LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND YOUTH AFFAIRS

(Reference: Inquiry into the extent, nature and consequence of insecure work in the ACT)

Members:

MR M PETTERSSON (Chair)
MRS E KIKKERT (Deputy Chair)
MR C STEEL
MR A WALL

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 19 OCTOBER 2017

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Secretary to the committee:
Mrs N Kosseck (Ph: 620 50435)

By authority of the Legislative Assembly for the Australian Capital Territory

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WITNESSES

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Amended 20 May 2013

The committee met at 1.30 pm.

CAMPBELL, DR EMMA, Director, Federation of Ethnic Communities Councils of Australia

THE CHAIR: Good afternoon, and welcome to this public hearing of the Standing Committee on Education, Employment and Youth Affairs. During proceedings today we will hear from a range of witnesses in relation to the committee's inquiry into the extent, nature and consequences of insecure work in the ACT.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. Proceedings are also being broadcast and webstreamed live. Witnesses are asked to familiarise themselves with the pink privilege statement. Please confirm that you have read it and that you understand the privilege implications of that statement.

Dr Campbell, would you like to make a short opening statement?

Dr Campbell: Yes. I have read the privilege statement and I understand it. Thank you very much for inviting FECCA to make a submission and give evidence to this inquiry. We are generally active in the commonwealth federal space, but issues around employment are critical to culturally and linguistically diverse communities, so we were very pleased to be given the opportunity to play a role in this inquiry.

Many people who are employed in insecure work are from culturally and linguistically diverse backgrounds. Their experience of this type of work is that it is low paid, unsustainable, dangerous and isolating. FECCA has always believed that employment is the most effective way of empowering individuals and including migrant Australians within our community and our societies, and it also creates dignity, self-confidence and stability.

I will not read through the submission as you will have the opportunity to do that, but we have a number of recommendations I would like to highlight. Some of them relate more to commonwealth legislation, but some of them are particularly relevant to the ACT. Any support the ACT government and opposition can give in the collection of data on CALD workers, particularly those in insecure work, we would be very grateful for as there is a massive shortage of data on this issue. There is a need for funding and support for small organisations that provide information around workers' rights and around the challenges that may be faced by employees in insecure work to be distributed by small organisations to culturally and linguistically diverse communities. We also ask that the inquiry recommends a push for cultural competency training for employers so they can improve the experiences of culturally and linguistically diverse employees within organisations. And perhaps most important is funding of research into the specific challenges and barriers which contribute to keeping CALD employees in insecure employment and research that looks into effective or good practice pathways for individuals to find sustainable, safe and secure employment.

Looking at the federal level we ask the inquiry to support efforts made by FECCA and

other organisations to protect the immigration status of those people who have suffered exploitation while being employed in insecure work and who make complaints against their employers, even if they may have breached the regulations around their visa status. We would also encourage this inquiry to support the work of the Fair Work Ombudsman who has done very good work in protecting culturally and linguistically diverse workers, particularly those who are working in insecure employment.

THE CHAIR: I read through your submission and I want to ask why refugees and new migrants to this country are particularly likely to experience insecure work?

Dr Campbell: FECCA does not specifically represent refugees; we represent the broader CALD community. My response applies as much to more established CALD communities as well as to new migrants and refugees. There are a number of reasons why they find it difficult to find employment: their qualifications are often not recognised, they may have a lower level of English and there is strong evidence of racism in employment practices. Second generation CALD Australians, even if they are graduates, find it very difficult to find high quality employment because their parents might not have the same networks, for example, as young people who come from families who are more established in Australia. There is a wide variety of reasons why refugees and other CALD Australians find it difficult.

THE CHAIR: I asked specifically about refugees and new migrants, but those issues you have described apply to culturally and linguistically diverse communities equally?

Dr Campbell: I think for some communities those issues would be more salient than for others. English language will be more of a challenge for newer arrivals. Recognition of qualifications will be an issue for new arrivals in particular. But the issue of networks applies broadly to Australians of CALD background.

THE CHAIR: What industries, what sectors, do your members experience insecure work in? Are there any particular industries that stand out to you?

Dr Campbell: If you look at the Australian Public Service you see a massive increase in insecure work, so I think the move towards insecure work is across the board. I am not an expert in this area, but it is not only in lower paid professions but is also in the public service. But CALD Australians are over-represented in lower paid industries, in particular the hospitality industry, service industries and some aspects of the caring and health industry. Those industries have been particularly impacted by flexible working practices and, therefore, CALD Australians are impacted at those lower levels. But you also see it in the IT industry, which has high proportions of CALD workers.

FECCA does not have a clear position on whether flexible working practices are good or bad; we are not a union. But we are concerned about those lower paid jobs where insecure work impacts CALD Australians disproportionately and where it is impacting on quality of life, family stability and so on. We see that a lot in lower paid sectors.

A very well-known demographer—whose name will come back to me—at the University of Adelaide calls it "employment skidding". It relates to migrants who come here with qualifications of equal value to Australians but because those qualifications are not recognised they always find themselves skidding backwards to a lower position to where they would have been. So CALD Australians will always be over-represented in those lower paid and increasingly insecure jobs.

THE CHAIR: A great example I came across was I got in a taxi one day and I found out that my taxi driver was a qualified accountant in their country of origin but their qualifications are not recognised here.

Dr Campbell: Yes, there are two issues. Taxis are a perfect example; I am not sure about the ACT but I know there are some challenges around the way taxi drivers are hired. In many states and territories they are called bailees; they are not business people in their own right so they are kind of employees without any rights around sick leave, holiday leave and so on. Taxi driving is a perfect example of insecure work.

The issue of accountants, for example, and other professionals having their qualifications recognised is a real challenge because you need to work with the professional bodies in Australia to encourage them to allow recognition. We have been working on this a lot at the federal level and there is not a strong desire amongst professional bodies to do work in this area and expand their recognition to overseas qualifications.

MR WALL: You mentioned—and they have been raised in a couple of submissions—difficulties of workers from overseas working in Australia under visa conditions and how Fair Work Australia fits into that. For example, if there is a challenge to entitlements not being paid correctly by the employer, often the employee's visa expires or they are found in breach of their visa and are sent back home before the case gets to the Fair Work Commission. It has been put to this committee that a way forward would be for those visas to be extended to the end of any legal challenges. Does FECCA have a view on a way forward around that area at all?

Dr Campbell: We would say two things to that: firstly, absolutely if someone has been mistreated by their employer and their case is before the Fair Work Commission as a general rule they should be supported to stay in Australia until that case is resolved, particularly if the job is linked to their ability to stay in the country. If they were fired from a job or had to leave their job because they were being treated badly and therefore they also have to leave the country—the two are linked—it is deeply unfair to send a person home. If you do that you discourage people from reporting poor behaviour on the part of the employer.

I also think there is a challenge around people who are being underpaid or poorly treated, which is often the case in areas where employment is insecure, and find themselves having to work additional hours in order to get paid enough to live, but then they breach their visa conditions because they work beyond the number of hours allowed and therefore are afraid of reporting. In those cases we think there should be some kind of amnesty for those individuals so that their cases can be heard. That is particularly the case with students.

MR WALL: Do you have a view on how that could be facilitated, beyond just the legal changes? If the employment is tied to a condition on the visa and they are no longer employed in that position, obviously there are living costs and those sorts of things. Is it the role of government? Is it the role of the individual? How should that extended tenure in Australia then be managed?

Dr Campbell: I am not sure if visa conditions are managed by legislation or regulation, but I think it is legislation. I would guess it would have to be legislative. But in general we believe when a visa is tied to employment, if a person leaves that employment a very decent amount of time should be allowed in order to search for alternative employment. The federal government has over time cut the period allowed between jobs, and the shorter you make that the more vulnerable the worker is because they are not able to leave their abusive employer if they are not able to find a job within such a short period of time before being thrown out of the country or required to leave.

MR STEEL: Thank you, Dr Campbell, for the submission from FECCA. I have a question in relation to your recommendation regarding targeted pathways programs and whether you have an example of a best-practice program you have come across to assist vulnerable workers to access training and skills development? Is there an organisation or a government that offers that sort of program currently?

Dr Campbell: We work very closely with RCOA, the refugee council, and the settlement council. The refugee council have done a very good report on jobactive and what works and what does not work with regards to refugees in particular, but I think their recommendations and findings can be applied more broadly to CALD Australians. With regards to targeted pathways, I think the school-to-work transition is a very important period in the life of a young CALD person for ensuring good longer term employment outcomes. So programs towards the end of school and when they are moving into employment would be very valuable.

In terms of people who are already in the workforce it would be valuable to have targeted programs that are very specific to culturally and linguistically diverse communities that recognise that there may be particular cultural needs or linguistic needs when looking for employment. It would be good to have job service providers who have specialist skills and knowledge in working with Australians from culturally and linguistically diverse backgrounds.

As I understand it, with jobactive most of the providers are just mainstream providers that have some obligation to have cultural competency training, but I think it is varied. They are not very good at using interpreters; they have very little understanding of the cultural needs of Australians with refugee or new migrant backgrounds. There is even the problem that some refugees and migrants are forced to miss their English language training course in order to report to Centrelink or to their jobactive service provider. Attending an English language course is not often deemed a justifiable reason for not attending your jobactive provider even though it is an English language course mandated by the government. Overcoming these small things in the current system would be a huge benefit, and then funding smaller programs that might target CALD youth in particular in schools or particular communities.

MR STEEL: Work experience?

Dr Campbell: Yes, helping them to understand work culture and helping them to make the necessary connections for good work experience that my parents could help me get. If you are a new migrant to Australia you do not have those connections and networks. If you do not have those experiences throughout school and your younger life it is very hard when you first start in the workforce. We would highly recommend the refugee council work, and we can send a copy which has some very good recommendations around employment.

THE CHAIR: I wanted to talk very briefly about social inclusion. In your report you allude to the fact that people working in insecure work often do not feel like they are part of the community. Is that exacerbated for culturally and linguistically diverse communities?

Dr Campbell: It has certainly been my experience that the workplace is a very important place for developing relationships, for making connections, for becoming part of a community. It is how I settled in when I came to Canberra from the UK and it is how I settled in different places that I have lived in throughout my life. It would be the same for migrants and refugees coming to Australia. If you have an insecure workplace not only are you not remaining in one position for a long period of time but also you do not have certainty in salary. You are maybe travelling between many jobs, so you are not able to give certainty and commitment to your family in the way that you might want to because of work insecurity, because you might have to move in order to find work.

These are all things that I think, from a CALD perspective, are detrimental to inclusion and social cohesion. I know there are different views about flexible workplaces—it is an ideological discussion and something that FECCA would not necessarily engage with—but the evidence is that it is not useful for helping CALD Australians feel at home and connected to the communities that they have joined.

One other thing is that unions need to make more of an effort. We have talked very much about employers. Unions also need to make much more of an effort to engage with CALD Australians. There are two challenges with insecure work: obviously unions are less likely to be involved; and they have not traditionally—it depends which union you are talking about—done a very good job of reaching out to CALD Australians. There is work to be done on both sides of the debate.

THE CHAIR: Do you have any examples of anyone engaging with the CALD community well? In a workplace environment do you have any examples of someone who is doing a good job?

Dr Campbell: There are lots of good examples, not necessarily in the space of insecure work.

THE CHAIR: Who and what are the role models for engaging with the CALD community when it comes to general workplace issues?

Dr Campbell: There are elements of the public service that do a very good job. The Department of Human Services, because their customer base is so diverse, do a very good job in making sure that their workforce is diverse in order to meet the needs of their customers. They have a large multicultural service provision section. They have realised the value of having a diverse workforce in order to meet the needs of their clients and customers. There are some good examples of large corporations that see a commercial benefit in having a multicultural workforce. Some of the banks have done some very good work in this space. NAB has a paid internship. That can then go on to a traineeship. That program is for refugee Australians who have arrived through the humanitarian stream. Commonwealth Bank has done some very good work because it wants to engage with customers from CALD backgrounds.

Where there is a commercial imperative, employers can be quite good. I think the public service in general does take it quite seriously. A lot of the small businesses are run by people from migrant backgrounds who employ other people from migrant backgrounds. They are not always the best employers though. That is another challenge: how we can reach out to CALD business owners and make sure that they understand the rules around running businesses—make sure the rules around running businesses are simple enough for small business owners to manage, particularly if you are not from an Anglo-Celtic background. These are all issues that will help support a more successful and multicultural Australia and workforce.

Short suspension.

HALL, MR DEAN, ACT Branch Secretary, CFMEU

THE CHAIR: Welcome back. Witnesses are asked to familiarise themselves with the pink privilege statement in front of them. Could you please confirm for the record that you have read the privilege card and that you understand the privilege implications of that statement? Would you like to make a short opening statement? Before you speak could you just introduce yourself, name and title?

Mr Hall: Yes, I have read the privilege statement and I understand it. My name is Dean Hall. I am the ACT Branch Secretary of the CFMEU and the National President of the Construction and General Division of the CFMEU. I will give it that you have read the statement at this stage so I am not going to take you through that. I know I have only five minutes; I read the rules.

I draw people's attention to the fact that everything that has been said before by people about insecure work is taking place in the construction industry. Some unique examples have grown, particularly over the past two decades. Traditional labour hire companies have morphed into something that is more about minimising people's liabilities to employees.

I have seen in my time in the past two decades in the construction industry the first of my three examples, which is preferenced in the formwork sector. A couple of decades ago there were predominantly two formwork companies in the ACT. Some others would come and go, depending on the amount of work in the town. Those formwork companies would employ anywhere between 150 and 200 direct employees on union enterprise bargaining agreements. They got very good pay and conditions in secure employment for a very tough job.

In the boom that has happened in Canberra over the past two decades, those companies searched for additional labour. Instead of employing direct employees—their actual numbers went down as their workload went up—they searched labour predominantly out of southern Sydney. Those groups that came in were workers often searched by ethnic backgrounds. There would be Iraqi or Iranian groups of workers et cetera. Those workers would often be either refugees or on visas. They were recruited by their countrymen. They would come here as work groups. They were not identified by the principal formwork company. The principal formwork company would get the work with the builder, but would top up their workforce with these groups of workers. These workers were not paid to the registered enterprise bargaining agreement. They were paid often in all-in rates and without being covered by workers compensation, sick leave, annual leave, rostered days off et cetera.

