

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Long Service Leave (Private Sector) Bill 2003)

Members:

MR B STEFANIAK (The Chair)
MR J HARGREAVES (The Deputy Chair)
MS K TUCKER

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 11 NOVEMBER 2003

Secretary to the committee:
MsJ Henderson (Ph: 6205 0199)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.06 pm.

LYNDAL RYAN,

ANDREW WHALE,

PETER MALONE,

CHRISTINE TUTTY,

ROSS FOTHERINGHAM,

RODNEY BARNES,

CHRISTINE WAGLAND and

LAURON GAZZARD

were called.

THE CHAIR: This is the first in a series of hearings in the inquiry into the Long Service Leave (Private Sector) Bill 2003. I welcome everyone here today. I'll just read this out. It's probably unnecessary for a hearing such as this, but it's something we read to any witness, prior to their giving evidence before an Assembly committee hearing.

Ladies and gentlemen, you should understand that these hearings are legal proceedings of the Assembly protected by parliamentary privilege and that gives you certain protections and also certain responsibilities. It certainly means you're protected from legal action such as being sued for defamation from what you say at the public hearing. It also means you have a responsibility to tell the committee the truth, because giving false or misleading evidence will be treated by the Assembly as a serious matter. For the purposes of the transcript, could you please identify yourselves and the capacities in which you appear before the committee.

Ms Ryan: I'm Lyndal Ryan, Assistant Secretary with the Australian Liquor, Hospitality & Miscellaneous Workers Union, ACT Branch.

Mr Whale: Andrew Whale, Secretary of the Transport Workers Union, ACT sub-branch.

Mr Malone: Peter Malone, Secretary of Unions ACT.

Mrs Tutty: Christine Tutty, I'm the industrial organiser for the United Services Union.

Mr Fotheringham: Ross Fotheringham, I'm an organiser with the Independent Education Union.

THE CHAIR: Thank you all for appearing. Does anyone want to go first and make any comments to the committee?

Mr Malone: Yes, if I may, Chair. You have a series of written submissions by each of the unions before you today, including Unions ACT. It's not our intention to go into the same material to any great extent, but we will make some brief comments and then go to three further witnesses who are here today, to provide additional information.

First and foremost, the union movement within the ACT fully supports a portable long service leave scheme within the private sector in the territory. In our view, it is a scheme which is long overdue and would address some serious inequities that take place within the work force in today's society. It's important, we believe, to note just how dramatically the employment structure has changed over the last few decades. The original concept of being employed with one employer for a lifetime or a career time simply doesn't exist in our current day work force.

Equally, the level of work people perform has significantly intensified, to the point where significant downsizing has occurred across all of the private sector industries. This further highlights the ongoing need for the original intention of long service leave—to provide a break from paid employment after a period of time within employment.

The fact that the original long service leave structure was based on periods of service with one employer is, from our perspective—and we believe historically borne out—a reflection of the times when those provisions were created. From the 1920s through to the 1970s it wasn't an issue that you wouldn't be employed by the same employer. It was simply taken for granted that that was the normal way of the world. Had today's circumstances existed back then, we would strongly argue that different mechanisms for the payment or application of long service leave would have been negotiated. They would have been considered by various assemblies and parliaments of the day.

The bill before you reflects the reality in economic working life today. It reflects the fact that most people are not, and will not be, employed in the one industry with the one employer all of their lives. It is necessary to reflect in the long service leave provisions the degree of casualisation and flexibility which has arisen. We need to take account of the reality that people still need—indeed even more so—a break from their employment after long periods of time. But, in reality today, they won't get that break unless we move to a system that provides recognition of portability from one employer to another.

In the ACT context, the building and construction industry long service leave legislation occurred in 1981. That scheme has proven to be a great boon to both employers and employees within the construction industry. Unfortunately, it took another 18 years for the next industry within the territory to gain access to a portable scheme. That was the contract cleaning industry—in 1999.

There's no doubt that, when both those schemes were being introduced, there was disagreement on whether they should or shouldn't occur. Many employer groups argued that it shouldn't happen. But if you look at the reality now within the construction industry, where the levy started at 2½ per cent and is now down to 1 per cent, it's a financial benefit to both employees and employers to be part of that scheme. The 1 per cent is actually lower than what it would otherwise cost for employers to take appropriate action with regard to looking after long service leave accruals for their employees.

Similarly, the initial cost factor involved with setting up both those schemes has been built into the business overheads and the pricing structure of those industries. Together with that price structuring goes a 30 per cent tax rebate which is accessible by those businesses because of the fact that it is a levy.

