006 New South Wales Industrial Relations Commission 218, in which judgment was handed down on 24 August 2006.

CHAIR: You said that in your experience these sorts of cases—

Ms TELFER: These sorts of cases did not usually go to the Industrial Relations Commission. We knew from time to time that there were people who were harassed for raising occupational health and safety issues, but the fact that these cases have had to go to the Industrial Relations Commission, where someone has been victimised as a result of raising occupational health and safety issues, seems to us to be the tip of the iceberg; there are a lot more cases out there. Anecdotally, we know that if there is one case going forward to the Industrial Relations Commission there are many more cases similar to this, where people do not have the opportunity or the resources to go forward but they are being similarly victimised. We are quite concerned that this level of victimisation is going on and that people may be harassed or victimised or dismissed for raising legitimate occupational health and safety issues.

CHAIR: Therefore, to come back to the question we sent to you, you would expect that as knowledge of that gets around, people may be more reluctant to raise occupational health and safety issues?

Ms TELFER: Yes. We think people may be more reluctant to raise it in the workplace. Interestingly, we have had some additional inquiries into our WorkCover Assistance Service, which is our call centre. They are about the specific issues that people are raising. But we know anecdotally that some of those people are raising issues with WorkCover because they do not feel confident about raising them with their employers or with other people into their workplaces. So they are coming to WorkCover—which is fine; that is what we are there to do, to assist people—but we know that we are getting an increased number of calls from employees with regard to occupational health and safety issues. We have certainly had a huge jump in calls about injured workers as well. It has jumped from about 2,500 for June to December last year to something like 3,500 or 3,600 inquiries this year to our claims assistance service from injured workers.

CHAIR: In the six months from January to July?

Ms TELFER: That is right. And particularly from the period April to June 2006, which was 2,200 calls, compared with January to March, which was 1,400, which is a significant increase in calls.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said that the Commonwealth Comcare had only about 20 inspectors. Is that for the whole of New South Wales?

Ms TELFER: No, that is for the whole of Australia.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You would not have much chance of getting prosecuted—?

Ms TELFER: They are doing their first prosecution now.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: For how long have had been going?

Ms TELFER: They have been going for a while. To be fair, they were only given prosecution powers in 2004. But even up until that time, they took very little enforcement action. It is more about voluntary compliance. It has been a little easier until now; it is now changing quite considerably. Up until now they have basically been government instrumentalities, so problems with occupational health and safety or injury management have been primarily done at the policy level through government and government-making decisions about what should happen to an agency that transgresses. But they are only doing their first prosecution now. We are concerned that this voluntary compliance regime seems to be in place in Comcare as the private sector is going in—for example, Linfox, a major trucking organisation, has gone in – and that there will be a diminution of standards. It is just not the way that Comcare does business.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: With regard to the people they covered, were they mainly office workers, or were there public utilities and so on as well?

Ms TELFER: There would have been public utilities. The Commonwealth Government has a pretty broad range of occupations. They range from Telstra employees, who include people who are digging trenches and lines, putting up cables, to people delivering your mail; ABC workers, who are doing all kinds of different things; office workers; nurses; and people in the defence forces. They cover a whole range of people in various occupations. It is not necessarily what people might characterise as safe, white-collar workers; it is a whole range of different occupations, many of them quite dangerous.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably industries such as the building industry or the trucking industry can now opt into that scheme and have that slim a ratio of compliance officers, is that correct?

Ms TELFER: That is our concern. We get on very well at an officer level, and Comcare tell us that they are doing more work to recruit inspectors. But our concern is that they just will not be recruiting enough. They do not have the instruments or tools, nor the culture within Comcare, to go out and talk to private sector people and give them the advice, the guidance material and the systems they need, which is what WorkCover likes to do. What we like to do more than anything else is go and talk to people about how they improve safety, and give them the guidance material. That material is simply not available; those inspectors are not available. We go out and talk to thousands of employees every year, in a proactive way, about improving safety. That work simply will not be happening, we do not think.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have quite a lot of resources. In your brochure shop you used to have thousands of pamphlets and other material explaining standards.

Ms TELFER: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably the Commonwealth could use that material, but it may not because technically it cannot because it is may be a different standard in Victoria and presumably they would want to use one lot of material consistently within the country.

Ms TELFER: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If they do not have duplication of that range of proper material, the inspectors basically do not have anything to hand out, is that the bottom line?

Ms TELFER: Not only do they have nothing to hand out but they do not have the resources or the people to hand anything out or to give the day-to-day advice about how you improve the safety system in a work site. Our inspectors not only visit a workplace, they actually provide guidance material and verbal advice to a work site about how you improve a safety system. Recently we have introduced in New South Wales what we call advisory notices, which are non-punitive notices, which give written advice to an employer about what they might want to do to improve safety in their workplace. People do not get any kind of penalty with those, but we give that advice. But Comcare, with the best will in the world, does not have that those resources or that culture.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can you make a guess about—and this might be quite an unreasonable question—how many employees per inspector you have, and how many employees per inspector Comcare has?

CHAIR: You can take that on notice.

Ms TELFER: I am going to have to take it on notice because I actually asked that question two days ago of our data people. I would be taking a wild guess at the moment and I really do not want to do that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably if WorkChoices is going ahead, the number of employees Comcare has and the number of employees you have will change quite dramatically anyway, or may change?

Ms TELFER: WorkChoices itself will not change the occupational health and safety [OHS] coverage. It is the Commonwealth's OHS legislation that will, the Comcare legislation that will. That will also add a level of confusion because you will have WorkChoices that carves out industrial relations [IR] provisions for one set of employers and workers, yet if someone decides to nationally self-insure, they will be a different carve-out and a quite separate carve-out for their OHS and injury management workers compensation provisions. So there will not be a natural kind of overlap there. There may well be some overlap, but not a natural overlap.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So it is only self-insurers that get into this.

Ms TELFER: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If someone says that they want to go under the Commonwealth, an employer can go under the WorkChoices scheme, can they not?

Ms TELFER: A corporation is covered by WorkChoices but to be under the Comcare provisions, they need to be nationally self-insured.

The Hon. KAYEE GRIFFIN: There has always been a very big emphasis on occupational health and safety training and rights and responsibilities of employers and also employees. As there will now be a dual system, for want of a better term, do you have any evidence or an opinion in relation to whether or not the confusion that will exist will probably have an impact on how people see that training that should be occurring from the employees' side but also in relation to the responsibilities from the employers' side?

Ms TELFER: We have no firm evidence on this but what we do know is that where there is confusion about what should happen, about training, about systems of work, about what should happen in the workplace, people throw up their hands and back away from it. So people become confused, and when they become confused, they do not do anything. The concern is that where there are dual systems in place or there is a level of confusion about who covers what and under what circumstances, the training that should happen will not occur, the safety systems that should be put in place—people will go, "We don't know what it is", and they will metaphorically throw up their hands in horror and back away from it. Of course that has a really big impact on safety in the workplace.

The Hon. KAYEE GRIFFIN: Of course there will also be legislation in terms of third party intervention, such as by a union.

Ms TELFER: Yes, that is right.

The Hon. KAYEE GRIFFIN: And that will be another issue for people who do not feel they are able to confront their employer.

Ms TELFER: They may not know. They may not know whether or not they are covered by the Commonwealth OHS provisions—"Am I covered by the Commonwealth OHS provisions? Am I covered by the State OHS provisions? Can I call my union in? Who can assist me here—is it

WorkCover New South Wales? Is it Comcare? Who do I go to get assistance on this?" That is from an employer's point of view but it is also from an employee's point of view. Like, who do we go to, to get that practical assistance that we need?

The Hon. KAYEE GRIFFIN: One of the comments that was made in evidence previously was from a number of lawyers who came in to give evidence.

CHAIR: From the community legal centres.

The Hon. KAYEE GRIFFIN: Yes. One of the problems that they said they had with the introduction of WorkChoices was that when people rang them for assistance, it took a long time and it was quite often difficult for them to even determine if the employer was deemed to be a corporation. Has WorkCover had any experience in relation to people ringing and trying to determine that?

Ms TELFER: We have had some evidence of that, not a huge number. People ring us because they know that they can get an answer from us. I have to say that our staff take the position that we are not checking whether or not they are a corporation. At the moment, not very many workers in New South Wales are impacted by the Comcare legislation, except if they are Commonwealth employees or are covered by Linfox. Our people do not ask the question, "Are you covered by us or not?", or, "Are you a corporation or not?" They give the advice that is required on the day, though I can see that this could become a problem in the future if there are more and more employers to become self-insured under the Comcare provisions. It is going to become much more confusing in the future, I think, for OHS. It is something that our people are going to have to work out. At the moment there is a straight answer that we can give the majority of our callers without any cause for concern about whether or not they are under our legislation or not because most people are under ours. That is going to become something in the future.

CHAIR: Is it possible for you, probably on notice, to give us some sense of the current proportion of self-insurers and the way in which those who are not currently may choose to become so, if they feel there is an advantage to them coming under a Commonwealth system?

Ms TELFER: I can give you some information about the number of self-insurers in New South Wales and the number of entities that have either self-insured with Comcare or are applying. We hear a lot of rumours but our experience would tell us that we should not be listening to the rumours. Some people might think that this is a good way to go, but when they actually impact, there are a whole lot of other considerations—for example, financial considerations—and that may not be something that they wish to do. I will not speculate on those companies that we have heard about on the grapevine, but I can provide to the Committee the number of companies in New South Wales that self-insure with us, the number of companies that have self-insured with Comcare, the number of companies that have been given a right to apply for a licence—for example the National Australia Bank, which is a very large organisation, as you would imagine. That has now got the right to apply for a licence to be nationally self-insured under Comcare. I understand that is being considered today.

CHAIR: If we could have some data on that and, I guess if you can, it is not so much a company as how big it is.

Ms TELFER: Yes, that is right.

CHAIR: And how many workers it has.

Ms TELFER: Yes. I will take that on notice and I will get the information to the Committee.

CHAIR: Particularly given, as you have explained, the confusion that can develop with a group of workers who are covered under WorkChoices or covered under WorkCover.