The principal formwork company would engage on an hourly rate to the middle person—we call him "the gang boss". The gang boss would supply labour to that company and take a cut per hour of those workers' pay. Of course that hourly rate was often 20 to 30 per cent less than the hourly rate for a direct employee they were engaging. You had a situation where even the principal builder did not know who those workers were. They just assumed that they were workers for the principal formwork company. They would wear the shirts of the principal formwork company, be inducted into the site as the principal formwork company but they were being paid significantly less. They would often house these workers from interstate in group

houses where they had a three- or four-bedroom house and put up to 20 workers in that house at any time.

These workers remained silent because they were on conditional visas. They could not voice their concerns or they would be dismissed or removed. It came to our attention when workers were seriously hurt and they could not be hidden from the accidents. One example is when a formworker had his thumb cut off at the meaty part of the bone on a band saw on a construction site in Civic. He was building the shopping centre down here.

I was working onsite. I was not working for the union at the time but I was a member. I was a safety manager. When it was identified to me by the union delegate on site, the worker was sent for treatment. When we confronted the principal formwork contractor and said, "There's a requirement now for workers compensation forms and a treatment plan and we need to find out about this worker" he clearly said to us, "He's not a worker of ours." That was the time that we were made aware—and we made the union aware—that they disowned the worker.

Because of the changes in some parts of the Workers Compensation Act I went to my employer, who was the principal contractor on the site, and said, "Guess what? We've got a major problem because under the act we are now liable for this worker because they are saying they do not work for him." A phone call was made and all of a sudden that worker was now covered by the compensation policy of the formwork company. The worker never returned. We were told anecdotally he was sent back to his country of origin on a plane two days later. This is what is happening in Canberra.

The next model which we see is used in the scaffolding sector here and has been for decades. There are now four—used to be three—major suppliers of scaffolding components in the ACT. They have the material and they house it in large yards. They go out and they bid on jobs with the builders. They win the jobs.

They then have very few or any direct employees who are scaffolders; they have some. They have teams of workers under them that are companies set up solely for the purpose of engaging employment for erection and dismantle of that scaffold. Those companies are set up and folded regularly. Their primary purpose is to take away from the major scaffolding company, who wins the contract with the principal builder, their responsibilities for things like entitlements, workers compensation and all those things that flow on from it.

Over time if you have a poor safety record, your premiums go up. You can get into the situation where you can shuffle down your responsibilities to small companies below you. When you start a new company, the premise of the insurance company is to give you a low premium at the start—give you the benefit of the doubt. Then, over time, if your performance does not improve it goes up. You can see there is a significant reduction.

Also, both in the formwork and scaffolding sectors, if you can keep your workforce under a certain number you get yourself away from paying payroll tax. A significant amount of money is lost to the ACT government in revenue. Both the formwork model and the scaffolding model are probably costing millions of dollars of payroll

tax to the ACT government. It is also jeopardising our workers compensation scheme by underpayments of premiums to the scheme.

There is no real contract in that situation. They have their own company set up under them. Some of them—a few—cross over between the two supplying companies. But what really happens is that they allocate the work. Those companies underneath do not tender. You are told, "Well, Andrew your company can have this job. Chris, your company can have that job." There is a system of allocation. It is really just a scheme of labour hire. The majority of those workers in those scaffolding companies are casuals. They are not like the formworkers who are blatantly sham contracting and dodgy; they are all predominantly casual.

These days that is why we have such problems. You might have seen the scaffolding audit. I believe one of the key reasons is the turnover and churn now in that industry. There is also the lack of skill and training. Once upon a time you would have to do an eight-week to 10-week course a couple of nights a week at the CIT. You would then have to go on a logbook for 12 months under the supervision of an experienced scaffolder. That system is all broken and gone. Registered training organisations from interstate predominantly have entered into the realm. Scaffolders can get a ticket in two or three days to four days. They do not have to have the competencies or sign-offs of the logbooks of experienced scaffolders. Then you see a situation where WorkSafe audits construction sites in the ACT, and four out of five do not meet the standards.

The last model is probably different—you do not see it in other industries. In the concrete sector in commercial here, you have predominantly about three to four larger concreting companies that supply that finish. They supply the concrete—actually they come in trucks—they place the concrete, and then finish.

There is some separation, but generally—not all the time—the placement and finish is done by the same company. When you see large concrete pours you see a lot of concreters on the job. They need to rotate them for fatigue levels. You might have a concrete job that requires only say eight concreters at a time at the workface. They sometimes come up with up to three times that number because you cannot stop; you have to rotate through breaks. You have got to give them a rest. It is a very tough job.

When you look at the companies you see the very small numbers in terms of long service leave and superannuation funds, and what they are reporting for various other things. They might have four on the books, but when you see the site you see that all of a sudden they have 24. And there is no report of engaging them as—or saying that they were—casuals.

You can see those same workers are a cluster of ABN workers who put themselves forward as businesses. They move between the concrete pours, between these companies. They are on straight ABN rates claiming that they are actually independent businesses. And all they do is supply their labour.

One example is now before the courts. There are clear documents. I have talked to his mother so I am allowed to talk about Ben Catanzariti's death. Ben was a casual employee who was put on by the company just before his death. But on that day—this is not talked about—two other workers were very severely injured when the concrete

boom came down.

One of those workers was there in his role as a company. But in court documents tendered, it is said that he was in control and supervising, and instructing all the workers in the concrete group, including the ones who were the direct employees to the principal concreting company. That is a serious problem. Again, it is a problem for the ACT government—as well as the moral and principle issue of injured workers, and serious consequences in our community of suffering not only pain but also death—around payroll tax. There is an issue around the viability of our workers comp scheme. There is an issue around superannuation, which is a federal issue. And there is an issue of the quality of people's future living.

They are some examples. There are all the other things that are happening, but these are unique things that have sprung up and are widespread in the ACT.

THE CHAIR: Could you explain to me how labour hire might blur employment-related responsibilities in the workplace?

Mr Hall: Yes. What we have is a situation where it is very common now for people to be missing out on two things primarily: proper pay and conditions and safety. The best talking stories are real stories. You can go to WorkSafe and verify these. There was an accident on a building site at the old Canberra Club where they were refurbing the inside of Canberra House. Workers were employed on that site through an intermediary contractor at the middle. They all came through a labour hire company.

They were doing demolition work. There are special regulations about demolition work in the act. One of them says they must have competency and show skill training in that area because it is dangerous work. All those workers had no training and no skill. One of them was a carpenter, who is a member of ours. He went into the site. He had 14 years of experience in construction. Unfortunately, he could not get full-time work. It is insecure work. This is how people are going. This is the way of the world.

He made a comment about something not looking safe. He was having difficulty pulling down a part of the ceiling. They said, "Just work around it. We will come back to it." He went to lunch. When he came back, that part of the ceiling had a fire check, which is three or four levels of insulation around a kitchen area. It is quite heavy. It fell down on him. It broke his pelvis in four places. He is very lucky to be alive.

The long and the short of the situation is that it was found that he was not inducted to the site. They had no first aid on the site. He had no training or experience in demolition. Now he is in a legal situation with the subcontractor. He has not worked properly since then. It was almost 2½ years ago. When he does work, he actually is meant to be on light duties through a labour hire company. But the employers often say to him, "Get on the shovel," or whatever he has to do. Then he cannot do the work, so he is dismissed.

But the situation he is in now that has caused him the most pain is that he is in a brutal legal argument about who was his employer, who is responsible. Everyone is lawyering up. The principal contractor has lawyered up and said, "He is not mine." The subcontractor, who directly engaged him from the labour hire company, has

lawyered up and said, "He is not ours." Then the labour hire company lawyered up and said, "We hired him to these people, so he is yours."

The end result is this complicated, expensive, drawn-out process through the court system where everyone is protecting their situation, bar one person, which is the worker, whose position still has not been settled and who still has no compensation. He is still on workers comp benefits. They have been reduced because he has gone past the statutory period. He is now depressed; he is suicidal; he is in counselling; he is in constant pain. It seems that the person who has the least power in the situation is the person injured. It does not seem to be the case; it is happening. He is paying the biggest price.

THE CHAIR: Your submission talks about the similarities between group training organisations and labour hire. Can you expand on that for me?

Mr Hall: First of all, I want to say that apprenticeships are very important. We support apprenticeships. We think employers should be incentivised to take on apprentices and to take them on directly. We suggest that the ACT government should have quotas for apprenticeships on your jobs. You should say that 20 per cent of all people on government jobs should be apprentices or trainees on legitimate courses. Employers who do engage and support apprentices through their workplaces should have that benefit and it should be weighted in tendering to recognise that they are training young people—and older people, depending—and improving their skill sets. So that is the first thing. We are in full support of apprenticeships.

It is how they are engaged. Anyone who has had an apprentice, or who knows someone who has one, knows that the reality of apprenticeships is that when you start off, you often get the tough and boring jobs to do. You sweep up, you do the trash, even if you are a carpenter. That is part of it. It is part of learning the ropes. It is not pleasant but everyone has to do it. You dig the hole; you do not get to do the fancy stuff. When you are in a group training situation the reality is that you do get some employers who host these trainees or these apprentices. They take them for the whole four years or the whole three years. They give them the full benefit. They do the right thing.

But the sad part of it is this: there are still a large majority of people who use these apprenticeships as cheap labour hire, cheaper actually than going through a labour hire company. They hire them in to do menial tasks. If you are one of those kids—predominantly they are young people—you can go from employer to employer through that host situation just digging the hole for years on end, just sweeping the floor, driving a lift on a construction site.

The other thing that is extremely dangerous is the safety. What happens generally with people who engage an apprentice is that they form a relationship between them. It is usually a personal one because you are working one on one. There is a requirement under the act, by law, that if you have an apprentice and you are a tradie you must keep them in visual sight and audible at all times, particularly up to a certain point in their training. You cannot let them run off and be unsupervised because it is dangerous.

We have seen, unfortunately, a kid on work experience—on a kids assist program—fall seven metres and break three vertebrae in his back. We have seen another young man who was a first-year apprentice working unsupervised who cut his fingers off with a bandsaw. That has all happened in the last 12 to 18 months. These are real things happening in the territory. When you get a situation where people just coming and going from your business, it is understandable that you do not form a personal connection with them. Then you are not invested not only in their safety but also in their personal development. It is just a problem of this system.

The better system would be, like I said, to incentivise people to take them one on one and take them into their businesses and invest in their interests, which they would. The vast majority of employers are decent people. But it is hard to invest in someone when you have them only for one day, a matter of hours or a couple of days. It is a flawed system.

When you are an employer and you do that, it is up to the group training company to ensure that that person is properly trained, properly inducted and properly supervised. How can they do that when they are running at 120 employees on any given day and they have one or two field officers who are isolated all over town? You cannot make sure that those kids are safe. I say "kids" but there are older apprentices too. You cannot make sure that these young people are safe. You cannot ensure that they have been properly trained and you cannot ensure that they are being properly supervised. You just physically cannot do it.

THE CHAIR: Can you take me to what it is like to live a life of insecure work?

Mr Hall: I was talking to a worker recently. It is a true story. He is an older worker. He is working through a labour hire company. We were talking about what has happened over time. He said this to me: "Remember the Hungry Mile in the early 1900s, when people were working on the wharves? They used to line up in the early hours of the morning. The bosses would come out and they would select people." So every day you had to turn up. If you complained about safety or you complained about your pay, you were not selected. You were blacklisted or you were put on a list. The message was sent to you, "Shut up and don't complain or you won't get a run."

That was a terrible situation. But there were some positives out of that. Those workers who did not get selected stood together in the darkness of the morning. The ones who did went back to the local pub or went back to where they were living in the cottages and said that that was not good enough. They formed a collective. They formed one of the strongest unions in this country. They demanded higher pay and conditions and job security. They had a very hard fight over decades, but they secured those conditions.

The difference now is that that is happening in the construction industry. Thousands of workers in the ACT and surrounding area are doing it a different way. I call it the hungry text message. They either sit by their phones late in the night—10 or 11 o'clock at night or later—or at four or five o'clock in the morning waiting for that text message to find out whether they have work for that day or the next day.

The difference between that situation and that of the wharfies on the Hungry Mile is

that they do that in isolation. Their self-worth is destroyed, along with their ability to understand the situation, its complexity, how it has spread through our community. That stress and that damage is done not only to them; it is done also to their families; it is done to the community. It is, I believe, an insidious social problem that is driving many of our other problems in our community around mental health, general health and social inclusion. The best I can say is that it is not the Hungry Mile now; it is the hungry text message.

MR WALL: Mr Hall, I go back to group training. Whilst you have identified some concerns you and your union hold about the way group training is operating, from my experience of doing a carpentry apprenticeship I can also see some benefits. You and I both agree that there is increasing specialisation in the construction industry particularly. Businesses and tradies are becoming more specialised in one form of construction. It is not as broad and as diverse as most businesses used to be. In my example, the company I worked for only dealt in aluminium—patios, carports and small stuff like that. Another guy that I was doing my apprenticeship with at TAFE, all his boss did was standard roof trusses. It was highly specialised work for an industry or a qualification that has such a broad application.

How, then, if you go away from a group training model where young guys are being exposed to a diverse range of job sites, employers, types of work and skill sets that they are going to need through their career, do you go to predominantly young blokes ending up on sites that are highly specialised and who are not getting a broad exposure to the multifaceted aspects of the construction industry? Then, at the end of the day—at the end of their third or fourth year—they get the same ticket as someone who has worked across the industry.

Mr Hall: I used to chair a group training scheme which jointly had union-employer representatives. We shut it down for a number of reasons, but the major one was that we could not provide a safe workplace for a lot of them when they went out with hosts. But I do agree with you: how do you do that? What is the answer? Well, nothing is simple. Nothing is simple.

