REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO THE IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

At Sydney on Tuesday 20 June 2006

The Committee met at 10.30 a.m.

PRESENT

The Hon. J. C. Burnswoods (Chair)

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

JOHN MICHAEL GOOLEY, Solicitor, Marrickville Community Legal Centre, sworn and examined:

LINDA LOUISE TUCKER, Solicitor, Kingsford Legal Centre,

MARK ALLAN MacDIARMID, Principal Solicitor, Elizabeth Evatt Community Legal Centre, and

PATRICIA ELIZABETH McDONOUGH, Solicitor, Inner City Legal Centre, affirmed and examined:

CHAIR: Merrin has given you a copy of an opening statement, which largely deals with our concern about allegations against naming individuals and the procedures we need to follow. I would assume that none of you intend to do that, so I probably do not need to go into that detail. We do not have any media here at the moment. The other part of the document deals with our request of the media not to focus on people in the gallery but to film only witnesses or members of the Committee if appropriate.

The questions we sent to you are, as you would have noticed, very broad, and more or less run through the different elements of our terms of reference. Firstly, I invite any or each of you to make an opening statement, to tell us why you are here, what your centre does, and why you are interested in the inquiry.

Ms TUCKER: I will speak for all of us as representatives of the Combined Community Legal Centres Group of New South Wales. We come here with particular expertise in relation to our communities, which may be defined by geographical catchment or particular needs or interests, covering New South Wales in one way or another in relation to employment matters.

Community legal centres are not legal aid centres. We are not-for-profit centres; we operate under a range of State and Federal funding. We can provide the Committee with not only a perspective in relation to employment-related claims, but our centres provide a wide range of legal advice and representation advocacy policy work, and so on. Our centres provide combinations of tenancy law, family law, and discrimination law. A lot of these areas or fields of the law interact, clearly, with the impacts of WorkChoices. We may be referring our clients to non-legal providers as well, with the needs that are arising in relation to people, particularly vulnerable members of the community, who tend to need our centres, and the other needs that are coming out of their being pushed in relation to their employment relationships.

Mr MacDIARMID: We are what is known in our business as a triple-R centre, which stands for "rural, regional and remote". We are in Katoomba, and our catchment area runs basically from Richmond to Bathurst, although we are the only free legal service available to people with employment difficulties between Richmond and Dubbo. There is a legal aid office in Orange, but they do not do employment work. We are funded by both the Commonwealth and the State. That funding is sufficient for us to have two part-time solicitors. If you can imagine the area between Richmond and Bathurst being serviced only by two part-time solicitors, that is what is available to people who have issues around this.

I am identifying our catchment area because we are one of the lucky rural legal centres. The next centre out, which is in Dubbo, covers nearly one-third of the State, and then we hit Broken Hill. There are not that many of us in rural areas, and we all cover vast areas and we are all very poorly funded and underresourced to provide the work we do. So we are grateful for the opportunity to address you on these issues, because what we see is pretty horrific.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is this going to result in an explosion of your work?

Mr MacDIARMID: Yes.

Ms DONOUGH: It has.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It has, already?

Ms DONOUGH: Yes.

Ms TUCKER: It is a diversification, I would say. Everyone has different experiences. I run a metropolitan practice, and it was mostly an unfair dismissal practice. So I have to say, in that area it has severely fallen off. Mr Gooley has prepared some further information in relation to the diversification of what representation means now in employment law. In the past, the unfair dismissal remedy was one in which you could roll up entitlements issues, such as long service issues. You might have an unlawful issue there, but you would whack it into the unfair dismissal application.

This was conducted by way of negotiation. As I am sure you are well aware, more than 90 per cent of unfair dismissal matters would settle well before an arbitration. In that settlement, the deed of release that would deal with that would bring to an end, generally, many different matters. As I said, Mr Gooley has probably articulated this further—

CHAIR: That is in the document we received this morning?

Ms TUCKER: That is correct.

CHAIR: We have not had time to read it, so you might need to run as through some of that.

Ms TUCKER: The overview of that is that you might end up with a discrimination claim in the Anti-Discrimination Board or the Human Rights and Equal Opportunity Commission, or you might end up with an unlawful matter. You might end up with a matter before the Chief Industrial Magistrate. You will now be going off to a number of jurisdictions.

Ms McDonough can probably speak to the issues in the Local Court in relation to chasing up entitlements claims. There will be not only a diversification of our practice in relation to going to these different jurisdictions, but people who do not deal with these matters from day to day as the commission's did, so there is a burden also on these other services, that is, the Anti-Discrimination Board, the Chief Industrial Magistrate and the Local Court. So you have that loss of expertise and the loss of the convenience of having them all in the one jurisdiction, where you could roll it all up into one settlement. So we might not have so many unfair dismissals, but we are having to run all over the place with a whole lot of other matters.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So, effectively, there is now no unfair dismissal, so that the peg on which you hung a number of injustices that were related no longer exists?

Ms TUCKER: Exactly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So that you cannot run an unfair dismissal, but you may run some of the other matters, which were less critical and less clear-cut? Is that the essence of it? What are the things that hung on unfair dismissal—discrimination, sexual harassment?

Ms TUCKER: You always have evidentiary difficulties. Unfair dismissal was simply a forum under which you could bring an employer to the table for negotiations. In the State commission, you were in the commission for conciliation within two weeks. That would get the employer into a meeting with the employee, and then you would whack everything on the table and see how you go. It was a way in which negotiations could be undertaken, and it was open to you and the other side to decide what could be rolled up into an overall settlement.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I do not quite understand all the other things that you were rolling up.

Mr MacDIARMID: I will give you an example. I had a client last week. The issues were unfair dismissal; a failure to provide for the superannuation guarantee, an issue that rests with the Australian Taxation Office; occupational health and safety issues, which rest with WorkCover; and issues concerning immigration, to do with migrant workers who were being employed in this

workplace. There was also a discrimination issue. So there are five different legal issues that we need to advise on. In the past, we probably would have said, "Commence an unfair dismissal, because then you can at least enter into a deed of settlement to wrap all of those up in the one thing if it settles."

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you did those singularly, the employer might not come to the table, you might have to wait for several years for them to come to the table, and the evidentiary difficulties of discrimination in terms of racism, harassment and stress, presumably, would all be very difficult for you?

Mr MacDIARMID: Yes. And you have a multiplicity of venues. For our centre, given the pressure of work that we have, we can provide phone advice or face-to-face advice, but we cannot provide representation. So people are patted on the back nicely and sent off to do this themselves.

We have many clients who struggle with literacy and other issues. I cannot say to a client, "Go off and complain to the Australian Taxation Office" or "Complain to WorkCover" or "Complain to the local council about the guy recycling cooking oil."

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Tell it to the church, as they say in eastern Europe?

Mr MacDIARMID: Exactly right. That is one of the bigger complexities of this, I suppose, for people in disadvantage—and all of us deal with people in disadvantage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably, fair dismissal means that you have a finite date in two weeks. I notice that Ms Tucker commented that you have a finite date in two weeks. Some of these other things simply go on a list forever, more or less, or for a very long time?

Ms TUCKER: Or they are left with a government department to investigate and whatever timetable.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: We have seen what that can do.

Ms TUCKER: Obviously, those investigations could continue, but in relation to a remedy for your client there could be prosecutions going on parallel to that anyway.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But how likely is all that? If someone says, "I have been harassed. My super has not been paid", they may chase it up, but they may not and it may just go into some file on the never-never, might it? Is that what happens in practice?

Mr GOOLEY: We are finding that it is being used as operating capital and providing an unfair playing advantage against other employers. In the material from Marrickville we have used example A and example B. I have spelled those out in considerable detail in the hope that they will answer a lot of questions. You may not be aware that each of the legal centres has a different funding base. At Marrickville we do not do criminal or family law matters. We send those on to legal aid. We do a general legal service, which has always had a strong employment component, which has become the major component, to some extent, under the current pressures. We have a specialised children's legal service, a specialised tenancy advisory service and a women's domestic violence court assistance scheme service. I am currently doing two days a week full time, which allows us to provide some representation because of the nature of the things that we are seeing coming through as a result of the WorkChoices changes. All the matters you are raising are things that people confront every day, and so do we.

At the moment we have the luxury of being able to help people with representation at least up until the end of the conciliation phase. Other centres cannot possibly address the incredible number of factors they have. To some extent we all rely on trying to get pro bono assistance. In rural areas and remote areas it is very difficult because the person you would turn to normally, or the range of people for pro bono assistance, also represent business as their primary customers in that area, and very often there are conflicts of interest and clashes of reality. In rural areas they are even worse off, and we are concerned about that. In the city area we cover 12 local government areas. We can mark basically

south to west across Sydney from Marrickville. We are seeing an enormous number of things. I know that the Inner City Legal Service and Kingsford are seeing the same. But we are waiting for the first requirement of our tenancy advisory service to assist somebody who suffered under WorkChoices, and we are beginning to see visible effects across other areas as a result of WorkChoices. We have a phrase in there, through the narrow portal of unemployment we are pretty closely connected to a diverse and growing wider range of social issues and effects.

CHAIR: Given that most of us have not had a chance to read your document, could you refer us to where that comment is in the document?

Mr GOOLEY: Page 1 at 40. We do not resile from the fact that whilst we act for employees, we look at all of the ramifications both before and since WorkChoices. I think we would be agreed that employers who are willing to play by the rules, hard and fast by the rules, but, nonetheless, by the rules are put in a position with this legislation that allows their competitors to do a number of things that takes away a level playing field, and we see it as a downward spiral. Later on I will briefly say something about your question No. 2, the effect of actual bargaining under WorkChoices and what that has led to. I may expand that at that time, if that is all right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Could I clarify Ms Tucker's point? When you say all these things need to be rolled up, it is a bit beyond the terms of reference of this Committee because what you really are saying is that all the other laws do not work very well. In fact, the one that worked quite well, which was the unfair dismissal, was used as a vehicle to help the others. In a sense you are saying that all these rules do not work very well, which is not the business of this Committee, but it is a point to note.

Ms TUCKER: I think it is just that unfair dismissal worked particularly well. Ms McDonough and I both do a lot of representation, and it was a vehicle to better assist the clients' needs and, I think, better assist the employer as well because you were dealing with it in one go.

CHAIR: Do you want to add to that?

Ms McDONOUGH: With regard to all these matters that we would roll up at an unfair dismissal, the same matters applied in the Federal jurisdiction, not just the State. If there were several other matters that would be part of the settlement. For instance, if superannuation had not been paid it would not be settled or the matter withdrawn from the Commission until such time as that money was paid into the employee's account. That is how we would get those other matters addressed. It would not be settled or finalised until all those outstanding matters had been dealt with.

Mr GOOLEY: I have never seen a dismissal matter that was only about dismissal. A dismissal occurs for some reason, valid or otherwise, and there are always other factors hanging off it. What was able to be done in the State and Federal commission—the more practice you had there the more able you were to understand the system—the commissioners and the judges facilitated the fact that you got to talk about all of the issues. It always astounded me about a person who had an ironclad, golden case about, say, sexual harassment, was happy to abandon that claim just to get the whole thing dealt with in the industrial commission quickly and get on with their life. I guess that is an underestimation of the resilience of the ordinary human person. But that is how it is, and I admire people for it. I have seen some sacrifices made, some things forgone, that have been quite amazing just in order to get on with life. The ability to do that should not be underestimated. All the other factors roll in, and as you will see from the examples we have given there are numerous bases for other charges or actions to go on. They are all very legal and they all go ahead at their own speed.

But you have a person who has been dismissed who, generally, needs some money to get another job. One of the things that it is stopping them getting another job is the fact that they do not have a reference from the previous job. They are having trouble getting a termination and certificate to take to the Federal Government area that pays unemployment benefits, or whatever it might be at the time over the years. The quasi legal, but very down-to-earth industrial systems, Federal and State that operated, was populated by decision makers appointed from all political parties, and they were able to bring about a commonsense jurisdiction that is the envy of a lot of places on earth. It is known as the fair-go-all-round jurisdiction, and it was. You did not always get the fair go you or the client thought, but you got a fair go when you reviewed it some time later. There was an opportunity to get a lot of

bile and bitterness out of the way in a conciliation hearing. If that did not work you went on to a full hearing, but in the overwhelming majority of cases matters settled, and when they settled they overwhelmingly, almost exclusively, included the golden phrase—all instances arising from this employment.

People forewent the Chief Industrial Magistrate et cetera, et cetera. Some of the foregoing was because there had been an agreement to pay the money that would have been recovered by that method, or a part of it. Other things were left out. Dobbing into tax was not done because, if the employer had done anything wrong then in the negotiation settlement he agreed to tidy that up, usually on behalf of employees who may well have been in the same situation, but not dismissed. When we say rolled up, that is probably the jargon of industrial practitioners. It was all settled once and for all then and there. Overwhelmingly, people got on with their lives, both on the employer and employee side and away it went. One or two trips down to the commission on serious matters taught everybody—advocates, clients and employers—a lot of tricks about how to stay out of there. The first thing I was taught many years ago—the first work I ever did was in the industrial advocacy area—was to stay out of court. Bad things happen to good people in court. You never get what you want. You are not there for justice: you get law. Stay out if you can.

But when matters went there you learned that the way to do things was to settle if at all possible and, as I say, people's willingness to forego things that I thought they would have dug a big hole to stay in, to get the thing over and done with, amazed me. That is increasingly important under WorkChoices because young people are looking for work continually. They appear to be primarily our focus at the moment from what we are seeing, and they need a decent work reference and a decent non-disparagement clause, which, unfortunately, WorkChoices does not provide. That is a clause that means that if someone rings up later about a reference, despite a written reference that might have been given, they will not disparage the person. There are groups who go around subtly checking on that. A few people have learned that you cannot have it both ways. If you are going to give a non-disparagement clause and a decent reference you should stick by it. In some ways that is why certificates of service came about in place of references: they would state only certain things. But in a negotiated settlement you can often get a realistic reference that allows a person to go to another job and be able to be dealt with honestly by the future employer against the past employer and get a start.

Those are the sorts of things that we are seeing going by the board because you cannot take these things to the industrial commission. The fact that a piece of legislation has come in, as yet untested in the High Court— have made some comments about what Justice Callanan and the Chief Justice have said—that takes away the opportunity to do those things in that jurisdiction does not take away the other rights that exist that they cannot all be rolled up, and may very well be pursued. Increasingly we are seeing people having to pursue them. They are not getting the quick remedy that they once got, but that probably only makes people more determined to get a remedy of some type in the future. In those remedies, the benefit of a deed of settlement, not only rolling things in but also keeping things secret from the public is not there. When all parties go out and tell their story in another forum there is a lot of dirty washing to come out of any dismissal.

The Hon. IAN WEST: Because of the user-friendly nature of the jurisdiction that you are talking about, there is a perception that it is being abused. Can you give us some indication from your dealings as to the number of people to whom you have had to say, "You haven't got a case"?

Ms McDONOUGH: It depends whether we are talking before WorkChoices or after WorkChoices. We are now telling many people that they do not have a case.

The Hon. IAN WEST: Perhaps I should reword that question. I should have articulated it a bit better. The number of people out of 10 that you saw before 27 March, to how many of those would you have said, "You haven't got a case"?

Ms McDONOUGH: Prior to working at the Inner City Legal Centre I was the principal solicitor at the Women's Legal Centre, which is now closed. It has been my observation that eight out of 10 people would have a case, and of the two who did not have a case usually it was because they had only had a short employment period with the employers. For instance, if they had worked there for only two or three months and, yes, they had been unfairly dismissed it was not worth going to the Commission and maybe getting two weeks pay. It is better to drop off your CV and get on with your

life. There are certainly people who do not have a case regardless. They have been given warnings, they have had counselling, they have been brought them in and sat down, the employer has been fair, before they sacked them they paid out all their entitlements and, sometimes, a little bit extra, and in those cases we would just say, "No, you haven't a case. You don't want to put yourself through this and we cannot assist you because of lack of resources."

Ms TUCKER: Also, obviously, because of our funding we are going to apply a merit test. We have limited resources. We have to make sure that is directed in the best way we see fit, which, obviously, will have an element of merit.

The Hon. IAN WEST: You cull the cases, you do not take everyone that comes in through the door?

Ms TUCKER: No. That is the thing: you would make that cost-benefit analysis. It was a good jurisdiction and you did not want to stuff them around. But you could go to conciliation and, again, this is the flexibility of it, you turn up and you find out a bit more of the story from the employer, and I have had this, and you back off and say, "Okay. Withdraw. We discontinue the matter." It was user-friendly in that way as well because it allowed you to be quite fluid in it. It has been quite a quick process. There has not been a massive amount of costs or inconvenience. You hear the other side and, as I said, that works both ways. You can hear the other side and say, "Okay, this is a strong case." Or you hear the other side and you say, "We can't act any further" and you advise accordingly.

Mr MacDIARMID: Built into the jurisdiction was always to penalise the vexatious litigant, to penalise litigants who, after the conciliation stage, insisted on pushing through with a matter when they had been advised by the Commission not to. The cases without merit, there was scope for the Commission to punish and the Commission would, more to the point. This is a regular criticism at this level of the old system, you cannot provide legal remedies to the community without there also being a concomitant risk that people will seek to abuse the availability of those remedies in all jurisdictions. In our centre we do an enormous amount of family law work. The statistics are that most matters settle in the Family Court. However, 6 per cent or 7 per cent of matters do not and in those matters one party generally does not have a decent case, but insists on grinding through. Often one of them is self-represented. It is a feature of all of the jurisdictions where ordinary people can access justice. In courts like the Federal Court of Australia or the Supreme Court of New South Wales it is far less common for you to have ordinary people abusing the system because it is so expensive to enter. Different corporations, nevertheless, as we all know, will use the process as a competitive edge. But my point in all of this is that the mere fact that the abuse of process is available is not a sound reason to withdraw a remedy from someone. There are procedural issues that can be put in place to penalise people who abuse process—they are and always have been.

Ms TUCKER: The commissioners have always been fairly vocal in letting you know what is good and bad about your case. Again, there is that loss of that expertise and instruction. You had a great resource of letting people know how to run the business and how to stay out of court in future as well.

CHAIR: Ms Parker has a question. I am conscious of the time. I know we have not been talking just about unfair dismissal because you have used it to explain a whole lot of other things to us. But there are a whole lot or specific areas we want to get your comments on.

The Hon. ROBYN PARKER: Please excuse my lack of knowledge in this area. I have not focused on it too much and I was not able to be here yesterday. I may ask questions that have already been asked of other witnesses. Can you clarify your explanation of bundling these various things together under unfair dismissal a little better? It seemed to me that you were bundling issues that dealt with State legislation with issues that dealt with Federal legislation and then dealing with all of it under unfair dismissal. Is that correct?

Mr GOOLEY: To this extent, an harassment matter might to go to the State or Federal antidiscrimination area, et cetera. But it all crystallises around the dismissal, which has to be categorised as falling under the State or Federal system. If employer X gets rid of employee Y and there are a whole lot of issues, what has crystallised it and why they come to us is if the dismissal is a

State-based award matter dismissed under an award or under the new WorkChoices legislation. You work out where you are going to go first off, or where the legislation allows you to go, and you are only going to be allowed to go to one of the two commissions. You go there and, in the course of going there, negotiations begin either between the parties independently or under the auspices of the relevant commissioner as part of the conciliation conference. At that time everything comes out, "The boss groped me", "The boss said I wasn't at work on that day", and "I caught her with a hand in the till". There are all these other issues on both sides. In either of those jurisdictions prior to WorkChoices in most cases you are able to say, "How can we settle this?" The advocates would assist the parties, or if the parties are unrepresented they did it themselves, always under the guiding hand of the relevant tribunal.