Overall, we strongly say that within the ACT we have two proven industries where it works. Not only does it work well for employees, it works well for employers. It provides appropriate entitlements to be given to employees who are working within the industry, regardless of the employer. We now need to take it a step further and acknowledge that it's not just the contract cleaning industry which needs that assistance—and it's not just the building industry.

The same factors which applied to those industries apply across every industry in the territory and there shouldn't be a differentiation made. The same benefits that those schemes can provide, and have provided, to employers and employees can be provided to all ACT private sector workers. This should be done. This scheme will prevent the unfortunate circumstances where companies go into bankruptcy and employees cannot access their proper entitlements.

For whatever reason, many companies go into bankruptcy. They have not made proper financial account for those entitlements, and the employees lose out. We've had some high profile examples of that over the last few years, whether it be Woodlawn Mines, National Textiles or Ansett. Equally, there is a range of smaller businesses every year where that circumstance arises and workers lose out. This scheme will prevent that from occurring.

Many local employees, through no choice of their own, lose their entitlements because they are forced to look for work with other employers and in other industries. It is commonplace now for workers to have up to five significant career changes in their working lives. That's the reality. In most cases, that reality means that they're never working in one place long enough to gain access to their long service leave entitlements. To summarise, it is critical that the legislation be brought up to date, to reflect the working reality in our community today. To present further substantive evidence for our claim today, we have three other witnesses.

THE CHAIR: In the private sectors that don't have a scheme, are there any private or informal schemes, in any businesses that you're aware of, which employers offer employees in certain industries in the territory?

Mr Fotheringham: The Catholic school employers in the ACT have a portability agreement which operates across the ACT, between ACT and New South Wales, and a general agreement operates across states. The reason for there being basically two agreements—the New South Wales/ACT and the interstate one—is attributable to the fact that not every Catholic congregational school is a party to the interstate one, but all of the Catholic schools in the ACT, both diocesan and congregational, are parties to the ACT/New South Wales agreement.

That operates quite well. It encourages a cross-fertilisation within the sector. If you have six months of leave, that's a disincentive to move. If you've qualified for your 10 years

and move to a new school, although you don't have to give up what you've accumulated, you start again at the new school. The balance is transferred from, say, the diocesan sector to a school like Daramalan or Marist.

THE CHAIR: Is that three months at 10 years?

Mr Fotheringham: That's three months for 10 years. Three months for 10 years applies generally throughout the independent sector in the ACT.

THE CHAIR: Peter, you said that the building and construction industry scheme, which has been going for over 20 years, would say the levy's gone down from 2½ to 1 per cent. You say it's been a boon for employers and employees alike. As briefly as you can, specifically how has that been a boon to the employees to start with, and then for the employers?

Mr Malone: From the employees' side, it's fairly obvious, in that they gain access to long service leave, even though, in their industry, they change employers very regularly. From the employers' side, my understanding is it costs approximately 1.67 per cent of payroll to meet the long service leave entitlements. With a levy of 1 per cent, it's cheaper than they would otherwise have to put aside to meet that entitlement.

The profits from that scheme—the surplus investment—are utilised within the ACT community, within the construction industry, to promote construction. So the employers gain benefits from projects which would not otherwise have been able to proceed. We have an employer witness—Mr Rodney Barnes—who will take that matter further.

MS TUCKER: Picking up on that conversation you had, I notice you covered that in your submission, when you pointed out that there was no such arrangement between Anglican schools and Christian schools? Is that right?

Mr Fotheringham: There's a small scheme in Christian schools, but it applies only within certain designated Christian schools.

MS TUCKER: Whoever wants to answer this, it is fine. The Women's Electoral Lobby put in a submission. They raised a couple of issues. One was that we have a situation where some community services are doing the right thing as employers and have put money aside. They invest and earn some income, which they then put back into providing services for a number of vulnerable clients in an under-resourced environment. They say that this would take away their capacity to do this. Do you have a comment on that?

Mrs Tutty: I'm aware that there are a number of employers who are very good at doing that. But in the private sector I look after, which is the small and micro business in the ACT, 99 per cent of them don't fund their long service leave because the money is needed for capital. On numerous occasions I get phone calls from people who say that they are on 10 years, nine years and nine months or whatever, and they've been fired or made redundant—or the business has gone bust. Not only do they not fund their long service leave, they don't fund their superannuation. Up until the changes, they were supposed to put it in once a year. This money wasn't being put away either.