The first thing is to have high quality training. Predominantly, it is federal government funding for our CIT and TAFE system, but it also needs support from the local government in that area to have high quality, well-skilled trainers with state-of-the-art facilities so that we can give broad, high-level training skills to these workers that go beyond maybe discrete work that they are doing on the site. But then, as you would say, it is not as good. You can have mocked up situations all you want, but it is better to do real-life stuff.

MR WALL: Yes. I was going to say that the classroom scenario does not replace real world experience.

Mr Hall: Yes. There is a good one that I suggest, if you are interested in that, you go and have a look at. There is a scheme that is run out of Queensland. It is run by the CFMEU there. It is a peer support model. A small number of workers—young apprentices or apprentices—are given to a mentor. That mentor then facilitates exchanges between the employers to ensure that there is a movement of skill bases.

But they also look after them for welfare and they also look after them to ensure that clothing is supplied to them. They support the employer when these situations arise, which they often do, with complex personal relationships. They are there to support both of them. Completion rates in the construction industry are well below 50 per cent now. In that scheme they are above 90 per cent.

It is recognised as a model for the world. It is operated by the construction and general division of the CFMEU in Queensland. It is a great model. It allows what you are saying to happen, but also what it does is support employers to directly employ the workers. It is not a group training scheme; it is a support model with a very high completion rate.

MR WALL: Speaking from personal experience, one of the reasons my family and I, in our business, tended not to take apprentices on was that our work was often seasonal, cyclical. You could go from having more work on the books than you could possibly poke a stick at to really scratching around and not being able to guarantee work for the small number of staff we had.

Taking on an apprentice brings with it, as we always thought, a commitment to see them through their training. When you cannot necessarily guarantee that you can do that—we were not alone—group training often offers that flexibility. As you say, some employers will hold them for the four years, taking them all the way through and treating them as their own employee. I would suggest that there are probably employers out there, or host employers, that are doing the right thing by them, even in the short term. It is probably a few sites or a few employers that are doing the wrong thing, regardless of whether it was an apprentice through a group training scheme or one that they have on their books as a permanent employee. Do you think that the flexibility that the group training offers is something that is meeting a need that exists in the industry and that it needs to be looked at more broadly?

Mr Hall: I think it definitely allows us flexibility. Does it get the right outcome? I do not think so. Honestly, a lot of money goes into different schemes like that at the moment. There is money from the federal government and there is money from the ACT government through the ACT training fund. There is a substantial amount of money. That money could be directed to help subsidise legitimate employers to carry those workers through those times. That could be a time when extra skill training could be done, when the theory could be done. In the peak season, when you need the workers to be at the worksite, we could be more flexible. With this competency-based learning now, people will all complete at different rates and do the packages. It is that ability—

MR WALL: Different stages at different times.

Mr Hall: Yes. If an employer was incentivised, if we could see that the employer was doing the right thing, paying this person correctly, training them and making a real effort but might have 20 per cent or 10 per cent of the time when they legitimately could not employ this young person, we could say that we would transfer the money to keep this young person going so that person could do their training. Then when you need them there, they are not in training.

I think there needs to be some funding of the CIT system to ensure that it can be more flexible. That comes with an investment. I think the strongest thing that will prevent insecure work for apprentices is to ensure that they are highly skilled and valuable and more and more are brought into the system that way.

MR WALL: So you are suggesting that probably more flexible block training delivery—

Mr Hall: It could become part of it, yes. I think so. In the end, it is not in anyone's interest to have a business fail. Even from our perspective, often when the failure comes—often, not always—people, for whatever reason, often in goodwill, have used all their cash reserves. The entitlements and things like that are not there. We get into a real problem with that.

MR WALL: Bills unpaid; wages unpaid.

Mr Hall: Yes, and superannuation has not been paid for six months or whatever. So it becomes a really painful situation even for unions to be dealing with employers that way. In the end, the construction industry and the community need employers; they need small business people and all that.

But the thing you have to remember is that the real thing that benefits the ACT, that really benefits our economy, that really will make us go forward, that will make us a great place with social inclusion—which we are, but even better—is a well-paid, secure working and middle class. They are the ones that buy coffees when they have spendable income. They are the ones who can save their money to buy a house, renovate it and get tradies in. They are the ones who can go to the local restaurant when they have decent, secure, well-paid jobs. They can participate in the community. They can coach footy teams. They can be on the school councils. They can volunteer at the nursing homes. It is very hard to do any of those things if you honestly do not know whether you have a job the next day.

MR STEEL: One of the recommendations that you have made to the ACT government is that it establish a labour hire licensing scheme. What do you think the benefits of that sort of scheme could be?

Mr Hall: It is totally unlicensed at the moment. Probably not you in this situation and probably not me now, but if I resigned I could start a labour hire firm. I do not need any checks on whether I have got a criminal background, any checks that I have been bankrupt. I can just go out; I do not need any experience; I do not need any capital. Anyone who has run a business knows—and it is very easy in situations—cash flow is a big problem. And you have got to have a certain amount of capital reserves because you can have lows and highs and you have got to be able to ride that wave.

A lot of these people start these with bugger-all money or anything in that situation. They are set up to fail. There is one case study in here of a labour hire company, Zenith, which is not here anymore. You will see that we list how many entities they had in a four-year period. It is ridiculous. It is a whole page long of Zenith-this, Zenith-that. They constantly phoenixed themselves.

What happened was that, over time, workers, either naively not knowing what their entitlements were or because they were promised a job in the new entity, did not pursue what they were owed in the other one. The company was allowed to continually phoenix and, until we did the investigation and worked out what the hell was going on, they would not pursue it.

Back to that point of licensing: licensing would allow for government oversight, for people to be held accountable. It is like anything. Why do we license plumbers? Why do we license electricians? Why are you now looking at—I think it might have happened—licensing waterproofing? People are sick of sitting in the lounge room of their unit and next minute they are having a shower because someone is having a shower above them and it has leaked through.

Licensing would hold them accountable; licensing would ensure that they have the proper financial credibility. If they do things like phoenix or they do not pay people or they have poor safety or whatever they do, licensing would be able to hold them to account. It would limit the number, I would believe, but at least it would ensure that there is some sort of mechanism to hold them to account, which is a bit quicker than what is happening. What you have got to remember is that people in this situation are the most vulnerable and are very unlikely to either have the wherewithal or the power in the workplace to come forward to make a complaint.

MR STEEL: Do these sorts of sub-organisations, companies, have enterprise agreements often?

Mr Hall: No, they do not. The scaffolders do. Sorry, the scaffolders have enterprise agreements that mirror the principal contractor's. Very few of the form workers in that situation do. The concreters predominantly set themselves up as Australian businesses. They are individuals as businesses but they go from concrete pour to concrete pour.

The best man at my wedding was a concreter who owned a business. I know what a business is. You go and do driveways, you go and do pads and you do stuff. He had a concrete truck. He had the gear. He would turn up. I laboured for him for a long time. They simply turn up and they stand there and they are dressed in the same uniforms and all they are is a form of fraud or sham.

That is why I call it a sham. It is a just a fake employment situation where they get a higher rate. Do not worry, they are getting a higher hourly rate but they are not getting things which we should be all be concerned about and which are a problem for all of us—proper superannuation in the future. They are not properly insured and they are not getting long service leave and all things that ultimately, if something goes wrong, we all pay for.

If there is a workplace accident and people are underinsured or not insured they go to the default insurance. I sat on the default insurance body for a period. Without going into personal details, when you look at the list of outstanding claims that have gone through of underinsurance, or non-insurance predominantly in there, a hell of a lot of them are from the building and construction industry. We are all paying for that ultimately because very few get reclaimed. You go to the person, they fold or they

have no money and then we all pay because it goes on your car bill, because insurance companies have got to reclaim the money.

There is a consequence not only for the individual but the pain and suffering of the workplace injury or these things happening. But these people being in this situation and not getting everything that is a statutory requirement, not being covered for insurance, will blow back on all of us eventually.

MR STEEL: And are they using these companies as a way to terminate people's employment by simply shutting those companies down?

Mr Hall: Yes. There are two different forms, I would say. It is quite complex but there are two. Broadly and stereotypically there are the ones who are being exploited on very low hourly rates, and often they are migrants. They are the migrant workers and they are on very low rates and they are used to keep their pay rates down.

On the other side you actually have people who are getting quite an exaggerated hourly rate, maybe $50, $55 an hour. But when you put in things like superannuation, sick leave, rostered days off and all the other things that go with employment conditions, that hourly rate should be closer to $80 an hour when you put all your entitlements in.

These people actually like this, to a degree, because they are only paying company rate tax and they are getting to write off the fact that the dog is an alarm. That sounds funny but what I mean is—and I have seen that—on their tax return they claim a home office, they claim for their partner and they claim the dog as the security alarm. They claim the dog food for actually feeding the dog. I have seen that.

What I am saying is that that is a fraud because they are not paying the normal rate of tax that we pay. Often some are. Do not get me wrong; they are buying investment properties. There are so many of them who are looking after their future, but there are so many of them that are buying the ute on an ABN as a business and getting it cheap and buying a jet ski. Sooner or later the tax office does catch up with a lot of them and they usually go bankrupt and usually end up trying to get wages and conditions. But it is a big problem. There is a social problem with that, on both sides—people getting ripped off by that system and people who are getting done.

Then in the scaffolding one, they are all on wages and conditions but they are all just casual. You never get enough money. As you have probably heard, you cannot get a loan for a car. You might be able to, but you are never going to get a loan for a house unless your parents or someone else backs you. There is all this situation. You look back 20 years ago and there was very little of it. Everyone had full-time work and it was not any different than a choice of how you engage people.

THE CHAIR: Thank you for coming in, Mr Hall.

Mr Hall: Thank you. It is very kind of you to have me.

THE CHAIR: Happy to have you.

SMITH, MR STEPHEN, Head, National Workplace Relations Policy, Australian Industry Group.

THE CHAIR: Thank you for making time to speak to us today.

Mr Smith: Certainly.

THE CHAIR: Can you acknowledge that you have read and understand the privilege statement that was sent to you?

Mr Smith: I can, yes.

THE CHAIR: Would you like to make an opening statement?

Mr Smith: Yes I would. The Australian Industry Group welcomes the opportunity to participate in the inquiry. We have filed a detailed written submission which argues that it is vital for a flexible labour market to be maintained in Australia. That flexibility is essential for companies that are striving to remain competitive and it is also needed by workers in an increasingly diverse workforce. They want the ability to reach agreement with their employer on arrangements that suit their family responsibilities, lifestyle preferences and income preferences.

I would like to make a few comments about labour hire, casual employment and independent contracting arrangements. With regard to labour hire, Ai Group's position is that, firstly, the use of labour hire is a well-established and essential mechanism to address challenges faced by employers. Secondly, of course labour hire employees enjoy the same existing award conditions and legislative protections as other employees do. Of course awards and national employment standards and so on apply equally to labour hire employees.

In our experience the vast majority of labour hire companies are reputable. Many of the major labour hire companies are members of the Australian Industry Group. They not only comply with the law; they have progressive and sophisticated employment practices and often provide superior wages and conditions. We are not convinced of the need for a licensing scheme for labour hire and we have made submissions opposing the proposals in Queensland and South Australia and the announcements in Victoria about the setting up of licensing schemes.

With regard to casual employment, despite submissions constantly made by the union movement that an alleged 40 per cent of the workforce is in alleged insecure employment, in our view that figure is completely unsustainable and whichever way you look at the figures you cannot get anywhere near 40 per cent of the workforce. There is the same level of casual employment today as there was five years ago, 10 years ago and 19 years ago—about 20 per cent of the workforce. In our view, there is no casualisation problem in the workforce.

With regard to the figures cited by the unions, you obviously cannot include labour hire and figures about preferred employment because labour hire employees are employed typically as casual employees or as part-time or full-time employees. They are included in the figures. The 20 per cent of the workforce that is casual includes the

labour hire employees. Even if you include every independent contractor—and most of those are truck drivers and electricians and so on and have no desire to be full-time employees—and every small business owner you still cannot get anything like 40 per cent. In our submission that figure is nonsense.

I have just a few comments on independent contractors. We believe that the common law is far better equipped to assess the substance of independent contracting arrangements than any statutory definition could, and the existing common law approach, rather than a statutory approach, should be maintained.

As I mentioned a moment ago, the vast majority of independent contractors are happy with that method of organising their affairs and have no interest in being employees, and it would be completely inappropriate to deem them to be employees other than in the context of the very tough sham contracting laws that are already in place and protect contracting arrangements that are not genuine. Those laws were tightened up significantly when the Fair Work Act was introduced, and we do not see a need for any further tightening.

In conclusion, we do not see the need for any significant regulatory changes to labour hire, casual employment or independent contracting arrangements. The small minority of businesses which are not doing the right thing should be addressed through increased compliance and enforcement activities and better education, not through taking away much-needed flexibility for employers and workers.

THE CHAIR: I will start with the questions. A large part of your submission talks about how beneficial flexible workplace arrangements, as you put it, are for employees. The committee has received a wide number of submissions from NGOs, charities, Legal Aid, unions and individuals about how harmful insecure work has been to them personally or to their members. How are you in a position to evaluate the benefits of insecure work or flexible work, as you would put it, to employees as an industry representative group?

Mr Smith: We have been at the forefront over the past 20 years of participating in a very large number of inquiries and a large number of cases in tribunals and elsewhere about casual employment, about independent contracting arrangements. We just played the leading role in the Fair Work Commission's casual employment case, for example, where, after two years or so of deliberations, the commission has decided to maintain the right of employers to reasonably refuse converting to permanent employment. That is the logical outcome. We think all these inquiries that have been held have looked at this issue in great depth, and the existing arrangements that have flowed from a lot of those earlier inquiries are generally working quite well.

THE CHAIR: Could you expand on AiG's involvement in the inquiry? Is that you putting in submissions and appearing like this?

Mr Smith: Yes. We have appeared like this, usually in person, at a very large number of inquiries. We appeared at the Victorian inquiry into labour hire and insecure work and we made detailed submissions. We appeared at the Queensland parliamentary inquiry. We played a major role in the casual employment case as the lead advocates on behalf of employers over the last few years.