When things had cooled off a bit, due to the fact that it was possibly three or four weeks after the event, you were able to work out a settlement. The first point probably was: is it going to be a matter of reinstatement or is it going to be a matter of something else. As part of the negotiation process the employee might say, "If they take me back I will forget about all those other things. I might have exaggerated a bit." The boss might say, "All right. I didn't actually catch her with her hand in the till. She did have authority to spend that money on a staff lunch" or something. They all either get back together and are reinstated and it is finished or, if the employee is not going to go back for whatever reason, the quantum of any possible settlement, which is usually expressed in dollars and other agreed parts, goes up and down according to what is going to be settled. But it is extremely rare for someone to say, "Okay, we will settle this matter. I will pay you X, which are your entitlements, plus four weeks in lieu of notice, plus an amount agreed by way of compensation and we will finalise it, but I don't mind if you go off and sue me in the Anti-Discrimination Board."

The Hon. ROBYN PARKER: Those same avenues are still open if it is a State award. If it is an occupational health and safety issue they are still available under WorkChoices. It has really just unravelled State legislation and Federal legislation into different approaches?

Mr MacDIARMID: It has unravelled them, but it has made it much more inconvenient to pursue remedies.

The Hon. ROBYN PARKER: For whom?

Mr MacDIARMID: For everybody—employee and employer. If you could settle everything in one final deed, which is a legally binding agreement between both parties, you sign that and it is all done. The critical trigger for that agreement being entered into is that the parties have been convinced in a convenient jurisdiction, in this case the unfair dismissal jurisdiction. That is the thing that has brought people to the table. That is the thing that has triggered the settlement. All of the other issues involved complaints before different government departments or different tribunals that, in our experience, are not as successful.

The Hon. ROBYN PARKER: I wonder what all of you hope to gain from your attendance today, apart from morning tea, at a State inquiry that it is—

CHAIR: Come on!

The Hon. ROBYN PARKER: I am just making the same joke as they made. You need to have a sense of humour. I wonder what you hope to gain from a State-based inquiry that has nothing to do with Federal legislation.

Ms TUCKER: The final question addresses that, so we can move to that if it suits the Committee.

The Hon. ROBYN PARKER: You can do that now.

Ms TUCKER: We are cognisant of the jurisdiction that we are in and the legislation we are talking about, but part of what we have been discussing today is that this burden has been spread out across a range of jurisdictions in relation to the discrimination in relation to local courts dealing with entitlements and so on. That is something that State bodies will have to deal with. That is something that we would like to provide, that evidence, so that they may factor into broader impacts from the

legislation that the State bodies may need to address. Going back to our opening comments in relation to our dealing with legal issues, there are many other issues arising from that and there will be that burden spread out across other departments and other services. The matter of discrimination that has been referred to that often arises, that we would go down the unfair dismissal route because it was straightforward and there were lots of other advantages, now means that those matters may go to the Anti-Discrimination Board and we would hope that the consequences of that are looked at. Those processes may need to be improved or worked on.

In relation to the local courts, far more magistrates are going to have to deal with industrial matters, entitlement claims that previously would have gone to the commission. The issue of occupational health and safety, yes, that is excluded from WorkChoices, but occupational health and safety issues could have been dealt with as a remedy for the individual in relation to an unfair dismissal matter. All those issues could have been brought to light only because there was an unfair dismissal matter. I have had clients come to me who have been sacked and then you find out about horrendous workplace conditions, and we are all aware that that goes on. WorkCover is a public prosecutor of an employer. It is not a remedy for the employee. There is a loss there. Perhaps that is something to look at. Is there going to be greater work there with WorkCover? As I say, we have lost this one remedy and many other issues as well that will have an impact on State bodies, so it would be great if this evidence were taken on board in relation to that.

CHAIR: Does anyone else want to add anything?

Mr MacDIARMID: All of our centres are in a position of having to provide increased assistance to people in employment matters. It is a slow trickle at the moment because the legislation has only just come into play, but increasing numbers of people are seeking advice in relation to profit agreements. We are it, as far as providing that advice to people on low incomes and, as I said, at our centre we have two part-time solicitors. I cannot imagine where we are going to find resources to do that. That would be a direct request to this Parliament, to fund us to cover this because someone has to provide advice to people entering into these agreements. They are complex agreements.

CHAIR: Do the agencies the Federal legislation sets up play, or will they play, a role in that?

Mr MacDIARMID: No. Under the legislation when employees are provided with an agreement they specifically are not provided with advice in relation to content.

The Hon. CHARLIE LYNN: Is this not advice that you would expect unions to give?

Mr MacDIARMID: If everybody was a member of a union that may well be the case but one of the other goals of the legislation, on my reading of it, particularly in relation to the prohibited content aspects the regulations and the Act, are to lessen the role of the unions. Already the unions do not have a huge role in the Australian workplace, which I hope we are all aware of. In fact, I cannot remember the last time I was contacted by a client in an industrial relations matter who was a member of the union. I normally say, "The easiest way would be if you were a member of a union, but you are not, and they are not going to assist you now, so what do we do with this? "

Ms McDONOUGH: We actually—

The Hon. CHARLIE LYNN: So why are people not joining unions?

CHAIR: Ms McDonough wanted to add something.

Ms McDONOUGH: We always ask the client, when they phone or come in, whether they belong to a union and I agree with my friend that 99 per cent of people do not belong to unions.

The Hon. CHARLIE LYNN: Do you ask them why?

Ms McDONOUGH: Sometimes we do.

Ms TUCKER: It could be a non-unionised workplace and there has been no encouragement and, indeed, there is active discouragement. And although that is bordering on the unlawful, if there is

a threatened dismissal in relation to union membership, as we all know the threat is there and many people say, "We have never had a union here" and so to people with little bargaining power if it is made clear in the workplace that they do not have unions here, they are not about to go and put their hands up and say, "Well, I think we should have a union", because they will be out the door.

CHAIR: We are dealing with question No. 9, which is: What would you like to see come out of this inquiry. Let us try to get across-the-board answers to that question and we will come back to some of the earlier questions.

Ms McDONOUGH: From a practical level, what we would hope to come out of the inquiry is that the New South Wales inspectorate is boosted with more resources to inspect dangerous workplaces.

CHAIR: This is the WorkCover inspectorate?

Ms McDONOUGH: No, the Office of Industrial Relations, and that more resources are put into them so that they can inspect workplaces, where there are underpaid wages and so that they can inspect the wage records, where there are no pay slips, et cetera. We would also say that the Anti-Discrimination Board needs more resources because obviously more work is going to be directed to them. We would ask that consideration be given to more powers being given to the Anti-Discrimination Board. It is a conciliation model and if it is unsuccessful, then the client either goes to the Administrative Decisions Tribunal, which is a legalistic institution and if they are unrepresented, it is a difficult task for them.

We would also like to see that the Chief Industrial Magistrate's Court, which originally stood on its own and had its own court and has been moved into the Local Court, is not separated again and operates with people who understand industrial relations and the award system, the new systems et cetera, and, as my friend suggested the Local Court, because we see in the future there will be more breach of agreement matters.

CHAIR: So basically there needs to be a considerable expansion in powers, funding and resources to a series of New South Wales institutions?

Ms McDONOUGH: Yes.

CHAIR: Mr Gooley, did you want to add to that?

Mr GOOLEY: We were asked why we were here. We are here because this Committee is fulfilling its charter to look at social issues in relation to the people of New South Wales regarding a particular piece of Federal legislation and we do say that this legislation will affect all of the population of New South Wales, not just those who are in work. We think that is an admirable task and I note that it is not being done anywhere else.

Therefore, I am happy to say what we can. We are pretty much a one-stop-shop type of organisation, probably through happenstance uniquely placed to see all or a lot of current aspects flowing from that Federal legislation. I fully support what everybody else has said. In relation to what Pat McDonough has said, I might say that the suggestion that the New South Wales Department of Industrial Relations [DIR] be ramped up is important and that it should possibly be in that or somewhere else.

There ought to be a central monitoring body, bearing in mind what Mr Lynn has said, and that quite plainly we are not telling you anything about what unions will say because we are not seeing union members. It might be as well to have, for the benefit of efficiency and proper and just assessment of the effects of the legislation in New South Wales, some form of monitoring group, possibly within the DIR to co-ordinate that so that the Government can, in turn, make decisions on social issues and impacts. I just raise this here because it might be slightly off the tangent of the question, but I do not know if it is appreciated that they are not only taking away the State and Federal industrial jurisdictions and the effects we have related here today but also they were very limited in the remedies they could bring.

We did not take people there for no reason. If you were going to get two weeks at the most, it was often better to advise someone either to move on or to try to ring the employer and negotiate the other things out of it that were important, like a proper a reference, et cetera and we often did that, particularly since the other changes that have come in since 1996 have made increasing restrictions on the commission's jurisdictions anyway.

CHAIR: With respect to monitoring, are you saying that because the legal centres are dealing with one group of people and the unions are effectively dealing with and representing the others in those various bodies, that there is a need for someone to be collecting the statistics and doing the research to see what the pattern is across-the-board?

Mr GOOLEY: Yes. Without wanting to presume upon the union's role, they would essentially deal, by necessity and reality, with the industrial effects. We deal with that on behalf of the clients that we see but also we have the ability to see these other wider effects and how it is happening.

CHAIR: But the union's legal representation is doing for those people much the same role that you are doing?

Mr GOOLEY: It may be, but I doubt that they would know about or see some of the things that we do and, of course, there is that vast unknown majority of people possibly out there who do not approach anybody about the situation.

The Hon. IAN WEST: The vast majority.

Mr GOOLEY: Yes.

CHAIR: Question No. 8 asked you about the impact that the legislation will have on employers in small business. I know you suggested you do not usually represent those people but you said before that you thought one of the major problems is that good employers do not have a level playing field because of employers who rort the system?

Mr GOOLEY: That is right.

CHAIR: The ones who do not pay their tax are, in fact, getting a competitive advantage. Can you expand on that and suggest how we can deal with that issue?

Mr GOOLEY: I could not presume to suggest how it ought to be dealt with. I do know that the WorkChoices regulations, all 400 pages of them, do have a segment in there, which I cannot take you to because I am overwhelmed by it, but that segment says that there will be certain monitoring in the workplace, inspection of books, et cetera, and requirements on book-keeping and records of employers that appear quite onerous. Until the last time I looked at the regulations it said that this will commence in September 2007 and there will be an 18 months grace period in which there will be no prosecutions, so there is your 2½ years flying start and if I was in small business today I would be very worried that if I played the game fair, even by the hard rules we say WorkChoices brings in, I might not be around in 2½ years on a commercial basis because somebody else is able to undercut me in price, possibly because of what they are doing in relation to wages or conditions.

Now that is not unknown in Australia at all. The old phrase "holding the bet" in relation to PAYG tax and superannuation guarantee levies—9 per cent for every employee for superannuation and averaging it out—30 per cent tax for each employee; if you are hanging on to that for as long as you can until you get a kick up the backside from the relevant authorities, you have got a lot of operating capital there that you did not have to raise and pay a bank interest on, and you are able to deploy that against your competitor how you will, either in lowering your costs for your goods and undercutting the opposition. That has always gone on but I believe that, unfortunately, the new legislation assists it.

Can I just quickly refer briefly to a previous matter when I said that those industrial commissions had limited jurisdictions. New South Wales can only get six months money. That may be very cheap compared to results in other jurisdictions. For instance, there was $2.7 million paid to a

security guard not that long ago—it got a lot of headlines—for a discrimination matter. That could have been, if reasonably handled I am told, settled in an industrial sense, but for one reason or another it went ahead and $2.7 million is a lot more than any employee I know could get in six months, so not only was the jurisdiction of the industrial commissions good for all the other reasons we told you; it had a capped ability to pay anything back to the employer in the small business aspect. I think the Government has the resources way beyond any of my skills to look at how that might be monitored and that would be in the interests of the people of New South Wales and in the interests of social issues because that is where it is going to flow.

CHAIR: Do you want to say anything about any or all of the specific areas of our terms of reference, which we phrased as questions? Mark, you said a little about rural communities by talking about the load on the Katoomba Centre.

Mr MacDIARMID: Yes.

CHAIR: We have questions about gender equity, balance between work and family responsibilities, injured workers and vulnerable groups where if bargaining ability is affected certain groups, young people, women and people from non-English speaking backgrounds are impacted.

Mr MacDIARMID: I would like to say something on that because it covers many of those issues, and I will use our centre as a melting pot for that. We find that the majority of people who approach us are in some degree of disadvantage. Many clients are dependent to some degree on social security payments as well. Many of our clients are women. That is because we run a women's domestic violence court assistance scheme and so a lot of the family law matters are directly referred by that scheme as well. So we do see a lot of women in social disadvantage particularly. In our area what we are going to find when the Welfare to Work changes kick in—and I might say this for the benefit of everyone at the table—

CHAIR: We actually had a lot of the evidence given by various witnesses yesterday about the start of the Welfare to Work on 1 July and the expectation there.

Mr MacDIARMID: It will also cover women with children, and also the family law changes that will commence on 1 July and changes to child support that will commence early next year; 90 per cent of people on parenting payment at the moment are women, as we know. Those women, if the children are somewhere between the ages of six and seven, depending on when they came onto the benefit, will be migrated into Newstart. The new family law changes are favouring the rights of parents over what was previously emphasised, which was the paramount principle in family law, which is the principle that the best interests of children are to be held above all other concerns.

The parallel change in the child support regime means that child support is much more timed or proportioned according to the number of nights spent with different parents. The net effect of that is that you are going to have large numbers of women who are being pushed into Newstart with perhaps less money available from parenting payments, depending on the circumstances. Some people will get more, some people will get less.

However, in our area where public transport for many people west of the mountains is not a reality, where a condition of receiving the benefit is that people go out and seek work within a 40 kilometre radius, where we would get at least two telephone calls a week from people who are seeking help doing pleas in the Local Court because they have been fined for driving while unlicensed; they may have lost their licence because they did not pay a rail fine or a parking fine or some other kind of fine—it may have drink-driving—but largely it is due to non-payment of fines.

Those people, if they do not take the work that is on offer, whether it is under a negotiated AWA—and I gather you have heard evidence on that so I will not labour the point—but those women, I am identifying women in particular, will be forced to take whatever is on offer. You have asked us about the ability of workers to bargain. My view is, taking those things into account, that a woman who is currently on a parenting payment will not have the ability to bargain. I direct you to the 2004 publication of the Commonwealth Department of Family and Community Services "Women in Australia", which gives a good rundown of exactly what the situation is with women and work in this country and the old saying, "84¢ in the dollar is generous for some sectors".

Many of the women that we see, if they do get work it will be in large chains in centres like Lithgow or Bathurst or Mudgee, and we know what sort of AWAs are beginning to be offered by those organisations. We have seen the Spotlight case, for instance, in recent weeks. My view on that is that women particularly, who already, I think, are not in a great position to bargain—if they were then they would not be paid 84¢ in the dollar—are in less of a position.

Young people and casual employees, it goes without saying. An 18-year-old, 19-year-old, or 20-year-old bargaining with a 40 or 50-year-old boss—that we even talk about bargaining power in those situations is laughable, in my experience.

CHAIR: What you are saying applies to people with fewer skills or women with family responsibilities?

Mr MacDIARMID: Yes, and the less bargaining power those people had to begin with, now that WorkChoices has come in, if they are negotiating with a trading corporation then I would say they are worse off. How can their bargaining position be improved by this legislation?

The Hon. IAN WEST: On page 4 of the very comprehensive submission by the Combined Community Legal Centres Group, submission 25, can I earmark the case study of the young child care worker—who it is said was not in a union and worked at a particular centre—who had dyslexia? To me that particular case seems to epitomise most of what you have talked about this morning. Can I earmark that for you to either take on notice to give us some more detail about that case or if you are able to tell us in the very short time we have available, if anyone is familiar with the case?

CHAIR: Perhaps we could have it taken on notice and whoever has carriage of it could give us some extra detail.

Mr MacDIARMID: I just make one last point in relation to the difficulty that people have in identifying just what laws cover them. The legislation was plainly drafted by lawyers, who understand how to find out whether someone is incorporated or not and under what laws. The first question that I will ask anybody who rings up for advice from our centre is, "Was your employer a corporation or a self trader?" I have not yet come across anybody who knew. The next question is, "Look at your payslip", and the most frequent reply is, "I do not have any". So even working out for the average employee that we see—and I am making no bones about the fact that the people who come to our centre are generally at a social disadvantage at any rate—those people are not equipped to determine whether they are under State jurisdiction or Federal jurisdiction.

I have access to online searches so I can find out some of that information. For at least half of the employers I have been approached about I have not been able to work that out because business names have not been registered. So I have not been able to go behind the business name that the clients come in with. That is a profound difficulty. When I cannot tell someone, "You either go to the New South Wales Industrial Relations Commission or we investigate further to see whether your employer employs more than 100 people", it is impossible to give advice. If someone is running without advice—and as I said, we have only got two part-time solicitors and I am the only one who is doing industrial relations stuff in our centre—where do you get that information? I do not know. That is one thing that has really become very apparent over the last two months.

CHAIR: What you all seem to be saying is there are a lot of hidden and possibly unintended consequences that what you are dealing with is, in a sense, not the professed aims of the WorkChoices legislation, but it is interaction with an enormous number of other legal and administrative issues, State and Federal. Would that be a fair summary?

Mr MacDIARMID: Yes.

Ms TUCKER: I am just trying to extrapolate from that the broader circumstances of the dislocation of people being either pushed out of their jobs or being put into marginal positions within their jobs. One of the increases that I have seen is people calling up who are still at work and suddenly their conditions have changed; threats have come in or they have raised a concern and they are told,

"Well, let's have a look at your performance", in the full knowledge that a remedy has disappeared for them if they are dismissed. I am getting far more calls about that.

The Hon. IAN WEST: You mean the mentality has changed?

Ms TUCKER: The mentality has changed. The bargaining position, I am sure already accepted as unequal, has been aggravated. So that is certainly something that has changed. The other thing that I want to refer to is the disingenuous approach that it is an employees' market when we all know there is a wide range of people who work and it is not necessarily a market for those without skills in demand. But even for those people I do not think we should overshadow the fact that changing jobs is a huge dislocation in relation to broader services. And coming back to what you were talking about before, Jan, what we are trying to bring across is the welfare issues, the social capital issues of stability in employment.

You pick up and move jobs, you have lost your building up towards long service leave entitlements, you have lost the skills and experience, you have lost the relationships. So it is going to filter through to the other services that we provide, as well as in relation to families, society, communities and so on. Employment law is almost like family law in a way because you have these very close relationships people identify with their jobs, and the fallout from saying that the way you deal with it is you pick up your bag and you go down the street and you go to another employer, apart from the fact that that is not the reality for the most vulnerable people, for those for which it is the reality there are broader social consequences.

The Hon. CHARLIE LYNN: Have you ever heard any evidence from employers that the unfair dismissal legislation prior to this acted as a disincentive for them to employ people?

Ms TUCKER: I have never heard that, and I have dealt with a lot of self-represented employers, so I have had quite a close relationship at times—

The Hon. CHARLIE LYNN: How come they tell it to us and not to you?

Ms TUCKER: They might be irritated at having to come to the commission, but it was dealt with so quickly. I have never heard someone say, "If I didn't have this I would employ another seven people", or whatever the statistics are.

The Hon. CHARLIE LYNN: They have said it to me. And that is out in the western suburbs—Campbelltown, Camden. It has been said many, many times by small-business people, that it is a major disincentive for them to employ. Are they fibbing to me and not to you?

Mr GOOLEY: We have endeavoured to deal with that in a brief anecdotal piece about a factory at Marrickville. I have done seven years of research on actual cases, tracking down—only for my benefit as an advocate—as to what to do, where I might squeeze things in negotiations. But the fact is that in almost every case that I uncovered where that had been publicised or I was able to track it down, when you look at it, the complaint was that they were harshly dealt with in the commission but they signed a mutual agreement to finalise all matters there. They do not mention that when they are telling you perhaps. And the fact is that they also do not tell anybody that if that was not signed they may well have been up in headlines on a number of issues in other jurisdictions.