Ms TELFER: All of the different permutations.

CHAIR: I think you said earlier that in relation to the WorkChoices legislation and the other stuff you have spoken about that it has to be seen as a whole.

Ms TELFER: Yes.

CHAIR: That poses some difficulties for our enquiry, obviously, in that we have very specific terms of reference.

Ms TELFER: Yes.

CHAIR: But you are saying that you would see the recent legislation in relation to Comcare as being connected in a broader sense to the WorkChoices legislation.

Ms TELFER: I think there is a broader policy question. I think there is a broad policy intent behind some of these provisions. It is dressed up as harmonisation and making it easier for business. We would see it as part of a whole policy agenda about deregulation, self-regulation and voluntary compliance, and the structures not being in place for either the employers or for workers, yes.

CHAIR: Do you see the shift to the Commonwealth's control over so many aspects of industry and the work force as being to achieve the policy ends you have just spoken of, or do you just see it as a sort of centralising, of government taking more and more from the States' agenda?

Ms TELFER: I think I would be a bit unwise to speculate about that, but there has been some discussion about co-operative federalism, which is the kind of system that we would prefer to have in place and that Minister Della Bosca has talked about, rather than competitive federalism, which seems to be where it is at the moment.

The Hon. IAN WEST: I am mindful of the time. I thought that if I start asking questions, I will not know where to stop. I will follow up the question by the Chair by perhaps posing it in a different way. I am led to believe that there is some debate out there in the world of workers compensation and occupational health and safety as to the definitions of harmonisation at the one level in the Federal arena and at the State arena the concept of harmonisation being seen as attempting the lowest common denominator. In one breath, one man's harmonisation is another man's lowest common denominator. Is that somewhere near the mark?

Ms TELFER: I think it would be fair to characterise some of the debate as that. I cannot imagine anyone would go out and say we are harmonising and, by the way, we are cutting standards. I cannot imagine that anyone in their right mind would go out and say that. The reason that we have been very concerned about the operation of the Australian Safety and Compensation Council is that New South Wales does not wish to engage in any kind of forum which is going to be diminishing safety standards or benefits for injured workers down to a lower level.

It is not a race to the bottom, and it should not be that. Harmonisation should mean ideally for business that you cut out unnecessary forms or that you do not have a different form in Victoria to what you have in New South Wales, or the kinds of things that an inspector takes into account in Victoria and Queensland or in New South Wales are the same as what you would do in South Australia. It is not necessarily about saying that we will have no definition or a definition of worker or, say, injured workers that is different or lower, or that we will cut out some of the safety standards for occupational health and safety.

Some of the work that we have been doing in harmonisation at the State level has been working with our Victorian colleagues to make sure that the back office procedures are the same. When someone goes out to an employer, for example at Wodonga or Albury, the same kinds of messages are given to employers along the border. We are starting that work in Queensland as well.

CHAIR: Taking Ian's hint about the time, we only gave you three questions, really. The third one's answer may be implicit in some of what you have already said, but some of the participants in our inquiry have suggested the possibility that employers may use WorkChoices as a basis for saying they will not engage with WorkCover systems. Is there any evidence that that is the case?

Ms TELFER: It is very early at this time to have any firm data about it. Again, it is anecdotal, but I think some of the cases that our inspectors are coming across and that we are getting into our call centre would lead you to think that some employers are engaging less in the proper

systems and around the form and structure of OHS and injury management. We think the longer-term impact of WorkChoices on OHS and injury management, putting aside what is happening at the Comcare level, will be about changing the cultural norms, about consultation, about inclusiveness, and getting a shared understanding about what should be happening for health and safety and injury management. We know that when there is proper consultation and there is a shared understanding in the workplace and there is a private exchange of information, you get good health and safety outcomes. You actually get people back to work.

We think that some of what WorkChoices will do is change some of those cultural norms so that people do not think it is the right thing—like, you do not have to engage with people, you do not have to consult with unions, you do not have to consult with your employees in the workplace. We think in the longer term that is where it will go. We are not sure how soon that is going to happen but, as we get more phone calls about injured workers, this huge increase that we have had leads us to think that that is already starting to happen in the workplace.

CHAIR: We did have a fourth question. Are there any other matters that you wish to bring to the attention of the Committee?

Ms TELFER: No. I think I have actually canvassed a pretty broad range of questions and information. I thank the Committee for allowing me to do that. My colleagues from the Office of Industrial Relations [OIR] will be talking about some other broader matters and I will not traverse their ground. I thank the Committee for asking me back. I have taken a couple of questions on notice and I will make sure that I get those answers to you.

CHAIR: Okay. Katherine or Merrin will contact you about the details of those.

Ms TELFER: All right. Thank you very much.

(The witness withdrew)

PATRICIA MANSER, Deputy Director General, Department of Commerce, 2-24 Rawson Place, Sydney, on former oath, and

REBEKAH STEVENS, Acting Assistant Director General, Office of Industrial Relations, Department of Commerce, 2-24 Rawson Place, Sydney, sworn and examined:

CHAIR: Ms Manser, do you wish to make an opening statement or comment on the questions the Committee has forwarded to you?

Ms MANSER: I would like to make an opening statement, which will pick up the issues in your first question. In reflecting on the work of the Committee and the public process we have seen related to WorkChoices, some things are becoming clearer on a daily basis. My guess is they point inevitably in the same direction, which is that WorkChoices is poor public policy. Sometimes people seem to miss the point about WorkChoices; it has taken fairness off the table. It has made unfair behaviour legal. We have seen this in Cowra and the Spotlight example. We always knew some forms of behaviour were unfair, but we had remedies for them before WorkChoices, in either the State or Federal systems; now we do not.

In addition, the balance is skewed towards employers. Previous systems were crafted with checks and balances that made them fair. The medium-term impact of WorkChoices perhaps troubles me most of all, because it will be devastating. We now get people on our telephones, in the newspapers and you would have heard their problems, describing the situations in which they are offered an Australian Workplace Agreement [AWA] and they have to give up a good number of important conditions to keep their job. We have had independent research that backs up the fact that this is happening. What happens when that very first agreement they sign runs out? The worker will have nothing left to trade away. For example, we know that many people have traded away conditions about leave, the flexibility with which they work and that usually addresses the family requirements, penalty rates, public holidays and so on.

All of that may be gone, or some of that may be gone. Apart from the inequity and indignity at the end of the agreement and trying to negotiate another one—and remember it might last for five years and we might see no pay rise in that time—the possibility of wages going down even further needs to be contemplated. That is deeply disturbing. Of course it will be fairly difficult to get hold of information that either confirms or denies or tells us that there is a mixture of those sorts of AWAs. My guess is that there will be a mixture. However, we will not know much about it.

It is interesting that the disquiet about WorkChoices is spreading. Lately a couple of decisions in courts have had judges say very interesting things. Just this week Justice North in the Federal Court was talking about the case in which a company called Caelli Constructions was being prosecuted for paying 50 workers for stoppages in 2003. The Building Industry Commission was asking for penalties against the company, because it paid its workers for that stoppage, which they regarded as reasonable. Justice North said that the court must take care that the fixing of penalties does not bring the law into disrepute. He said that if penalties are imposed on employers who pay workers for stoppages, which reasonable people would see as understandable and justifiable in the circumstances, then law itself would be seen to be out of step with reasonable community expectations. Instead of prosecutions enhancing law-abiding behaviour, they would generate disrespect for the law.

That is a very strong statement from the Federal Court judge who, you would recall, is probably relatively new to industrial issues. Previously they would not have gone before that judge. In August, the Senior Deputy President of the Australian Industrial Relations Commission, Jan Marsh, was hearing a case in which an employer had tried to get his work force onto AWAs and had failed with that particular group of people. He tried to terminate the collective agreement on which all of them had previously been covered. This would have meant that the people concerned would have dropped back to the Fair Pay Commission standard—so their pay, hours and conditions would have been determined according to the Fair Pay Commission standard, well below those provided for in the agreement.

Senior Deputy President Marsh determined that such action does not accord with the public interest as it relates to the maintenance of proper industrial standards. She declined to terminate the agreement, because the workers would have fallen back so far. Both of those cases, which are being heard by people for whom we have considerable regarded in terms of expertise, knowledge and understanding of the law, demonstrate the level of concern being expressed. We are now getting cases which reflect the general community concern.

Another issue which is worth drawing attention to came up at the conference we ran in August. It was the second Fair Go Conference. We had a prominent employer representative from a large steel company who said she was not concerned about herself or her company because it was an ethical employer, but she was concerned about her children. Her remarks were picked up and endorsed by Professor Ron McCallum, the Dean of Law at the University of Sydney, who said he had the same fears.

The package of changes to workplace arrangements that we are seeing fit in with some of what my colleague from WorkCover was saying. You have a package relief that you have to look at, a considerable package. It includes the building construction industry legislation, the welfare to work legislation, WorkChoices legislation, the independent contractors Act, which is still in the bill stage, and they represent a package of changes to workplace arrangements such as we have not seen ever before, because we have had a very consistent approach to industrial relations and workers compensation. They have been about the kinds of things that Ms Telfer spoke about concerning consultation, agreements between people, how they would behave, and what was proper in the circumstances in workplaces. All of those are now basically on their heads.

We have seen serious negative effects and that will probably go on. That is all I wanted to say to pick up the kinds of things you have been hearing from unions, workers, parents; it is very comprehensive.

CHAIR: And from some employers as well.

Ms MANSER: Yes, and community legal centres, from everyone who is involved.

CHAIR: Ms Stevens, do you want to add anything?

Ms STEVENS: No, thank you.

CHAIR: You have given a general statement in relation to the evidence that the Committee has had, which you obviously have taken account of. Are there any specific issues that have been raised in the evidence that you want to comment on?

Ms STEVENS: No, we have prepared ourselves for questions today, and are happy to answer any. I suppose the only other comment was the number of times people used the word "fear" when they were speaking. We are getting that on our phone service as well. People are afraid to raise issues and afraid not have a job, of course. In the current climate it is very hard to blame them. In our discussions with our interstate colleagues that has come across very strongly as to what other jurisdictions are getting from the constituents and employers and employees.