It's a significant problem at that level. I think we need to look at it from the micro to the bigger picture. A lot of people work in tiny businesses. They don't fund these things—they don't put that money away. Whilst it might disadvantage a couple who do the right thing, I think the greater majority will benefit from a scheme like this, which ensures that the people who otherwise would probably have lost out will have that ability—because it's funded.

Mr Malone: Clearly the community sector is significantly underfunded in a range of areas in which it undertakes its work. The fact that it has to rely on interest from long service leave money, which is minuscule in that respect for those individual organisations, is a reflection of the need for the ACT government to look at the whole funding issue for the community sector, reconsider how it occurs and how much is provided.

Ms Ryan: I'm from the LHMU, as you know, and our coverage is very broad. We have coverage of members in the community-based sector, and large employers in aged care and childcare service provision. The issue there is turnover, more than anything else. There is tremendous turnover in those sectors. People never qualify for long service leave, simply because they are moving from one part-time job to another, for a promotion, or to what is perceived to be a better job. Of course, there are breaks in employment to have their own families and then return to the work force.

That sort of thing becomes a big issue in the community services sector, with people never qualifying for long service leave payments. That's probably a bigger issue for smaller but good organisations who have managed to retain their staff. Those people happily will qualify for long service leave, but many thousands won't.

MS TUCKER: In your submission, you say that more than 90 per cent of employment growth over the last 20 years has been in temporary, part-time, casual and contract work where it's not possible to access LSL. Where did you get that figure from? Do you know?

Ms Ryan: That's from our submission to the Senate inquiry. It's based on ABS data. I can get you the full copy of the report.

MS TUCKER: Could you give that to the secretary?

Ms Ryan: Absolutely.

MS TUCKER: It's a very important figure. I was interested in where you got it from.

Mr Malone: The ACTU has also done some analysis of that in a document they've produced. It indicates that, of all jobs created in Australia between 1990 and 2000, 87 per cent earned less than \$26,000 per annum, and that 50 per cent—or just under half—of those jobs earned under \$15,000 per annum. So the degree of casualisation or short-term part-time jobs is very significant indeed.

MS TUCKER: I notice that, in the WEL submission, there is also a gender breakdown of part-time and casual work. They're talking about the percentage of women, which is very high. There is another thing they've raised which I wouldn't mind a response to. By

the way, they were, in overall conclusion, supportive of this legislation. But they've pointed out these particular issues which I'd like responses to, if you can.

It's possible that unscrupulous employers will not hire employees who are close to being able to take long service leave because they do not want to train someone and then have them off work for two or three months on long service leave, meaning that they will have to find a replacement. This scenario is possible, even though a current employer will not have to fund payment for the long service leave. Do you think that's an issue to worry about?

Mr Whale: I wouldn't think that would be in our industry. The transport industry is very similar to the picture Christine outlined with a lot of small employers. We are now seeing, more and more, a tendency towards contracts in the industry being geared towards seven years so they can cost into their tender documents the cutting out of a lot of long service leave. That's happened in the waste industry. We've seen instances in the last 12 months, here in the ACT, where that's occurred. We've had waste industry workers who have lost six years worth of accumulated long service leave because of the government contracting processes.

The scenario you're putting is not something I envisage being a problem here. I understand the concern of some organisations, which I would think would be outside the transport industry, from my experience, which may be utilising that funding in a productive and meaningful way.

In the transport industry, there are a lot of entitlement issues. When we've surveyed our membership in the last 12 months that has rated—in Nos 1 to 3—as their number one concern. It's more the issue that the employers who are concerned about this sort of legislation are those that aren't putting away any money and are likely to be in the Ansett or National Textile category when they go under. It's really that sort of profile for companies in our industry.

MS TUCKER: I don't know if I'm misunderstanding—correct me if I'm wrong. I would have thought that, if I were an employer and you came to me when you were just about ready for your long service leave, it would not be a cost on me as an employer, because that person would be paid from the fund. So you wouldn't be out of pocket as an employer. There might be a training issue. But if there's a serious training issue, it's probably not a casual position anyway. Is that right? Would that be a reasonable response or not?

Mr Malone: The possible cost for the employer in that circumstance could be replacement cost while that person is on leave.

MS TUCKER: What are the replacement costs? Do you mean salary?

Mr Malone: Yes.

MS TUCKER: I thought this other person was getting paid from somewhere else, totally.

MsRyan: We've currently got many examples in the construction and cleaning industries. If I'm a cleaner now wanting to access my long service leave, the situation is that I make my application to my employer; the employer pays the money and the employer is reccredited for any contributions they've made to the long service leave fund. But there may be some inconvenience to an employer who then has to replace me. I've been with them for only a short period of time, but I'm now wanting to access my long service leave under the provisions.