THE CHAIR: How does your involvement in these inquiries better inform you as to what employees want?

Mr Smith: We have been debating these issues with the unions and others for many years. As an example, I mention the figure of 40 per cent that the unions often cite as a statistic, which we think is just nonsense. We do our own research at significant cost, and that is mentioned in the submission we made. We engaged ANOP several years ago to run focus groups completely independent of employees and employers, and the results are in our submission. The employees of labour hire companies generally said they were very happy with that form of employment and it gave them the flexibility they were looking for.

THE CHAIR: Why do you think unions or employee representative groups of any stripe come to a different view?

Mr Smith: I believe the reason the unions in particular are arguing so strongly against casual employment is the very low level of union membership within casual employees. There is obviously significant self-interest, if you like, amongst unions in opposing casual employment arrangements.

THE CHAIR: Do you think there is any link between a worker being in a secure full-time job and having the ability to join a union and being in an insecure casual job and not having the confidence to join a union? Can you see a link there?

Mr Smith: No, I do not see any link. There are about 2.6 million casual employees in Australia. Some of them are in sectors like fast food, where a lot of young people are working around their study commitments. In the manufacturing industry there was a major casual employment case in 1999 and 2000 and our figures were that about nine per cent of the workforce were casual and the AMWU's figures were about 11 per cent. So say about 10 per cent, a significant proportion, of those employees were engaged on a casual, long-term basis. The thing that came out of that case was the right to request full-time employment, and less than one per cent of employees have taken up that right. They do not want to lose the 25 per cent casual loading or the flexibility they enjoy or both. That record stands as an important outcome.

THE CHAIR: We have received evidence from regular punters, real people who have written to this inquiry, who have worked in insecure arrangements. They said that their positions were talked about as being flexible but that flexibility only went one way—that is, they were expected to be flexible to the demands of their employer, whereas when they tried to move shifts it was not so accommodating. Have you heard things like that before?

Mr Smith: Across 2.5 million employees you are always going to find some casuals who are not happy with their work arrangements, just as you can find full-time or part-time employees who either are or are not happy. It is easy to find a sample of people who would rather things were different in their work arrangements. But when you look at the fact that we have a relatively flexible labour market and the importance of that, we got through the global financial crisis much better than most other countries because we had quite a flexible labour market. It is very important that

we maintain that.

THE CHAIR: Why do you think certain groups in our community would like to see labour hire licensed?

Mr Smith: They point to some organisations that have not been doing the right thing. When you look at the organisations that are cited, they are not the companies that are typically regarded as labour hire companies; often they are more akin to a migration agent. They are not the big, reputable labour hire companies that everyone knows. The biggest ones are members of the Australian Industry Group.

The Queensland legislation, for example, has the most ridiculously broad definition. It is not even called labour hire; it is about the supply of labour from one person to another person, being a corporate entity or a natural person, it seems. I know the government up there is looking at trying to narrow it a bit with a regulation, but it is going to cause enormous disruption. The jail term of up to three years for using an unlicensed labour hire provider is completely unfair. The way it is drafted at the moment, if a home owner called up Jim's Mowing to mow their lawn, they would be breaching that legislation. It is very poorly drafted and it should not be repeated elsewhere.

MR WALL: That addressed the question I was going to ask, which was how the implementation of the licensing in Queensland has gone. Mr Smith, do you think the operators doing the wrong thing in the labour hire sector are going to continue to not abide by the full letter of the law, regardless of what licensing or regulations are put in place, or do you think there is need for legislative redress in that space?

Mr Smith: I do not think there is a need at the moment. The vulnerable workers legislation has just gone through parliament and most of it has come into force. The arrangements around franchise laws and so on come into force next week. That legislation increased penalties for breaches of industrial instruments by up to 20 times; over 10 times for some penalties and 20 times for the record-keeping and payslip requirements. We have very tough laws aimed at those not doing the right thing, labour hire employers or not. We have a very well-resourced regulator in the Fair Work Ombudsman, so where is the need for this labour hire licensing legislation which is extremely poorly drafted? The regulatory burden is ridiculous when a labour hire company has to provide an exhaustive amount of information about all the contracts, all the employees, all the types of work to the regulator every six months. It is completely over the top.

MR STEEL: One of the reasons put to us as to why a labour hire licensing scheme might be appropriate in the ACT is that labour hire companies established under a parent company that have done the wrong thing are essentially wound up, and the owners of those companies have then established another company doing the wrong thing again. It has been put to us by a number of groups that a licensing scheme might ensure that those sorts of phoenix companies are not able to operate and that it will actually support the labour hire companies that are doing the right thing. How do you respond to that issue?

Mr Smith: Phoenix company arrangements are best addressed under the corporations

legislation and the laws that relate to phoenix companies and company law generally. The way things are going at the moment, the Queenslanders have already passed that legislation and the South Australians have legislation before parliament. There are 20-year jail terms in the Queensland legislation and it seems the South Australians have decided, "Well, we'll have five years in ours." The way it is drafted, the legislation would even apply to the provision of legal services by a law firm or accounting services by an accounting firm. The companies that operate nationally and maybe have a number of different entities within their business—which many of those big companies do—will have to have a whole host of different licences even in one state. It is going to cause far more problems than it solves. If there are issues about phoenix companies, let us address those as a phoenix company issue.

MR STEEL: So you think a national scheme might be better if we were going down the road of licensing?

Mr Smith: We do not think there is a need for a licensing scheme because the laws that apply to every company and the rights that every employee enjoys apply equally to labour hire companies. We have this new piece of legislation that increases penalties by up to 20 times that has only come into force in the last couple of weeks, so let us let that work. It was aimed at the sorts of circumstances that are being talked about in the context of labour hire, like the horticulture industry issues and so on that have been talked about. We see these labour hire licensing schemes that are being developed as giving the union movement very extensive powers to interfere in business arrangements. No doubt the unions think all their Christmases have come at once with laws like the one in Queensland.

THE CHAIR: Can you explain what powers the union movement seeks to utilise in these instances?

Mr Smith: Under the Queensland legislation unions have the power to oppose a licence being granted. They have very significant powers. They have powers to intervene in cases where a company might wish to challenge the decision of the regulator. The whole regulatory burden that is imposed on employers is aimed, it seems, at stopping new entrants into those markets. It is going to act as a significant deterrent to any new labour hire companies coming into the labour hire industry.

MR STEEL: A couple of reasons have been put forward as to why a licensing arrangement is a suitable policy, and one of them is in relation to remuneration issues, which I understand is mainly a federal issue. But in relation to safety, if you have a labour hire company with a very poor track record on safety, are there not grounds for a licensing system to ensure that the labour hire companies operating within a jurisdiction are as safe as possible?

Mr Smith: In our view, that is an argument about work health and safety legislation, which, of course, in every state has very significant penalties; the penalties are higher in some states and territories than in others. In the ACT you have amongst the toughest work health and safety laws in the country. When you look at the inquiries that have looked at labour hire licensing, the Forsyth inquiry in Victoria only recommended licensing in a couple of industries where there was a recognised need—horticulture, meat and security—and the Queensland parliamentary inquiry did not

recommend licensing. Yet, despite that, we have the licensing legislation in Queensland, the Victorian government has announced an across the board licensing scheme, and we have the legislation introduced into the South Australian parliament. All of those things are being pushed very heavily by the unions and, in our view, they are inconsistent with the inquiries that have been held in those states.

MR STEEL: So you have, for example, a labour hire company that has been investigated by WorkSafe and found to be noncompliant and action has been taken against particular people running that company. Should we allow those people to continue to run labour hire companies in the future? Is that not the whole idea of a licensing scheme—to stop them from running a labour hire company if they have been noncompliant?

Mr Smith: What is different about a labour hire company than any other company? The company is subject to all of the same laws that require them to pay their employees correctly and ensure a safe environment. If they do not, then very tough penalties apply. A licensing scheme will just impose a higher level of regulation on labour hire arrangements and will deter those arrangements, which is exactly what the unions are hoping to achieve because they do not support the flexibility that the labour hire industry offers.

THE CHAIR: Mr Smith, thank you for joining the committee via telephone today. Your evidence has been well considered by all of us.

Hearing suspended from 3.00 to 3.29 pm.

HENDRY, MRS ROBYN, Chief Executive Officer, Canberra Business Chamber
HOOD, MRS LUCIE, Workplace Relations Manager, Canberra Business Chamber

THE CHAIR: Welcome back, everyone. Witnesses are asked to familiarise themselves with the privilege statement, the pink card in front of you. Could you please confirm for the record that you have read the privilege card presented before you and that you understand the privilege implications of the statement?

Mrs Hendry: Yes, confirmed, Mr Chairman.

THE CHAIR: Would you like to make an opening statement?

Mrs Hendry: I would like to take the opportunity to make an opening statement. I will read the statement just for accuracy. Then, of course, I would be very happy to answer any questions. I am supported today by my colleague Lucie Hood.

Thank you for the opportunity to contribute to the inquiry into the extent, nature and consequence of insecure work in the ACT. In June this year the chamber provided a written submission to this inquiry. Today's evidence reiterates the points made through the written submission. The chamber is a membership organisation which represents around 5,000 regional members through its direct membership base and extended kindred network.

This substantial reach reflects the chamber's representative role as an authoritative voice on the Canberra business economy and its labour market. By way of context, the chamber's June submission noted that the ACT, along with all other states and territories with the exception of Western Australia, referred its workplace relations powers to the commonwealth through the introduction of the Fair Work Act to ensure a nationally consistent framework ensuring a more uniform and simple workplace relations system.

Reflecting Canberra's characteristics as a small economic jurisdiction with close connections to other state economies, particularly New South Wales, the Canberra Business Chamber has been, and continues to be, a strong advocate for a consistent regulatory approach which avoids patchwork or inconsistent economic environments across state boundaries.

A misaligned regulatory framework weakens the ACT economy by burdening businesses operating across state boundaries and acts as a disincentive for interstate investment in the ACT economy. Misaligned regulations increase the cost of doing business in the ACT and weaken the ACT economy, which has considerable implications for the local labour market.

In addition to the need to avoid a patchwork regulatory environment, the chamber's June submission reported that the term "insecure employment" is in itself not a clearly defined concept. Rather, the term is a catch-all encompassing all alternative forms of employment that fall outside the traditional concept of a permanent nine-to-five job.

The chamber believes that the broadbrush "insecure employment" term fails to reflect

the changing and dynamic nature of work in today's economic environment. The chamber also believes that the term fails to recognise the real and important desires of employees who may not wish to undertake full-time employment or those employees who would prefer some work rather than no work, even if they would like more hours.

Employees, for a variety of reasons, including caring for family responsibilities or studying, may wish to engage in more flexible employment relationships. Therefore, to support these employees it is important that these types of arrangements are not disincentivised to the detriment of these employees.

In addition to supporting employees, flexibility is also critical to business and its growth across the broader economy. Where appropriate, flexible arrangements can provide a win-win for both employee and employer. As noted earlier, the chamber is a representative body with a broad membership base. The chamber, through a variety of mechanisms and media, has an ongoing dialogue with the ACT business cohort.

It is this ongoing dialogue that allows the chamber to put the position that there is insufficient evidence to suggest that operators of labour hire businesses or those using independent contractors are doing so to avoid their workplace and statutory obligations. That said, the chamber is very strong in its position that if there is any evidence indicating that workplace and statutory obligations were being worked around or undermined, we would support the vigorous application of the existing regulatory system to permanently eliminate any unlawful practices.

The chamber believes that the existing federal workplace laws governing matters such as labour hire arrangements, casual employment and independent contractors are sufficient to properly regulate the ACT labour market without disadvantaging local businesses operating across state boundaries.

The chamber believes that there is a role for local government in this space, but it is of the position that this role should be to provide better education to local businesses that are looking to appropriately and ethically meet their federal legislative requirements. Once again, thank you for the opportunity to contribute to this inquiry. I am more than happy to take questions. As I say, I am supported by Lucie Hood, our workplace relations manager.

THE CHAIR: You mentioned that you have concerns about patchwork regulation spreading across the country where different states and territories have different labour hire licensing schemes in place. Does that mean you are in support of a national labour hire licensing scheme?

Mrs Hendry: It means we are in support of the federal framework. Where there is requirement to strengthen any regulation, regardless of its form, we believe that it should be done at a federal level so it does not create border environments, particularly for a small economy like the ACT.

THE CHAIR: So does that mean yes?

Mrs Hendry: We support, for instance, changes to regulation, in particular the vulnerable workers bill that has recently been introduced on the back of the 7-Eleven

learnings and we also support the Fair Work Commission's decision that employees working on a casual basis for 12 months may then request to be converted to permanent employment.

There are times when federal regulations can be strengthened and there is advantage to that. What we are saying is that if there is evidence that these regulations need strengthening, it should be done at a federal level. It is our view and it is our experience with the 5,000 businesses that we are engaging with, that there is not sufficient evidence, certainly that we are aware of—it is not our experience—that that regulation needs strengthening at this time.

THE CHAIR: The view you have that we do not need regulation in this space, is that in the context of Canberra? You do not think that Canberra needs a labour hire licensing scheme?

Mrs Hendry: It is our experience that the current regulatory framework that already exists is sufficient to ensure that people, whether they are labour hire firms or whether they are firms employing casuals or contractors—we believe that for those firms to meet their regulatory obligations, their employee obligation, there is sufficient regulation there at this time.

THE CHAIR: The pursuit of a uniform national scheme would see perhaps Queensland having to draw down their legislation to meet the ACT's current licensing, whatever form that currently takes. If you do want to see a uniform national scheme, do you think the ACT should be going up to a state like Queensland, going down to a territory like the Northern Territory where there exists nothing, or should other states be coming to the ACT?

Mrs Hendry: At this stage, unlike Queensland, we are not aware of a significant increase in issues around insecure employment in ACT. In actual fact, our experience is that, nationally, research coming very recently out of the University of Canberra indicates that people are feeling more secure about their work and the casualisation of the workforce has slowed significantly.