CHAIR: You mean the other State and Territories?

Ms STEVENS: Yes.

CHAIR: The pattern in New South Wales is pretty common across the country?

Ms STEVENS: Yes.

CHAIR: Can you run through the measures that the New South Wales Government has announced in recent times in response to the WorkChoices legislation? We have picked up on some but may have missed others. We have picked up young people, injured workers, alternative low-cost dispute resolution.

Ms MANSER: Concerning young people, you would recall that earlier this year the Premier announced the creation of new legislation to protect the working conditions of young people under WorkChoices, specifically because of their vulnerability. According to the Australian Bureau of Statistics, in New South Wales about 150,000 young workers aged 12 to 17 are formally employed. In other words, they are in proper jobs, we are not talking about going next door and minding the baby. We are talking about occupations. We commissioned a survey in 2005 called Young People in Work, which found that young people are particularly vulnerable in the workplace. The WorkChoices Act increases that vulnerability because of its reliance on people having skills and negotiations and the capacity to front an employer, if you like, about not only getting a job and had you achieve that but also keeping the job.

The WorkChoices legislation allows for the removal of penalty and overtime rates and increases the irregularity of hours. As you would be aware under WorkChoices you can annualise hours and have people doing a variety of different hours of work during the year. They can be annualised. Most young people are working either around school or study, or on weekends. The loss of penalty rates makes a huge difference to the kinds of ways they can plan their lives. Many young people are paying their own way through university and may need to work longer hours to make the same amount of money that they were earning pre-WorkChoices.

It is interesting to note that the no-disadvantage test being removed from the workplace relations Act is a particularly significant element in the disadvantaging of young people, because at least in the past there was a test. The employment advocate was to use the test to make sure that young people, or any worker for that matter, were not disadvantaged through the contract that they had received. Interestingly, the experience in New Zealand under the contract Act was very parallel—no, nothing is parallel to this thing. It is an Act that does a similar task to the Australian one, which is WorkChoices. It deregulates a lot of employment relationships.

The median income for young people aged 15 to 25 fell from $14,700 in 1986 to $8,100 in 1996. Given that they would not have gone backwards in terms of prices or any of the sorts of things you need income for, that must have been quite a blow. We believe it is possible that WorkChoices will have a similar effect here. As a consequence the Government is currently drafting stand-alone legislation to address these concerns. We will define a person who is under the age of 18 years to be a child. We will require an employer of an employee under the age of 18 years to provide terms and conditions at least equivalent to those applying under the relevant New South Wales award and legislation. In other words, we will be maintaining the status quo for young people with regard to wages and conditions. We will allow people to apply those stipulations flexibly—in other words, it might be an Australian Workplace Agreement [AWA], a collective agreement or something else—provided that the arrangements do not constitute a disadvantage to the young person concerned. We will use our industrial inspectors to enforce the requirements and enable the Industrial Relations Commission to make a determination as to whether or not a child is disadvantaged if there is any dispute.

I think it is important to note that the legislation will not impose any additional regulatory burden on employers and should not act as a disincentive to the employment of young people. There is one protection for young people in the whole of this volume and that is that a parent or a guardian can or should sign off on an AWA for a young person. That does not actually mean that the AWA has to be fair or that has to specify any particular content, and it is quite conceivable that young people will be excluded. We already know that they are, of course. We have case after case, particularly at this time of the year when people leave school and go out working in holiday jobs. They are frequently told that they do not have to be paid for something that is trial employment, as the unscrupulous employer will put it. We get lots of calls about those sorts of things and we run media campaigns that this time of the year to alert people to those sorts of things. So, there are people who are prepared to exploit young workers. The legislation is in the drafting at the moment and we are looking to have it as an exposure bill for some time in order to get comment from people about the provisions, to see what they think. Shall I move on to injured workers?

CHAIR: Yes, do.

Ms MANSER: The plan for injured workers is fairly simple. There are two provisions in the New South Wales Industrial Relations Act of 1996 that relate to injured workers. One is that it makes

it an offence to dismiss someone who is injured with a compensable injury for six months after the injury, or, if the award says something else, for that period. In addition, employees dismissed in that way have a right on reinstatement and they can ask the commission to reinstate them if their employer will not do so. Those laws have provided important protections for workers. There was some confusion when the WorkChoices legislation was passed because it was said it basically obliterated the whole of Industrial Relations Act. There was some confusion about whether those provisions remained because occupational health and safety provisions are specifically exempt from the taking over of the jurisdiction.

So the Minister wrote to Mr Andrews to try to clarify that and got back an assurance that they were not obliterated. On the other hand, we decided there would be confusion caused for business people if they are to think that the Industrial Relations Act no longer applies except for these bits, that that is a bit more complicated than it needs to be. We are planning to move those provisions into the workers compensation legislation and have them dealt with there. They will remain exactly the same and will simply move across into workplace safety legislation and go out of our legislation. With regard to the additional powers for the Industrial Relations Commission, the Government announced that it would strengthen the powers of the commission. One of the ways in which it would do that was for the commission to take over some of the roles that had been stripped from the Australian Industrial Relations Commission [AIRC]. We would give New South Wales' commissioners the capacity to sit with their colleagues in other States and Territories. They could jointly sit to hear cases we consider to be of national importance—such as State wage cases or test cases.

Given WorkChoices, there is no mechanism now in the Federal legislation for test cases, which were always an important instrument in industrial relations because they came out of general applications about specific things. One of the most recent in New South Wales was the secure employment test case, which has provided greater security for casual workers. They do not necessarily come out of any kind of dispute, but they are about a general position that needs to be looked at. It may be getting out of date or it may need wider application, or one of those sorts of issues. Pay equity, of course, it is perhaps one of the classic successes of the test case scenario, in terms of the commission. The ability to have joint sittings will make sure that we keep some commentary between states about how minimum wages might move and shift.

CHAIR: Does that mean each State has to vary its existing legislation?

Ms MANSER: Some States do and others do not.

CHAIR: What does New South Wales have to do?

Ms MANSER: We do not have to do anything but we are going to include a provision to make it absolutely clear that it is permitted. We have a provision at the moment that allows the commission to sit with Federal commissioners, but not with other States. But there is a further provision that makes it rather vague and we thought we would clarify it and make it abundantly clear that the commission judges can sit with their colleagues from other States. In other States, such as Western Australia, there will be need for legislation. That is something we will do to enable those sorts of actions to occur. The other thing we are going to do is give the Industrial Relations Commission the capacity to use its expertise as a settler of disputes to provide alternative dispute resolution services to employees and employers who are covered by WorkChoices. This means that people who have found themselves pulled into the Federal system will continue to be able to use the expertise of the commission for dispute resolution. The Government has already introduced section 146A of the Industrial Relations Act, which is the section that allows common-law agreements between the parties to agree to use the services of the commission in the resolution of disputes, but we will also give them a facility to carry out what is in effect a mediation process as opposed to an arbitration process.

CHAIR: That covers the New South Wales Government's steps so far.

Ms MANSER: There is another matter that the Government intends to move on, which is to increase the small claims application limit. At the moment we have a small claims jurisdiction, as you know, which is less formal than court hearings. There is no legal representation for people before the courts and no binding rules of evidence. It does not have the fairly straightened processes of the court,

and makes it very accessible to workers as an avenue for getting back money. Say, for example, we get a complaint from someone who thinks he or she has been underpaid. If we think they will manage it, we will encourage them to use the Small Claims Tribunal to do that. If they need help with the process, we can give them that help. In other instances where we think they will not be able to cope, we will actually take up the issue. That could be quite useful avenue for people who begin to suffer some perhaps underpayment of their wages or allowances or whatever. The small claims limit will increase from $10,000 to $20, 000, which is probably a better reflection of the way wages have increased over the last decade.

CHAIR: That is in effect bringing a fair trading principle into the relationship between employer and employee?

Ms MANSER: Yes. It is the principle that applies generally across all business dealings, if you like. It only works, of course, with some people, but it does work for them if they pursue it. We will give them a lot of help with that. Those are the sorts of strategies that the Government is proposing as we speak. Needless to say, we spend a lot of time looking for ways to build on the strategies that we have already thought of. We keep reviewing and reviewing what is happening, and the information that is coming in to us all the time. We always did, but we now do it with a great deal more urgency perhaps.

CHAIR: Shall we move on to the Fair Pay Commission?

Ms MANSER: Yes. The Government provided a submission to the Fair Pay Commission because it now has, of course, the wage-fixing principles, and the wage-fixing system in Australia is now down to the Fair Pay Commission. It has taken that power away from the AIRC. We made a submission to the Fair Pay Commission indicating that we thought that the position of the New South Wales Industrial Relations Commission, that $20 should be added to the minimum wage, was a fair and reasonable proposition and that that should be carried over copper if you like, into the Fair Pay Commissioner's considerations. One of issues for the Fair Pay Commissioner, I guess, will be that people covered by Federal awards will be 18 months behind everyone else by the time a decision comes from the commission. We are assured today that it is on track for spring so, presumably, are quite soon we will have a decision from the Fair Pay Commission. I do not know whether it will accept the Government's advice on the $20 increase.

The Hon. IAN WEST: Is that spring 2006?

Ms MANSER: Spring, which began a week or two ago. Yes, this spring I guess.

Ms STEVENS: It does say spring 2006.

CHAIR: There is no provision for retrospectivity I imagine?

Ms MANSER: We do not know. They will have to decide that. The thing to remember about the Fair Pay Commission is the constraints under which it will operate. It has a very clear set of parameters all of which relate to the state of the economy and none of which relate to fairness or relativities, or some of the other things that have been important to industrial commissions and tribunals across the country at various times. We have yet to see how the commission will make its decision, and the level of transparency that will be associated with that. I think one of the sad losses in the process has been transparency. They have conducted some consultation strategies across Australia, but there seems not to be huge confidence in quite that consisted of, in some places at least, where the commissioners did not turn up to the consultations.

The Hon. IAN WEST: Sorry? I did not hear that.