Everybody is entitled to advocate their own particular global case the way they want, and small business certainly do, but I just do not see that there is a great deal of truth in that. I do recall hearing similar claims when maternity leave first came in. Unfortunately, I am old enough to remember that. I also take the point that, as Linda said, in changing positions, either of your own volition or not, when women lose out on long service leave entitlements because they, voluntarily or from a push, change employers, they are not just losing their entitlement, long service leave accrual was very often going to be used in conjunction with, say, maternity leave. We are now finding that maternity leave and returning from maternity leave, if you went on maternity leave before WorkChoices, is becoming a major issue as well.

The Hon. IAN WEST: Have you ever had a situation where you have come out of the court where your client has lost and your client has said that the judge is in the boss's pocket?

Mr GOOLEY: People always have views about the referee. The trouble is that whoever is complaining, if he had been factual and looked back over things in a realistic light over the years that we can here, the referees are within one or two degrees of dead fair, most times I can remember. I have come out and felt hard done by, but when you look back over realities and even it out over a whole range of cases and years and similar fact evidence, they are pretty good. There are no soft touches here. We do not take cases on for the fun of it, and nobody likes taking on a losing case. You may have been appreciative of the fact today that we have not talked in terms of winners and losers because there are no winners in the industrial area: matters that go to court always have a component of loss; it is a matter of minimising loss for everybody.

The Hon. KAYEE GRIFFIN: There are probably two parts to this question that perhaps can be taken on notice. I know in the Marrickville submission today you talk about one of the cases and some of those issues related to maternity leave and parental leave and so on, I was wondering whether it may be appropriate to give the Committee some more information in relation to some of those breaches regarding parental leave. The second question relates to a comment, I think made by Ms Tucker, about telephone calls concerning performance since WorkChoices has come in. It may be something you can answer now or maybe something you need to have a bit of a think about.

In relation to the inquiries that you are getting since WorkChoices came in, and perhaps the unfair dismissal cases you ran previously, has the performance of work elevated itself as a reason why people are concerned about keeping their jobs or there is nothing there now that says what your performance should be or an opportunity for an unscrupulous employer perhaps to dismiss someone rather than go through what were fairly common procedures in most awards about disciplinary procedures or performance and so on? In your opinion has there been an increase of concern in relation to performance because an employer or supervisor has mentioned this and there is nothing there that says that?

Ms TUCKER: I will just go through quickly what I understand the question to be. Performance may be raised whether or not it has been raised in good faith. It can actually be a form of harassment or bullying to get someone just to stay in line. They do not necessarily need to follow any procedural fairness now if the unfair dismissal has been removed because there are fewer than 101 employees but it has just been raised as a bogey there to say, "You had better keep your head down because there is this possibility that I can sack you for no reason whatsoever on the spot", and that is tough. So that is the issue.

On top of that also is the operational requirements, which I want to quickly refer to, which is an enormous removal of unfair dismissal remedies, where someone can be made redundant—so-called redundancy—and it does not matter how many employees are there. It is very difficult for the individual employee to challenge whether that redundancy is genuine or not. So that huge loss and the possibility the employer might say, "I am looking at making some changes around here", even if you are in a large organisation, there is that implied threat, "I can get rid of you. I can make some token restructure and all unfair dismissal has been removed, and I can do it on the spot". Again, we are getting quite a lot of operational requirements—that it is asserted that it is an operational requirement in a large organisation and those people are then precluded from any procedural fairness.

As I said, it is very difficult, even for us as legal representatives, to decide that we are going to challenge a redundancy because it is very difficult to go behind a redundancy, and that has certainly been my experience in practice.

Mr GOOLEY: Operational requirements, if it is raised as an issue, in order to try and find out if it is genuinely founded would require at least a forensic accountant. That somewhat parallels the situation that Mark mentioned earlier where for the first time employees are required to know something about how to use the ASIC records to find out who or what their employer is, and it is often quite a surprise. That is required if you are going to go in genuinely and bargain on these contracts. That just does not happen. But if there is any proof required as to the genuineness of the outcomes of bargaining we have now seen enough, particularly in areas of less than 100 employees, to say that when we look at, say, 60 or 70 contracts that have been signed after alleged individual bargaining in the one workplace, it is quite remarkable how they are all very small with very few conditions, but everything is the same for everybody and they are down below the previous level. That comes from

doing away with penalty rates and overtime, et cetera, and a very small, if any, increase to make up for it.

How that relates to questions two and three of the Committee is basically this: the fact that you are now doing the same work for less money and when you apply for, say, home finance or to just sustain your existing mortgage, you can no longer put forward regular overtime, which has been a very big component that the banks know of such applications and such payments, you have now got a social effect about to flow through and we believe it is very serious.

CHAIR: Our next witnesses are here and we have used up our break. At this stage, anyone who wants to add anything that we have not covered could do so now.

Ms McDONOUGH: Taking up the Hon. Kayee Griffin's point about maternity leave, I have found quite alarming the number of women who are facing pregnancy discrimination or return to work discrimination, in particular return to work discrimination. They have their baby and they think they live in an enlightened world. They plan to return to work after their 12 months or six months or whatever period of absence has been agreed to, but then they discover there is a problem with their performance. It is usually because the boss likes the person who is working in their position. Often they will be women who were formerly full time and intended to return to work full time but cannot find any child care full time and can only work two days.

The problem with the demise of the unfair dismissal jurisdiction is that it has the power to reinstate whereas the discrimination jurisdictions do not, and that is a major problem for women. The legislation, in particular the New South Wales legislation in its Industrial Relations Act, is really strong for women to return to work to their previous job, but in reality it is still not working.

CHAIR: Does anyone else want to add something?

Mr MacDIARMID: Just on a very quick point, the Hon. Charlie Lynn raised the issue of the impact of this on employers. I draw the Committee's attention to the final page of the Combined Group's submission where I have extracted some Australian Bureau of Statistics statistics for the number of employers who are likely to be covered by Work Choices in this State.

CHAIR: We will have a good look at that.

Mr GOOLEY: Very briefly, the modern phrase in the current Federal legislation of "operational necessity" draws an amazing parallel with something that was done away with in New South Wales industrially and in the other States at the time and I think Federally also in around about 1986, and that is the old phrase "administrative convenience". It was primarily used in the public service. Provided that a senior member of the department was prepared to say that a change had been made for administrative convenience, it could not be challenged. We have the modern equivalent of that coming back again.

CHAIR: I thank all of you very much. We have been here longer because you have had so much to tell us. Mr Gooley, I suggest that the document you gave us this morning we may treat as a submission from the Marrickville Legal Centre.

Mr GOOLEY: Yes.

CHAIR: Because, really, particularly the way it starts, that is effectively what it is.

Mr GOOLEY: Yes. That is how we designed it. I am only sorry that we were too late.

CHAIR: We have had a quick look at the comment you make about the confidentiality for case studies. It seems to us on a quick look that we will not need to keep anything confidential, but we can discuss that. We usually resolve to make all submissions public unless there are things that need deleting. I think you have taken one or two matters on notice. Probably the easiest way to handle that is for the Committee's staff to talk to you later by telephone or whatever and clarify what we are after. They will talk to you about what will be helpful for us. Do not puzzle yourselves about exactly what

we want to ask you. We will be in touch with you. Thank you very much, the four of you, for coming and giving us so much detail. Pat, did you have something further to say?

Ms McDONOUGH: I have just got more case studies here.

CHAIR: Would you like to table those for us?

Ms McDONOUGH: Yes.

The Hon. IAN WEST: I move:

That the documents be tabled.

Motion agreed to.

Documents tabled.

(Short adjournment)

RUSSELL KERRY COLLISON, State Secretary, Australian Workers Union [AWU], 16-20 Good Street, Granville, and

STEPHEN LOUIS BALI, Organiser—Policy and Industrial, Australian Workers Union [AWU], 16-20 Good Street, Granville, sworn and examined:

CHAIR: Mr Bali, are you appearing on behalf of the union?

Mr BALI: Yes.

CHAIR: Thank you for your submission. You have probably been given a copy of "Opening Statement".

Mr COLLISON: I have, yes.

CHAIR: I do not need to say very much about it unless you want to give individual case studies that may involve allegations about people. If you do not, then you have the statement. As a Committee, we need to be careful. Obviously, in fairness, there may be a right of reply if allegations are made. But if you are not going to go down that path, I do not need to say any more about that.

Mr COLLISON: Okay.

CHAIR: Do you want to make an opening statement? Our questions, as you would know, basically are fairly general and follow the aspects of the terms of reference, but we would like to know a little bit about your union, particularly in terms of its coverage in non-metropolitan areas. Would you like to make an opening statement?

Mr COLLISON: I would, Madam Chair and Committee members. I have to say that when we had an opportunity to put a submission in to the Committee, we were very interested in doing that, even though we are well aware of what the Federal Work Choices legislation means when it comes to those laws looking like overtaking, can I suggest, State laws sometime in the future, if the Federal Government gets its way. The Australian Workers Union is the oldest union in this country. I was fortunate last week to be in Ballarat where virtually the whole show started. We are 120 years old this year, so we have been around a long time. We have a great history. I say today to this Committee that we do not intend to go away. We will be around in the future. While governments of whatever persuasion move through, the Australian Workers Union [AWU] will be here.

We have a very proud history, starting with the shearers dispute in the late 1800s. Our coverage has changed over the years, and we are now a very broad-based union. When I talk to people I meet in the course of my job I describe our coverage as looking after people ranging from the very highly skilled, such as at the Qantas base maintaining 747s—at this stage anyway—to people doing mundane tasks in regional New South Wales, such as fruit pickers and itinerant workers. We look after people in aerospace at different air bases who are maintaining aircraft. In this country we are the senior union in steel—and when I say senior, I mean the biggest union in that industry.

We are also the largest union in the aluminium industry. We are a major union in the petrochemical industry and the metal industry. We look after people in the pharmaceutical manufacturing industry. We cover glass workers as well as workers in the chemical, food, soap and civil construction industries. In the construction of roads and tunnels that have been built in this State in recent times, we are the major union for people doing that type of work. We also look after—not that I go to them too often—hairdressers. We look after people involved in indoor sports, such as netball, ski instructors, racing industry people, people who look after zoos, amusement parks, golf courses, bowling clubs, nurseries and landscaping businesses.

In regional coverage, we are very significant—covering shearers, fruit pickers, farm hands, viticulture workers, pastoral workers, those in the fishing industry, as well as workers in the poultry and grain industries. When people ask me seriously who we cover, I say, "It is far better for me to tell you who we can't cover." I say, "We can't cover the police, nurses, teachers and the fire brigades. But

anyone else, join them up!" But, seriously, we have very broad coverage, and we are very proud of that.

If you talk to us about what happens in country and regional areas in particular, the Committee will hear of a lot of experiences apart from what has happened in Sydney and other metropolitan areas. We have major concerns about what is happening with WorkChoices, but in particular we are concerned about the pain and suffering that legislation is causing, and will continue to cause, to our country and regional members and their families. I do not know how the Committee would want me to address the questions that we have been given.

CHAIR: The order can vary, but Committee members may want to tease out some of the issues raised in the questions. So we might deal with the questions one by one so far as we can separate them.

Mr COLLISON: Though I have illustrated that our coverage is very broad based, I have probably done it justice in what I have mentioned; there is more to our coverage, and it is broader than I have said. The Commonwealth WorkChoices legislation will affect in particular women, young people and casuals. I notice that is raised in one of the questions. At this point of time I suggest that if you are a tradesman in the community with special skills, you are in a unique situation because of the lack of trades people available for employers. Those trades people could probably sit down and negotiate a reasonable outcome, because most of those trades people—with all due respect to other members—have had substantial schooling and education and are therefore better able to negotiate a reasonable outcome. But the work available to women, particularly in country areas, young people and casuals is reasonably limited in this day and age. In a lot of cases, it is seasonal work. It is itinerant in the sense that if you want continuity of work you need to follow that work. A lot of our people have a number of skills, and not only go from one farm to another picking fruits and working in areas of viticulture, but also do some shearing as well as working from time to time in the grain industry in order to maintain continuity of work.

Obviously, the very vulnerable are the young people. When I talk to the average person on the street I hear them say that they do not see much wrong with the legislation. We are very concerned about fairness and equity in this country, and I believe what is being implemented under the guise of choice—that is, WorkChoices—should be properly described as no choices, because that is the reality. For anyone who is employed these days, the employer can insist that they sign an individual contract and that they work under terms and conditions that the employer requires, irrespective of whether people are working in similar classifications on the same job. Because of the WorkChoices law now in operation, employees are expected to accept whatever terms and conditions are offered. You either accept them, or there is no job.

It is easy for people to say, "Well, if you don't like it, move on." But what do you do if you are 300 kilometres out from a major country town and you have an opportunity to work, and the employer says, "These are the terms and conditions that apply; and you are casual, but I want you to be a contractor"—so that they have absolutely no obligations to look after their workers' occupational health and safety, workers compensation or any of those benefits that normally accrue to an employee of a company, such as annual leave, sick leave and whatever? So young people, women and casuals are the three categories in country and regional New South Wales that in my view are without doubt the most vulnerable.

CHAIR: Itinerant workers would come under the category of casual.

Mr COLLISON: Absolutely.

CHAIR: I guess most unions do not have itinerant workers as such.

Mr COLLISON: No. Itinerant workers obviously come under our jurisdiction and coverage, but a lot of them are backpackers, who come into an area and all they are looking to do is pick up a few bob and move on because it is part holiday and part work. What happens is that a lot of the employers say, "Fine. These are the arrangements that we will offer you. Take it or leave it." Overwhelming, they take it. But the residents in the local area do not get a look-in, they don't get a

chance! They say, "We were working for $13.50 last year, and they are offering $11.20 this year." But the employers have the takers in the backpackers, and that is a problem confronting the locals.

So it is extremely difficult in country and rural New South Wales. We have country offices in Canberra, Wagga Wagga, Griffith, Cobar, Dubbo, Orange, Grafton and Tamworth. Those are manned in the sense that an organiser is stationed at those particular offices, with some clerical support staff. They are telling me about problem cases they are having these days. People such as those on this Committee who have a fair and open mind on this issue would not know how much intimidation there is out there. They must either sign, or there is no job.

CHAIR: When you say intimidation, do you mean financial intimidation in that there not really choices in areas with small populations, or do you mean intimidation in the sense of more threatening behaviour?

Mr COLLISON: Even the transport to a lot of workplaces is supplied by the employer, and once you get onto the property you work under the arrangements that are available. It is easy for people to say, "Well, you wouldn't get on board the transport until all the i's are dotted and the t's are crossed." But that is not the reality. The reality is that these people want a job, and they think they will be treated the same as they have been in the past. Yet, when they get out there they are confronted with terms and conditions that have been eroded or reduced from the last season. What option have they got? They either sign, or they find their own way back to town, 200 or 300 kilometres away. Some people might say, "That's ridiculous." But that is the reality; that is what happens.

My phones, through the offices in regional branches, are running hot. The biggest concern is fear—you sign, or you haven't got a job. In the metropolitan area at least you have a chance at fairness. If you have some skills, you will probably pick up a job elsewhere—but not on all occasions of course. Where is the fairness in the system for a young person or a woman, or a casual, or for that matter anyone who works out in country areas and do not have a union to give them some assistance? By the way, the employers have their union. Employers and people from the more conservative areas do not like to admit that employers have their unions: they have their Employers First, or they have legal experts to tell them how they can wind down terms and conditions. They have their unions, but if employees talk about being in a union, they are not real interested in employing you.

I heard a Committee person say, "Why aren't they members of a union? And why is union membership dropping off?" I have my view on that. I think the landscape has changed considerably because a lot of businesses have gone offshore. I could take you to shops where five or ten years ago we had 500 members. Today, we have 50. They are all in the union. But, because of changes like the company going offshore with a product, of course membership has dropped—but not as a result of people saying, "I don't want to be in the union,"; it has dropped as a result of consequences that have come from employers going off shore.

CHAIR: Mr Collison, would most of the employers you are talking about at the moment be not constitution corporations, in other words, having fewer than 100 employees et cetera under the WorkChoices legislation, because of the nature of jobs in rural areas?

Mr COLLISON: That is right. I have been an officer of this union for more than 20 years, and I have been a trade unionist since 15, and I am now 57. I simply say to you today that anyone who thinks there is fairness in this system should think again.

People think if the business has got more than 100 employees that is terrific, I am saved, you little beauty. You can wipe your brow and say, "I have escaped." That is rubbish, because there is a little provision in there that says "for operational changes". So anyone with 100 employees or over, if they turn around and say, "I have got to make some changes because there are operational problems. I have just got to do a bit of twigging here and twigging there. I have got to put 20 off", that is what they can do. If anyone is under an illusion that if they have got 100 employees or over someone working for them is safe, that is a load of rubbish. That is just totally incorrect.

I have heard it said today that they have spoken to employers who have talked about the problem with unfair dismissals. I will say here today, Madam Chair and members of the Committee, that there was not anyone in the trade union movement in recent times that did not turn around and say

there should be some adjustment to the unfair dismissal laws for small employers. There was no doubt there was some disincentive and that maybe, not maybe, I suggest we accepted it needed some change. But to use that to come in and spend millions and millions and millions of taxpayers' dollars to employ the top end of town lawyers to do over the union movement, which in turn is really about doing over the Labor movement, I think is absolutely shameful. I think that will be seen.

I addressed a group of people early this morning and I said to them that 60 per cent, I would suggest, of our members voted for the Government federally. But there is one thing they did not vote for. They did not vote to have their wages and conditions lowered. He never, ever come out and said, "You vote for me and I will reduce your terms and conditions of employment." Never once. I have come along here today with the view that I want to put our position. We see there needs to be a fair umpire. I think the New South Wales Government is showing its bona fides in standing shoulder to shoulder, knowing full well that what is being enunciated is unfair. I do not want to got to the last question now, but I just want to say: What did I want to get out of this Committee? Why did I come here today? Why did I not send an industrial officer? I have got obviously Stephen with me today. We want to see that because we have got right on our side and we have got a valid argument we can convince the New South Wales Parliament, no matter what political persuasion, to turn around and say, "We do recognise there is some unfairness in this legislation."

There is some unfairness in the balance. I am sick to death of people saying the unions run this and the unions run that. The pendulum has gone back that far to the conservatives it is unbelievable. It is not right that workers generally cannot go out there with a view to saying, "I want to apply for a loan to buy a car or upgrade my transport arrangements", or "I would like to put a deposit on a house" because the way this legislation is drafted there is absolutely no security of employment. If someone from the employer side who may be one of the underlings on the lower level of management gets out of the wrong side of the bed for whatever reason and someone looks at him the wrong way, they can be dismissed and there is absolutely no recourse. If anyone can tell me that is fairness in the system, I would suggest you are very biased.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When I went to the USA in 1985 to study workplace absences, many unions were excluded from workplaces premises where they were trying to cover their workers. They worked from cheap office accommodation on the periphery of industrial precincts. Are you excluded from any or most workplace sites?

Mr COLLISON: For a start, we need to have membership for right of entry, unless we have got some occupational health and safety concerns and that comes under our coverage as such. The restrictions that are put in place now by WorkChoices make it extremely difficult for us to have access to a work site.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You cannot just walk in?

Mr COLLISON: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do have to make an appointment?

Mr COLLISON: You have to give 48 hours' written notice, then they will allocate you a time, whereas in the past you could go onto the site. Our organisation has always been one that we understand it is a partnership between business and the union. We want to see the benefits such as a good outcome in terms of wages for our members but also a good profit for the company, which is obviously a result of good productivity. To me, that equation equals security of employment. That is what it does. So that is what we are about. Now, even with relationships like that, the employers are being told, that is what they are advising us, that they must conform or otherwise any chance of getting a Federal government contract will be virtually nil. People may say that is hearsay. I suggest it is not. Because if you see the code that is now put out in the building and construction industry and all the agreements we have got to vary as a result of compliance, I just think they have gone far too far. You can have a system in this country which is decent and fair where employers prosper but they also bring the stakeholders with them. We are a stakeholder in business. To turn around, just cut us off and say we are not relevant because they have got someone who has been there for 10 years, we have been around 120 years and are still going strong.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are you picking up new workplaces now or do the work contracts make that difficult if an individual wants to bring in the union? Are you picking up new businesses as they start?