So it is not our experience that in the ACT we have a problem that requires addressing at this time. However, there may be other pockets around Australia that need addressing. We are not covering those areas; so we cannot comment on that. But if they need addressing, we believe that the appropriate way to do that is through the federal framework.

THE CHAIR: Do you have any idea how you would have a federal framework that would affect states and territories differently?

Mrs Hendry: No, we believe that you would have a federal framework that was consistent with a national approach.

THE CHAIR: So we would need to meet the same standards as a territory or a state that does have potentially these problems that we are talking about?

Mrs Hendry: If the inquiry finds that there is evidence for these problems that are

being investigated at the moment, then, of course, yes. We would say that there should be a national approach.

THE CHAIR: I turn to your submission. There are a couple of lines that stood out for me: " … the Canberra Business Chamber is not aware of any sham contracting arrangements taking place"; "The Canberra Business Chamber is not aware of any evidence suggesting that members who operate labour hire businesses, or who engage labour through an agency are any less compliant with meeting their statutory employment obligations"; the "Canberra Business Chamber is not aware of any evidence suggesting that members who operate labour hire businesses, or who engage labour through an agency are any less compliant with meeting their statutory employment obligations"; "The Canberra Business Chamber is not aware of any evidence suggesting that operators of a labour hire business …" and the submission continues.

I want to get to this idea of how you make the claim that you are not aware of any evidence. Do you actively consult with industry? Do you actively consult with employees to come to a claim like that?

Mrs Hendry: Yes, we do actively consult with industry and we do actively consult with some groups of employees. I will start with industry. The chamber provides a workplace relations advice service. All members of the chamber are entitled to seek advice on a rationed system, if you like, with that particular advice service. Then over and above that, some members choose to pay for a greater resource. We are constantly—all day, every day—talking to employers about their obligations and their rights and assisting them in understanding them and therefore meeting them.

In terms of employees, we, on behalf of the ACT government, have the apprentice advice line. That particular service is designed for that apprentice cohort and we speak to both apprentices and their employers, again, regularly. There are just under 1,000 calls a year, I think, to that particular employment group advising them of their rights and obligations.

THE CHAIR: You get 1,000 phone calls a year into this hotline?

Mrs Hendry: Just under; I think it is about 800 calls a year.

THE CHAIR: And not a single one of them had a substantive problem?

Mrs Hendry: They do seek information. If they have substantive problems, or any problem, we seek to have them addressed. If an apprentice calls and says, "Can you assist me in determining whether I am being paid the right amount or whether all my conditions are being met?" and we find that that is not the case, that there is some issue there, we then advise them how to go about addressing that.

Really, we are not saying that there is never an occasion that anyone identifies something that needs addressing. What we are saying is that there are existing channels where they can be addressed.

THE CHAIR: What I am trying to get at is this idea in your submission that you are

not aware of any of these things happening. You have a hotline with 1,000 phone calls coming in and these people are talking to you about problems. Have you ever got a phone call through that hotline when someone said they suspect that maybe they are experiencing sham contracting?

Mrs Hendry: What we do get is questions to determine whether or not somebody is meeting their obligation. What we did not say in our submission is that there is never an occasion when we do find that someone was not fully aware of the obligations they needed to meet, something was misclassified or that there was some sort of remedy required. But what we are saying is that we do not believe that that incidence occurs any more in casual employment, in contracting or in labour hire firms than in general employment.

THE CHAIR: We have had NGOs, charities, legal aid, unions, as well as individuals—regular punters—that have made submissions and written in. They say the opposite. Are they imagining things?

Mrs Hendry: I am sure what they have said in their submission is their experience. Fortunately, at the chamber, people who join the chamber and seek workplace relations advice are seeking to do the right thing, by and large. They are wanting to do the right thing. They are wanting that advice in a timely manner for them to do it.

I am not for a minute suggesting that the world is a perfect place out there and nothing ever happens that does not need addressing. All we are suggesting is that there are remedies and channels to remedy things that are not correct at the moment.

We are absolutely forthright in saying that people need to meet their employer obligations. They need to do the right thing by their employees. Part of that is informing them and part of that is enforcing existing regulation. The chamber is not purporting that that should not be the case. We are just saying that when something is found to be wanting, whether it is an education issue or whether it is a deliberate issue, there are channels to remedy it.

Certainly most recently I have had a letter from UnionsACT outlining a number of cases that have occurred. Of course, I am sure that that is correct and I am sure Lucie and her team are across the case law and the case incidents in that regard. But that, to me, is just more evidence that there are channels and places to remedy the issues when they are not right.

THE CHAIR: I am still hung up on the idea that you are not aware of them. So UnionsACT wrote you a letter outlining some cases. You have this hotline that people call through on and ask for help. I open the newspaper and I see unfortunate employment arrangements occurring frequently. I find it a strange thing to claim that you are not aware of any of these things happening.

Mrs Hendry: We did not say we were not aware of any incidents where the employee obligations had not been met. What we are saying is that we are not aware that there is any disproportionate number of concerns or incidents in employment with casual employees, contractors or labour hire firms any more than in the general employment relationships.

THE CHAIR: I want to go to insecure work in general. Are there benefits to employees from working in—it is a term that some people like to use—"flexible arrangements"? What are the benefits to the employees in that situation?

Mrs Hendry: Certainly, as we have said in our submission, employees have a range of obligations: they want some employment, they want flexible employment because they may have family responsibilities, they may be studying, it might be that they are seeking semi-retirement; it might be for any number of reasons that they do not seek full-time work. So absolutely that is a benefit.

In the case of, say, casual employees, they are compensated for the things that they forgo, the benefits that they forgo, whether they be leave—holiday leave et cetera—in the higher rate, based on the modern awards. There are people who prefer unusual, not Monday to Friday nine to five, employment, and, yes, there are benefits to that.

There are also benefits to contractors who prefer to run their own business. There are benefits, obviously, to the business in gaining specialist or additional employees at a time when volume or demand is high but, equally, there are obviously benefits to employees who elect for that work.

Additionally, obviously we are aware of underemployment. We talk about underemployment. We want to have more opportunity for those who would like more work. That is a factor of a stronger economy. That is true. But what is equally true, and I was listening to reports on this this morning, is that those that have some work, particularly entry level employees—with entry level employees, I heard this morning that data was released that showed there are 4.8 people looking for every entry level job in Australia.

There is high competition. So anybody looking for entry level work who has had some work already will have a much greater chance of gaining more work than if they had not had that opportunity. Perhaps the person who is getting some work when they would like more is then going to be in a much better position to build on that.

THE CHAIR: Are there any downsides to being in casual or labour hire employ?

Mrs Hendry: In terms of casual, of course. If you are underemployed and you would like more hours, absolutely that is a downside. If there are times that you are seeking to get a loan or a financial arrangement that you would benefit by having much more predictable, secure work, yes, absolutely that is a downside. For those people impacted by that, a strong economy is what will in fact open up an opportunity to convert their casual work, whether it be with that employer or with another employer, to have their needs met.

MR WALL: Mrs Hendry, there has been quite a lot of discussion around casual employment. What impact would it have on the ACT if there were tighter conditions around who could engage in casual employment, particularly given our big growth centres like tourism and hospitality?

Mrs Hendry: Business needs to respond to demand, and if people cannot respond to

that demand in a flexible way they will be very, very cautious before they invest in a full-time employment position that has some rigidity around that. We know that employers value full-time employees. There is no question about that. But they need to have certainty around their demand schedules. For instance, where we have Friday night shopping, we know there is a demand peak there. People that might like to work on the weekend might take advantage of working on Friday night if they are not otherwise engaged. That is a classic time when retail, for instance, will take on additional casual employees.

We know that our tourism industry is growing at the moment, but it is not without its peaks and troughs. If employers are constrained in the growth of those businesses and the growth in that investment because they cannot respond adequately to those peaks and troughs, in fact it can mean the difference between them going out of business or not if they really cannot respond to those peaks and troughs in a viable way.

MR WALL: As a side question—and I think you touched on it in your opening statement on the role of educating businesses and the work that the chamber does in working with business—do you think that there is an issue of intentional non-compliance through some areas of the business community in their obligations or is it more often the case that the framework is just so complicated that navigating their way through it as a small business is more challenging and education is needed rather than a larger regulatory and legislative stick?

Mrs Hendry: We know that the growth for advice and assistance to meet regulatory requirements is heading north. The demand for our services to help employers manage their workforce with confidence is absolutely growing, and it grows at the same rate as regulatory complexity grows. Absolutely, small business finds it very hard to keep up with the regulatory requirements and obligations. That is why we are saying that we believe sticking with the federal framework rather than having a patchwork approach will be conducive to small business keeping up with those requirements.

MR WALL: And a nationally consistent approach would be led through a COAG-level agreement with states and territories rather than individual jurisdictions doing their own legislation in similar areas on an ad hoc basis?

Mrs Hendry: Absolutely. We would support that. What we are not saying is that there is no need ever to strengthen regulation but when there is—as I say, I cited the vulnerable workers bill or the more recent Fair Work Commission's decision to make provision for long-term casuals with consistent employment—we think that that should be done at a federal level, and COAG is exactly the right instrument for that. We would support it. If there is national evidence to strengthen regulation, that is the framework.

But in the ACT, as an island in New South Wales, with Victoria the next biggest economy not far south, it is very difficult for small businesses—and we are a small business jurisdiction—who might operate in Yass or Queanbeyan or not much further to be across multiple sets of regulation.

MR WALL: The chamber's advice would be that the territory should not go it alone unless there was consistency at least with our neighbouring jurisdictions?

Mrs Hendry: That is our advice.

MR STEEL: The Fair Work Commission has recently ruled that casual workers can apply to become permanent employees under mandatory conversion. How much do you think that will affect the number of people that call your hotline—the number of businesses in particular—for advice around those things? Are you expecting a flood of applications for mandatory conversion coming to businesses?

Mrs Hendry: It will be interesting to measure that. At this time we are not getting a flood of inquiries in that regard. It is not mandatory conversion. There are reasons that businesses can reasonably refuse that offer. Obviously if they are unsure of that work continuing in the next 12 months then of course they will not make that conversion, which is considered by the Fair Work Commission reasonable. But at this stage I am not sure what our experience is with that.

Mrs Hood: I have read the privilege statement. We have not seen a huge influx. What we have seen is that a lot of businesses, in my experience, call up seeking information and advice. They might see something in the newspaper or hear something around the traps, and they just want to solidify and better understand what that means and what their obligations are.

My experience is that the majority of employers genuinely want to try to understand their workplace obligations, and I think our role at the chamber is to support businesses and provide support in that area in terms of understanding the complexities around the Fair Work Act and what their obligations are, particularly small businesses who might be juggling or have multiple hats and are trying to wear one hat over here and then trying to understand what their workplace obligations are. I think there does need to be more education on those sorts of provisions, but we are seeing businesses that do get on the front foot and want to genuinely understand and know what those provisions are and what they mean.

Mrs Hendry: If I can just take a step back and build on the thinking around that 12-month casual and then it converting, really that is a factor of a stronger economy and business confidence that they can make that commitment and it is ongoing.

We have come off a period in 2013 and 2014 where we lost 16,000 jobs in Canberra through public sector contraction. That, of course, had a ripple effect throughout this economy, and we had more businesses than ever inquiring about how to downsize and reduce their workforce under those circumstances. We have now seen a much more stable economic circumstance. We have got a few threats around in terms of decentralisation or what have you, but conditions largely—not for every sector—are much better and much more stable, and we are seeing growth industries.

At those times, it will be the employer that is really very interested, if they can see that ongoing work, in converting that casual employment to full-time employment, because we know employers know their comparative advantage is out of their team. They value their workforce. If you can get commitment from both the employee and the employer that it is a useful thing to do to turn that into a full-time employment, I think that will be welcomed.

Our biggest issue, members are telling us now, is skill shortages. If you have trained someone up over 12 months and invested in them and decided they are a great employee and you can see that there is demand sufficient to warrant that full-time position then you will be very happy to hang onto them. You will want to retain that investment.

MR STEEL: And do you think you will be providing advice on how to not have those sorts of provisions apply in terms of the conversion to businesses?

Mrs Hendry: We always provide advice as to what their obligations are and what the factors around the regulatory environment are. If a business is concerned that it does not have ongoing work, that their contract is due to expire before the next 12 months or there is some uncertainty around that ongoing demand, yes, of course we will be advising it of those options. But at the same time we know that employees and employers will be well served if there is ongoing demand and ongoing certainty for that work. We are assuming at this point that the employee's performance is not in question. If they have continued to work consistently in a casual capacity over 12 months, there are lots of opportunities for the employee and the employer to decide that they like it or not, and we would imagine they would look at that very favourably.

MR STEEL: How would an employer demonstrate that the business is not going to be operating the same way over the 12 months?

Mrs Hendry: If you were in the construction industry, for instance, and you had had someone working casually for a period that happened to be a 12-month period, and you could see that you were going to finish that building within the next six months, clearly that would be an example where the Fair Work Commissioner would say, "You wouldn't convert that to full time because there is no certainty around that ongoing work." But the Fair Work Commission's decision is written in favour of long-term, 12-month consistent casual employment being converted to full time where appropriate.

MR STEEL: You mentioned certain situations where there might be questions over an employee's performance and termination, potentially. We have heard from another business group that that is not an issue, in the sense that if they were going to reduce someone's shifts as a casual that would be considered to be a constructive dismissal. Is that what you are suggesting would happen? Is that how you think that termination generally occurs amongst casuals in the business centre: a reduction in shifts?

Mrs Hendry: I am not sure I understand your question, sorry.

MR STEEL: My question is: we have heard from another business group that in relation to the employment of casuals if a business reduces the shifts of a casual to zero, for example, that would be considered to be constructive dismissal; is that generally how you might terminate a casual's employment as a business?

MR WALL: That is against the Fair Work Act.

Mrs Hendry: Lucie might like to comment on this in just a moment, but essentially

we would never advise an employer to have practices that are against any regulation or law that exists. There are times when you can reduce people's shifts, particularly in response to demand, and other times where you cannot just do that on a whim. But Lucie will comment on the advice that we would provide.