Ms MANSER: I was so that the consultation processes that the Fair Pay Commission has used in its coming to grips with the notion of having a determination have been criticised, in the media at least, for at times been fairly cosmetic, because none of the commissioners were there at some of those events.

CHAIR: Then who consulted with whom?

Ms MANSER: Apparently people were asked to say that they would like to go, their backgrounds were checked and they were then invited to turn up. In at least one instance the process was conducted by a public relations company. There was a series of questions and people were divided into small groups to answer the questions. Somehow it was all pulled together out of that. I do not think that has been a general process; I do not know.

CHAIR: None of this was done in public?

Ms MANSER: Well, not in public in the sense that you had to say you wanted to go, then you had to be checked out, and then you were invited to go. But they did not open the doors and let everyone else in.

The Hon. IAN WEST: May I clarify one point? The New South Wales Government was there, not of right but by invitation?

Ms MANSER: We did not attend any of those consultations. We made a submission on behalf of the Government, which was in response to a general newspaper advertisement inviting submissions. We were not specifically invited to submit. I guess the other complication for the Fair Pay Commission is that it has to take into account the report of the Award Review Task Force, whose job it has been to try to simplify award and pay classification scales. It has released one report, which has some of its work in it, and through that report we now seem to have 105,000 Australian pay and classification scales. It has been to every award—and there are about 4,000 industrial awards nationally—pulled out all the pay classification material from those awards, and the answer is there are 105,000 pay and classification scales.

Quite how they then proceed from there to some sort of simplification, I am not certain. I am not sure they are either. It took a long time for that report to be made public, well after it was due, and there is a second one due to tell us how they are going to simplify awards. They have already said they do not think they will be able to get rid of State and Territory differences across awards in the time they have been allowed. Our view would be that State and Territory differences are quite meaningful because they can relate to the cost of living in Perth as opposed to the cost of living in Bathurst versus the cost of living in Sydney or Brisbane. Some of those differences are meaningful and should not just be obliterated by a generalised concept.

The Hon. IAN WEST: And have been the subject of industrial tribunals for the past 150 years.

Ms MANSER: Yes, I think it is very brave—or is the word courageous—to take two lots of 100 years worth of work and say we are not going to do it that way any more. I was talking to a lawyer from New Zealand yesterday. She was shocked at the degree to which the institutions of industrial relations have been undermined at a time when you would think transitional processes might need the expertise of people who already know what it is they are dealing with. Yes, I think courageous is the word.

CHAIR: Can you explain to us, because we are just not sure, when the Fair Pay Commission decision is announced hopefully early in spring this year, how binding is it? What is its status in terms of obligations on employers? Do they had to comply with it wherever they are?

Ms STEVENS: Yes. It is difficult to know what the decision will consist of. We have made submissions about that but there are a variety of approaches they may take, but their job is to adjust pay and classification scales, and the minimum wage, which is the $12.75 an hour, which is legislated in the Act, and then the pay and classification scales and the minimum wage form part of the fair pay and conditions standard.

CHAIR: So, if they come down with a decision that says the minimum wage will go up to X, anyone who is following it or anyone who is paying any wages—

Ms STEVENS: If they are currently covered by a pay and classification scale or the fair pay and conditions standard, yes, that would be the case.

CHAIR: Are there any important areas outside those rules or that coverage?

Ms STEVENS: I do not think so, no.

The Hon. IAN WEST: Are they talking about the very subtle difference between a minimum hourly rate and a minimum weekly rate?

Ms STEVENS: Sorry, just back to the last one. Those that have gone over on a preserved State agreement are exempt from any adjustment there. To work out the hourly rate they have taken the minimum weekly wage and turned it into an hourly rate, so then the minimum weekly rate becomes 38 hours times $12.75. Of course, people may work longer than 38 hours a week and be paid only for the 38 hours a week, on the basis that it can be averaged over a 12-month period, which can cause all sorts of difficulties for people who may need to make childcare arrangements and things like that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is not much use to do the work now and get paid six months later, is it? Would that be happening in the average process? You would get the same wage when you did the extra hours as when you did not do the extra hours?

Ms STEVENS: That is correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you could have to work very long hours over the Christmas rush, for example, if you are in retail and then get plenty of time off when you did not need it when the kids are at school in May?

Ms STEVENS: That is correct, yes. And, on a week-to-week basis, when you have an agreement that has taken away any obligation on the employer to give you advanced notice, for example, of your roster and you are getting the same weekly wage each week and suddenly you are asked to work 60 hours this week and you have to make childcare arrangements and you have the same amount of money as you would have every other week, that makes it very difficult.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But, if you do not have job security, could you not work the extra hours now on the assumption of getting it back in kind later and then lose the in kind?

Ms STEVENS: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is there something to stop that? Presumably, unless you kept restrict records you would not know or would not be able to quantify if there were some come back to a judicial body, which seems to be in some doubt.

Ms STEVENS: Absolutely.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But let us assume there is, you would not have the data, would you, most people would not have the data?

Ms STEVENS: Under the record-keeping requirement under the Workplace Relations Act as amended**,** employers are required to keep starting and finishing times and various other things. But there are exclusions to that. If you earn, I think it is, more than $55,000 a year, you do not have to keep those types of records, for example.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You mean the person who is employing someone who gets more than $55,000 a year does not have to keep records?

Ms STEVENS: No, the employee. So, if the employee earns $55,000 a year or more, the employer does not have to keep records for that employee about starting and finishing times.

CHAIR: So, if an employee leaves a job, voluntarily or otherwise, someone then has to do a reckoning of money owed by a notional annualising? That is not going to be very easy, is it?

Ms STEVENS: No, the Office of Workplace Services has said they will pursue those types of matters but, as you said, it would not be a very easy thing to do and it would depend on an accurate record being kept of the additional hours worked.

CHAIR: It could also lead to legal action in some avenues, but the number of avenues is reduced?

Ms STEVENS: It is particularly difficult for employers at the moment, who are having to change those records that they keep. The Federal Minister said there would be no prosecutions for breaches of the record-keeping requirement in the first six months of the operation of WorkChoices. That six-month finishes next week so one would think that that means they will begin to prosecute employers for not keeping the correct records after that time. It is a difficult time for employers to invest money in changing their record-keeping or payroll systems to keep that additional information.

The Hon. IAN WEST: Or they will just make you a 37-hour part timer, with no part-time loading.

The Hon. KAYEE GRIFFIN: With the awards being pared back from the paring back that happened a few years ago, the Fair Pay Commission's decision, when it comes down, the 38 hours a week averaged over 12 months, how does this all fit together? I am not sure of the order in which it comes, whether it is award, AWA and whatever else fits it. How would it all fit together in terms of the document and then, I suppose, the accessibility of those documents to employees if they do not have rights of having a third party support them in any disputes or anything else?

Ms STEVENS: Of course, they no longer have an obligation to have that instrument displayed in the workplace either. The simple answer is it is not all in one document. Pay and classification scales have been taken out of the awards. So, those matters that remain allowable award matters are adjusted by the Australian Industrial Relations Commission. The pay and classification scales are adjusted by the Fair Pay Commission. Employers need to work out which one of the 105,000 pay and classification scales applies to the employee, if any, as well as having to work out which award would apply to the employee as well or, if not an award, a national agreement preserving a State award or a preserved State agreement.

The Hon. KAYEE GRIFFIN: At the end, it then lapses?

Ms STEVENS: Yes.

The Hon. KAYEE GRIFFIN: There is a certain period for them, so all the people who at the moment are protected in the interim measure, presumably if it is corporation, depending on the outcome of the High Court decision, and so on, there will be another round of those sorts of things happening and a determination about where people sit who have gone from a State award?

Ms STEVENS: That is one of the purposes of the second report of the Award Review Task Force, that they will be looking at the award simplification process. I will make recommendations in that report about how the rationalisation process will work. Then, the Australian Industrial Relations Commission has the task of going through that process and what happened to those workers on the preserved instrument at the end of the transitional period. So, we do not know the answer to that yet.

CHAIR: Can you tell us where the independent contractors bill is up to? We seem to have been asking questions about it for months, but it is still a bill and we still do not seem to know much more.

Ms MANSER: It is still a bill. It is into the Senate as we speak—yesterday. The second reading speech and the third reading speech have gone through the House of Representatives and it is in the Senate now. We anticipate some amendments might be suggested in the Senate because the Senate committee that looked at it when it was in committee—

CHAIR: Do you mean government amendments?

Ms MANSER: Yes. There may also be others. The Democrats have suggested they might want to amend the bill. As we speak it is basically on the cusp of going through. There were no amendments in the House of Representatives so I assume we will see those in the Senate. The second reading speech that the Minister gave was significant, I think, in that it suggested that in the State provisions—whatever they are in the individual State, and some States do not have them at all but others do—for people like outworkers and, in New South Wales at least, for owner drivers of trucks, that there would be some provisions to assist them and there was no intention to obliterate State legislation for outworkers.

The provision for owner drivers is a little less generous. All it says is they will leave them in place for the time being but they anticipate a review during 2007. Minister Andrews has indicated a couple of times quite publicly that he has no intention of replicating them across Australia. So, the strategy of deeming certain people to be employees because he thought their bargaining power was diminished in the relationship they had is gone. It will be interesting to see how they cope with that in various industries, including transport and clothing.

The bill itself is a very commercially oriented bill, if you like. It is very much about the capacity of people to decide to be independent contractors. The New South Wales Government has no problem with that if it is a genuine arrangement and people choose it. But, as I think we all know, there have been occasions when people, including outworkers, have been told they are contractors, and nothing could be further from the truth of their relationship with the person supplying the work. We see it as a missed opportunity to address some of the issues that have appeared in that area of law. The common-law test of what is and what is not a contract is the one they are planning to apply, and it is a missed opportunity to rectify some of the problems associated with the common-law test.