Mr COLLISON: I think out there in the business community there are a lot of very mature employers. By that I mean there are very sensible employers and they realise that we have a stake in their business, if I can use that phrase. We are there and we are an integral part. If you have got a business with 300 people, why would you turn around and have 300 individual contracts? They do not want that. That is not their core business. Their core business is manufacturing digits or whatever. As it goes, we are getting a lot of inquiries. But I am not a bloke that will con people in the sense that we are not going to join people up and take their money if we cannot genuinely represent them. The problem I have with this legislation is that they say they are not opposed to unions. If you read the legislation, there is everything there that is part of the legislation to destroy the trade union movement, to destroy it. But we will not be destroyed. We might be knocked about a bit, but we will not be destroyed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can you join in negotiations? Can an individual use you as a consultant if they say, "I am negotiating an individual contract and I do not know much about it. Can I bring in the bloke from the AWU?"

Mr COLLISON: We can do that, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Would that have to be approved by the employer?

Mr COLLISON: What has to happen, you have do understand, we would only be there as an agent. The employment contract is between the individual and the company and the union has no role in that contract. That is the way all the contracts are couched.

Mr BALI: Just picking up on the point raised about the ability to pick up new businesses, under the WorkChoices legislation it actually says on greenfield sites the employer can negotiate himself or herself and establish a greenfield agreement which goes for 12 months. So you can lock out unions, you can lock out everybody and have a greenfield site, which previously you could not do. Picking up on an earlier statement about your tour of the USA, you were talking about workplace absences. For instance, we have got a few factories that I have been involved with where obviously employers are worried about increased absenteeism. They have sat down with us and before WorkChoices came in we just registered an agreement where if there is perceived high absenteeism they sit down with the employee, with a delegate and if need be the organiser or the senior site delegate, the HR manager and the supervisor—basically it is a five person committee—and look into the absenteeism.

What they are trying to find are the people abusing the system. If the employer can show it is genuine sickness—it is not just missing the night shift on a Friday night—we can work through it. Then if there is a health problem or another issue, the company together with the employee and the union representation can put in a system that will support the employee. Under WorkChoices it is illegal to have that section in future enterprise agreements. Also, at another factory they have high absenteeism. Generally the first thing that management will do is to take the draconian approach and say the employees must have a doctor's certificate for every single absence.

In a previous group they were talking about forensics accounting. That is basically what we need to be looking at. You have to test management. Management is not always right. They raised the issue of high absenteeism and we asked them to show us the data: who it is, where it is coming from. Sometimes you find it might be one or two employees doing it and the others might have taken leave because it is the middle of winter and there has been a high outbreak of colds. They may take a week or two off recovering. That will blow out the absenteeism data. By the same taken, it does not mean there are mass problems right across the site to change to draconian laws and bring in that you need a doctor's certificate for every single day off.

On a lot of occasions by having the union involved—as Russell will probably be able to expand—it just put the brakes on, slows down an immediate decision. In that way people can think

through with clarity and say that maybe management was hasty with a particular decision. Today with less than 100 employees—and if you look at the statistics I understand over 90 per cent of workplaces in the private sector have less than 100 employees—a person can be upset one day, walk in, sack a worker and you are gone.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I used the phrase "workplace absences" because the word "absenteeism" has a connotation of laziness. "Workplace absences" means that employees are not there and leaves it open for investigation. I take your point that absences are not necessarily absenteeism.

Mr BALI: Regardless of how you phrase it, employers want to have that at zero. Sometimes if you do not look at all the facts and the employee does not have support or the ability to talk to someone outside the system, like the unions, to have a chat to and find out their stance, they will be rubbed out of the process. As a classic example, I will not name them but it was reported in the *Daily Telegraph*, a turf farm worker simply rang up the employer when he was out on the farm and said, to quote his words but I will drop out a few expletives, "This grass is crap. Is there any other grass we can use to take out to the client?" He was genuinely interested in the needs of the client. The employer abused him and said, "You take out that grass and take it out now." The employee said, "Fine, it's your business, I don't care. I will do whatever you want." Then the employer actually drove down onto the farm where he was working and carried on with the argument because the employee hung up on him. In the end he got sacked because the employer said, "Either you lay it or I will get someone-else to lay it." Actually the employer goes, "You got out and lay it and you are not working here anymore." So the employee said, "You can lay it. I'm not going to work here just for nothing."

That employee, after being on *A Current Affair* and in the *Daily Telegraph*, had three or four job offers in that area, because people saw that he was highly qualified, he actually cared about the company, and he was sacked on a principle.

If this were pre 23 March, before unfair dismissals were removed et cetera, we might have had on opportunity to put a brake on that situation, have both parties step back, and then go, "All right, we both overreacted and so on", and the person would have their job back. Now, he has found another job, which he is happy about, but the brakes are gone.

CHAIR: I notice that on page 11 of your submission you have quite a number of comments about hairdressing. That seems to be a good example of the difficulty of unionisation, the fact that almost all the businesses are smaller, that it is almost totally female, and has a fair degree of younger workers and apprenticeship problems as well. I thought we might talk about that as a case study in relation to the questions we have about women, gender equity, and the balance between work and family responsibilities.

Mr BALI: We have just had a case—and I am happy to name the employer because it has just gone through the Chief Industrial Magistrate's Court and there is a ruling on the matter. Violetta Baslakovski was an employee for about 10 years at Prodigy hair salon at Hurstville. Over the last six years she never received one cent in superannuation payments. She enjoyed the workplace. This is common right across the hairdressing industry. In a lot of small businesses, you work so closely with the employer that you build a friendship or bond with them and you are a bit hesitant to ask them, "Where is my super? Where is my tool allowance, my meal allowance, et cetera?" The employer supposedly takes them into their confidence and starts saying, "The business is not doing that well." Then the employee sees that the employer turns up with a new car or suddenly has better accommodation.

This employer is in a little bit of trouble, which we have recently found out. The total claim was about $25,000, which was awarded in unpaid superannuation. Plus, when she left she was not paid out for long service leave and other entitlements. This goes for all the employees. There are about six employees at this hair salon. Those who have joined in the last four years do not even have an account registered with anybody.

We have been involved in the last 12 months or so, and we have been talking with the employer. Once again he is giving us the story, "The cheque is in the mail; we are working through with her." We were happy to do that, under the instructions of the employees. In this instance, they all

joined. We just never got to that stage where the cheque was written, even for a partial amount or just to keep up to date. That is why we took it to the Chief Industrial Magistrate's Court.

CHAIR: As an unfair dismissal case?

Mr BALI: No. She quit, because she started off her own business down the road. This is a classic example. She is now going to be paying the right amount of wages to people. She is up against her former employer, who is basically not paying superannuation, saving 9 per cent in employment costs. So how is she going to be able to compete against employers like that? If you look at today's WorkChoices legislation, firstly, after 2008 unions will not be able to take superannuation claims. That will all drop out of the awards, and if it is not in the awards the unions cannot take action.

CHAIR: So an individual will have to take individual court action?

Mr BALI: An individual will either have to take it to the Federal Court or wait for the taxation department to follow it up for them.

CHAIR: They can go to the taxation office and complain, and ask for the matter to be investigated?

Mr BALI: These employees did that for the last two years, and basically the taxation office has been chasing this person. But it takes a while. With the unions, if we take it to the Chief Industrial Magistrate's Court, we get a ruling, and then they have to pay it within 28 days. In this instance, it is instant satisfaction, so to speak. But with WorkChoices, we cannot go to the Chief Industrial Magistrate's Court any more; we have to take it to the Federal Court. So we have gone from a $65 jurisdiction to lodge a claim to over $650. If a person is not a member of the union, are they going to now fork out $650 to take action?

The Hon. IAN WEST: To lodge a claim?

Mr BALI: To lodge a claim.

The Hon. IAN WEST: It costs a lot more than that to take an action?

Mr BALI: Yes. And the then you have to employ lawyers, because they will not be able to do it on their own. The other thing is that WorkChoices has now reduced the small claims amount for legal representation. Under the New South Wales jurisdiction it is $10,000 before lawyers get involved. Under WorkChoices, it is now down to $5,000. If the employer knows a lawyer, or decides to challenge, the costs just escalate. Instead of just solving the problem instantaneously, it will be dragged out with legal parties.

The other change with WorkChoices in relation to this is that it was up to the individual party that was taking action whether lawyers become involved; now it is up to the court. So that power has gone from the employee, to object to having lawyers involved; it is now employee versus employer only, or their representatives. About 1,000 pages of legislation has changed, and the ramifications are quite large across the board.

CHAIR: You also made the point in relation to hairdressing that there can be an effect on the employer or the small business because you do not have a level playing field if everyone is not playing by the rules. Also, if it is very difficult or expensive, or both, to make people play by the rules, the unscrupulous employer or business person will have a competitive advantage.

Mr BALI: Absolutely. It is a race to the bottom. If you look at most small businesses, whether it be hairdressing or other businesses, something like 80 per cent of small businesses go bankrupt within the first couple of years. With WorkChoices coming in with AWAs, if they are starting off a small business they will just go for minimum amounts, decreasing the amount of wages they are paying to lower their costs. That is not a fair basis of competition for those who are already established in the marketplace. You will not be able to maximise the income for the workers there. In hairdressing, real estate, or whatever, there are a large number of small businesses—nail technicians, beauticians—there are thousands of them popping up everywhere. If they are all employing people on

$12.75, with no penalty rates, no annual leave loadings, et cetera, the established businesses will not be able to compete.

CHAIR: In the past I have had some dealings with problems of apprentices in hairdressing. Does the WorkChoices legislation have an effect on the union's ability to assist an apprentice?

Mr BALI: Apprentices are indentured—

CHAIR: Mostly within State legislation.

Mr BALI: —within State legislation. There are huge ramifications still. I will give you two examples, once again to do with hairdressing. An employer hairdresser in the Blacktown area basically wanted to get rid of an apprentice. She did really well at TAFE; she got distinctions all the way through. So she was entitled to finish her apprenticeship a year early, which she did. The employer was quite happy to sign the paperwork for her to finish her apprenticeship, but it was only on the sole basis to get rid of her. The employer was saying that there was no work for her. Meanwhile, at the same time in the local newspaper, the *Blacktown Advocate*, there was the employer's phone number looking for other hairdressers to work in the salon.

CHAIR: Is this because a new apprentice or worker would be very much cheaper than someone who had finished their apprenticeship?

Mr BALI: An apprentice is usually a little cheaper. I think the employer just did not want to carry on with the ongoing training, because there is a lot of responsibility involved. There is another one in the Parramatta area, a hairdresser who owns a couple of hairdressing salons. Because the hairdresser wants to get rid of a male apprentice, the employer occasionally transfers the apprentice from one salon to another, and back again. So he is going between the city salon and the Parramatta one, and he is getting him to do mundane tasks, such as washing walls, et cetera.

That is where we get involved, to make sure appropriate duties and training are given to the apprentice. But essentially, in a small business, whether it is hairdressing or otherwise, you find that if the employer does not like you, and decides to throw everything against you, you are not going to survive in that business, and sooner or later you will probably have to leave. But under the old system, we were able to be more involved in the business, without the employees having fear of retribution and being sacked.

In hairdressing, it is common that if you join the union the employer takes it personally, saying, "What have I done wrong to you? Why have you gone to the union?" It is not a matter of us being against the hairdressing boss. We have been looking at different programs. With the hairdressing industry, since there are so many underpaid their wages, if we can identify a good business, the AWU is quite happy to promote it. We are quite happy to promote small business, and we work closely with them.

I know that Russ has said on a few occasions that if businesses do not thrive, they cannot employ people, and they cannot employ them at appropriate rates. We are not here as a union movement. There seems to be an idea on the part of the Federal Liberal Party that unions are bad and should not be around the negotiating table. The purpose of the union is to make sure that the environment is safe and viable for the employees to operate in, and then, as far as the lobbying we do on behalf of employers to make sure they maintain their businesses here, that they do not lose out to foreign imports. There are a lot of things that the unions do, which are a little bit peripheral to just the standard employee-employer relationship, that benefits all parties. This has simply been lost out in WorkChoices.

The Hon. IAN WEST: No doubt there are a number of employers, whom you know, who share the view you have just expressed. Do you know why they have not made any submissions or are not appearing before this Committee?

Mr BALI: The main reason, I think, as Russ said earlier, is their fear, if they suddenly come out and speak against the Federal legislation. At the moment the Government is negotiating with China for a free trade agreement, and it is negotiating with Saudi Arabia for a free trade agreement.

The one it negotiated with Thailand about three or four years ago, we have had a direct effect. In Melbourne, for instance, Ford and a few other major companies there are now not using Australian-made glass; they are now importing glass from Thailand. China and Saudi Arabia are massively building up their productions. They cannot provide oil for ever and a day, so they are looking at other industries. The cost of shipment from Saudi Arabia to Brisbane is cheaper than sending the same shipment from Sydney to Brisbane. So how the hell are we going to be able to compete?

The Hon. KAYEE GRIFFIN: With regard to superannuation, you said that in 2008 it will fall off the edge and there would be very little recourse for employees whose superannuation has not been paid. In other examples regarding WorkChoices, are there entitlements in respect of which, after a set date, the only opportunity an employee may have to recoup money or argue the matter is by taking it to either in the Federal Court or other court? I am thinking of issues such as long service leave and other entitlements that may or may not now be in AWAs. Is there an opportunity for these matters to be taken to court, and what limitations apply to them?

Mr BALI: Generically looking at it, long service leave and annual leave Acts are all covered by State parliaments. If the Federal Government gets away with what it is doing at the moment with WorkChoices, why can it not do its own annual leave Act? Why can it not do its own long service leave Act? The moment it does that, you will find the five minimum conditions start to disappear and you will be negotiated out. It is really interesting as far as what the outcomes will be and what the High Court's decision will be based on—

CHAIR: You are saying that if the corporations power in the Constitution can be used to cover the WorkChoices legislation it can be used for a whole a lot of other things?

Mr COLLISON: That is right.

Mr BALI: Absolutely. We are seeing also for WorkCover for instance that the Federal Government is setting up its own legislation nationally using the same reasons as they did for WorkChoices, that they want one unified workers compensation system across Australia.

Mr COLLISON: Comcare.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And they abolished Worksafe, which was the Federal occupational health and safety body?

Mr BALI: They will probably expand upon it, but it does not have the same teeth as the New South Wales Government has in relation to going after employers for industrial manslaughter et cetera. There will not be any of that, plus for unions, I think 24 hours or 48 hours we have to give notice to do an inspection in relation to occupational health and safety issues. In that time we have got to actually identify—and this is how ridiculous the law is—the person who has raised the issue and what the issue is, before we even get onto the site, so how would we know in detail what the problem is, and possibly even solve it. Then we would turn up in 48 hours time and all they can say to us at the door is, "Problem solved". The employer has now gone or has the problem actually been solved? It has restricted the ability of us to really be involved in occupational health and safety and people's lives will be in danger.

CHAIR: One of our questions is what effect, if any, will the WorkChoices legislation have on the injured workers? Is that a particular concern for your union or is the State system a protection?

Mr COLLISON: It will be if the Federal Government gets its way and Comcare comes in over the top. Comcare is certainly not the same system as what we have got in New South Wales. It would disadvantage injured workers without question.

CHAIR: Under the existing system are things like return to work and so on more problematic than they were before WorkChoices or is it reasonably neutral in relation to injured workers?

Mr BALI: I think it would be worse because if you look at the New South Wales legislation, for instance, it gives the right to the employee to choose their rehabilitation provider. If you work for a

small organisation—and obviously most rehabilitation providers are supplied by the insurance companies to the employer and you have to pick from that list—they may not be as sympathetic to the employee as getting a rehabilitation provider that is independent. If you pick an independent one, when you are rehabilitated I do not think you are going to have your job there that much longer. If there are less than 100 employees, they will just get rid of you.

Mr COLLISON: This gets down to another area, workers compensation, but what you will find is that major insurance companies own their own rehabilitation providers so they are, in fact, as one. They are being guided by the amount of money it costs and the insurance company gets to a stage where it says, "Right, there is no more servicing of that particular individual." In New South Wales injured workers have the right to pick their own rehabilitation providers and obviously we, as an organisation, like to think that we have a couple of rehabilitation providers that we know are independently owned, so they are not influenced by any one outside factor bar that particular injured worker's injury.

That is the difficulty, whether people like it or not, that major insurance companies own their own providers and that is where they direct people to go. I can give you examples where time after time, even under the old system as it stands, an injured worker would be taken to a hospital or the doctor and a senior employee or someone within the company management goes along with the injured worker and they take them straight to the doctor. Once they have seen the doctor, if there is any rehabilitation required they are directly referred to their provider because that is what the insurance company tells them to do. That is what happens.

We are starting to educate people now to say that that does not have to happen. You have the right to select your own rehabilitation provider but under Comcare that will not happen. Make no bones about it. There are no sweeteners in there for workers, let me tell you.

The Hon. KAYEE GRIFFIN: Some evidence was given yesterday in relation to ballots for collective agreements where some unionists were on the site. Has the AWU had any experience or problems in relation to ballots since WorkChoices has come in or the fact that the ballot has been conducted in a fair manner as opposed to no-one being able to see what the ballot papers look like or being told what the ballot might be? Has the AWU had any experience like that?

Mr COLLISON: I would have to say that we are very fearful of going down that track because at this point in time all we do know is that we have been fortunate enough, I think, to be able to negotiate with a lot of the major employers, who will not come out publicly and say they think what is being proposed is counterproductive. They say it to us. Employers come to me; they come and visit us in the office and say, "We want to talk about the parameters of an agreement. Look, we've got the handcuffs on it. You're aware of it. We can't do much about it. We've got to conform and make the necessary changes otherwise we can't tender for any work", so as a result of that we can reach agreement with most of the employers.

Our organisation is one with a great history but we are about making sure that business survives and we will do whatever is required and sometimes, whether people accept it or not, trade union officials and leaders have to say to our members a number of things that do not sit real comfortable with them. But as responsible trade union officials that is what we have to do, and we do it. I am not saying that we are totally embraced by our members on all occasions when we tell them the facts of life and the lay of the land but when it comes to the ballots we have been fortunate enough not to be able to have gone down that track yet; there have been a couple of close threats, can I say, where it looked like there were going to be ballots but agreement has been reached leading up to those final arrangements, but with sensible, mature people around the table—that is where you resolve disputes, around the table; not necessarily belting each other over the head with a bit of four by two: that does not really resolve any problem, does it?

We are sensible enough to say that we have been able to achieve that, but at this stage if you go to a ballot, we have to pay for it; it has to be run by the Electoral Office. You have all the hoops that you have to jump through and really, we have not experienced too much at this stage when it comes to that. But, by gees, with WorkChoices and if the Government continues to go down this path—and some of the Ministers have come out and been a little bit honest when they are talking to

their own. They have turned around and said that they intend to take it further. God knows what we have in store for us, that is all I can say, when it comes to these sorts of arrangements in the future.

I realise and I appreciate the Committee and the Chair giving us the opportunity to address the Committee today. I am certainly not a lawyer and I do not profess to be. But I tell you what I am: I am a bloke who is a bit realistic. I know what goes on out there. I get around New South Wales. I talk to our members; I talk to thousands of people and I know the heartache and the pain that people are not only experiencing but will experience. This has not bit everywhere yet, let me tell you, but it will. And when it does, it will affect every employee in this country. It will affect them, their family or their extended family. This is not about fairness or decency; and it is not about being Australian. We do not need it, we do not require it and we do not want it.

If people are going to push the barrel on it and say, "This is the best way to go for the future"—the thing that I am cranky about is that this process has been adopted—this WorkChoices—without any consultation with the people involved that it is going to affect. They went to the big end of town. They said, "We will talk to you. You tell us what you want and we will fit them up with it." And that is what it amounts to. It is disgraceful, it is outrageous and anyone who takes their time to sit down and read it, and can tell me that there is fairness in the system, then I would suggest they are not on this planet.