Mrs Hood: I am failing to see the connection between the model casual conversion clause and constructive dismissal. However, a casual is employed generally on an hourly basis. If the work is not there, then they are not going to be given the shifts. But let us say, for example—and I know the situation you are referring to—that shifts were significantly reduced and the employee can prove there was a reason behind that, then it could be deemed a constructive dismissal. There are safeguards in the Fair Work Act to protect those employees.

MR STEEL: But that would be a very difficult thing to prove from an employee's perspective, would it not?

Mrs Hood: Not necessarily. There have been various decisions around an employee showing that it has been caused because of a prohibited reason or because they have raised a workplace right. Casuals do have avenues under the Fair Work Act to pursue a general protections claim or an unfair dismissal claim after a certain period. There have been cases where businesses do need to be very aware and be mindful of those sorts of situations. If a casual can prove that their shifts have been reduced because they have raised an issue or a complaint, then, yes, it could definitely be dealt with as constructive dismissal and they can pursue unfair dismissal protections under the act.

THE CHAIR: But Mr Steel makes a very good point. Some of those things are very hard to prove. Let us say you raise a complaint about safety on a construction site and then you stop getting called back to work. It can often be quite hard to prove a link between the two. Is that a fair comment?

Mrs Hood: Perhaps. There are safeguards in place in terms of the general protections under the act. They could bring a complaint under the general protections provision. I think it also comes down to the employer's culture on a job site in terms of safety too. Employees should have the right to raise a safety complaint or a matter as well and for it to be dealt with appropriately, as opposed to, "We are going to cut your shifts." The chamber definitely does not support those sorts of situations. But there are safeguards in place to protect employees.

THE CHAIR: Let us mix things up again. Let us say you work for a labour hire company and you are on a construction site and you say, "I am not happy with safety on this site," and the principal contractor on that site goes to the labour hire firm and says, "We don't like that person." Do you think that is covered under the general protections?

Mrs Hood: There is still an employment relationship with the labour hire company and the employee. They still have that employment relationship, and they are still covered by that. Just because the principal has said, "No, sorry, we don't want you on this site," the labour hire company has an obligation in an employer-employee relationship that would need to be managed under the Fair Work Act.

THE CHAIR: I agree. Everything falls under the Fair Work Act. But what I am saying is that this person is essentially sent home from work and then, as evidence tendered today said, they sit there waiting for a text message each morning to know if they are going to work that day.

MR WALL: Probably it is a great difficulty for someone with a legal background to give advice on a hypothetical without all the evidence.

Mrs Hendry: I think that is the issue.

THE CHAIR: You were just giving advice on it.

Mrs Hendry: What we are suggesting is that there are remedies for wrongdoings, and there are wrongdoings that occur. That is why there are remedies existing. Every case needs to be seen with its own specifics and addressed accordingly, and it is hard to respond technically to hypotheticals where you do not have all the information at hand.

But it is absolutely essential in the sort of circumstance that you are referring to that there are protections in place. Those protections exist, and our position is that they are necessary and they are useful. The question is: would those circumstances you are hypothesising be any less frequent or dealt with better with another layer of regulation? And what we are arguing is that they need to be remedied if they occur, but the existing regulation is sufficient to do that.

MR WALL: Mrs Hendry, there has been a large focus of this inquiry on, as the term has been defined, insecure employment for employees in an employee-employer relationship. As the peak business association in the ACT, could you maybe give the committee some insight as to what business owners, operators, experience in insecurity, particularly through the start-up phase, and what some of those challenges are, given that for many people, an increasing number in the ACT, setting up a small business as a sole trader or a sole operator is becoming a direction of choice?

Mrs Hendry: The failure rate of business statistics tells the story: 85 per cent. It is a very difficult job to start up a business. We have got the highest failure rate of start-up businesses in the country here. It is difficult to unpack those statistics. Sometimes it might be because someone has got a great idea, they have registered their business and not very far down the track they are advised that perhaps it is not such a great idea and they drop it. Perhaps that is a fairly benign closure of a business.

But with businesses that have employed people and have got families they are supporting and all the rest of it, of course the failure rate is very challenging to people. It is a huge risk in starting up a business and getting through all the challenges and vagaries that come your way, some of which are completely outside your control.

What you absolutely need to assist in responding to those external and internal challenges is flexible conditions that keep you viable and keep your capacity growing at a time when you can afford it. Otherwise, if we do not have that flexibility, we will have more failure rates than we currently experience and we will have less employment.

Certainly one thing the chamber is really focused on is: we need more private sector employment. In terms of our vulnerability to the public sector, we saw that in 2013-14. We do not want to repeat that. The best way to reduce our vulnerability is to grow the private sector. In a small jurisdiction where we have got 97 per cent of the businesses with fewer than 20 employees if we impose just layer upon layer of regulation, regardless of the particular subject, then we will ensure those businesses are less able to meet the challenges that they face and grow, and we will not grow our economy and employment opportunities. That is why we need those flexible arrangements, both in the workforce and in other regulatory environments, and that is why the ACT government, in all its versions, has been committed to reducing red tape.

THE CHAIR: Mrs Hendry, Mrs Hood, thanks for coming in today. The secretary will provide you with a copy of the proof transcript of today's hearing for your feedback when it is available.

Mrs Hendry: Thank you very much for allowing us to contribute to this inquiry.

THE CHAIR: Thank you.

MILLS, MS JULIE, Managing Director, Association of Professional Staffing Companies in Australia
On behalf of the Association of Professional Staffing Companies in Australia:
ELLIOTT, MS ANNA, Partner, Squire Patton Boggs

THE CHAIR: Thank you for coming in today. Witnesses are asked to familiarise themselves with the privilege statement. Please confirm for the record that you have read the privilege card presented before you and that you understand the privilege implications of that statement. Would you like to make a short opening statement?

Ms Elliott: Yes, I have read the privilege statement, and, yes, I understand the implications. I will take it as read that you have read the submission that was made earlier this year, in June. On behalf of APSCO Australia, I thank the committee very much for the opportunity to appear at today's hearing of the inquiry into the extent, nature and consequence of insecure work in the ACT.

APSCO Australia is part of a global, leading, professional staffing industry body, APSCO Global, and represents the professional contracting and staffing sector in Australia. Its members supply and manage skilled white collar professionals with permanent and flexible work arrangements across Australia and multiple international markets in a range of different industries, but in the ACT it is mainly ICT and finance.

I am instructed that the clients of APSCO Australia's ACT members are mostly government departments that use contracting to supplement their workforces rather than as a way of avoiding employment costs and obligations. In the ACT these requirements and engagement models are specifically driven by the clients of the members of APSCO and requested by government departments because they may not have the budgets or the imprimatur to employ permanent staff, and that is a key driver here.

APSCO Australia contends that—and Julie will attest to this—professional staffing contracting in the ACT is not used as a way to avoid employment obligations or to exploit workers. In fact, due to the unpredictable nature of the labour market in the ACT, contracting provides some form of protection for workers, in that they have the autonomy to decide when and where they will work and are not tied to permanent placements.

Data that has been collected by APSCO Australia shows that the professionals supplied and managed by APSCO Australia's members are very highly paid, as you may have seen from the submission. They are not considered to be in a class of vulnerable workers. They are not subjected to exploitation, harassment or other forms of mistreatment and enjoy comparative levels of legislative protection and entitlements as direct employees. The vast majority of these workers seek non-standard forms of work and have no desire to become permanent employees. In many cases they negotiate superior conditions themselves directly. As such, they do not consider themselves to be engaged in insecure work, nor is there an adverse impact on their families or the community. I am obviously just talking about those individuals that APSCO Australia members engage.

In addition, compliance amongst providers in the professional staffing and contracting sector is informed and supported largely by industry association standards and accreditation schemes, which Julie can expand on. As part of the compliance work we have been doing with APSCO's members, we helped develop a vulnerable workers checklist so that those members can ensure that they are not engaging any vulnerable workers and to satisfy themselves of that. They take their workplace obligations extremely seriously and want to make sure that they are compliant and are not falling foul of the Fair Work Act or any other requirements.

We contend that the nature of insecure work as defined in the Victorian inquiry and in the discussion paper for this inquiry does not really exist in the industry sectors that APSCO Australia members provide services to. These professionals, as I have said, have higher pay and control over their working lives. It is interesting to see similar findings in the UK following the recent Taylor review of modern work practices, which also explores the modern ways of working and the demand for individuals and businesses to have more flexible approaches as the dynamics of the workforce composition change.

We respectfully submit that there are sufficient statutory and regulation protections in place in the ACT and federally to protect the rights of vulnerable workers. You have the Agents Act 2003 in the ACT, which was outlined in our submissions, and greater protections have recently been established through the federal government's vulnerable workers legislation to protect those people who are really vulnerable. There is also the casual conversion decision by the Fair Work Commission. There is a lot of focus and regulation in place and businesses need to make sure that they are complying with those workforce laws.

I am sure you have had regard to what has been happening in the other inquiries in Queensland, South Australia and Victoria which are at various stages of progression in terms of the licensing schemes that have been developed. What has been interesting to see from those inquiries is that, although evidence of exploitation and mistreatment was only found in limited industries—for example, in Victoria it was limited to agriculture, horticulture and the cleaning industries—each of the proposed licensing schemes has gone beyond that evidence and taken a very broad brush approach to apply it across all industries.

Where you have highly skilled professionals such as those APSCO's members represent, this will cause a great degree of difficulty when they see themselves as already compliant. It just adds another layer of regulation. Also, if they are operating globally or nationally they will have to comply with unharmonised schemes across different states, which will also cause a great degree of difficulty with compliance issues, even in the sense of keeping timetables of renewal periods in that sense.

Any scheme this inquiry would be looking to recommend, in our view, should obviously pay heed to what has been happening in those other states and make sure that you are not placing an unreasonable regulatory burden particularly on small businesses. Recruitment and professional staffing businesses are generally small businesses and they are very entrepreneurial. They are looking to start up businesses, so we do not want to be a bar to entry for people looking to do business in the ACT. I will hand over to Julie, who may have some comments on some encouraging

statistics that she has seen from the market here.

Ms Mills: The statistics are quite detailed, so, because of the time frame, when I am asked questions I am happy to share any of the stats. I have job advertisement records and salary ranges and all sorts of things on temporary versus permanent placement. We track data in our sector across multiple professional staffing sectors, and we are certainly seeing a trend to greater permanent work here in the ACT than temporary, which is interesting. That is a trend in the last 18 months, so that is interesting with the timing of this inquiry.

Having listened to the previous presentation and having read all the submissions, there are questions around the whole definition of insecurity—is it based on whether you are going to have a job tomorrow or is it based on the money you earn or is it based on how you are being treated in the workplace? All those things need to be taken into account as we move forward.

Interestingly, for the sector that we represent in the ACT it is very much driven by federal and territory government departments. I spend a lot of my time working with departments to understand how the contracting workforce needs to be framed within a government project. The ATO is a classic example every year, when, at a particular time in the year—we all know when that is—there is a huge need for a temporary casual contracting workforce. Whatever definition you want to use, that need is there, but there is a clear and finite beginning and end. Is that insecure work for that contracting cohort or is it simply, "That's the time of year I'm going to be working my butt off to earn my income because I know that's when the work's on"? That is not only in the ACT but obviously this location is what drives that.

The other thing that needs to be considered in all of this conversation is what these workers see themselves as, and "labour hire" is not the right descriptor. I have spent 20 years representing this industry both in this association and the association presenting next—I was there before this one—trying to get a clear understanding of what "labour hire" really means as opposed to "staffing", "contracting" or any of those. We have spent two years now trying to get better definitions of work. As we almost got one in place, a whole new language started coming out: the "gig economy" and the "gig worker", which effectively is a contractor or a casual but given a different title because it sounds sexier in 2017. They are all the same thing, and I think we need to look at that history and keep that in mind as we are looking at these sorts of inquiries.

Anna has covered where we sit in this inquiry. Because of the number of contractors engaged in ACT, because of the nature of the work, it is important that we represent that voice, even though it might be not sitting in a lot of the spaces about which you heard submissions during the week. I am happy to take any questions.

THE CHAIR: I am a little confused, Ms Elliott, as to your role here. You are a partner at Squire Patton Boggs.

Ms Elliott: Yes.

THE CHAIR: How does that come together here?

Ms Mills: Anna works with us, and there are three parts to our relationship. We are the industry body. We run an industry advice line service similar to everybody else you would have heard from in associations, which is managed by Squire Patton Boggs. Any calls that come into that advice line would come from our corporate members. That then gives us a tracking mechanism to see whether any issues are occurring in the sector that we need to address. That is one part of their role. The second part of their role is running our education and training through all of the compliance levels—from privacy through to EEO. Anna develops and writes all our training materials and the examination our consultants have to sit in order to work in companies in our sector.

The third part of the role is work in the advocacy and submission development space to ensure that we are in touch with the legislation at the time. I have got the bigger picture, but I am not a lawyer. So the reason Anna is always here at any of these inquiries and hearings is in case anything comes up that is relevant to those conversations and also to be a reference point for any legislative obligations. If I could employ her inside my business I would, but they will not let her go. That probably answers your question.

THE CHAIR: Now that is a compliment. I want to read a section of your submission to you:

> In APSCO AU's experience, the host organisations who engage professional staffing/contracting … firms to … supplement their permanent workforce, with permanent and contracting professionals working alongside each other—to fill a short term niche skill requirement, to add specific skills or to complete finite projects.

I compare that statement with one of your tables showing state-by-state ratios of permanent contract ICT roles in the ACT, which is seven per cent. Seven per cent of ICT roles are permanent; 93 per cent are contracts. Can you explain to me how seven per cent of the workforce is getting supplemented by 93 per cent of the workforce?

Ms Mills: By the very nature of what I spoke about before. As I said before, the ACT is a microcosm of what goes on in our sector, in my view, and that is shifting. Historically, in APSCO's view, across Australia this is data that has been moving. I could give you up-to-date data now—

THE CHAIR: This is quarter one, 2017.