We think too that the provisions that are supposed to protect people from sham arrangements are extraordinary in the sense that if you suspect you are in a sham arrangement and that the work you are doing should be called employment and you are an employee, you have to be able to prove, first of all, that it is employment—and lawyers constantly fight over what that means—and you also have to know the mind of the employer or the person who offered you the contract at the time they offered you the contract, because if they can show that they genuinely believed that this was a contracting arrangement, then you are in a contracting arrangement. So all the onus is on the person who might be an employee and who might be a contractor to show that the other person had good faith when they entered into the contract, which is an extraordinary reversal of the usual sorts of processes.

CHAIR: Do they go to the ordinary courts?

Ms MANSER: Yes, they will. There will be no industrial tribunal that will look at it because it will be regarded as a commercial contract.

CHAIR: Does the New South Wales Government have any plans, such as the ones we have already talked about, about the WorkChoices legislation, given the existing legislation relating to owner-drivers?

Ms MANSER: The difficulty is that both the employment and the schedule arrangements in the New South Wales Industrial Relations Act are overridden. So any kind of simple strategy is not particularly available to us. What it may come down to is what we did, in effect, with chapter 6 of the Industrial Relations Act and also schedule 1, which deemed certain people to be employees. We may have used particular strategies for particular industries to try to ameliorate some of the effects. We have not looked a lot at that yet because, as I say, we have not seen the Act as it is still a bill. We are in the same situation that you are in. But we do not think there is anything there that gives a lot of comfort in terms of those people who are in strange arrangements that have been categorised in New South Wales as employment. Really they are dependent contractors. They are people who have bought a truck and run a transport business for themselves but do all their work for Coles, Woolworth or Franklins, or whoever their distributor is. That industry is particularly difficult to manage from the perspective of an individual contractor. It is difficult to know quite what the Federal Government has in mind when it talks about that area. I suppose the only comfort is they do seem to have preserved the provisions of the State Act relating to outworkers, at this point in time anyway.

CHAIR: Do you know whether the provisions of the legislation, if and when passed, will come into effect immediately or they will be staged?

Ms MANSER: No, we do not. We need to see the wording of the Act. Normally it would be either on proclamation or at some proposed date. It is going to have a big impact in the industries that have previously been protected by the schedule in the New South Wales Act.

CHAIR: The next question is a broad one. We keep grappling in our inquiry with the issue of the interaction between the States and Federal systems as a result of the WorkChoices legislation. Have there been any developments in that area since you last spoke to us and our inquiry has been under way?

Ms MANSER: I am not sure about developments. I suppose we are finding more and more instances where there remains confusion. One of the purposes, we were told, of the WorkChoices amendments was to clarify and simplify and to have a unitary system. We all knew it would never provide a unitary system of and by itself. That may come, I suppose, but certainly at this point in time it has not been achieved. We still have pieces of the New South Wales Industrial Relations Act, some of which we have just spoken about, which will continue to apply. We have an annual holidays Act which will continue to apply. We have a long service Act which will continue to apply. We have occupational health and safety and workers compensation legislation which will continue to apply. So the situation for a businessperson, it seems to me, is certainly no better than it was before when they would choose which system to be governed by. Obviously the large employers—not always but frequently—took themselves to Federal arrangements and small employers tended to stay with the State system. Some larger ones did too because they preferred it.

Where that choice cut in was that, in effect, it simplified things. You used one Act and you worked through that. You worked through the institutions, the processes and the rules in that Act. Now people are going to have to work across a plethora of different arrangements. One of the interesting observations about the Federal system is that there are now no fewer than 13 Federal bureaucracies associated with the industrial relations. The list is deeply impressive. You have got the Department of Employment and Workplace Relations; the Office of Workplace Services, which is the one we keep seeing in the press, who are basically inspectors; the Office of the Employment Advocate, whose concentration is on workplace agreements; the Australian Industrial Relations Commission; the Award Review Task Force; and the Australian Fair Pay Commission.

Also, you have the alternative dispute resolution providers, whoever they will be; the Alternative Dispute Resolution Assistance Scheme; the Unlawful Termination Assistance Scheme; the General Employee Entitlements Redundancy Scheme; the WorkChoices Employer Assistance Program; and the Australian Building and Construction Industry, which of course only applies if you are in that industry or you supply to it. In the Independent Contractors Bill there is another one: the Service Contract Review Scheme, which I think is a scheme in relation to the contracts that people feel are a sham. Then, of course, you have the courts. Just in dealing with WorkChoices a businessperson has to figure out 13 different organisations before they know who to talk to about their particular concern. That does not seem to me to represent any kind of simplification. There is also the cost. It is half a billion dollars over the next four years. That is extraordinary.

CHAIR: To be spent on those bureaucracies?

Ms MANSER: To be spent on those bureaucracies.

The Hon. IAN WEST: That is against individuals, who instantly understand all of this and will negotiate on their own.

Ms MANSER: Sometimes I wonder whether that was the intention: that it would be so confusing that everyone would say, "I will do what I was always going to do or what I have always done." In that way we would have a totally freed up labour market, which I understand the Prime Minister to be interested in having.

CHAIR: In terms of the Act, the regulations and the bureaucracies, the market is not freed up or deregulated. It is intensely regulated.

Ms MANSER: Yes, some areas are intensely regulated. Then when you look at the pattern of awards or agreements becoming NAPSAs [notional agreement preserving a State awards] or preserved and then those provisions ceasing, you wind up with an Australian Workplace Agreement or some collective form of agreement if you can get it or your employer wants it, where that applies. So, in fact, you do end up over a period of years with a very deregulated system, which will be very hard for anyone to know what is actually occurring inside it.

CHAIR: Over what period will that occur?

Ms MANSER: The transitional provisions go to five years in some cases and three in others. At any point in time, of course, if your employer wants to change those transitional provisions they can. If you do not want them to, it is too bad. You do not have any say about that. It may happen more quickly than it is predicated in the Act. But even within that time frame, in industrial relations terms those are short periods of time and they will have a major impact in the workplace by freeing up for employers to be able to pretty well do whatever they want.

The Hon. IAN WEST: That is not deregulation. That may be the end result of reregulation in a different format. But of itself, the outcome is not deregulation.

Ms MANSER: The outcome of this is not deregulatory, that is for sure. It is intensely regulatory. But once it starts to roll and you get people off awards, you get out of collective arrangements of any kind and you get more individual arrangements, you start to see the impact of it in terms of removing previous protections that people had, like awards. In that way you get rid of the regulation you did not like, at least.

CHAIR: We have a couple of questions and I do not know whether you will need to respond in writing to them. We want to know the types of issues people have contacted you about WorkChoices and we are particularly interested in whether there are patterns that relate to particular groups in the community. The second question is how the Office of Industrial Relations or other bodies have responded to the issues that have been raised through hotlines and various other means.

Ms MANSER: We have had 105,000 phone calls within the last year relating to all employment issues in general terms. It is impossible to say how many of those are specifically WorkChoice-related. That should be six months, not one year, that we have had 105,000 phone calls. We are fairly exposed to the kinds of things that are upsetting people. The sorts of patterns and concerns that are emerging are whether people are covered by WorkChoices or not, and that comes from both employees and employers. The level of confusion is pretty major. There are fears about security of employment, which I know the Committee picked up on when you were talking to people. There are concerns about the AWA [Australian Workplace Agreement] offers, the contents and comparisons, which are provoked by someone wanting to put their staff on AWAs. There are things like unpaid periods of trial work to get employment. Some businesses are trying to get work out of people without engaging them. There is unpaid compulsory training, which I find particularly fascinating, where, for example, a person is told they have to do three days' training to work in a call centre but they will not be paid. Some people even had to pay for the cost of the training. Not only do they not get paid at the time they are not at work, they have to pay to do the training.

People are concerned about extended probation periods, which put people in great insecurity for longer than is usual. We have seen a bit of no sick leave or annual leave entitlements. Another concern is the lack of ability to negotiate. A lot of people ring up because they feel very powerless when they are put in a position of accepting or not accepting an AWA. People are being threatened with the sack if they do not sign an AWA—that is, of course, people who already have a job. Some people do not get to first base; they do not get the job if they will not sign the AWA. There are problems even if people simply want to ask questions about it. We have had people who said they wanted to take the AWA away and think about—for which there is provision in WorkChoices, to be fair—and they have been told they are not the right sort of the person for the job, they should sign it now or do not bother.

We have had employers who ring in asking when they can cut their staff and when they can cut their staff's wages. We have had employers who refused to pay award conditions and have found

themselves in significant confusion about the transitional provisions, whether or not they are meant to pay according to awards. We have had inquiries about how to terminate employment. Employers are not giving notice, even when they were legitimately terminating someone's employment. Some were not giving reasons for terminating people. We had calls about employers refusing to pay redundancy or contract payments on termination, such as pro rata long service leave or annual leave. There is a lot of confusion about maternity leave, whether they have to comply or not with maternity leave requests. They do, as it happens. Employees are reporting difficulty in getting information from those 13 agencies and often ringing us back because they have used us before.

What are we doing about all of this? We continue to provide our phone and workplace information services which consist of a web site which, in the last year, had 2.01 million visits—a visit of course is longer than a hit. We do not count hits. We count visits because we figure they are purposeful. That is a 30 per cent increase on what we normally get. The web site offers a number of different services, all of which have experienced since WorkChoices. We have State awards on the web site. We also have check your pay and the comparison calculator. Those are small programs which allow you to figure out how much you should be getting paid. If it is a State award that is quite simple. The comparison calculator is designed to help people make decisions about AWAs. So for example, I can type in what I am paid currently under a State award and compare that with what is being offered on the AWA and make a decision about whether I am being paid properly for the job.

Check your pay is now used in Western Australia and Queensland to assist people to make decisions about that. We have a paid rates update service which allows people to get an email when things change in relation to State awards. We have an award download system so people can actually download the provision in our Act that requires people to show the award in their workplace. It is assisted by the fact that you can now download the whole thing off the net if you want to. We run seminars. We have run about 96 of those across the country—50-odd in the metropolitan area and 40-odd in the country—to try to assist people to understand what applies to them.

My personal favourite is the fact that we have strong partnerships with industry and community groups, business enterprise centres in the country and community organisations and that has added about 85 presentations a year to people usually from a particular business sector. We might work with accountants. We have a program of seminars with the State Chamber of Commerce, for example, which is called "Three People You Do not Want to Meet". It has an IRA and sector, a WorkCover inspector and a person from the Australian Taxation Office.