CHAIR: That is a very clear note on which to finish. Thank you for coming this morning.

(The witnesses withdrew)

(Luncheon adjournment)

GERARD ANDREW DWYER, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, New South Wales Branch, Level 3, 8 Quay Street, Haymarket, Sydney, and

DAVID JOHN BLISS, Senior Industrial Officer, Shop, Distributive and Allied Employees' Association, New South Wales Branch, Level 3, 8 Quay Street, Haymarket, Sydney, sworn and examined:

CHAIR: Thank you for the supplementary submission, which we have handed around and will have a quick look at later before we agree to make it public, just to check content and so on. Have you been given a statement from the Committee in relation to some ground rules about the naming of people and making allegations against people?

Mr DWYER: Yes.

Mr BLISS: Yes.

CHAIR: I probably do not need to go into it at length, but we are being quite careful that in making allegations against identifiable people we ask witnesses to be cautious. We have certain responsibilities, if that does happen, of contacting the person or company that allegations are made against, depending on the nature of them, and giving them a right of reply. It is something we have to consider as to the fairness of the proceedings.

We sent you some questions that essentially spell out the different aspects of the terms of reference, but individual Committee members can hop in and ask their own questions. Would you like to make an opening statement in relation to the inquiry or do you want to answer our first question and tell us something about the union, its membership and its coverage and so on?

Mr DWYER: I might begin with background on the organisation, then deal with an overview of the submission, and then work through a number of matters that have been raised in terms of the questions put to us, but which I think are adequately addressed in the submission. I will draw committee members' attention to the most salient points surrounding the questions, but I would like to clarify something in the first instance. With regards to the status of the supplementary submission, I understand Committee members have got a copy, but I would formally seek leave, if it is necessary, for the submission to be part of the proceedings here.

CHAIR: I am sorry, I think I misled you. We will treat it as a supplementary submission and you can refer to it. It is just that the Committee has a process whereby we check the content before we make a submission public—put it on our web site and so on. That is partly because of the warning that I included in that statement that if allegations are made against named individuals, and they are of a serious nature, we have to be careful. It is really the same issue but in relation to a written allegation rather than a verbal one. But feel free to refer to your supplementary submission in detail if you want to.

Mr DWYER: Committee members are probably aware that on pages 14 to 16 we set out some detail relating to the Shop, Distributive and Allied Employees' Association—which I will refer to hereafter by its abbreviation SDA—noting that we cover employees working in retail, in fast food, warehouse distribution and pharmaceutical manufacturing throughout the State of New South Wales, excluding the Hunter Valley and Central Coast where there is a separate branch that has coverage, otherwise, the New South Wales jurisdiction in its entirety, and also the ACT.

The branch in New South Wales has in excess of 65,000 members and we obviously work to represent the interests of employees working in those industries that we cover. On page 14 we have set out in some detail the employment categories that our coverage sees as representing workers in retail, and setting out there that it ranges from shop assistants, also retail now, there are clerical employees, there are tradespeople, apprentices and then moving into fast food, pharmacy, general distribution and warehousing, pharmaceutical drug manufacturing. There is another range of categories covered, but primarily our membership base is in retail and fast food and pharmaceutical manufacturing.

We also set out what is involved as far as the retail industry is concerned. There are obvious categories there, including supermarkets through to department stores and speciality retailers. Quite pertinent to today's proceedings are the demographics of the SDA's membership that are set out on page 15. There is particular focus on young workers, casual workers and female workers. I refer the honourable members of the Committee to table 1 on page 15. In that table and you will note that the female membership of the branch is 62.8 per cent with casual employees representing almost 59 per cent of our membership.

CHAIR: Among the groups that have been identified as vulnerable, your union has very high percentages of each of those categories.

Mr DWYER: Exactly. We submit that we are ideally positioned to make some meaningful and accurate observations for the benefit of Committee members in relation to those categories of employees.

CHAIR: What about in relation to the size of most of the employers?

Mr DWYER: We have members working in companies where there would be fewer than five employees, but it is fair to say that a large proportion of our members work for employers who would have much larger numbers of employees than that. It would be inaccurate to say that we do not have members in small retail outlets, in small fast food outlets, because the nature of the fast food industry in particular is that it has quite a deal of franchising. You have owners and operators who are employing people in only one unit which may have 30 employees and sometimes more. It is not always the label of the shopfronts that indicates the size of the employing entity.

I will take members to page 3 and I will give a quick summary of the material that I would like to draw the Committee's attention to as I work through the submission. Obviously we noted the inquiry's terms of reference. I intend to spend the bulk of my time this afternoon referring to the most vulnerable groups of employees. In terms of the combined effect of the Work Choices legislation and its impact on the wages and conditions of New South Wales workers, that is set out at point 1.04. In summary, we are concerned essentially about the removal of fairness. I will say a number of things about fairness later in the submission, but I refer particularly to the economic consequences of the wage setting system that is proposed under Work Choices and the so-called Australian Fair Pay Commission.

We also have some serious concerns with regard to the abolition of the no-disadvantage test from workplace agreements. Later I will point out how that will have a detrimental effect on young workers and female workers in particular. The third point raised is the unfettered infiltration and priority given to Australian workplace agreements or individual contracts and how they have, and will continue to have, a negative impact on the collective arrangements that groups of employees are able to achieve versus what is, in effect, handed to them on a take-it-or-leave-it basis in individual contracts. We would also like to draw the attention of Committee members to the statutory exclusion of 75 to 90 per cent, on our best estimate, of workers in this State relative to unfair dismissal claims arising from having 100 or fewer full-time, part-time and regular or casual employees as the bar that must be surpassed before unfair dismissal rights accrue.

CHAIR: Are you referring there to the numbers of workers in the States or to the numbers of workers in the union?

Mr DWYER: That would be across the New South Wales jurisdiction. Bearing in mind that the retail industry is the single-largest private sector industry, we are talking about hundreds of thousands of retail and fast food workers across New South Wales who are affected by this. I will also make some comments on the destruction of fair and reasonable standards with regard to the New South Wales minimum award conditions of employment, but we will deal with that in more detail in our supplementary submission.

Before I move on to what we perceive as the lack of appropriate attention to the concept of fairness in the Work Choices legislation, we also draw the attention of Committee members to two key points. The first one is the absolutely false premise that all employees, all workers regardless of their industry, are somehow in an equal bargaining position with their employer, and that is the

premise upon which Work Choices is based. I think you will see as we work through the submission that that is a falsehood that is quite clearly demonstrated in the industries we cover. The second main point I would like to make before going to the additional detail is that we reject categorically the Federal Government's assertions that Work Choices legislation will lead to higher wages, better jobs and a more decent society. We would like to take Committee members to the lack of evidence underlying those assertions and refer to the fact that recently reports from the OECD have shown that to be quite a misleading and unsubstantiated claim by the Federal Government.

CHAIR: I am sort of anxious that we might run out of time. You should be able to take it as given that the Committee members have read the submission. People may want to interrupt and ask specific questions arising out of it, so we may need to go a little bit faster.

Mr DWYER: On page 8 of the submission, we address the erosion of the concept of fairness within the Work Choices legislation. The key points of this are expressed in the elimination of the wage setting powers of the Australian Industrial Relations Commission and through the New South Wales Industrial Relations Commission. Those mechanisms have been replaced by the Fair Pay Commission. I have flagged the unfair dismissal rights. The abolition of the no-disadvantage test is a key issue with regard to those vulnerable groups of employees we have identified. With regard to "choice", it is a term used rather loosely and, we believe, inappropriately with regard to the Federal legislation. The use of the word choice has to be balanced against the reality of people in the industries that we cover having a lack of bargaining power.

The point needs to be made that new entrants to the industry have no choice. As a new employee comes in and is seeking employment, it has been held in the Australian jurisdiction that the offering of an Australian workplace agreement or an individual contract at the point of engagement on a take-it-or-leave-it basis is permitted. We say that that simply extinguishes any choice that a person may have. There is no choice to elect to take an individual contract or a collective agreement. That choice is simply not given. The choice is to take the job on the terms proposed by the employer, or do not take the job at all. Choice in the Federal legislation really should be read to be choice for employers, not choice for employees.

It is particularly relevant in our industries because of the issue of staff turnover. Staff turnover throughout the retail industry—depending on the employer—certainly is tracking in general terms around the 30 per cent to 40 per cent per annum mark. Employers in the fast food industry who are trying to put in place workplace arrangements that may bring staff turnover down to what they regard as a more acceptable level, say that is down to 100 per cent per annum. That is a staggering turnover in the fast food industry. Obviously, that does not mean that every employee has been replaced in the 12-month period, but 50 per cent might turn over twice in the course of the 12 months.

CHAIR: Is that mainly because of the youth of the employees in the fast food industry?

Mr DWYER: That is a large factor, because obviously we have people exiting in large numbers when they have finished their schooling or their university education. Those two groups are represented in large numbers in that industry. The other thing to take into account is that there is a low-skill point of entry, which means that people can enter and leave the industry without the need for additional qualifications and so on. Later on we make the point of how that impacts on young employees. The young are particularly exposed to this legislation. Quite often, the jobs they are filling are at the low point of the skills barometer. You also have to understand the context of unemployment. The Federal Government is keen to say that the WorkChoices legislation will create jobs, but a specific case I will deal with later will show that to be absolutely false.

But, with regard to the young and pressures on the young to get a job that they cannot say no to, youth unemployment is invariably far higher than the headline unemployment rate. In the middle of last year, for example, youth unemployment was running at more than 19 per cent, which is well above the 5 per cent headline market at that time.

CHAIR: It is also very high in certain geographical areas. But, given the youth and other resources of the people, their ability to travel very far to a job is limited.

Mr DWYER: Yes. Regional employees are particularly at risk here. You are right: the capacity for an employee in the Sydney metropolitan area to be able to say no to what they regard as unsatisfactory wages and conditions and to take a job one or two suburbs away is quite plausible; but if you live in Dubbo, in western New South Wales, you are quite constrained by that job market and the fact that to pick up and reposition your family somewhere else in New South Wales is quite expensive.

CHAIR: But the same is true in Sydney for people who, because of their youth or family responsibilities or resources, may live in an area of high unemployment but find it very difficult to travel to a suburb of low unemployment.

Mr DWYER: Yes. In the high unemployment areas you also find a correlation in that transport may be more difficult. All of those things are real issues for young people, because they quite often do not have the means to run a vehicle. So public transport is very much a necessity in terms of their employment.

Regarding assertions made about what will happen with wage rates under this legislation, we would emphasise what the Australian Government Treasury expects to happen with regard to wages under WorkChoices. On page 12 we draw your attention to the fact that an Australian Government Treasury minute of 6 October 2005 quite clearly put on the table that increases in minimum wages are likely to be lower than they would have been under the adversarial Australian Industrial Relations Commission system. That is of particular concern. The Federal Government, over the past nine wage cases, made submissions which, if adopted, would have resulted in employees now being on a rate of pay some $50 a week less than the awards that currently cover them in New South Wales.

Another point with regard to a system that is more centralised, not just in the setting of wages but in terms of setting what we would regard as very important standards for employees with reduced or little bargaining power, is the concept of test cases that both the New South Wales and Federal Industrial Relations Commission had adopted. This has particular reference to the national and State wages cases but also—and this impacts particularly on young and female workers—to the family provisions test case. It is interesting that for the minimum standard provided for in the Workplace Relations Act the Federal Government chose not to adopt what was established as a new community standard with regard to employees having the capacity to request up to 24 months of unpaid parental leave, and rather saw fit to adopt a period of 12 months, which we would submit was the old standard. The family provisions test case had established a mechanism whereby people could reasonably expect to have that extended to 24 months.

We make reference also to the redundancy test case and the secure employment test case, which is very important for casual employees. The New South Wales Industrial Relations Commission adopted in that latter test case very important standards as far as our members are concerned with regard to casual employment, and the fact that if I have been working a systematic pattern over a 12-month period I have the right to raise that with my employer and seek to be appointed as a permanent employee on that particular roster. We believe the secure employment test case actually balanced the interests of both employees and employers, but it has now been extinguished for those casuals working under WorkChoices.

With regard to getting a handle on what the impact of WorkChoices will be on the vulnerable group of employees, I submit that it is worth reflecting on what had happened with regard to individual contracts under the pre-WorkChoices Federal legislation, the 1996 Workplace Relations Act. We draw the attention of the Committee to a couple of examples. The first is at page 16 and relates to Aldi supermarkets. Committee members obviously will have looked at the detail of that, but the salient point is that those started off as individual employment contracts that prima facie gave reasonable compensation for some entitlements that were bought. People may have varying views on whether or not those entitlements should have been allowed to have been bought out, but the reality is that the company undertook an exercise that provided something close to proper monetary compensation. The real problem with AWAs emerges when you look at the second and third generation AWAs that come into play.

We note there that things like productivity bonus, which was in the first generation of AWAs, have been removed in subsequent AWAs. We note that the base hourly rates of pay have increased by

less than 10 per cent in just over five years, and that is less than inflation. So employees of Aldi are achieving pay increases that are less than inflation, whereas employees working under the relevant New South Wales awards have been achieving real wage increases. So in our industry, where employment has been growing, at the same time real wages for award employees have grown by some 8 per cent over the decade. Enterprise bargaining has delivered larger wage increases, but the award minimums achieved results of some 8 per cent increase in real wages. Contrast that to the second generation Aldi AWAs, which saw employees go backwards in real terms. We would submit that that is a pattern that will be played out across AWAs generally.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably Coles, Myers and Woolworths will not be able to compete with Aldi if their wages are increasing by CPI or greater and wages at Aldi are going up by less than CPI. That is what you are saying, is it not?

Mr DWYER: Yes. We make the point in the submission about a race to the bottom. Aldi is a major retailer with, at the moment, about 3 per cent of the Australian market.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And rising.

Mr DWYER: And rising. In world terms, it is a very significant retailer. Being left to the unfettered forces of the market and individual contracts, which can push wages down, will bring its own market pressures on those companies that at present adopt the system of enterprise bargaining with their employees.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In terms of prices—and I suppose I look at prices from a consumer's point of view—the relevant questions are, "Is the company going to make more profit? Is the consumer going to get a better deal? And is the employee going to get a better deal?" Those are the three parties involved. If you buy Colgate tooth paste in Australia it is about three times the price of Colgate tooth paste in Thailand. So we have a pricing of goods according to where you are, not according to what those goods are. If the costs of the retailing enterprise increase through the cost of labour being higher, presumably all that happens is that Colgate says, "The price, instead of being three times the Thai price is 2½ the Thai price." In other words, if the cost of retailing is higher, either the manufacturer or the retailer cuts the margin to fit the situation. Is that a reasonable proposition?

Mr DWYER: That may be too simplistic, I think. Without knowing whether the product in Thailand is produced locally—which I imagine it would have been, or certainly within the Asian region—versus whether the Colgate product was produced her in Australia, and whether or not the quality is comparable, on which I am not in a position to comment, I could not say. It is probably too simplistic a way to look at it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In terms of international competitiveness and so on, we talk about how we have to have the same prices as in other countries, and that services here are not in direct competition with services in Thailand because, by definition, persons in Thailand cannot staff a store in Australia. They can on the Internet or through a call centre, but they cannot in terms of handing over the goods and taking the money. But, if we are talking about competitiveness and the need to compete—which I think is what WorkChoices is supposedly about—if you are racing to keep wages down to a third-world level, and yet you have people setting the price of goods at three times the third-world level, that is inequitable, shall we say.

Mr DWYER: Yes. And, in terms of the pendulum, there will be a movement what comes out as profit for the corporate sector, and a movement downwards in terms of what people are able to take away as a wages component.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you will not see the price to the consumer coming down.

Mr DWYER: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is what happened in the milk industry, for example.

Mr DWYER: So, in terms of the pendulum moving towards increased profit, that is exactly what would happen.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So, in terms of government policy, if you are talking about the total benefit to the society—which is supposedly what we are legislating—if the same amount of money is paid by consumers—and there is not evidence that when you lower the wages the price goes down, or, if there is evidence, I would be interested to see it; but amazingly enough no-one every seems to talk about what the consumer pays; there always seems to be a dearth of data, certainly presented to us or shopped around—it seems what is being divided up in the cake is what goes to the shareholders or in profits and what goes to the employees. Certainly, in terms of manufacturers, the price seems to be set more by what the market will bear than by any real cost of production. That seems to be the divide that has occurred over the last four years.

The Hon. IAN WEST: Madam Chair—

CHAIR: I do not know whether that was a question.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am trying to set an economic basis. Do you agree with the proposition that the wages have a minimal effect on price?

Mr DWYER: In our industry I think it is fair to say that wages would have a minimal effect on price, underlined by the fact that any competitive advantage will simply be transferred into profit as opposed to transferred into an increase in wages. I might just draw Committee members' attention to the petrol industry. In recent times, the increases in the cost of fuel have certainly been caused by some outside factors. But if you move back before that impact, there have been complaints over a number of years about how pricing is set, such as in holiday periods. All I can say is that we do not see any movement in wages at those points.

CHAIR: People do not get paid more on Thursdays than they do on Tuesdays.

Mr DWYER: Exactly. So there is a movement in product price but there is no movement in wages.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You have gone against your thesis between Aldi and Coles. If Aldi's wages are lower than Coles, clearly something has to go somewhere. If the manufacturer is supplying the goods at the same price, the one that has the higher wages is going to be disadvantaged.

CHAIR: This is getting away from the terms of reference of the inquiry.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The submission compares Aldi's wages with the award.

CHAIR: I do not know whether or not these witnesses are the relevant people to deal with that issue or the Committee should investigate it in other ways. We have a long way to go and not much time.

The Hon. IAN WEST: I appreciate where the Hon. Dr Arthur Chesterfield-Evans is coming from. Perhaps in another place we may look at Wal-Mart in the southern States of America and find some correlation as to what happened with prices and wages. As to the young and casuals in regional areas, would you give us an indication as to what is happening with negotiations under the new regime?

Mr DWYER: One of the real standout examples of what is happening in regional New South Wales and its direct impact on the young is Spotlight. That is a large retailer, not an insignificant employer and an employer that has quite a large exposure in regional New South Wales. I might take Committee members to the supplementary submission.

The Hon. IAN WEST: I articulate that the concept of negotiation I refer to is a comparison between what happened prior to the new regime and what happens now in terms of what you as a union determines negotiations to be.

CHAIR: If I may, it is another way of asking about the effects on workers' bargaining positions and the ability to negotiate. It comes back to the point you made about fairness, choice and available options.

Mr DWYER: Exactly. In the job market in regional New South Wales, the number of opportunities there, that is jobs, in any given regional centre is far more limited than it would be in a metropolitan area. Therefore, people's actual bargaining position is reduced because of the costs associated with having to move if what you are offered is not something you believe is fair and reasonable. That then builds up pressure on people in terms of being forced by economic reality to accept what is on the table.

CHAIR: Does that mean we will gradually see a drop in wage levels in rural and regional areas compared to metropolitan areas?

Mr DWYER: We suspect regional New South Wales workers over time will see their earnings reduced.

The Hon. IAN WEST: Are you aware of a situation where an individual has negotiated an outcome different to the offer?

Mr DWYER: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Ever?

Mr DWYER: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Anywhere?

Mr DWYER: No.

CHAIR: You say in your submission in relation to Aldi over the five years of AWAs that you are not aware of any such case.

Mr DWYER: No.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That suggests there is no room for negotiation at all. It is definitely take it or leave it. Presumably not everyone said, "Yes, please, I will take a pay drop."

Mr DWYER: No. The reality is it is take it or leave it.

CHAIR: You were referring us to the Spotlight case in your supplementary submission.