Ms Mills: but what I am saying is that there is a movement towards permanent. Generally, in most instances, clients of our members do use contracting to supplement their permanent workforce. But I agree with you on those numbers. That would be their justification for using it. How do you tell a government department that they need that seven per cent core to run their department on a day-to-day basis in ICT? When they have a statement of work project and need 300 SAP developers—and they only want them for six months—they will bring them in. They will not employ them full time because there is no project after that.

THE CHAIR: I can understand that, but—

Ms Mills: The numbers do not match what the theory is; I am not disagreeing with you. That is the reality of ICT contracting in particular.

THE CHAIR: So they do not bring people in to work alongside a permanent workforce; they just have a contracting force?

Ms Mills: They still work alongside them, so there would be a—

THE CHAIR: Seven per cent of them.

Ms Mills: I am working with the Department of Human Services at the moment. They have a core ICT management workforce—that is their permanent employees—and then they have 150 in at the moment to run a project. They will be there for six months. They do not need them after that. They build that particular project and then they will turf them out. They will have a contract that is set for that six months. They will then bring in another 300 to run something later on. Those niche ICT skills are carried with the worker. They are not necessarily needed by the business every day of the week. It is an unusual anomaly. ICT is unusual in that space, more so than other areas. I get your question; I do.

THE CHAIR: So it is largely as a result of your skills, being ICT, being highly specialised and government organisations, in this instance, predominantly bringing in individuals for a project-based period. Then, when that need is gone—

Ms Mills: One of the biggest challenges in that space is the shortage issue. They are not only using them out of the community here in Canberra but also bringing them in from other states. They are being brought in from overseas when they can be—it does not always happen. There is a classic example at the moment of the Gold Coast getting ready for the games. They have not got the ICT skills on the ground. They are literally drawing them, for six months, from everywhere they can find them. My members are literally sourcing them from all over the world for that particular project.

The other part of this conversation is around the upskilling of the workforce to ensure that we have that talent here in Australia. There is another conversation that goes on here. The bigger conversation is this: how do we track that moving workforce to make sure that they are always engaged? That is part of what we do with our bigger tracking of contractors through our stats.

THE CHAIR: You mentioned before, in your opening statement, that these are highly paid professionals and they quite like working to a contract.

Ms Mills: On contracts, yes.

THE CHAIR: That might explain why across Australia 87 per cent of people working in ICT roles are in a contract position.

Ms Mills: Yes.

THE CHAIR: Can you think of any other industry where 87 per cent of the

workforce were—

Ms Mills: Banking would be similar at the senior levels. The Commonwealth Bank would have 10 per cent max of permanent staff. The rest of them would be contractors, and have been for a very long time. Not just in ICT but—

THE CHAIR: Can you expand? You say at the highest levels?

Ms Mills: I am not talking about tellers—there are no tellers left—not at that kind of level, but at the finance level and the business and accounting level. One of our largest members—and one of the largest members of the other industry association—supplies almost half the teams to a bank. I am not sure whether it is still Commonwealth. They supply and they are on contract; they are contractors. They may be there on longer than six-month contracts; they might be on 12-month contracts. They have always had the opportunity to convert to permanent. But history has shown that those opportunities are not being taken up.

MR WALL: I am curious about some changes to payroll tax a couple of years ago that heavily affected your industry.

Ms Mills: Yes, the whole industry.

MR WALL: Given that we are talking about insecure employment—given the nature of employment that most of your members engage in—what impact did a regulatory change like that have on them and ultimately their take-home pays?

Ms Mills: That was the historical piece of payroll tax legislation that had been sitting around for a very long time—20 years, I think, from history.

MR WALL: Yes. It was intentionally designed and written that way; that is my understanding.

Ms Mills: Yes. It was to bring ICT talent into the ACT; there was a reason for it. What impact did it have in the beginning? It was done retrospectively and with a short turnaround. This is probably where it is well demonstrated that the association is helping and ensuring that everybody is treated fairly. I was in the middle of that for two years. I am not sure where your history is, but you probably know that.

When that was announced retrospectively it was extremely difficult and extremely concerning to the contracting space. Suddenly there was no payroll tax issue for them. Look at the history of those charts in this report. The history is not here, but I can easily provide it to you. In any of these reports, ACT contracting always had a much higher salary than in any other state or territory because of that payroll tax. When that happened, all these people who had housing loans and other costs suddenly saw their take-home pay change because of the payroll tax issue. They were concerned and felt unfairly done by, by the government of the day who made the decision.

We intervened, in the sense that we had a number of conversations to say, "You can't do this retrospectively. Let's set a time line so that everybody can get their house in order and their life in order and adjust it." I think it was a six-month window we were

given. Now it is not even mentioned. Everybody now knows where they sit in the scheme of things.

To do it the way it was done meant that people were going to be impacted. The announcement was made—I do not even know the dates now—on the Friday and it was going to be implemented within 10 days. People needed the time to get their house in order. It would not have made any difference whether you were a contractor or a permanent employee—if suddenly somebody changed your payroll structure within a 14-day period it would be fairly challenging.

One of the things I just want to say on that issue is that within our association we have—for the contractors that work through our members; anyone can access it, but particularly our members—support structures such as a banking relationship and a credit union relationship that allows them to get housing loans. It does not matter whether they are continuous. It is the only one that is around. It has been set up for the ICT and the contracting sector. That is well used by the sector. Some disadvantages have been talked about. They just have to show evidence they have been engaged by an APSCO member for a period of time but not necessarily in that permanent workplace. We probably put that in place eight years ago in the other association and it has been carried forward to this one.

MR WALL: Where some of those difficulties exist, there are workarounds.

Ms Mills: There are ways around it. Because I know the contractors and the insecurity are more your concern, I add that we have two pipelines for advice. We run an advice service for our members. That is the recruiters, through Squires. We have an HR advice line through an HR advisory service that contractors can use if they have questions. It means that it is independent; it does not compete. They are not ringing up someone who has already spoken to the member who has got the issue. Both of those are funded by the association.

MR STEEL: You mentioned in your submission that professionals choose to work as independent contractors because it affords them a level of flexibility and recognition. How do they take leave?

Ms Mills: If they are independent contractors that is their choice.

MR STEEL: If they have to go off on leave for sickness or something like that, they are not getting paid for a period?

Ms Mills: As part of their independent contractor agreements—I can speak a little more to this—they get a loading for that leave and whatever. It depends on how they use it. If they spend it every week as they get it and do not allow for it—

MR STEEL: Yes, sure.

Ms Mills: Again, remember that we are talking about people whose average daily rate is between $600 and $800 a day. We are not talking about people who are living hand to mouth in most cases. They are people who can read, understand and negotiate their own contracts. Even though the work is maybe not continuous in the way we are

talking about permanent work, it is still work. They are still people who in most cases have academic qualifications. They can read their contracts and understand what they are negotiating.

THE CHAIR: I do not think Mr Steel is concerned about the person making $800 a day. Mr Steel is probably concerned about someone new to the workforce, working in ICT for the first time and being told that they can work only during the high season, and who is then unemployed and driving a taxi over Christmas.

Ms Mills: But they would not necessarily be an independent contractor. They would be hired on a flex work basis, a labour hire basis, as an employee of the recruitment firm. For independent contracting you have to have set yourself up as a business. Someone stepping into the workforce on the first—

MR STEEL: Yes, I know. I do not think that applies to everyone. Certainly there are professionals that are contractors that are paid quite well and they may have factored four weeks leave equivalent into in their rate. But I am aware, through friends who have worked in the banking industry in the UK that were on very low wages but are working as contractors—

Ms Mills: Are they independent contractors? Everybody who does not work in a permanent role chooses to call themselves contractors because it is the only word to describe them. We are facing a challenge in trying to change legislative definitions to ensure that they are described correctly.

MR STEEL: They are independent contractors in IT in the banking sector, for a major bank.

Ms Mills: Therefore they, as an independent contractor, have their own business. They have registered their own business. We go back a step and say, "What are the parameters around being allowed to even set yourself up as a business?" Let us go back one step and ask who is responsible for allowing them to set up as a business.

I have argued consistently with various regulators that someone who is only straight out of university—unless they have all of those structures in place—should not be in a position to do that to start with. If they do it, there have to be some parameters around how they engage and what their contract looks like. Are they engaging directly with the client or are they engaging directly through using a recruitment company to engage with the client? There are as many independent contractors who are employed directly by a client as there are engaged through recruiters. That is the challenge in this conversation about understanding that whole pipeline.

THE CHAIR: Why do you think that young people just out of university would try to register themselves as a business? You do not want to see that happen, but why do you think they would want to do that?

Ms Mills: Because that whole gig worker, flexi worker, is the latest thing to do. My daughter decided that is the way to go because it is seen as "I am my own boss." I am not using that as the only excuse; it is that whole independence thing. There is evidence—and I have seen plenty of it in some sectors, and cleaning is a classic

example—that people are told they have to have an ABN before they can do roles. I know where we are going with that.

In reality I think that question has to be asked if they are allowing people to set up businesses at a level where they have not got the understanding of the infrastructure around them. If somebody contacts me and says they want to set up a business as an independent contractor and they want advice, I send them off to a business adviser, not a legal line just a business adviser, to give them all the risks and strategies because those same independent contractors, if they have not got their insurances correct and all of those things correct, are exposing themselves. Those conversations need to be had. What is missing is that those people do not have anywhere to go for advice. They have nowhere to go. The chamber does not do it.

Ms Elliott: And that is when they become vulnerable.

Ms Mills: That is what makes them vulnerable.

Ms Elliott: That is when the Fair Work Ombudsman steps in.

Ms Mills: In our checklist that is one of the questions we ask, because that vulnerability sits if you do not know what you do not know.

MR STEEL: So going back to the issue of leave, an independent—

Ms Mills: Sorry, I was not avoiding the question.

MR STEEL: No. I am going back to ask a different one on this same issue. An independent contractor, a professional, who has—

Ms Mills: Yes, whatever they have done.

MR STEEL: built four weeks annual leave into their rate, needs to take leave without notice because of—

Ms Mills: Family, yes.

MR STEEL: a family issue, whatever, what then happens? Do you have someone else step into their place to fill the gap? Is that something one of your members would organise?

Ms Mills: The client, yes. If someone is suddenly called off for a family death or they have had a car accident or whatever, the client, my member, would have the relationship with the client, the end user, we will say for now. It sounds better than "client" because government does not fit in that word. That end user would either restructure the team they have got to cover that work or they would contact the member to look for a short-term replacement, and that short-term replacement might be someone who is sitting on a bench, which in some cases means they are sitting on a bench and being paid by the recruiter waiting for a role to fill. There are all sorts of models out there now. That end user might know of someone in another department who is about to finish a contract—if I am using government as an example—and

move them across. There are multiple ways of doing it, but the roles are filled. They can be filled for a four-week, short-term contract or six weeks or whatever.

Ms Elliott: And the individual, as you mentioned earlier, has obviously negotiated that rate which is inclusive to allow for if they need to take a day off here or there or they want to have a month gap in between projects that they are working on. That comes with the flexibility. If you liken it to a casual employee, obviously they do not get paid either if they are off sick for a day. They have a casual loading to compensate them for that.

MR STEEL: I think what we have heard in relation to casual employment is that if people do not take up shifts they often feel like the employer is penalising them by not giving them any more shifts. Do you think that happens with professional, independent contractors as well?

Ms Mills: Not as much. I think the challenge with the professional, independent contractors is that they worry that if someone comes in whose skill is just that bit higher than theirs it may affect them. If the contract templates and the contracts between the client and our member that we have available and recommend are used, those sorts of things cannot happen. They are very strong on those particular clauses. Not everybody uses them and not everybody is our member, but the benchmarks are there to remove that level of insecurity, if you like.

THE CHAIR: I think that is it from us. Thank you for turning up and answering our questions.

Ms Elliott: Thank you.

Ms Mills: Thank you.

THE CHAIR: The secretary will provide you with a copy of the proof transcript of today's hearing for your feedback when it is available.

Ms Elliott: Thank you.

Ms Mills: And thanks again for the opportunity.

CAMERON, MR CHARLES, Chief Executive Officer, Recruitment and Consulting Services Association, Australia and New Zealand

THE CHAIR: Before we begin, witnesses are asked to familiarise themselves with the privilege statement that was sent to you. Could you please confirm for the record that you have read the privilege statement presented and that you understand the privilege implications of that statement?

Mr Cameron: I have read it and understand the privilege implications, thank you.

THE CHAIR: Would you like to make an opening statement?

Mr Cameron: How much time do you have available? I appreciate that it is the end of the day and, whilst I would like to emphasise a few points in our submission, I am also mindful of your time as well.

THE CHAIR: We are running behind time by 15 minutes. We do not want to cut you off by 15 minutes. Take it away.

Mr Cameron: I would like to thank you for the opportunity to contribute to the hearing and to the inquiry more broadly. I am sorry that I could not be there with you in person today. Recruitment and Consulting Services Association Australia and New Zealand, RCSA, is the peak body for the recruitment and workforce services sector. We are the largest of the dedicated industry bodies representing workforce services.

Workforce services extends well beyond what you might term labour hire and includes recruitment placement and contracting placement services as well. I am happy to get into a bit more detail around that because I think the terminology is very, very important for this discussion and this debate if we are going to have a proper analysis of what is insecure work and what may contribute to concerns around so-called insecure work.

We represent about 3,000 corporate and individual members across Australia and New Zealand, which represents about 50 per cent of Australia in what we define as on-hire worker services. On-hire worker services of course are those recognised in modern awards, where an employee is engaged by a firm and then is assigned or on hire to perform work for a client under their general guidance and instruction. We have a code of professional conduct that binds our members and we are very committed to enhancing and promoting the reputation of the sector through best practice workforce services. I can take you through some examples of that in more recent times in a moment.

In the ACT we represent the interests of approximately 70 corporate members who are providing ethical and professional recruitment and on-hire services predominantly to ACT employers. In some professional segments of the market it would include independent contractors as well, but I place on the record that the RCSA has a policy that does not condone the employment or engagement in on-hire by independent contractors in unskilled and semiskilled positions. We think it is a very important policy position to hold and we have always maintained it.