CHAIR: And you call for volunteers to attend?

Ms MANSER: We have a particular assistant director-general who actually enjoys his role as one of the people you do not want to meet and off he goes. We would be hard pressed to push him out of the role. I think he enjoys it enormously. We go to as many community agencies as we can like migrant resource centres, schools and TAFE colleges, because increasingly, and largely thanks to the work of Gillian Calvert, the Commissioner for Children and Young People, what we now know about the work that kids do, and the importance of getting to them in the first few years of their secondary schooling, because many of them start working in year 8 or year 9. We try to get to them as much as we can and to their teachers. We also work with the Department of Fair Trading where, of course, our colleagues in Commerce now, it has a program called "Money Stuff" which contains a workplace part.

These are all these strategies that we use to try to reach people and let them know what has changed and what has not changed in situations. We have had to make major changes to all these programs to accommodate WorkChoices and to make sure the advice we give to people is accurate. We get very good feedback, I must say, about the accuracy of what we do. We have a businesswoman on the lower North Coast who runs a transport business. Despite the fact that she is a company and now belongs in the Federal system, she keeps talking to us because she is not sure what they are trying to tell her. Apparently she has breached something and she is not sure what, and she keeps ringing us to find out what it is. We help such people through those things as much as we can. Obviously the important thing for businesses is to be able to comply to whichever legislation applies to them.

We also have an Aboriginal and Torres Strait Islander unit which works specifically with Aboriginal and Torres Strait Islander people and businesses to assist them to figure out what applies to them. It is a fairly intense program of education and information. We also use, in the same way that

Ms Telfer was talking about inspectors at WorkCover doing a lot of education and information work, our inspectors to do similar things. We start with those processes and we end with prosecutions or penalties. We usually find—it is very even and consistent actually—about one-third of people complying when we walk through the door, another one-third will sort it out on the way through and a further one-third has to be prosecuted or sent penalty notices which is something you can do in relation to some issues.

We cover about 62,000 workers a year in New South Wales in that process and 14,000 workplaces. In that 14,000 there are 2,000 complaints. We do targeted campaigns across industries where compliance might be low which we know from our figures from year to year. Also on top of that we get a couple of thousand complaints a year where some individual will actually say "I think there is something wrong with my pay". In the course of a year we would gather about $3.1 million back pay for people, which is a sizeable amount of money when you think about what that means in individual terms for people. Sometimes the amounts are not particularly high but they mean a lot to young people and to people on part-time wages and salaries. Those are the processes that we use and we have reallocated our resources, I suppose, internally to put a lot of emphasis on service to the public, particularly obviously to assist with the kind of confusion that you would expect and understand people are feeling right now.

CHAIR: You say you mostly reallocated resources within the office. Have extra staff been taken on or are there extra costs in units, individual staff or resources as a result of WorkChoices?

Ms MANSER: No, not generally speaking. Originally when we promoted some of our services over the radio we got in some people who had recently retired from the organisation to assist with the phones. We then decided that a better strategy, because of the need to keep up-to-date and the fact that WorkChoices was so complex, was to use inspectors on the hard calls, use the more junior compliance officers to answer the more simple questions and to rout complex question to senior inspectors. That has been our strategy now and it is working well. Despite the increase in the amount of work that we are doing, we are actually managing.

One of the things that we have had a lot of success with, which is kind of an unsung hero for us, is the web services because if you put something up on a web site people frequently ask you the second question rather than the first or they are looking at the web site while they ask you the question. So you can say, "Yes, the bits you are missing are in section six. Look at section six it is there". We have actually had a lot of success with electronic strategies of delivery of simple information issues. Once it gets harder than that we meet face-to-face in a variety of ways whether it is on the phone or at seminars or information sessions.

CHAIR: I am very conscious of the time because one more witness is waiting. You made a number of comments relating to what employers ask you about. Do you want to tell the Committee anything about the response from small-business employer organisations to the WorkChoices legislation in the time since you last spoke to the Committee?

Ms MANSER: Yes, a couple of surveys have been done by independent research people like Census and MYOB in relation to research work with small businesses to find out how they a coping. If we are running out of time I could supply you with that information about people complaining about the amount of bureaucracy.

Document tabled.

CHAIR: Do you want to draw anything else to the attention of the Committee?

Ms MANSER: I want to reiterate a point I made last time which relates to the issue of research. The Federal Government appears to be abandoning collecting information in these areas. We have had a number of arm wrestles with it over the Bureau of Statistics which we won. We have got them playing with a household incomes survey. It held a survey in which I think it is attempting to redefine "poverty" which will have a big impact on people in that welfare-to-work layout of the workforce. I guess it is in that research area that we think there will need to be some emphasis over the next few years to figure out what is actually occurring.

One of the hidden issues—perhaps not so hidden but it certainly struck me on one particular occasion and I had not twigged to it before—is if you put, as WorkChoices does, disputes into alternative dispute resolution processes, there is nothing essentially wrong with that, but you do hide the consequences. They will be confidential meetings. They will be confidential resolutions. They will be confidential solutions. One of the advantages, I suppose, of a tribunal system is that it is very public. I can go down to the Industrial Relations Commission and listen to a court case or a tribunal case which relates to a dispute. I can understand how the Act is interpreted. I can inform myself as a practitioner how the law is being interpreted, in effect. Now large slices of that are going to be hidden under WorkChoices because any dispute that arises is meant to be resolved in those sorts of ways. The other issue to which Paul Monroe recently drew attention again at our conference was the issue of people finding a mediator that suits them, and not necessarily someone who is unpredictable in terms of a tribunal.

CHAIR: There will be a loss of rules, precedents and that sort of thing?

Ms MANSER: Yes, and a lot of knowledge, for businesses particularly, and the larger businesses will concern themselves a lot with this. It is always the case when a new piece of legislation is introduced that people look for guidance about how it is going to be interpreted. It might be as simple as pie. This is a very simple Act to read but there are still cases that elaborate on particular bits of it that help people understand how to interpret that particular section. Given the complexity of WorkChoices that will be quite a tough call and it will not be until those issues get to the courts that we will see precedents and understand some of that. I think that is an area where there is a hole.

The Hon. IAN WEST: I interpret you to say that because there is a diminution in tribunals of record you will get not only a lack of precedent but a lack of information gathering in all spheres of definitions of poverty, precedents of cases, et cetera?

Ms MANSER: That is what seems to be happening right now. They are changing the goal posts in relation to those quite critical things. We have tried to fill at least one of the gaps by doing some workplace industrial relations surveys ourselves. We have got our colleagues in Queensland and Victoria doing the same so that we can have an eastern coast view of what is going on. It is a project which was started years ago by the Commonwealth and was providing five-year pictures of what was going on which as a longitudinal study was fantastic but it stopped it some years ago so we are now trying to compensate for that.

CHAIR: The collective bargaining process that is available under WorkChoices, the level of involvement that unions can have, and the rights that employees have to representation or assistance in negotiating agreements are specific areas that we have not been able to get certainty on. Could we ask you to take that on notice? Perhaps we could send something to you in writing and you could respond. That would be very useful for us.

Ms MANSER: Certainly.

Ms STEVENS: May I briefly clarify one point. The Committee asked about the application of the decision of the Fair Pay Commission, the resultant fair minimum wage, and groups that may be excluded from any increase to the Federal minimum wage. Several groups of employees are completely exempt from the Federal minimum wage, and that includes junior employees. Anyone under the age of 21 is excluded from the operation of the Federal minimum wage, as are disabled workers or workers eligible for a disability pension, regardless of whether they receive a disability pension. At the moment there is no Federal minimum wage that applies to those employees at all. They can legally sign an Australian workplace agreement with a rate much lower than $12.75 an hour. While WorkChoices does allow the Fair Pay Commission to set a Federal minimum wage that applies to those employees, there is no requirement for it to do so.

CHAIR: Which has a big impact on some of the groups affected by the Welfare to Work changes?

Ms STEVENS: Absolutely. And there are examples of independent contracting arrangements as well. We have heard examples of 14- and 15-year-olds carrying around hotdogs at the

MCG being offered independent contracting arrangements. How someone could imply that they were a genuine independent contractor, I do not know.

(The witnesses withdrew)

MARIAN PAM BAIRD, Senior Lecturer, Discipline of Work and Organisational Studies, University of Sydney, sworn and examined:

CHAIR: We are conscious of the time. If necessary, feel free to take some of the questions on notice. Given that you were present for much of the previous evidence, you may wish to refer to that evidence as well; they may have covered some of the detail. We have asked you to describe your expertise. Would you like to make an opening statement?

Dr BAIRD: I have prepared a short opening statement. I do not know whether you would like me to read that or to go straight into questions.

CHAIR: It is often handy to have an opening statement because it sets the scene and gives us a sense of your own views.

Dr BAIRD: I am here today on behalf of a larger group of researchers that Professor Russell Lansbury was asked to represent but he is overseas. I and my colleagues Professor Lansbury, Professor Ellen and Dr Ray Cooper have been doing a lot of research on what will be the impacts of WorkChoices on Australian workers. My research focuses on women, work and family. Overall, I would like to make some broad statements that we feel represent the truth about what is occurring. I suspect that the Committee has heard much of this, but I will just go through a few points.

We believe WorkChoices represents a significant paradigm shift in the regulation of employment relations in Australia. It draws on the Corporations power rather than the industrial relations power; it emphasises individual, non-union contracts rather than collective, union-based agreements; it establishes Federal legislated minima—some of them for the first time, which is quite a change; and it establishes a range of different institutions, including a different institution for the setting of minimum wages in Australia. Coupled with the changes to welfare and family law, the changes to the regulation of work are potentially very far-reaching. We believe that their impact goes beyond the individual worker and the employer, to the very heart of Australian communities and society.