Mr DWYER: As I said, Spotlight is not an insignificant employer. We have made reference to Spotlight in the primary submission, but there has obviously been additional detail that has come out in recent times. In essence, there has been an absolute reduction in people's earnings at Spotlight. At page 5 of the supplementary submission, we have sought to set out a couple of real life cases of people, taking their current working roster and showing the impact of the Spotlight AWA on their earnings. The first case is an employee working in Western Sydney. At the bottom of page 5 we submit that the person is almost $21 a week worse off, or over 4 per cent per annum. The second case at the top of page 6 is again a Spotlight employee working in Western Sydney—almost $18 a week worse off. Then we have the third case, which is a part-time Spotlight employee working in regional New South Wales, where they are over $71 worse off on the Spotlight AWA—almost a 17 per cent loss of earnings over the course of the year. We also point out that the situation can become even graver when you take into account what Spotlight has set up as its part-time work regime—part-time

work obviously being something heavily utilised by female workers in our industry. At 2.1.8 we set out the Spotlight AWA part-time provision. It simply states:

> You will normally work less than an average over a six week cycle of 38 hours per week, provided that at times you may be required to work up to or more than 38 hours in a week.

I would like to underline the lack of economic certainty there for that employee in that situation, but also the complete lack of rostering certainty if that individual employee has responsibility particularly for a young family or children in their teenage years where there is obviously a heavy requirement on parents to be moving kids to and from different activities. The other thing is it makes a mockery of part-time work. If you read and understand that clause for what it is, it simply guarantees a minimum of three hours—or we suspect three hours; it could actually be two—across a six-week period. To try to submit that a three-hour engagement over a six-week period in some way constitutes a part-time job is ingenuous.

On page 7 we have set out in table format the economic loss there for part-time employees over that six-week period. An award employee who would be entitled to 12 hours per week, which is the New South Wales Shop Employees State Award part-time minimum, would earn an average weekly wage of $171.36. If you look at the Spotlight AWA, on the construction I have just taken you to, they would actually be getting $164.21 pay cut per week if they finished up with their three hour minimum engagement over the six week cycle, which is completely legal and permissible under the Spotlight AWA.

The Hon. IAN WEST: What does that do to productivity and loyalty? I would imagine there would be anecdotal discussions in the local pub in regional towns as to a possible diminution in enthusiasm.

Mr DWYER: Yes, from a morale point of view and from the amount of money going around the regional centre's economy.

The Hon. IAN WEST: It must have an effect on the enthusiasm with which people perform their jobs.

Mr DWYER: Yes. A number of people have come to us with regards to AWAs, particularly in regional New South Wales, with an absolute sense of dismay as to why their employer that they had shown loyalty to would even contemplate doing this to them.

The Hon. ROBYN PARKER: Have you met people who are satisfied and happy with their AWAs?

Mr DWYER: Personally, no.

The Hon. ROBYN PARKER: Would that be because they do not come to you if they are happy and satisfied with their AWAs? Yes, it would, would it not?

Mr DWYER: I guess another way of looking at it is in terms of the average wage increases under AWAs for people in less skilled sectors of the economy. We know they are tracking at below CPI increases.

The Hon. ROBYN PARKER: Do you honestly tell me that you do not think some people out there are happy with their AWAs?

Mr DWYER: No-one has come to us happy with their AWAs.

The Hon. ROBYN PARKER: But you are aware there are people in the community who are satisfied with the deal that has been offered to them under their AWAs?

Mr DWYER: Personally I am not aware.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: They would not go to the union if they were happy, would they?

CHAIR: I point out that the union has stressed the more vulnerable workers who make up the bulk of the membership of this particular union.

Mr DWYER: Yes.

The Hon. IAN WEST: I would assume those who are happy have flexibility up, not down.

Mr DWYER: Exactly.

CHAIR: We do need to move on because the next witness is here.

Mr DWYER: With your indulgence, Madam Chair, on that last point could I move to the impact on wages, particularly female wages? At page 34 of the primary submission we deal with statistics provided by the Australian Bureau of Statistics. We set out from page 34 onwards the difference in earnings for people under individual contracts versus awards versus certified agreements. There is a helpful table at the top of page 36 that sets out female wages as a percentage of male earnings. Under awards females are securing about 80 per cent, and I am talking here in the retail industry. Under certified agreements in the retail industry, female wages were 90 per cent of male earnings. Under the AWAs that figure falls to just over 50 per cent. We would submit it is quite a drastic reduction for female workers in our industry.

The Hon. IAN WEST: They would not be very happy.

Mr DWYER: No, we are not taking any calls to that effect. Madam Chair, would you be able to indicate how much time I have?

CHAIR: Professor McCallum, our next witness, has to leave by 4.00 p.m. He was scheduled to start at 3 p.m. At the very most you have 10 to 15 minutes. You can take questions on notice and we have your submissions. You may want to raise some further issues or highlight some points in your submissions, taking it for granted that we will look at the tables you have provided.

Mr DWYER: I might make a couple of general comments based on the submissions. With regard to casuals, we believe that the regime under the WorkChoices legislation really does allow a situation to emerge where people will have casual loadings reduced. The minimum casual loading provided for in the Act is 20 per cent, which is virtually 5 per cent lower than the award in New South Wales provides.

The other factor worthy of note is that moving people from casual employment across to part time, with the person not getting any of the traditional part-time benefits—I think I demonstrated that by the three-hour shift for a six-week period in Spotlight—simply allows a person to be given a part-time rate of pay but, in effect, worked as a casual, which means it allows the complete abolition of a casual loading.

CHAIR: Which means they lose the monetary make-up for the loss of annual leave, sick leave and long service leave?

Mr DWYER: Yes, exactly. So young workers and female workers would be exposed to all the downsides of flexibility associated with casual employment, and the uncertainty that goes with it, but would not receive the proper casual loading as compensation for those factors.

The Hon. KAYEE GRIFFIN: With regard to the part-time process you are talking about, basically it would be a casual roster with nothing additional in terms of the casual rate that covered some of the other things that casual employees had. A part-time employee may be called in with very little notice to work a three-hour or six-hour shift, but he or she would have the same concerns as a casual employee, with the old saying, "If you are not rostered on, you don't have a job."

Mr DWYER: Exactly. There is a real pattern there in the AWAs that has emerged in our industry, even pre-WorkChoices, where rostering provisions are extremely broad; it is, in effect, the casual rostering principle.

The Hon. KAYEE GRIFFIN: It is a way of getting around a casual roster without paying a loading?

Mr DWYER: Exactly. With regard to the forecast and what we believe lies in store for young, female and regional workers, and workers generally in areas of low or middle skill, we draw the Committee's attention to the Victorian experience, which we go into in some detail on pages 45 onwards. In particular, we make reference to the retail industry and what came out in terms of moving retail employees back under an awards system.

As set out at page 48, evidence that was given by employers in those proceedings actually suggested that labour costs would increase anywhere within a range of 20 to 40 per cent. In other words, that is the drop in earnings that retail employees had experienced under the regime of individual contracts in Victoria.

We have also noted that the experience of Victorian retail workers was that there were no overtime rates, no penalty rates, and that only minimum hourly rates of pay applied. This makes a mockery of the assertions of higher wages and better jobs emerging from the WorkChoices framework; it simply cannot be sustained.

Some of the assertions in favour of the WorkChoices legislation are based on economics. We would draw your attention to page 9 of the supplementary submission, where the OECD, in its recent Boost In Jobs and Incomes paper, has found that employment protection legislation, fair and reasonable minimum wages and highly centralised wage bargaining do not have a significant impact on employment. The OECD report challenges the economic foundation of the Federal Government's WorkChoices reforms. It deals with, point by point, how some of the justifications put to the Australian public for this legislation simply cannot be sustained by economic argument.

In conclusion, in terms of what we would ask the Committee to give consideration to recommending from this inquiry, as set out at page 51 we would ask that recommendations be framed with particular focus on vulnerable employees in New South Wales, trying where possible to legislate some protections that roll back some of the ideological fervour that was seen in the WorkChoices legislation.

We would also like the Committee to give serious consideration to preserving a fair go for young Australians, which we set out at 7.1, making the observation that the WorkChoices legislation at sections 16 (2) and 16 (3) specifically sets out areas of legislative interest that it does not seek to impose itself upon. One of them is the child labour laws. At pages 51 in 52 we set out what we would see as a workable system, which would certainly give added protection to employees in New South Wales under the age of 18 years, employees like Amber Oswald, whose case appears in the annexures—

CHAIR: She is the 15-year-old?

Mr DWYER: Yes, the Pulp Juice employee given an AWA which made no pretence at all about slashing her base rate of pay by almost $1 per hour, and removing public holiday entitlements and penalty rates. She was certainly in a take-it-or-leave-it situation. We make the point that if the company had got its paperwork and timing right, what it did would have been completely legal.

We would ask the Committee to give serious consideration to a system whereby employees in New South Wales under the age of 18 years could be given added protections, protections that we say are consistent with a fair and decent society.

CHAIR: You have made other recommendations, in relation to monitoring, future inquiries, and so on.

Mr DWYER: We think it would be very useful. Some of the forecasting that we believe is accurate based on the Victorian experience and the New Zealand experience—and Committee members may well be aware that it is consistent with the Western Australian experience as well—then matching that up with what we see coming through since 27 March. Unfortunately, the track record is

that wages and conditions for the vulnerable group of employees we have identified in the submission are going to be on a downward trend. The Committee continuing to monitor these outcomes would be very useful on behalf of the citizens of New South Wales.

(The witnesses withdrew)

RON McCALLUM, Dean, Law School, University of Sydney, sworn and examined:

MICHAEL JAMES RAWLING, Research Assistant, Law School, University of Sydney, affirmed and examined:

CHAIR: Professor McCallum, the questions we have circulated to you and other witnesses basically rephrase out terms of reference. In your case, however, we thought it would be useful if you could give us a brief outline of your expertise in this area. You would also like to make an opening statement, I understand?

Professor McCALLUM: Yes, which we would like to table. In January 1993 I took up the foundation Blake Dawson Waldron professorship in industrial law at the University of Sydney, the first named professor in labour law for Australia. I have held this position ever since. In July 2002 I commenced my five-year term as Dean of the Faculty of Law at the University of Sydney. I am a labour relations specialist. I am a member of the National Academy of Arbitrators Overseas Correspondence Committee, a group of experts who advise American and Canadian labour arbitrators. I am the inaugural president of the Australian Labour Law Association and have held that position since 2001. I have advised State governments on labour relations and occupational health and safety.

CHAIR: Do you wish to table your opening statement?

Professor McCALLUM: The statement is by Mr Rawling and myself. I should add that Mr Rawling is a doctoral student at the University of Sydney. He is writing a Ph.D. He is a lawyer, and he does some part-time research work for me in the Faculty of Law.

This is our tabled document. I will read the first portion and Mr Rawling will read the second. The first heading is ability of workers to genuinely bargain. In our considered opinion, the WorkChoices legislation does not enable workers to effectively bargain, for the following reasons. First, it elevates individual bargaining above collective bargaining. An individual workplace agreement will always override a collective agreement, even when the collective agreement is in operation.

Second, the WorkChoices legislation does not provide any mechanism for employees that requires their employers to engage in collective bargaining or, at the very least, to deal with them on a collective basis. In other words, even if a majority of workers at an employing undertaking wish to collectively bargain with their employers, whether or not they are represented by a trade union, the legislation does not require the employers to engage in collective bargaining. In our considered opinion, the WorkChoices legislation breaches Convention 87, Freedom of Association and Protection of the Right to Organise Convention, 1948, and Convention 98, Right to Organise and Collective Bargaining Convention, 1949, of the International Labour Organisation. In our view, WorkChoices also breaches article 2 (a) of the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation.

In the United States and Canada, where a majority of employees wish to collectively bargain with their employer, the employer is required by law to recognise their trade union and to bargain in good faith with it.

In the United Kingdom, after a consultative process employers may be required to engage in collective bargaining where a majority of their employees wish to collectively bargain. In New Zealand, where any group of employees wishes to be dealt with collectively, even where they are not a majority of employees at the undertaking, the employer must deal with them collectively. For details I have referred you to one of my articles published in 2002 in a journal called *Relations Industrielles*. Under the legislation it is possible for an individual agreement to take away all of the existing protected award provisions of an employee, provided that it complies with a fair pay and conditions of standard.

Under the original Workplace Relations Act 1996 as in operation immediately before the coming into force of the WorkChoices legislation, greater safeguards were in place. Under that regime individual workplace agreements had to be approved by the Office of the Employment Advocate,

where they were subject to a no disadvantage test where the terms of the agreement were measured against existing or designated award provisions. The current workplace agreement provisions do not offer individuals even this level of protection. In our considered opinion unskilled employees, especially women and young persons amongst them, will suffer disadvantage under this individual bargaining mechanism. Here I have referred to my Kingsley Laffer lecture, which was published this year in the Journal of Industrial Relations. I will now ask Mr Rawling to continue.

Mr RAWLING: This aspect of the submission addresses the way that WorkChoices undermines security of employment by reducing protection against arbitrary dismissal, and by reducing regulation of work by industrial awards. In relation to reductions in protection against unfair dismissal, I have the following to state. Post WorkChoices, many employees in New South Wales who have their employment arbitrarily terminated will not have any recourse to unfair dismissal jurisdictions either at the State or the Federal level. The unfair dismissal jurisdiction in the Industrial Relations Commission of New South Wales has been dramatically reduced in scope, in particular employees employed by constitutional corporations will no longer have any recourse to unfair dismissal remedies in the New South Wales commission. WorkChoices has also drastically reduced the scope of Federal unfair dismissal laws. Under the amended Workplace Relations Act 1996 an employee employed by a constitutional corporation cannot make a claim for unfair dismissal if that corporation and its related entities employ 100 or fewer employees.

Moreover, in the Federal jurisdiction an unfair dismissal claim cannot be made if the employee was dismissed for operational reasons, which are defined extremely broadly in the WorkChoices legislation. It is our submission that these reductions in unfair dismissal rights means that the threat of dismissal is now an ever-present reality for many workers in New South Wales workplaces. Many workers in New South Wales will now work in the shadow of job insecurity. These WorkChoices reforms will significantly increase the ability of constitutional corporations to arbitrarily terminate employees engaged in permanent employment, and to re-engage those employees in less secure arrangements. Secondly, I will briefly address the way in which WorkChoices undermines the security of employment by reducing regulation through industrial awards. Prior to WorkChoices, industrial awards were a primary method of satisfactorily regulating the manner in which workers were engaged. One example of this was the award clauses that gave casual employees the option of converting to permanent employment at a certain period of employment.

Consequently the reduction or elimination of regulating work by industrial awards is also of grave concern in our submission for New South Wales workers. WorkChoices abolishes the ability of the New South Wales commission to make awards regarding the terms and conditions of employees employed by constitutional corporations. Existing State awards, insofar as they operate with respect to constitutional corporations, will cease to have effect after three years post the commencement of WorkChoices. Furthermore, the ability of the Australia Industrial Relations Commission to make new awards has also been effectively abolished. In addition, there are certain non-allowable award matters in existing Federal awards that will cease to have effect. Those matters will include matters regarding the conversion of casual employment to another type of employment, and restrictions on the engagement of independent contractors and labour hire workers.

It is our opinion that New South Wales employees, other than those performing short-term, intermittent and irregular work, should have all the normal entitlements of permanent employment. The philosophical underpinning of the WorkChoices reforms contradicts this opinion. In particular, the reductions that WorkChoices reforms put in place will greatly exacerbate the growth in casual employment, labour hire arrangements and contract labour. As the decision in the New South Wales Industrial Relations Commission in the Secure Employment test case highlighted, much casual employment is not genuine, but rather involves workers performing regular, ongoing work on a casual basis. Labour hire and contract labour is also used to substitute for direct, permanent employment and to avoid the operation of industrial instruments. WorkChoices eliminates many existing award restrictions that previously constrained corporations from converting permanent employees into less secure forms of work arrangements. Accordingly, it is now concerned that WorkChoices will considerably reduce the level of secure employment in New South Wales.

CHAIR: I will ask Committee members to ask questions on what you have said so far, and then we have more specific areas to ask about.

The Hon. KAYEE GRIFFIN: One of the questions that relates to our terms of reference would be rural and regional New South Wales and the opportunities, or lack of opportunities, that may already exist in moving around looking for work or looking for better employment. How do you see the legislative changes in WorkChoices affecting the ability of people in rural and regional New South Wales in very small towns or villages to find work that is not only meaningful but at a fair rate, and does that mean such people are more likely to be caught up in AWAs and perhaps less conditions than they have been used to?

Professor McCALLUM: I can speak from direct experience. In 2000 Premier Bracks and his Government asked me to be the chair of an independent task force to examine industrial relations in Victoria when its industrial law-making power had been referred to the Federal Parliament. But a schedule of wages and working conditions lower than that made by Federal awards operated in Victoria. On my visits to rural Victoria to examine the matter I came clearly to the view that workers were disadvantaged in small towns. The low wage economy really operated, and employers simply offered the minimum. There was no competition for labour in these small towns. As one employee put it, "Where should I go to get another job? The next town is four hours away and my husband has a job here." Extrapolating my experiences in Victoria north of the Murray where we now reside, I have no doubt in my mind that in rural New South Wales and particularly in small towns where there is no great competition for labour, that employers, if pressed, will, in time, using Australian Workplace Agreements, take away various protected award rights and lower wages.

After all, employers are often hard pressed in rural towns. They are doing it as tough as their employees. The squeeze on rural Australia is enormous. The problem with the WorkChoices legislation as it exists is that it gives employers the opportunity to lower wages and benefits without controls. Employers do not lower wages for the love of it: they lower wages when they, themselves, are pressed and pressured, and when there is less competition. It can start a race to the bottom. To put it another way, no matter how saintly I may be as an employer, if I am running a restaurant and the restaurants in my suburb have taken away benefits from employers and reduced labour costs, if I want to stay in business I have to do the same. This is not an issue of good and bad, it really depends upon the labour market. When the laws do not set limits to the labour market the particularly in rural New South Wales and other parts of rural Australia, labour market forces will take operation unchecked.

The Hon. IAN WEST: Are you therefore saying that productivity is not the criterion in the example you just quoted, it is the price of labour wholly and solely?

Professor McCALLUM: It is the price of labour. When dealing with semiskilled workers in restaurants productivity really is not the big issue, the real issue is serving at the tables and cooking the food, et cetera. Productivity is not an enormous factor when dealing with many unskilled workers. Productivity operates when workers are really adding value to what they are doing, and it tends to be from the middle upper in the labour market.

The Hon. IAN WEST: Are you suggesting that if I am running a restaurant in Lismore the price of labour has not got a bearing on restaurants being run in Beijing?

Professor McCALLUM: No. The price of labour in Lismore will depend upon how many other restaurants are operating and how many jobs there are. If people are after jobs and there are not too many jobs, people will work for less. The whole philosophy, as I understand WorkChoices, is to really say: Awards and collective agreements have not allowed market forces to operate. We do not want market forces to operate without any controls whatsoever, but what we want to do is have fairly minimal controls, i.e. the fair pay conditions standard. We want that because we think labour should be more responsive to market forces and also, as I understand WorkChoices, to soak up the alleged unemployment. That is the philosophy. In that situation market forces will operate more fully than they operate under an award or a collective bargaining system. What I am suggesting to you is that those market forces may operate at their most rampant in rural areas of Australia where jobs are scarce and where people may work for less.

CHAIR: I was pleased to hear you say quite a bit in your statement about independent contractors and labour hire companies. We have heard a few references in evidence so far, but very little detail about the increasing move to independent contractors with the extra costs and liabilities that it places on workers, but without necessarily the recompense for that shift from employer liability

to theirs. Could you enlarge on what you know of how big this movie is and what industries and what sorts of workers it is affecting?

Professor McCALLUM: Let me begin with a few words and then Mr Rawling, who is doing a lot of doctoral research in this area, can comment. It is no secret that independent contractors and consultants of all types have mushroomed in the last decade and a half—it must be somewhere around 15 per cent of the work force—and with the new Federal Government's Independent Contractors Bill, if it is passed into law and makes State protections of independent contractors ineffective or less effective, we may see an added increase of them.