I will say at the outset that "insecure" is not a term the majority of the workers who work for our members would necessarily use to describe the way they are engaged. Many of them of course have been engaged in this manner to suit their lifestyle. There is research that we rely upon through RMIT University that indicates that they engage in this form of work for a whole range of reasons. Some of them are very surprising. One is that they look to be paid for each hour of work they do rather than be engaged in salaried work and, as an employee, covered by, in most circumstances, the modern awards. They enjoy all the benefits of modern awards, everything from penalty rates to loadings, minimum rates of pay based on classification and in many circumstances—I would say most circumstances—they are actually enjoying the benefits of over-award rates of pay.

We are aware of concerns of, primarily, unions and some others who refer to insecure work in this environment and we think it is very important to bring some degree of considered approach to the context of so-called insecure work. In many circumstances—and you may have seen this in our submission—on-hire employment as a percentage of all employees is stable and non-threatening.

If the committee have had the opportunity to consider the Productivity Commission's report that recently found on-hire employees to be of a very small magnitude, around 1.8 per cent, of the workforce—and we hear some rather hysterical claims from those who are trying to argue that so-called insecure work is out of control, suggesting that it represents 40 per cent of the workforce and that labour hire is the hub of the problem—you will see that at 1.8 per cent of the workforce we find it hard to understand how that could be the case.

Interestingly—and I am sure the committee have had the opportunity to consider it—there was recent research conducted by Jeff Borland from Melbourne University, a very highly regarded researcher, who relied upon data including ABF labour survey data to come up with some interesting findings, some of which include that there is no evidence that supports claims of job insecurity in the labour market and that the number of people working for labour hire firms has actually decreased slightly since the early 2000s and, furthermore, there is evidence to indicate that casual employment is certainly not growing but, if anything, is actually reducing as a percentage of the Australian workforce.

We do feel that at the outset it is absolutely important that we bring a measured and considered perspective to this discussion around so-called insecure work and what role on-hire employment or labour hire is bringing to this broader consideration. The reality is, of course, that insecurity, if it exists, exists primarily because many businesses are increasingly insecure in their international trade relationships, in managing a more volatile economy, economic circumstances, increasingly insecure contractual arrangements with government and otherwise.

In conclusion, we are very concerned about what has been a lack of leadership by the ACT government recently in going down the pathway of reducing by 60 per cent, we argue, unilaterally the contingent workforce gross margins. The circumstance we are very concerned about is that procurement plays a very large part in really inviting less professional and less reputable contingent workforce or labour hire firms to operate in

a way which is not fully compliant and which cuts corners. We are very concerned that, if government is not prepared to lead the way in responsible procurement that recognises the full and true cost of being a professional on-hire or labour hire firm in 2017, in fact, one can only invite the question whether such government and procurement divisions are actually contributing to if not creating the problem.

We live in a world of costs down, where consumers are looking for greater value. We at RCSA are very much committed to ensuring that there is a right balance between flexibility and responsibility. To that extent, we would love to take you through some of the ways in which we are doing that in relation to the so-called exploitation of labour hire workers, primarily within the horticulture sector and the food processing sector. But, given the shortness of time, I would be delighted to field any questions that the committee may have.

THE CHAIR: Thank you, Mr Cameron. I will lead off with the questions. I am reading an excerpt from your submission:

> The majority of on-hire worker services business operators are professional, reliable and successful. Yet the open market for labour in Australia is being exploited by illegal and unscrupulous labour contractors …

Can you explain to me how the unscrupulous operators exploit these people?

Mr Cameron: Sure. One of the things that I think it is very important to do at the outset is understand the difference between what you might define as labour hire, but we will call on-hire worker services, and what we call labour contracting services. In many circumstances these types of non-traditional third party workforce service arrangements are all thrown into the same bucket, which of course some will call precarious work or undesirable.

Labour hire or on-hire work, as I mentioned earlier, is a circumstance whereby a worker is engaged by a firm and then assigned to perform work under the general guidance and/or instruction of what we will call a host organisation. Certainly amongst our membership, the absolute majority of those individuals are engaged as employees. They are employed under awards. They receive their casual loading, their workers comp and superannuation. They are covered by other protections as well, as they should be.

We are seeing an increase in certain segments of the market—primarily in horticulture, and we have seen evidence of it in some food processing segments of the market; I think it would be fair to say that there are some examples of it in infrastructure and construction—of organisations out there providing labour contracting services. The difference there is that these workers are not being on-hired or assigned to perform work for a client under the client's general guidance and instruction. They are individuals being engaged by a contractor who will be then supplying their services to perform a scope of work for a fixed fee for the completion of that scope of work.

We are primarily looking at—we have done a lot of work in the horticulture sector on the back of the very concerning *Four Corners* program—why and how it is occurring. We are really concerned that the unscrupulous, unethical, noncompliant operators are

operating in those segments of the market where the purchasers or the acquirer of the service is unable to conduct any form of due diligence and proper analysis as to whether these particular firms—labour firms, labour contracting firms and, in some cases, labour hire firms—are compliant with their most basic Fair Work, work health and safety, superannuation and other minimum legal obligations.

We believe that that is contributing greatly to the ability of these operators to remain viable and to continue to provide a service to the market. In far more sophisticated buyer markets they simply would not be allowed to operate. Our StaffSure program—which we have developed in conjunction with the Australian Workers' Union, with the oversight of the National Union of Workers, with the National Farmers' Federation and a range of other industry bodies representing horticulture—is designed to conduct a third-party audit to assist the buyer of the service to buy only from those firms that meet a standard against six key criteria. I would be happy to go into that.

In short, to answer your question, we are very concerned that it is very difficult for buyers of labour contracting or labour hire services to readily and easily determine whether a supplier of workers in a third-party manner are meeting their compliance obligations. It is rather technical and many of those who are unscrupulous will end up saying, "Don't worry about it. Sign this contract. All you need to do is pay us X amount per hour and we will take care of the rest." Many of these unsophisticated buyers simply do not have the wherewithal or the understanding in order to conduct proper due diligence.

That is where we think most of the issues arise. We have seen very little evidence of genuine noncompliance in other segments of the market—everything from government through to IPT and white collar administration—even in many circumstances in the storage services segment of the market. It is mainly in the outlying areas where these unscrupulous operators are taking advantage of the buyers of the service and of course the workers themselves.

MR WALL: Can you give the committee a bit of insight as to what impact particularly the labour hire registration scheme in Queensland has had on your members?

Mr Cameron: At the moment you would be aware that all we have is an act. We have been working very closely with the Department of Industrial Relations in Queensland to give them a fuller understanding as to what the cost implications could be of this scheme. We do not have the regulations yet so we really do not have many of the answers that we are looking for.

The primary concern that we do have in relation to Queensland—and this applies similarly to Victoria as well; you might be aware that recently the Victorian government announced that they would introduce a broad-based licensing scheme, despite the fact that the only genuinely independent inquiry into it conducted by Professor Forsyth recommended licensing only of the horticulture, food or meat industry and the cleaning industry—is that the broad-based nature of this will add significant potential liability, and therefore also cost, on reputable providers. There is very little evidence of them having not complied with fair work law, work health and safety law, immigration law or any other form of law.

We are very concerned that what that will do is increase the cost of doing business for reputable operators. In a market where we already see very tight margins—I repeat that we recently saw an example in the ACT of those margins being reduced by 60 per cent overnight—we are very concerned that the viability of professional, responsible labour hire services is in question and to no real benefit.

The other thing we are very concerned about is that the scheme proposed in Queensland is very wide but not very deep. When I say it is wide, it covers, as I say, all forms of so-called labour hire in every sector and in every occupation but it does not cover the example that I provided earlier, what I call labour contracting services.

We are very concerned that it will simply impose additional costs but will not address the problem at hand and we will see many of these unscrupulous labour hire firms simply converting to become labour contracting firms. In a labour contracting situation they will not be supplying a worker to a worker to do work; they will simply be performing work for the contracting firm. That is a real shame. If we are genuine about trying to stamp out genuine exploitation in the sectors where it exists, the Queensland law will simply not do it. It is a real shame. That is why we have developed our StaffSure certification program, which is deeper and more targeted, to try to address the problem at the root cause.

MR WALL: You are suggesting that, where there is now non-compliance intentionally—regardless of what the legislation or regulation is—that non-compliance will continue in some form or another?

Mr Cameron: Spot on. We do not want that. We, as the peak industry body, are absolutely committed to rewarding those professional firms that do the right thing, comply with the law. There is evidence that we have from the Fair Work Ombudsman and even WorkSafe regulators that indicates that when labour hire is done well and professionally, it is safer and more compliant than direct hire employment, especially amongst small- to medium-sized employers.

On the other hand, we are absolutely committed to identifying and stamping out the disreputable operators. We participate on the reference group to the black economy taskforce. We have represented before the Alan Fels-led migrant worker taskforce. The department of employment, under his recommendation, have recommended us and have provided us with a small amount of sponsorship to help our pilot program for our certification program.

We can absolutely hold our heads high in saying that we want to provide the ability of the marketplace to reward the lawful, responsible, ethical operators. Our real concern is that many of the inquiries we have seen before are simply becoming very political. They are focusing on trying to stamp out non-traditional employment. That is like trying to turn back the tide. We live in a globalised world. There is a lot of insecurity within business. Business are looking for greater flexibility. Our responsibility is to give them the solution that is the right balance: not too far one way, not too far the other.

MR STEEL: If the ACT government were considering implementing a labour hire

licensing scheme, what suggestions would you make to us to improve on the model that has been proposed in Queensland and Victoria? Would you suggest a broader scope?

Mr Cameron: I would propose that it target the supply of both labour hire and labour contracting services—the definitions of which we can provide you if it is of assistance; let us in a moment also talk about the gig economy, which is another issue in itself—and that licensing be required of those firms that provide labour hire contracting and labour contracting services in sectors where there is proven evidence of exploitation or non-compliance.

The best way I can describe this is: if you were to look at the recommendations regarding the scope of the proposed Victorian scheme, as proposed by Professor Forsyth, whom we worked with very closely—we have high regard for Professor Forsyth—you will see that he recommended that the scheme target labour hire in those sectors I mentioned earlier such as horticulture, meat processing and, to be honest, there is a lot of labour hire in cleaning. Cleaning is really a subcontracting arrangement, but a very good example of where we see labour contracting arrangements.

We would say, even: broaden the definition of labour hire. We would say it should include gig economy platforms as well—the new threshold of, I guess, genuine exploitation—and we would say target those sectors where it occurs. To that extent, if we find that that then resolves the problem in those sectors and it cleans it up, you can contract the scope. If we find that there are other new sectors where you need to expand the scope of the licensing scheme, then you will have our support to do so. Such schemes should work in conjunction with industry-led schemes like our StaffSure program developed, as I say, with the unions and other industry bodies—to complement it. Those that go well beyond the licensing scheme by being certified under StaffSure would get mutually recognised under the ACT-based licensing scheme. We would be very happy to provide further evidence to outline how that might work.

On that note, we are working with both the Queensland and the Victorian governments to get that mutual recognition under their scheme. We feel very confident that we will achieve mutual recognition. But that will not necessarily address our concerns regarding the definition of labour hire not picking up labour contracting services.

MR STEEL: Do you think that there is a constitutional issue as to why it has not been broadened out under the Queensland and Victorian schemes?

Mr Cameron: To be honest with you, I do not think it is constitutional. I think this comes back to still relatively—I will be upfront—naive understandings of the full scope of how third party workforce services operate in the modern Australian economy. We are experts in this field. We see it day in, day out. I am not sure if you came across, you no doubt probably did, the Plutus Payroll scenario. That is an example of a payrolling service.

Many probably would not define that as labour hire. There are 101 different variants

of the way in which third-party services are provided. The real concern we have here is that the approach being taken by many of the state governments considering introducing licencing is, pardon the pun, very agricultural. It is agricultural because it is dealing with only one easy to recognise element of third-party workforce services.

I take you for a moment to the gig economy. I read an article in *The Age* today in Melbourne, where I live, based upon an article from an academic in New South Wales. I am not sure if you have read *The Conversation*, a very interesting daily that comes out from the academic segment. They talk about the fact that many gig economy workers are not going to be receiving superannuation. They went on and talked about the fact that labour hire is prevalent all throughout society, and this is a problem.

Bear in mind the very essence of what we are dealing with here. Even academics who are specialists in their field do not understand that the gig economy is not labour hire. The gig economy is a situation where an online workforce platform matches—like a peer-to-peer scenario—an individual who has no option but to work as a freelancer, often in an unskilled or semi-skilled position, with an end hirer. There is no party being engaged by an intermediary, and on-hired to perform work under the general guidance and instruction of the end user. Even here we have examples—I do not blame the state governments, but it is so complex—of their not even understanding what labour hire is. They are getting it mixed up.

I have genuine concerns about the gig economy. I do not accept for one minute that somebody who is working as a busboy or a busgirl in a restaurant or a pub—somebody serving and waiting on people in a café—can be deemed to be genuine independent contractors. We are seeing the rise of these platforms that introduce these individuals as freelancers to work for very naive small- to medium-sized businesses that engage them and all of their rights—everything from super to minimum rate to workers compensation—are lost.

It really worries me. Here, on one side, we are talking about licensing labour hire that almost wholly and predominantly, except for the exploiters, engages a worker as a casual employee with all of the benefits under awards and the Fair Work Act. But over here, example B, is the gig economy, which is genuinely worrying, where individuals are being stripped of their most basic entitlements. We are really missing what should be the real target of this inquiry. Maybe you have concerns; I hope you have.

THE CHAIR: Thank you Mr Cameron, for appearing today. The secretary will provide you with a copy of the proof transcript of today's hearing for your feedback when it is available.

The committee's hearing for today is now adjourned. On behalf of the committee, I would like to thank all of the witnesses who have appeared today. The secretary will provide you with a copy of the proof transcript of today's hearing when it is available. If witnesses have taken any questions on notice today, can you please get those answers to the committee secretary as soon as possible? Thank you, everybody.

The committee adjourned at 5.09 pm.