In summary, we suggest that, based on the available evidence we have to date and the changes made, awards will wither and die, thus removing protection for up to 20 per cent of the work force, who now rely on awards for the setting of their conditions of employment, many of whom are women; for AWAs the principle is not about genuine choice or bargaining, as the rhetoric says, because most AWAs are on a take-it-or-leave-it basis; AWAs are not about suiting the individual employee, because they are typically the same template, so they are a pattern, individual agreement; and collective bargaining and union involvement are severely restricted under WorkChoices.

In terms of work and family, we believe it will be—and I particularly think this is the case having looked at the evidence—much harder to bargain for improvements in work and family conditions, and thus more difficult for Australian employees to balance work and family and added caring roles. WorkChoices did not improve on the unpaid parental leave provision that Australia already had, so we continue to rank very poorly compared with other OECD nations. There is also less likelihood that work and family entitlements such as paid maternity leave, paid parental leave, or child care or elderly care, can be bargained for individually under the new regime. Evidence already shows that less than 50 per cent of Australian working women have access to any paid maternity leave, and many of these women are in lower paid jobs, small business and female-dominated sectors.

In terms of gender equity, I see that the weakening of awards and the move to AWAs does not augur well for women. There is already a 20 per cent pay gap on hourly rates between women and men on AWAs; this is not so for women and men on awards, where the pay gap is minimal. The minimum wage is likely to decline in real terms over time and as a proportion of average earnings, and this will disproportionately affect women.

If we look at comparative studies, we know that the minimum wage as a proportion of average earnings in deregulated environments tends to drop. For example, in New Zealand the minimum wage is 47 per cent of average earnings, in the United States of America it is 36 per cent,

whereas in Australia at the moment it is 60 per cent. So I would anticipate that through the changes occurring we will see a lowering of the minimum wage relative to average wages.

Pay equity may be harder to maintain, with more emphasis on individual bargaining and the removal of test case abilities. It is important to understand that overall this would put downward pressure on minimum wage rates, and as a result some sectors and some groups of individuals will be impacted more. In particular, I am referring to the hospitality, retail, and health and community services sectors, where large numbers of women are employed on award rates only. Relative to other sectors of the labour market, women on minimum wages are likely to experience a decline in real wages over time.

Importantly, studies by our colleagues in Western Australia show that minimum conditions of employment become de facto standard conditions of employment for many employees, especially women and part-time workers. In this context, the streamlining or reduction of minimum conditions of employment might be expected to result in large-scale changes to standard employment conditions for specific sectors of the labour market that have limited bargaining power.

Moreover, I would argue that WorkChoices sees a complete change in the norms established in terms of managerial prerogative and what social expectations will be, and over time this will also see significant changes to employees' conditions and entitlements. That is one of those less tangible things we cannot talk about yet because the evidence is not there, but I am sure, and having listened to Ms Manser, that we are already seeing quite a shift in what people expect is the norm. That will start to work its way through the setting of pay and conditions, I would argue.

In terms of the productivity debate, through much of the research we have seen that the causal relationship between productivity and individualised bargaining is very doubtful, and comparisons with other countries show that. I think we could say, though, that over time we will see a widening of income distribution and pay gaps, especially for certain groups, and an incentive for employers to produce lower-quality and lower-paid jobs, and thereby going down a low path to development rather than a high-quality route. To end where I began, I would say that my colleagues and I do not think that this is the road that Australia should be travelling at the moment in a globalised economy. I would be happy to discuss some of these issues with you, if you like.

CHAIR: In terms of the ability of workers to bargain, you have covered quite a bit of this and we have drawn particular attention to women, young people and casual employees. Would you like to expand on what you have said already, perhaps particularly in relation to young people and casual employees given that you have said quite a bit about women?

Dr BAIRD: Yes. We do not know exactly what will happen. That is one of the issues with this period we are in. As a researcher, we can only predict the future based on what we have seen in the past. We know that certain groups of workers tend not to have collective coverage and do not have the same labour market power. We also know that it is inappropriate to talk of a labour market because, in fact, there are many different labour markets operating at one time, and those groups you identify form parts of that segmented labour market.

Youth and casual employees tend to operate in different parts of the labour market, they have different labour market power, and they work in different jobs and in different industries. I think we could predict fairly reasonably that their labour market power under a more deregulated system—I know there is debate about whether it is regulation, reregulation or deregulation—but overall they probably will have less labour market power. Certain groups may do better, and the strength of the labour market itself is something that will begin to impact on the outcomes over the next few years. It will be harder to work it out.

CHAIR: Those who do better are those who are more highly trained and skilled?

Dr BAIRD: On the whole, education qualifications, position, and geographic location will all play a role. We could expect to see much greater diversity of outcomes.

The Hon. IAN WEST: Interestingly, many of the labour markets you mentioned that may well end up on the low path of wages and conditions are not the labour markets that traditionally are of a highly competitive nature in a globalised economy.

Dr BAIRD: That is right.

The Hon. IAN WEST: Which is quite ironic.

Dr BAIRD: I think it would be fairly safe to say that we will see the emergence of a much more American-style labour market with the very low-end groups, and the higher-end, high-skilled, higher-paid groups eventually—perhaps sooner rather than later, actually.

The Hon. IAN WEST: So there is a need for some real in-depth thinking about some of the definitions of words that we use quite candidly without really understanding what they mean, or that have so many different or various meanings, depending on who you are talking to.

Dr BAIRD: Yes.

The Hon. IAN WEST: Like "choices" and "bargain" and "productivity" and "economy" and "poverty"—all those nebulous words that mean all things to all people. It seems in that area of industrial relations and labour market discussions, whatever the labour market is—that is another one that needs definition—there are some difficulties, are there not, in coming to grips with exactly what you are talking about.

Dr BAIRD: Yes. What you have touched on is not something that I have prepared for here, but I do not know if you are interested in quite an interesting academic debate about the way in which the language has shifted and different groups have really redefined words and given them a different meaning in the current debate. If you interpose modernist discourse analysis, you will see that that is substantially changing the way in which people can actually talk about the issues that are confronting them because they no longer have the words to use.

CHAIR: Yesterday we had an interesting case of that. The Committee had a visiting Norwegian committee talking to us about this legislation and other things. It was interesting to see the way that words had special meanings when you are talking about a group of people whose native language is not English.

Dr BAIRD: Very interesting.

CHAIR: We also had some very interesting discussions with them in terms of Norway being a very small country with a population of 4.5 million but with very high productivity and a very high standard of living.

Dr BAIRD: Yes.

CHAIR: Given what you said in your opening statement about the future of a country like Australia in a globalised economy, these are some of the issues that we talked about to the Norwegians who have gone down a very different path.

Dr BAIRD: That is right. Most of the Scandinavian countries have a tradition, and continue, a sort of social partnership—we refer to that is a social partnership—whereas Australia is following a different route which tends to be one of not partnership and not corporatist in any way but really emphasising the individual and the groups—a different model.

CHAIR: What about rural communities in talking about groups with less bargaining power and so on?

Dr BAIRD: I did note that in the questions. I am sorry, I cannot really speak with any authority on rural groups myself. I have not done any research particularly there, but I would just extrapolate, I think, that in so far as market forces begin to play out and impact across the country in a different way, we will see these different labour markets appearing much more strongly. So in certain

areas, especially in rural communities that are also characterised by maybe groups from different backgrounds, maybe indigenous groups, people with no qualifications, a lack of access to training and skill and to up-skilling their qualifications, I think we will see that they will be impacted upon quite drastically.

The other thing of course is that policing what happens is going to be very difficult. When the system is so freed up, having the resources to check on whether or not people are being paid the right amount is an issue. I commend the work that has been done in certain groups, but that still relies on individuals having the wherewithal and having the nous to actually contact someone. As I listen to the debates and hear what is being said, I think we are seeing a considerable shift from sort of the State and employers to the individual to carry the responsibility of understanding their own contractual arrangements, which can be very confusing, and also ensuring that they are being paid the right amount. I think it is an area that, unless a lot of resources are put into it, will be much harder to actually police, if you like, for want of a better word. With union power diminishing as well—they are the traditional group that would normally check that people are being paid appropriate rates, or legal rates. We will not even say award rates any more because there will not be significant—or, they will not be around.

CHAIR: I am not sure if you were here when Ms Manser was talking about the 13 Federal bureaucracies.

Dr BAIRD: Yes, I was.

CHAIR: Are you in a position to comment on whether they individually or between them can play the kind of role you are talking about?

Dr BAIRD: I will just make a comment here. Of course it is one of the interesting things for people who are observing the changes that it certainly is not a simplified or unified system and it has created a whole set of other bodies and agencies, which may be quite complex. I think that, of those agencies, the Office of Workplace Services is the one that is there to check the enforcement provisions. I do not know enough yet about that agency. I think it needs to still appoint a deputy director. I do not know if it is up and running as well as it could be. I have not had time to check on that. I think it is quite interesting to look at what that agency will do and how much resources it will have to go out. Really I think it has to be out in the field to check on what is happening. Whether or not they are going to do that, I am not sure.

The Hon. IAN WEST: We are also going through an era of self-regulation.

Dr BAIRD: Exactly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It sounds as though what we have had is virtually an anarchic system where everybody looks after themselves and nobody looks after each other. There is no overview and there is no capture mechanism for practices. Is that the essence of what you are saying?

Dr BAIRD: What we are moving to?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Yes.

Dr BAIRD: I do not know that I would go that far, but I would certainly say that it will be much harder to check that everybody is receiving the right pay and entitlements. I think there is probably quite a lot of movement of the system as it currently exists—a lot of underpaying or irregular payments going on—and that we could see that increase. Anarchic might be too strong a word. I do not know that I could say that at this stage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But if there is not going to be regulating or checking the books of what people are paid, and if their salary is greater than $55,000 which, presumably, after a few years of inflation will be a median salary, then basically of course if you are not regulating the hours worked and if you are not regulating wages because simply every extra hour becomes a bit of your hourly rate, and if they are not being inspected in any systematic

fashion and the books are being submitted to the tax department and the numbers of employees are presumably not being submitted at all or the number of hours they work are not being submitted, there is no data even collected to show a comparative level of anything. Today it is almost as if you walk out the door and see what you are worth. It is like a vegetable market.