I have no trouble in small business people being independent contractors. They are running their own businesses. My real concern is when people are independent contractors using only their labour. That is why our State laws at the moment, various awards, various workers compensation statutes and occupational health and safety statutes, have extended definitions of employees to cover them. We will see more and more use of independent contractor labour and it will become a problem for labour law.

Mr RAWLING: There is no doubt that labour hire trends and contract labour trends were already in existence before changes in regulatory frameworks were occurring but these changes will exacerbate those trends and basically take away any of the checks on conversions from permanent employment to other kinds of labour that are lower cost labour. There may be some issue with whether employers will need to do that, given that they now have a low cost form of arrangement under WorkChoices, namely, the AWA, but this is another strategy which WorkChoices opens up more for employers. I do not have any of the statistics at my fingertips at this point in time.

CHAIR: Could you take that on notice and give us more information on the dimension of those trends?

Mr RAWLING: Absolutely.

CHAIR: We are more concerned about conversion of a traditional employee, particularly the more vulnerable ones. Obviously people with quite high levels of skill made the voluntary choice to move from being an employee to being an independent contractor. It is the vulnerable and lower skilled end of the market that is of concern. You expressed concern about labour hire companies. Do either of you want to say something about that?

Professor McCALLUM: There has been a great deal of discussion about labour hire and inquiries by this Parliament and other bodies. Our concern is particularly where the contract labour hire where people are hired as independent contractors. There are two types of labour hire: One is where a person acts as an agent for a series of independent contractors and employs them to do work. It is known as the ODCO type of labour hire and it is prevalent in the building industry. Another area is where a labour hire company actually employs people and sends them around to different host employers to undertake specific tasks.

We are concerned about that labour hire workers will not be given appropriate and adequate terms and conditions of employment and so they would fit into our general concerns over the limited protection in the current WorkChoices laws. Labour hire is with us. It does have a useful role to play in employers being able to control the ebb and flow of production but if it is used unscrupulously to lessen the rights of employees of permanent employees and if labour hire workers are employed without benefits, then it is a problem.

In labour relations everything is balance. We all understand that we want a more productive community and that we want value-added employment. Equally, we understand that, as a democracy, and as most people are only able to maintain themselves and their families by employment, we must ensure that we have adequate benefits for employees, particularly for the young, women and in more remote areas. This is the way one should run Australia.

CHAIR: You have listed some vulnerable groups. Two that we did not specifically include in our questions were people from non-English speaking backgrounds and people with a disability. Is there anything extra you would like to say about their situation under WorkChoices?

Professor McCALLUM: As a disabled person myself I would want to address disability. Disabled people have the highest level of unemployment other than indigenous Australians. Our levels of employment have been falling. One gets into very complicated provisions; we have had provisions in this State and other States relating to paying less in sheltered workshops and some of that law does not work very well at all. But I am concerned that in a legal system like WorkChoices, which operates with more open-ended market forces, disabled people may be more vulnerable.

More important, perhaps because of their size, are people from non-English-speaking backgrounds. Many of them do not understand the old arrangements they were employed under let alone the new arrangements of WorkChoices. One of the concerns about WorkChoices is that Australian workplace agreements can come into operation even where they take away all of the protected award conditions without the Office of the Employment Advocate approving or making sure that everybody understood the agreement.

Previously, before WorkChoices, everyone who was on an AWA—and I should declare here that as a member of management I am out of the collective bargaining agreement group at the university; I am on a AWA—so I, like everyone else, received a letter from the Office of the Employment Advocate asking me did I have any concerns about the approval process, which I thought was perfectly proper. Now that process will not occur and that makes particularly people who cannot read and do not understand what is happening in a particularly more vulnerable position.

I have no great problem in a person at my employment level being on a AWA. I can see a place for individual contracts for people who have skill and who have choices. I can understand why some people may want to abolish them entirely. I do not want to get into that debate. I have lived long enough and studied labour law around the world to know that there is a place for this. My real concern is to ensure that there are sufficient safeguards in the market.

To put it another way, what is the purpose of labour law and what is the purpose of law generally? Why do we have a law against theft? I do not steal and most of my friends do not steal. We have law against theft because we know what human nature is and we know that some people steal and we know that we need rules to keep society operable and to prevent society from ending up in a violent mess. Most employers are law abiding and good people. Most employees are law abiding and good people. There are rogue employees and there are rogue employers. As I have been sitting in the middle and upper management level for the last four years, I have a better understanding of the difficulties employers have in managing their businesses.

My concern is that labour law should ensure as its purpose, like the law of theft, that there are safeguards in place to prevent unscrupulous and unfair and arbitrary conduct. My concern with WorkChoices is that perhaps it is written with the aims that most employers are good and so we should let the market operate. It is really too simplistic to talk about it in that way. It does not really depend as much upon whether employers are good or not; it depends upon whether market forces are allowed to fully operate, so that in my example of the restaurants in Glebe; if all the restaurants in Glebe dropped penalty rates and the only way I can stay in business is to drop penalty rates has nothing to do with my goodness or not.

Labour law must protect the employees, particularly employees who are vulnerable. The real question for legislators like yourselves is to get the balance right. No-one wants a system where you cannot shed labour, where you cannot go into new innovation. On the other hand, no-one wants a system where people are vulnerable, where people cannot raise families in security. My concern about WorkChoices is that in the zeal in which it has been enacted it has gone too far. My concern is that its effects will be felt, not on persons like myself so much but on persons at the lower end of the market. It is not rocket science to make a law that will allow innovation on the one hand and give enough protection on the other.

The Hon. IAN WEST: I think to a large extent you have probably answered my question, however I will ask it. Except in terms of democracy and fair go, why should you not have a labour market like Paddy's market; why should I not be able to purchase labour like I purchase an orange or an apple? Why should not the master-servant relationship operate? I take all the risk, I pay the wages: why should I not be able to hire and fire at will?

Professor McCALLUM: In this country we have had, for many years, moneylenders legislation, which prevents people borrowing money on usury's terms, which would put them into penury. Why do we have that legislation? Because when people are desperate and they have nothing to give to a cash converter, they will borrow, even borrowing at exorbitant rates. We have that legislation for the health of society. That is a little more extreme than labour relations.

Supposing we had no labour laws at all and had no minimum wage, no annual leave and no parental leave. We would find very much that where labour was plentiful in the semiskilled or unskilled, we would find there to be a race to the bottom. That is why all systems, whether it be WorkChoices or the existing system in New South Wales for non-constitutional corporations, have limits and have minima—the minima is expressed in WorkChoices in the fair pay and conditions standard.

My concern is more one of balance. I think the minima are too minimal and the safeguards are insufficient. I have always been a believer that if the majority of workers at an enterprise wish to be dealt with collectively, either with a union or, as is more often the case these days, just directly as a group, the law should require their employer to collectively bargain with them as that is one of the best outcomes. I have always been of the view that there should be some mechanism to check arbitrary, capricious or unfair behaviour, especially where that involves determination of an employee on arbitrary or capricious grounds.

The nature of that protection or review is an interesting concept. Whether it needs to be a full arbitrated process or some form of checking is a matter upon which reasonable people can debate. My concern with WorkChoices is that in the zealousness of governance of the current Government when it had the majority in the Senate it really went for broke. In fact, it is very similar to the original Workplace Relations and Other Legislation Amendment Bill that Minister Reith put into the Parliament in May 1996. It was then the Australian Democrats and others who forced the Government to compromise and I think we had a much better set of laws where Australian workplace agreements were measured against, albeit, a rather elastic "no disadvantage" test.

The problem with WorkChoices that is being put through at the moment is that it has been put through with exuberance and what the Government needs to do is to reflect and take advice on having a more balanced package without trying to do away with its aim, which I agree with, which is to make this country more productive and more responsive in this globalised world.

The Hon. KAYEE GRIFFIN: A number of witnesses have expressed concern about operational change and WorkChoices lack of definition stating that it provides an opportunity to remove staff without valid reason. Do you have concerns about how operational change could be used and whether there is insufficient definition in relation to that?

Professor McCALLUM: Yes, I do. I would like the definition to be narrower. I always like to relate these things back to practical experience. From 1997 to 2000 I was special counsel in industrial law with the national law firm of Blake Dawson Waldron. That firm, more usually than not, tends to advise incorporated employers. In speaking generally when talking to employers, and I am speaking generally now and not about any particular case, who have had difficulty with an employee, they would come and see you and you would say, "Look, it's very important here to act fairly. You can't prevent a person bringing an unfair dismissal action against a company. I understand, as your lawyer, the problems. What we have to do is ensure that we have gone through the procedural steps and if this person does not pick up her or his socks very quickly, the person should be terminated." That is what I hope a good lawyer's advice would be.

The problem with operational requirements is that it is so wide that an employer could receive legal advice, "Look, this definition is so wide, provided you make any change in the nature of production here, you can dismiss that person and they won't have a recourse". I think operational requirements should be narrowed to redundancy situations; no-one has any quarrel with redundancy situations. Remember here, we are not dealing with small employers; the only relevance of operational requirements is to incorporated employers of 101 or more people. So we are not dealing with small outfits.

If we are dealing with big outfits let us not have such a wide loophole that may allow the arbitrary use of behaviour, let us make it more narrower and tie it to redundancy. We all know that employees have to be made redundant when business circumstances change. Very many Australians have experienced redundancy; it is a necessary part of the change of our economy; it is a by-product of the globalised nature of our world.

CHAIR: Professor McCallum, do you have any comment to make in relation to whether the legislation will have unfortunate impacts on employers and small businesses? In other words, is the need for balance that you are talking about related to the fact that there are going to be some people on the employer's side who are going to have bad impacts?

Professor McCALLUM: I am concerned about the impacts on employers as well. We have been moving to an individualised form of labour law now, I suppose, for the last 15 years. If one is going to run an individualised process of labour law, the benefits to employers are where there can be developed a high level of trust between employers and employees. That is what all the human resources literature says, and I think it is correct. The problem with WorkChoices is that the temptations on small employers will not be to hold on to their workers and to develop a high level of trust, the temptations will be to shed labour and to lessen conditions simply to retain a profit level. Or, to put it another way, I think WorkChoices will push employers into short-term solutions of dropping benefits here and there.

Why I would like to see more controls in the labour market is I would like to see innovative employers developing higher levels of trust between employers and employees. As a middle and upper manager myself I think that trust is very important. I think that in very many workplaces I visit now there is no such thing as loyalty to the company. I think lack of that ethic is bad for this country. But it is a two-way street. That is why we need laws, not only laws to tell us which side of the street to drive down but laws to tell us about our behaviour to others. Our laws were based upon the good-neighbour principle, and that is what I would like to see retained.

To reiterate, I am concerned that WorkChoices gives employers so many options to operate in the short term that they will be less disposed to develop high trust, individualised workplaces, which are probably the workplaces, in large part, of this current century.

CHAIR: Some witnesses have suggested to us that small businesses in particular are likely to face very difficult tasks in grappling with the complexities of 1,400 pages of WorkChoices legislation and regulations and that the impact on small business in particular has been underestimated. Would you have any comment on that?

Professor McCALLUM: The Federal Parliament in all areas is far too prescriptive—whether it be taxation, whether it be labour relations or whether it be immigration. The best labour laws—and I am happy to give applause for the Industrial Relations Act 1996, which I helped draft, I have to admit—are short and simple and give broad discretions to tribunals and courts to allow them to deal with particular cases that come before them. There is a story I have often told that a friend helped me put together. It is a bit like going to have tea with one's maiden aunt. When I was 10 I would have tea and my maiden aunt would say, "Gentlemen wash the dishes". I was the only guy there so I had to wash the dishes, and as I washed she stood behind me and explained to me about every cup. And that is the problem with WorkChoices: it is so prescriptive, explaining everything you must and must not do in collective bargaining.

For example, if I am running a high-level business and I have about 70 employees and I want to attract the best form of labour, why should I not be allowed to give them employment security by establishing a review mechanism on termination in the collective agreement? WorkChoices says no, that is prohibitive conduct, and if I put it in I get a $33,000 fine. I think that prescription in modern laws, particularly coming from Federal drafting, is bad. The New Zealand labour relations statute is quite small; the South African statute is quite small; the American three labour statutes are about 100 pages long. We do not need this complexity. We do not need this detail. We want broad discretions and simple laws to allow people to fashion their own solutions and to allow tribunals and courts, where appropriate, to deal with the exigencies of particular cases that come before them. We want a law guided by the experience of decisions rather than by the fiat of a fairly remote legislature.

CHAIR: So why do you think the Federal Government ended up producing such a complex and detailed package?

Professor McCALLUM: They wanted to do everything in a big bang. They wanted to control every constitutional corporation in the country and to do it on day one. That meant having a whole lot of transitional provisions dealing with existing State awards or agreements. They wanted to ensure that collective bargaining would only be done one way, and so they have pages and pages and pages for legislation on secret ballots. It is extraordinarily lengthy. If we want secret strike ballots before strikes, and there are powerful arguments that should be done, it really does not take pages and pages to do that, it can be done in a simpler manner.

If they had not gone for broke they could have said that existing State agreements will operate until they are concluded, by the effluxion of time to their nominal expiry dates. This was the big bang theory. Most of us who have worked in the law for a long time know that big bang theories never work: one needs time to adjust. Just as when the Family Law Act 1975 came in and there was a huge spike in divorces because of all the pressures that had built up, we are going to see a whole swag of problems with this big bang on 27 March and onwards with WorkChoices.

CHAIR: Do you think that the legislation is therefore doomed to fail or to perpetual patchwork amendment and repair work?

Professor McCALLUM: I think it is doomed to perpetual patchwork and repair work. Most people will not worry about WorkChoices until something happens. They might find, if they are an employer, that other businesses around them are lowering their wages and benefits and so to stay in competition they will do so. Most people do not think about laws until something happens—they are dismissed. I am married, I do not think about the Family Law Act and what might happen if we divorced, I am living a day by day life in a marriage. Most people are living their work life day by day as an employee; it is only when something happens, when they lose a benefit, when they believe they have been arbitrarily dismissed. Employers do not worry unless an employee is not behaving or is thieving things or if their business is undergoing enormous competition.

People can live through almost anything. People lived through the Blitz in London. People will live through it, but the legislation will require patching and refining. It is not healthy to have 1,400 pages of a law and more than 200 pages of regulations to govern what is one of the normal relationships of daily life, that is the relationship between employer and employee—a cornerstone relationship in our modern day, just as the family or relationships are another cornerstone of our life.

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

Professor McCALLUM: I would like to see some recommendations that there be some protections against the most vulnerable. I think one thing worth looking at is what the Victorians have done, which is to have, I think it is, the Office of Workplace Rights. They have got an office established to give Victorian employees protection and advice, and I think that would be a very useful thing for this State to do. I would also hope that by the power of this Committee one could express in a clear manner to our sister Federal Government the concerns of this Parliament and of this Committee, and that there are ways of addressing some of the more egregious parts of WorkChoices without going against, if you like, wholly the Government's philosophy of a freer labour market.

It is a privilege to live in a democracy. Michael Rawling and I find it a great honour that you are hearing us this afternoon and that as citizens we can make our point. We think that this Parliament and this Committee have an important role to play in expressing views from the evidence and we would want these views expressed with clarity and we would want there to be some thought given to some form of office to give advice to New South Wales employees, where appropriate. We would also hope that statements about having simpler laws, about having more balanced labour laws, would ring true and would play their part in the future as these laws are reconsidered, as they are likely to be over the coming decade.

CHAIR: Mr Rawling, did you wish to add anything in terms of what might come out of our inquiry?

Mr RAWLING: No, thank you.

CHAIR: I think that probably concludes your evidence. Thank you very much for coming.

(The witnesses withdrew)

MICHAEL JOSEPH McDONALD, Executive Director, Catholic Commission for Employment Relations, Level 14, 133 Liverpool Street, Sydney, sworn and examined:

KIRRILY ANNE McDERMOTT, Employment Relations Adviser, Catholic Commission for Employment Relations, Level 14, 133 Liverpool Street, Sydney, affirmed and examined:

CHAIR: The statement to which we have referred is probably not necessary in your case. We have drafted it for people who may want to make allegations about individuals because that could, in fairness, involve us in having to contact people who have had allegations made against them. It is probably the case that you do not intend to do that, so we do not need to go through that detail.

Mr McDONALD: No. Thank you, Madam Chair.

CHAIR: Do you wish to make an opening statement? Before you do, I point out that the questions we sent you are quite broad. Essentially they just repeat the terms of reference, but it would help us if you could explain the role of your organisation and how you come to be appearing before us on this topic.

Mr McDONALD: I have some preliminary comments I would like to make in regard to Work Choices, but firstly I will refer to the role of the Catholic Commission for Employment Relations. The Catholic Commission for Employment Relations has been established by the Bishops of New South Wales and the Australian Capital Territory to provide advice to Catholic employers in New South Wales and in the Territory in regard to all employment-related matters. The work of the commission has been to represent Catholic employers in various tribunals and provide assistance to Catholic employers in regard to dealing with the day-to-day employment relations issues in their workplaces.

The Catholic Church is a large employer in New South Wales with activities in education, social welfare, parishes, works at various religious institutes as well as the works of the bishops across other areas of pastoral care that the church is involved in. We have been following carefully for a long period employment relations and, as a church, through Catholic social teaching, have tried to develop what we believe are the key elements of good employment relations. This has been a part of the work of the church's universal organisation as well as the organisation operating in Australia, particularly in New South Wales. We have been involved in making representations to the Commonwealth Government in regard to the Work Choices legislation. We also appeared before the Senate inquiry last year in regard to the legislation.

Our concerns regarding Work Choices are, at its most fundamental level, related to the values that underpin Work Choices as a package of legislation. We believe that the values that underpin it are really alien to Australian society as it has developed over the last 100 years and as we have seen through the various Acts that have applied to the Australian Industrial Relations Commission. We see a wiping away of nearly 100 years of learned experience by Catholic employers as to how they should be dealing with their employment relations. Generally, that applies to all employers in the country. It is legislation which, we believe, is not fair, is not simple, and does not constitute a national system of employment relations. Employers in the context of this legislation can easily find themselves being led down a path that is not conducive to good employment relations, not conducive to productive workplaces, and can encourage the development of mistrust and fear in workplaces rather than the trust that we have just heard Professor McCallum refer to.

Employers will need considerable support to implement Work Choices. It is a massive piece of legislation. Most employers who operate small enterprises will need considerable assistance in order to find their way through its maze. Employees, on the other hand, will not have the easy support of unions to support them through such a process and give them advice. There are significant impediments in the Work Choices legislation which go to undermine the capacity of an individual to be appropriately represented and to find, through a union, the support that they need to come to what we regard as a fair outcome in terms of a bargaining relationship between the employer and employee.

As an employer organisation, from time to time we have involved ourselves with other employer associations and with legal firms to provide advice to employers. Up until the

commencement of Work Choices, the legal advice that generally has been provided to us has been about encouraging co-operative workplaces and has been that co-operative workplaces will ultimately deliver productive workplaces. Regrettably what we are now seeing as a practical outcome in regard to Work Choices is that employers are being guided away from that co-operative workplace to a futile path of command and control as being the underpinning way of conducting employment relations. It would be and, I think, is a great pity that in a civilised and modern and wealthy economy, that is the paradigm that we are now moving into. They are just some preliminary comments I wish to make at the commencement of our evidence today.

CHAIR: It is a very strong statement in many ways, coming, as you have explained, from a body that has been set up to advise Catholic employers as well as to advise on broader issues in relation to employment relations. The questions that we sent to you go through a number of the specific sorts of areas. As you probably heard, because I think you were here for about half or more of Professor McCallum's evidence, as a Committee we move from one topic to another. Given the role of your commission, can you expand a bit on how you see the impact of the legislation on employers, and particularly on smaller businesses or the smaller employers you mentioned?