MS TUCKER: What sorts of costs are you talking about?

MsRyan: The cost of the replacement of the employee.

MS TUCKER: Advertising and so on?

MsRyan: No. The worker who is on leave is paid from their contributions. If the work remains, then that person may have to be replaced. That is the cost, but that is a cost under the current legislation. That is a cost if anyone qualifies for long service leave. When I go on long service leave and I'm replaced, there's a cost to my organisation for my replacement.

Mr Malone: By replacement, we mean simply a backfilling of the position for a period of time.

MS TUCKER: Yes.

Mr Fotheringham: While we take your point about the potential for unscrupulous employers, the essence of the problem is that there are probably more unscrupulous employers who deny people long service leave, and more people who miss out on long service leave, because of the situation we have at the moment, than would be affected in that scenario.

THE CHAIR: In respect of the industries that have it, I'm uncertain as to what applies here in reality, but my experience in the public service, before this place, was that a lot of people would never take it. They'd end up with about nine months. They'd often retire at around 64 because they could utilise all their long service leave—and other entitlements—to go early. I was entitled to three months long service leave when I first came into this place. I was paid a lump sum because I had to resign when I came in here. In the industries that do have it, and have portability, do most people tend to take it, as far as you're aware?

Mr Malone: I'll allow Mr Rodney Barnes to talk in relation to the contract cleaning industry. If you're broadening the question to include the public sector—

THE CHAIR: Probably forget the public sector, although I suppose you can't. In the industries that have it, do you have any idea of what percentage of people take it?

Mr Malone: I couldn't provide you with exact percentages within the ACT public sector. All I can say today, anecdotally and from my experience of working within the ACT public sector, is that it is certainly taken. It is taken for a whole range of issues and reasons.

You're correct in saying that sometimes people have deliberately planned it so they take it at the end of their careers. That's often the case because they've been later entries to the scheme and haven't accrued it until closer to the end of their working life. All I'm able to say today, without researching precise statistics, is that from my experience it is an entitlement within the ACT public sector which is taken and utilised regularly.

THE CHAIR: About when it's due, usually?

Mr Malone: Yes.

MS TUCKER: If this bill is agreed to, could people move from the public sector to the private sector?

Mr Malone: My understanding of the bill is that there isn't, in the draft, provision for that cross-transfer—that the bill applies only to the private sector.

MsRyan: We have with us today the vice-president of the union, Chris Wagland, who is a cleaner at Russell Offices and also sits as my alternate on the cleaning industry long service leave board. We also have Mr Rodney Barnes and I should mention his co-director, Len Pitt. They are from City Group—the largest private sector employer in the ACT. Rodney Barnes also sits on the cleaning industry long service leave board. They would like to talk to you today about the bill.

Mr Barnes: As Lyndal said, long service leave was introduced into the cleaning industry some time ago and the levy was set at two per cent. As an employer, we all thought we were hard done by at the time.

THE CHAIR: The three of you heard—it was not so much a warning—the screed I read out about Assembly committee hearings, and the fact that your evidence is protected but that you've got responsibilities as well. I won't repeat that because you've already heard it, but be aware of that. Please identify yourselves for the transcript, stating the capacities in which you appear before the committee, and then go into your screed.

Mr Barnes: Rodney Barnes, director of City Group, and also president of the ACT branch of the Building Service Contractors Association of Australia.

MrsWagland: Chris Wagland. I am a part-time cleaner at Russell Offices and vice-president of the LHMU.

THE CHAIR: Rodney, please continue.

Mr Barnes: It was introduced some time ago and the levy was set at 2 per cent. As an employer, we all thought we were hard done by, at the time. We then—as our company did—levied all the contracts we had. We went back to our clients. We were successful in obtaining a strike rate of 100 per cent. We forwarded the cost onto all our clients and they basically paid for it. With the levy at 2 per cent, it is reviewed every three years. Actuarials are done and hopefully, in the near future, the levy will come down, like the construction industry has, to maybe 1 per cent—or whatever.

Our thoughts are that the more people we get into the scheme, as far as contractors are concerned, the sooner that levy will come down. With more people contributing to it, the fund will get to a position where it's not fully self-funding, but some of the costs will be funded through the scheme itself.

THE CHAIR: How much is in the fund at present? Do you know? How big is the fund at present?

Mr Barnes: There is about \$1 million in the bank.

THE CHAIR: How many cleaners do you employ?