Dr BAIRD: That would be an anarchical extreme of a neo-liberal market playing out in the labour market. Even prior to the WorkChoices amendments, the inspectorate services had been wound down a lot as well, and different States do it differently. I am not sure what the New South Wales State system now is. We are now in a situation where there were a number of different systems operating. Probably no-one really understood exactly what was happening everywhere. So in one sense you could see the logic of trying to bring it all together, but I do not think that the new version is necessarily going to improve on the problems that existed before.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: This system, is it about demolishing existing systems, or building new ones?

Dr BAIRD: You would have to ask the policy makers, I suppose. As I said, it certainly has demolished and undermined the old system, and that was its intent, and it has built a new one in its place. The debate is whether that is more simplified or unified than the old one. I am sorry, I do not mean to be complicating it, but I am just trying to express that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have a number of organisations which are (a) complex and (b) tokenistic in terms of their ability to deliver a regulatory framework. What you are saying is that, yes, there are lots of complications, but it is anarchic from a practical point of view in the sense that ants will negotiate with elephants and the result will not be known to anybody, except perhaps the ant.

Dr BAIRD: I think that is an interesting observation, you know, because if we do move more people to AWAs, they are confidential documents and we do not know what is in them. So there is not a record. All we will get is aggregated results from the Office of the Employment Advocate, the OEA.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When you say it is aggregated, what does that mean? What are the inputs of aggregated data? Does an employer say, "I have got 500 employees working in various hours in my total wages bill is X", so you simply divide 500 into X and then you do not say how many hours there are? That is possibly an outcome of aggregated data, is it not?

Dr BAIRD: Yes, but I think—and we would have to check their requirements—they are required to make reports to Parliament, so you can actually see them, only there is quite a time lag between when the reports go to Parliament. It is about a two-year period. Presumably we will not see what is happening under this for another couple of years. That is data about what is in AWAs—not in each particular AWA, but groups of AWAs.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: This assumes that they are honestly reported and it assumes that all the conditions that are taken away, or subtracted as the AWAs change, are not of any value, does it not?

Dr BAIRD: To my knowledge, AWAs are lodged with the Employment Advocate so they have files of all those documents.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But I mean if the AWAs are all different in form because they are made up by thousands of different people—

Dr BAIRD: But they are not. That is the irony. That is the contradiction.

CHAIR: We are hearing the lot that there are template AWAs.

Dr BAIRD: There are templates, but even if they were all different, presumably someone in that office—I do not know, but I do know that people collect statistics there and they read them and

they log them onto some sort of big computer database, I imagine. From there is where they get their reports.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you would say that the AWAs are sufficiently similar. Is there an obligation to have a template, or is it just a template for the ease and use of the elephants?

Dr BAIRD: There is no obligation to have a template. If I could give you an example: at Sydney university, we have been offered AWAs. The employer, the university, was required, under the education workplace reform Act, which is quite different to WorkChoices but similar in intent, those AWAs are not template agreements for academics and the general staff. So everyone gets one individually. When asked the question, "Can we bargain over this?", we were told, "No." So they are really a take-it-or-leave-it template. They are all the same for your work group, but they are called individual agreements. I think that is being repeated or replicated throughout other sectors.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The ones at the University of New South Wales and UTS and at every TAFE and teachers college are different ones.

Dr BAIRD: They all have their—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So for every workplace, they would be different.

Dr BAIRD: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you were collecting statistics across the land and you had different ones for every employer and you are trying to put that into a statistical data collection package, there would be a fair bit of confusion and judgment calls, would there not?

Dr BAIRD: I think those bodies have the expertise to collect data if they want to, so it would be like the ABS or anyone else collecting that data. You collect groups of data on the wage rates and hours of work. As you say, it depends on what is written in them. I do not think that is the issue so much. It is access to that information and what that information tells us about the divergences that are opening up with this new bargaining regime.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Let us assume that you had a gun professor in the university and that he or she said, "I am not going to work for that, mate, I want this and this provision", so he or she got a much better deal than anybody else.

Dr BAIRD: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That would be a sort of one-off and that would go in.

Dr BAIRD: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: For every person who got a one-off in the university, you would then have a different contract for every individual.

Dr BAIRD: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Let us assume that that is certainly a possibility, if it is a much sought-after discipline and expertise or whatever. A contract or an AWA is not very convenient.

CHAIR: Presumably well over $55,000.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably, if a lot of the people are on over $55,000 and they are working, the hours agreed to and the hours worked may bear no relationship to each other.

Dr BAIRD: Absolutely, but that is the case now too. The thing is to work out what is going to happen as a result of changes in the legislation. That sort of thing is happening already. The hours of work no longer conform to a standard working week. Certainly people above the $55,000 mark are working longer hours. Coincidentally, the statistics on that came out just recently, a couple of months ago. The average for men is 43.2 hours a week, and for women it is 39.3 hours a week. That is what is recorded. We know people are working longer hours than that.

What you are saying is right, data collection is an issue. One thing that Ms Pat Manser mentioned was that the Federal Government has not been conducting workplace relations surveys. There is some question about all the other data. It might worth the Committee knowing that we have just released a report called Women's Pay and Conditions in the Year of Changing Workplace Relations. It is published on the National Foundation of Women web site; it is a useful document because it records every single bit of data that is now available for pay and working conditions in Australia.

It shows the big gaps. One big gap is knowing exactly what contracts of employment people have and what conditions they have under those. At the moment it is even more complicated than just awards, enterprise agreements and AWAs. There is a substantial proportion of the work force that is on individual contracts and for that we have no data. Unless you go to every single company and have access to them you do not know. You can only gather that information from ABS surveys, which go out to sample people at their houses; and ask "what is your employment?", "how much do you get paid?", "how many hours do you work a week?"

CHAIR: Dr Baird, will you table that document or give the Committee the details?

Dr BAIRD: I will give you the details, it is available online.

CHAIR: You have probably said quite a bit already about gender equity and work and family responsibilities. Do you have any comment on injured workers?

Dr BAIRD: No, I noted that, but I do not have any experience with injured workers; and I do not think I should claim to.

CHAIR: What about the impact on employers and small businesses? Any information about that?

Dr BAIRD: No, not extensively. I am reiterating what was said before that we know that there is a requirement for much more record-keeping and that is confusing some people. Some companies, not even small business but big business as well, including human resource data systems, have not been engineered to collect the sort of data that is now required and there is a lot of change going on there. There is a requirement to collect a lot more data in some respects and there is a whole lack of knowledge about what the legislation requires; that is worrying.

Overall, to go back to my earlier point, the whole normative context is changing and that is where small businesses particularly may feel at liberty to do whatever they like under the new system. They will not know the regulatory arrangements and they know that their employees probably do not have much bargaining power in many cases. So, apart from that, I should not comment much more on employers and small businesses at this stage, until we know from the research what is really happening.

CHAIR: You may wish to comment on this: Some employers have spoken to us and expressed concern that in the medium term, not even the long term, a lowest common denominator effect. The kind of competitive atmosphere or culture introduced together with the changes in rules may make it harder for ethical or fair-minded employers to compete with certain other kinds of employers. Is that something you have knowledge of?

Dr BAIRD: We know that with women's working conditions, for example, standards set by good employers do filter through to other employers, but also that employers or organisations do watch carefully what other companies are providing in their own sector. If the bar starts to drop we can expect a flow-on that in some areas will start to see a winding back of conditions and entitlements that used to exist, especially those that never made it into codified agreements, such as awards and collective agreements, but were just company policy.

There is a bit of a theory about that; that companies start to mimic each other, a sort of isomorphic effect, where companies start to copy each other's policies in particular sectors. So there is a potential that if you lower the bar, or some companies start to undercut, other companies will be either forced to follow or will find it not very attractive to offer higher conditions, assuming the labour market in their particular sector allows them to do that. That is the counter argument we are getting: The shortage of labour will mean that employers will want to be employers of choice and offer good conditions. You may see that in some areas, but not across the board.

CHAIR: In the areas you would see that, presumably they would be the areas of shortage where employers would offer packages to attract workers?

Dr BAIRD: Yes.

CHAIR: Even if WorkChoices changes had not come in?

Dr BAIRD: Yes. In the higher end, upper end, of the labour market, but not in those areas where there is a lot of churn and where employers rely on a steady stream of casuals, students, youth, immigrant workers, mothers forced to return to the work force because of welfare to work changes. That is where those crunches will start.

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

Dr BAIRD: I would be very interested to read the report of this inquiry. It sounds like a massive job. It is interesting to try to get some sense of understanding, and I know you asked that question about how the States will sit vis-a-vis the Federal system and which workers in the States will remain covered by the State system and which workers will be absorbed into the Federal system. Some estimates are about 15 to 20 per cent of employees will still sit under, that is Crown employees as I understand it, State governments. I think some understanding of how those systems relate will be interesting and it may be a challenge for the Committee to untangle that.

CHAIR: Do you see the work force becoming more casualised as a result of these changes?

Dr BAIRD: It will be hard to say if the changes themselves lead to increased casualisation because Australia has had a higher rate of casualisation already without those changes.

CHAIR: High compared to the international standard?

Dr BAIRD: Yes. I suppose you could argue that that trajectory was already there. I do not know that WorkChoices necessarily increases the incentive to casualise, but it does enable wages and conditions of casual jobs to become much more fluid and so probably standards in those jobs will begin to drop. If that makes it more attractive to employ casuals as opposed to full-time workers, there is an incentive for employers to do that.

CHAIR: In New South Wales there was a tendency in the other direction; for the State to make it more attractive for casual workers to be given more security.

Dr BAIRD: Exactly.

CHAIR: Could that be reversed?

Dr BAIRD: Yes, it could be, because those norms have been removed and those test case decisions and rulings will not come through with be weakening of the AIRC. If you remove the

disincentives to casualised, remove the need to pay penalty rates or extra loadings, you increase the incentive to employ casuals on weekends or other shifts. In those circumstances, yes, you could see it.

CHAIR: It then comes back to segments of the labour force?

Dr BAIRD: I think so, yes.

(The witness withdrew)

(The Committee adjourned at 5.10 p.m.)