Mr McDONALD: Employment relations for employers is generally not a skill that employers have when they become managers. Most managers find that they are given the task of managing an organisation because they have a particular knowledge base. If they are an engineer, they might be a great engineer and all of a sudden they might end up being responsible for Sydney Water. That is the sort of paradigm that has happened all too often in Australian workplaces. It can also be said that in the enterprises in which we are involved, when people become leaders in the social welfare sector because they are good at counselling and have developed a whole range of social welfare skills, they do not necessarily have expansive experience in developing around employment relations and how they relate to their own staff. Teachers who have become principals of schools are fundamentally educationally driven and their experience is in looking after children and young people in classrooms.

Employment relations is in fact an area that any government has a responsibility to nurture. The way you construct a piece of legislation ultimately can help an employer to deliver that type of general outcome in terms of employment relations or it can serve to hinder. I would certainly agree that one of the achievements of the Government in New South Wales was the introduction of the 1996 legislation because it provided a very simple framework that any employer can pick up, read and have an understanding of. What you cannot do with Work Choices is easily pick it up and read through it.

CHAIR: It is hard even to pick it up.

Mr McDONALD: And when you add to the legislation the extent of the material generated by the regulations, employers will need to have access to employer associations to help them. I suppose that is just indicative of the problem with this legislation. Employers, except for those who are well resourced and highly skilled, will need to go somewhere else to get advice and support to work through the legislation. What this legislation does is encourage employees from easily having access to the same sort of knowledge to help them manoeuvre their way through this legislation.

CHAIR: We heard from the Motor Traders Association yesterday about how much help their members need and about the way in which the legislation will circumscribe the role of the association in due course because it is a registered association.

Mr McDONALD: Yes.

CHAIR: It is almost doing the opposite of what you are suggesting will be necessary.

Mr McDONALD: My view is that because you continually have changes in leadership for various positions when you are dealing with positions that we deal with—principals of schools, for example, continually change—their skills base is such that new leaders need time to develop their skills. That takes time and we are not easily in a position to work in such a way that we cannot have regard for schools up the road or schools down the road because we rely on a degree of government funding to support those enterprises. There are cost structures and there is skill development that I think will continue to be required. Employers will need that support on a regular basis. I just cannot

see how any employer, other than those that are highly skilled and well resourced and have people on tap, will not be turning to employer associations like our own in order to have the necessary knowledge to be able to work through this legislation.

CHAIR: Does that mean, for instance, that you would see your organisation as needing to take on more staff to assist various and different Catholic employers?

Mr McDONALD: If we end up going down the track of dealing with AWAs and employee collective agreements, a lot of work will need to be done with leaders on the ground. Leaders of various enterprises are not going to have the skills to sit down and write out an AWA. Nor will they have the skills to know, if they are going through the process of an employee collective agreement, how best to organise the information to go to their employees, and then to go through the voting process. So there certainly is work to be done.

CHAIR: You have used the example of schools. If that process is to happen in Catholic schools, where would the expertise come from to fill the gaps that you have identified?

Mr McDONALD: The gaps in Catholic independent schools would be largely filled by ourselves. For diocesan systemic schools, there would be some support available in Catholic Education offices. But Catholic Education offices largely depend on us to provide them with information and advice to do that. I have no doubt that our role will continue. There is a range of Catholic Education offices in the sense that you can have a big one, like the archdiocese of Sydney, which has 140 schools to look after, and it would be in a different position to the diocese of Wilcannia Forbes, which takes up half the geographic area of New South Wales and runs 20 schools. So there is a disparity in the resourcing that will be available in each of those Catholic Education offices to enable them to provide their services.

The Hon. ROBYN PARKER: Have either of you employees under AWAs?

Mr McDONALD: No.

The Hon. ROBYN PARKER: Are there employees within the Catholic organisations that you are aware of that are under AWAs?

Mr McDONALD: If there are any under AWAs, it would be a very small number. The only ones that I am aware of would have to do with the Australian Technical College at Port Macquarie.

Miss McDERMOTT: It is a jurisdictional issue. It is not yet clear whether or not the Catholic Church falls within the definition of a trading and financial corporation. Under current legislation, to enter an Australian workplace agreement you need to fit that initial criterion. There is also the issue of the values that underpin an AWA being an individual contract. Catholic social teaching is imbedded in the idea of collective agreements, and it is part of our values.

The Hon. ROBYN PARKER: So you do have individual contracts?

Mr McDONALD: We would have common law contracts of employment, as does any other organisation. As to whether they have been converted into AWAs, we have not seen any need for that as a general principle. If there are any, they are very small in number.

The Hon. ROBYN PARKER: I do not understand why there is concern with the WorkChoices legislation if that is the case.

Mr McDONALD: There are several concerns about WorkChoices legislation.

The Hon. ROBYN PARKER: In terms of your employees?

Mr McDONALD: With our employees, we are at the cusp of determining whether or not any of our organisations are trading corporations. Most of our Catholic independent schools would be incorporated. The question is whether or not they are trading corporations.

The Hon. ROBYN PARKER: But the Catholic Church is still going to be a fair employer on behalf of its employees.

Mr GOOLEY: It certainly will be. But—

The Hon. ROBYN PARKER: Therefore there will not be a concern with this legislation.

Mr McDONALD: The Catholic Church has a position, and is entitled to that position, around not only its own employees but as a member of a pluralist society to be able to advocate a position about this, and our position is that in an important way this legislation is not fair legislation.

The Hon. ROBYN PARKER: Under previous unfair dismissal laws there were provisions, were there not, about discriminating against someone on the basis of their sexual preference, their gender and those sorts of things. Is that right?

Mr GOOLEY: There are unlawful termination provisions.

The Hon. ROBYN PARKER: What is your view on that? Was that a good protection to have for employees?

Mr McDONALD: The Church has a position that it adopts in regard to its treatment of employees, and that is that we aim to be fair in our dealings with our employees.

The Hon. ROBYN PARKER: But was it fair to discriminate against people? Was it good to have that provision on unfair dismissal that employees could not be discriminated against on the basis of their sexual preference, their gender and their marital status, for example?

CHAIR: I am not sure that that is the definition of the unfair dismissal legislation.

The Hon. ROBYN PARKER: I asked whether that was the case.

Mr McDONALD: There are two sets of provisions: there are the unfair dismissal provisions, and there are the unlawful dismissal provisions of the Commonwealth Act. In New South Wales, we have been using the New South Wales Act. We do have certain exemptions under the Anti-Discrimination Act. We have those provisions because in a pluralist society religious freedom is one of the provisions upheld as a key component of a democratic society. Where we have leaders who are responsible for advocating the Church's teaching, we have been concerned to ensure that those people are good witnesses to that. The position around that is not something that is new.

The Hon. ROBYN PARKER: Would you think that under WorkChoices people could be dismissed from employment without any problem on the basis of those conditions?

Mr McDONALD: We have not had to deal with the Commonwealth's legislation generally in New South Wales because we have dealt with the provisions of the New South Wales Act. Our view is that we have certain positions that the Church wishes to uphold, and has the right to uphold, but when we deal with our employees we would want to deal with them fairly.

The Hon. ROBYN PARKER: In that fair, just and pluralist society, do you think it is fair that the Catholic Church has provisions under the Anti-Discrimination Act to employ staff, for example in a school, on the basis of their gender, sexual preference and marital status?

Mr McDONALD: I certainly do.

Miss McDERMOTT: We have exemptions under the Anti-Discrimination Act for teachers of the faith. The Catholic Church cannot discriminate against somebody on the basis of their gender or on the basis of their pregnancy. Our exemption applies specifically to people who are teachers of the faith, and that is important to ensure that the Church has religious freedom. That is a principle that I am sure your party would appreciate.

The Hon. ROBYN PARKER: Absolutely. But it does apply, does it not, to teachers in a school situation, not as teachers of the faith?

Mr McDONALD: I am not sure where we are going here.

The Hon. ROBYN PARKER: I am just trying to draw out that in one situation you have different, and what some might call discriminatory, employment practices, yet on another you have a different view. That is all.

Mr McDONALD: What we are saying is that, in regard to employment, we think the employment relationship should be a fair one. We do not believe that WorkChoices legislation advances fairness. It is not an objective of the Act. It was in the previous Act; it is no longer in this Act. We say that if government is going to set a parameter in which employment relations should be conducted, at the very least the Commonwealth Government should have made fairness an objective.

The Hon. ROBYN PARKER: My point to you is that your own employment conditions are not necessarily viewed by other people as being fair.

Mr McDONALD: They may not be seen to be fair, but the Church operates extensive schools, which are of benefit for the community of New South Wales. Our schools have a particular mission. It is very clear what that is. We employ teachers who will be prepared to support that mission.

CHAIR: Maybe we should move on to your views—not in the sense of an employer or adviser to Catholic employers, but speaking more broadly. You have said a lot in your submission about the situation of vulnerable workers and of the worst off in our community. You have also referred to employment in charitable and welfare agencies. Leaving those aside for the moment, can you tell us a little bit more about how you see WorkChoices impacting on the people in our society that you have identified as vulnerable?

Mr McDONALD: WorkChoices introduces a number of structural changes to the previous legislation. I think it weakens the wage-fixing mechanism. It takes away the no-disadvantage tests. It establishes a bare-bones minimum conditions standard. It removes a significant proportion of employees from their right to seek unfair dismissal. I think it weakens the bargaining position of individuals and, for many marginalised people, makes bargaining a very vexed task in which to be involved.

The evidence shows so far that the outcomes for women in terms of being primary care givers have been poor under AWAs. You will find that on page 14 of our submission. For young people, understandably they will not unaided have the skills and capacity to appropriately negotiate with an employer, and therefore I think they are in a relatively weak position.

For casual employees, I think we can say that their position is weakened. We have here in New South Wales been through the secure employment test case, and now the outcomes of that test case are prohibited content for the purposes of WorkChoices, and that has an adverse impact on the capacity of casual employees.

CHAIR: To move to permanent full time?

Mr McDONALD: Yes. And for older workers and workers with disabilities, as Professor McCallum indicated, there are a range of people who will not be able to come to the table in a position of equal bargaining power. The people who will be able to come to the table with an equal bargaining power will be those skilled in an area of employment where there is a high demand by employers for their skills and talents. Obviously, they will be able to come to the table, and the reverse will probably be true for them.

The Hon. KAYEE GRIFFIN: Mr McDonald, you said that the Catholic Commission for Employment Relations has a relationship with the Archdiocese of Sydney and other dioceses in New South Wales, perhaps more the smaller ones because they would have more direct contact over

employment issues. What is your comment about the effect of WorkChoices? You referred to the diocese of Wilcannia.

Mr McDONALD: Yes, Wilcannia-Forbes.

The Hon. KAYEE GRIFFIN: What effect will it have on rural and regional New South Wales and remote townships, particularly when people lose their jobs and try to look for other work?

Mr McDONALD: We did try to gather some material in regard to rural communities. What we have all observed is movement of people away from many small towns to larger towns or to Sydney. Sadly, the work opportunities in the country have significantly diminished over a period of time, in part by the consequences of the drought that has lasted and lasted. Some of these communities have never recovered. We would see that the impact on rural communities is quite significant simply because the job opportunities are not there. If people cannot get a job and if they are coming to the table where there are few jobs available and a number of people are after those jobs, clearly the employer has an enhanced opportunity to begin the process of minimising the rates of pay and conditions that are available to those employees.

The Hon. KAYEE GRIFFIN: Previous witnesses have expressed concerns about the obligations under WorkChoices that will be placed on employers in reporting processes. As an employer association, do you have any comment about that?

Mr McDONALD: The regulations regarding recordkeeping have been changed more recently. There is no doubt that the recordkeeping as originally proposed was quite extensive and would have caused just about every organisation a problem. I think that is why the Government has now moved to amend those regulations. Even for some of the smaller enterprises putting in place the types of records that are required is going to take time and a lot of guidance. We have just sent out an extensive memo to all our constituent employers advising them of the regulation and asking them to consider how best they could implement this regulation.

The Hon. KAYEE GRIFFIN: Another concern also expressed by previous witnesses, representatives from legal centres and some trade unions related to problems with superannuation payments when an employee has been sacked. As to those types of employer responsibilities, will the problems be overcome by the recordkeeping that employers will have to undertake?

Miss McDERMOTT: We can have laws. We have similar legislation that exists in New South Wales. The problem is there will always be rogue employers who do not comply. That is the problem that community legal centres and unions will face. I believe that the penalties under the new WorkChoices legislation are considerably higher than perhaps they are in New South Wales. Perhaps that is a good thing in the sense that it is important that employers are required to keep necessary information in case there is a back pay or an underpayment of wages claim later on. The challenge is that whoever is enforcing the new regulations will need to be appropriately funded and there will also need to be an information program for employers to ensure that employers are not just hit with fines when they do not know they are doing the wrong thing.

The Hon. KAYEE GRIFFIN: They are not going to be hit to start off with, are they?

Miss McDERMOTT: That is correct, I believe it will not be until September 2006.

CHAIR: An earlier witness told us September 2007 and then a guaranteed 18 -month period before draconian action is taken, which brings it through to 2009.

Miss McDERMOTT: There is a grace period for employers.

The Hon. KAYEE GRIFFIN: A very big grace period.

Miss McDERMOTT: Perhaps.

CHAIR: Several of our earlier witnesses have talked about the possibly unforeseen impacts from the combination of the WorkChoices legislation with the Welfare to Work provisions that come

into effect from 1 July. The community legal centres, which the Hon. Kayee Griffin just referred to, also talked about the impact of the changes on the Family Law Act and the rules for payment when children spend so many days with either parent. Do you have a view on the way the Welfare to Work changes together with the WorkChoices legislation will impact to create difficulties for vulnerable groups?

Mr McDONALD: And for appropriate family friendly workplaces. In terms of the non-managerial sector, research shows already that individual negotiations lead to worst family friendly outcomes. We have referred to that on page 18 of our submission. We do need to look at that in the context of the Welfare to Work arrangements, as sole parents are required to work at least 18 hours when their youngest child turns eight.

CHAIR: Will they face pressure to accept a less favourable set of employment conditions because they are obliged to find work and therefore any work is better than none?

Mr McDONALD: I think that is probably only going to be known after we see this operating for a little bit. It would seem to me that if people are required to do something and the opportunities are few, then they are going to be prepared to compromise. It would be regrettable if the compromise means that their family situation loses out, that is, the welfare of their children or extended family loses out in terms of proper care.

CHAIR: In general, you have a concern about the impact of the legislation on the balance between work and family?

Mr McDONALD: Yes. I think it leads to the possibilities of increased unpredictable hours of work for people. It looks at the possibility of longer hours for people. It looks at work on public holidays or weekends when perhaps families need to get together. I know some amendments have been made about public holidays, but it does not prevent individual employers placing pressure on an employee to accept work during those times. When you add that to the legislation not providing for some elements of the family provisions test case, that takes away from being a family friendly arrangement. Further, with the removal of the role of the Australian Industrial Relations Commission, it becomes unclear as to where you are going to be able to find advances in the family-work balance outcomes in the future. The Australian Industrial Relations Commission has had an important role in trying to establish that balance between work and family. Now it is removed from that arbitral role.

CHAIR: There is no longer a pace set or a consideration of change.

Mr McDONALD: There is no longer a vehicle for advancing family friendly policies.

The Hon. IAN WEST: Or a tribunal of record or a judicial independent umpire.

Mr McDONALD: Yes.

CHAIR: Will there be a great dearth of data, of monitoring and checking, on employment relations, wages and conditions? Will the changes you have referred to mean it will be very difficult to see broad patterns in areas that may need change? Our society may agree on those issues but we will have less data and less control over what is happening in the workplace than we had in the past.

Mr McDONALD: The way I explain it is that WorkChoices is like a big empty box. You have an employer in there and an employee and everybody else is outside the box. That is the way it is constructed. There is little control over what happens inside the box. Even the new institutions created by the Government are largely outside the box. The Office of the Employment Advocate just has to receive a lodgement of the agreement. The Australian Industrial Relations Commission is really the alternate dispute resolution process. The trade unions are outside the box; everybody is outside the box. While you have this big empty box, I am not sure whether any of us will ever know again the quality of employment relations or key factors that emerge because we will not know properly what is going on between the parties that make up the employment relationship.

The Hon. IAN WEST: I would not say ever. It will change.

CHAIR: Professor McCallum saw perpetual tinkering and repair work as inevitable, given the big bang approach of this legislation, as he described it.

Mr McDONALD: It would not take too much to try to correct some of this legislation. You could legislate to improve the Australian fair pay and conditions standard. You can change the figure of 100 for unfair dismissals. There are several things you can do quite easily, which would move this legislation towards something that has a degree of fairness. Until that happens I am concerned about the continuing impact on workplaces, not only for employees but for employers, the quality of the work relationship and the continued diminishment in this framework for eroding morale and people's satisfaction arising from work. The Catholic Church's social teaching is very clear that work is a very important part of a person's life and needs to be recognised. Steps need to be taken to ensure that a person's working life is a productive and an enjoyable one and that the person is probably remunerated and treated fairly.

CHAIR: Officially what is the commission and the church's position now that the legislation has been passed? Is it one of seeking amendment or wait and see? Given the strong stand you have taken, where do you see yourselves going next?

Mr McDONALD: The position of the church was made clear before this legislation was passed. We have no reason to change our view of the legislation now that it has largely been in place since 27 March.

CHAIR: Does that mean you are committed, for instance, to it being repealed or amended?

Mr McDONALD: We are not the Government, but we would want the issues we have raised about WorkChoices appropriately addressed by the Government.

The Hon. ROBYN PARKER: The Federal Government.

Mr McDONALD: The Federal Government and that the Federal Government addresses those issues in the interests of all Australians.

CHAIR: Given that we are a New South Wales parliamentary committee, what would you like to see come out of our inquiry? What can New South Wales do, given your overall position on the legislation?

Mr McDONALD: I think the New South Wales Parliament should advocate the position of fairness. I think this is a position that should be easily adopted by all the parties that make up this Parliament. The citizens of this State should be able to know that fairness is an ingredient of employment relations that is not going to be compromised, irrespective of what political party you are involved with; that people will be entitled to a fair wage, that they will be entitled to fair working conditions, that there will be security of employment for people, that they simply will not be in a position of arbitrary action by employers without some degree of supervision about the way they conduct themselves with their employees; that there is a place in a pluralist, democratic society for trade unions to be advocates and representatives of employees, in the same way that employer associations like our own continue to be in a position to support and advise employers.

Our position is really to challenge, and continue to challenge, the Commonwealth Parliament to address some of our fundamental concerns, which have been there all the time, and that this Parliament has a significant role in conveying that message to the people of New South Wales. That is the challenge that, I believe, belongs to you. This Parliament needs to be telling the people of New South Wales that this legislation is not the way it should be.

CHAIR: Do you see any specific actions that the New South Wales Parliament and the New South Wales Government can take to ameliorate some of the effects of the WorkChoices legislation?

Mr McDONALD: I think advocacy amongst the electorates is probably the key here. I think continued support for the New South Wales Industrial Relations Commission is important. It has been a strong commission, it has been a very balanced commission, and it has endeavoured to deliver good outcomes for both employers and employees over a long period. It is a valuable institution. If we are

to end up with a national system—and we do not have an objection to having a national system—the content of that national system should really pick up what I believe are the very good attributes of the New South Wales system, and that those attributes are not lost by moving to a culturally, quite distinct outcome in this legislation, to, I believe, the underpinning values not only of the Catholic Church but of the Australian community.

CHAIR: Ms McDermott, would you like to add to that?

Miss McDERMOTT: No.

CHAIR: You said earlier that you tried to collect some information from rural areas. Is there anything that you obtained that would be useful to the Committee?

Mr McDONALD: We might be able to endeavour to collect a little more, but we have not had a great deal of success thus far.

CHAIR: Perhaps we could ask you to keep that in mind, because the Committee is anxious to get information from rural areas. Perhaps we could ask that if you succeed in getting some information that you think might be useful, you might provide us with a supplementary submission.

Mr McDONALD: Certainly.

(The witnesses withdrew)

(The Committee adjourned at 4.50 p.m.)