Mr Barnes: It usually ranges between 400 and 450.

THE CHAIR: You say you surveyed your clients and passed the costs onto them. Was that much? Did you have any problems there at all? What sort of costs did you pass onto your clients?

Mr Barnes: It was basically 2 per cent of our labour costs on the contracts. That's the cost we passed on to our clients. Many are government and semi-government clients, and a lot are private clients. A lot of those clients were in favour of it because of the employment conditions they themselves work under.

MR HARGREAVES: Was the issue of portability discussed with your clients—about it potentially being portable across the industry?

Mr Barnes: We sent out a flyer, or a letter, to every client basically explaining to them what had happened.

MR HARGREAVES: The reaction from the private clients and the government clients was roughly the same?

Mr Barnes: Pretty much, yes. We didn't get too much feedback from our clients, opposing it, at all.

MR HARGREAVES: Correct me if I'm wrong, but I think the point you were making was that they saw themselves getting that sort of reasonable benefit, and they couldn't see any reason why your employees shouldn't enjoy the same privileges?

Mr Barnes: That's right.

THE CHAIR: Christine?

Mrs Wagland: I've been a cleaner at Russell Offices since 1984 so I've been there for 19 years, last month. I've worked for five contractors, the latest of which is City Group. During that time I received long service leave for the years from 1990 to 1998.

That took two years in the Federal Court because the contractor we had—Broadlex Cleaning—who finished the contract in 1998, refused to pay the cleaners who had accumulated between seven and eight years long service leave. That took two years, until

2000, and a great deal of money. The union had to pay out over \$20,000 in legal costs for between 50 and 60 cleaners to get their long service leave entitlements.

The fund is a wonderful thing. I have three years banked with the long service leave cleaning fund. I never have to worry about my long service leave or what I do with my employment. If there is a change of contractors, it all stays there. In an industry that has a large percentage of ethnic employees, these are things that they don't need to be worrying about. We have enough problems without worrying about fighting for entitlements.

MR HARGREAVES: Yes. I notice that, in the previous employment, when contracts change hands, particularly in the cleaning game, there are transmission problems. I think this applies at Russell, where the same cleaner will work on site but a number of different companies arrange it. Correct me if I'm wrong. They are, in a sense, guaranteed employment all the way through.

MrsWagland: Not necessarily.

MR HARGREAVES: Right, but predominantly so within the context of the contract?

MrsWagland: Yes.

MR HARGREAVES: Yet there wasn't necessarily a guarantee that the benefits would flow forward as well, until the fund was created?

MrsWagland: Recently, yes. The only reason I received it was that the employment I had with the contractor from 1990 to 1995, Gracier Investments, was recognised by the following contractor. There was a nice little clause called "continuity of service" in the contract, which recognised our previous service. Until then, every time a contract changed, we had to re-apply for our positions and go through medicals. We virtually started again. We were paid out our annual leave, we lost all our sick leave and any other entitlements—and then we started again.

MR HARGREAVES: As casuals, I presume, the 15 per cent loading wouldn't go anywhere near to paying it, even if you put some money aside for your own long service leave from that 15 per cent?

MrsWagland: That's right—no. There are not that many casuals. It is pretty well all permanent part-time employment.

THE CHAIR: Thank you both. We have a third person.

MrsTutty: I'll introduce Ms Lauron Gazzard, who was an employee of the Florey Medical Centre for a long time. She was an employee there when the centre went bankrupt and all the employees lost all of their entitlements—every single thing, not just their long service leave.

MsGazzard: My name's Lauron Gazzard. I worked for the Florey Medical Centre for 10 years, until it went into receivership two years ago. What's going to happen obviously isn't going to help me but I've got nine grandchildren. In the future, it might help them.

We weren't protected in any way at all. Our tax wasn't paid and our super wasn't paid. Our super was taken out of our wages, which I feel was fraud—and yet they walked away. Nothing happened to them. A couple of weeks later, they opened up in business again. At 60 years of age, it left me in a really bad situation—and a lot of other people over the 10 years I was there. It affected 100 girls.

Something's got to be done to protect people like us. I don't know what the answer is. I was there for 10 years, but a lot of other girls were on rolling work time. I worked a minimum of 28½ hours every week. She wouldn't make us permanent part-time. When they went into liquidation, she said, "You could have been permanent part-time any time you liked." I cannot tell you the number of times I approached her. They were Teflon-coated, and they just slipped out of everything.

THE CHAIR: Where are they operating now?

MsGazzard: At Scullin, as Scullin Medical Practice. Their lives really didn't change—but it certainly changed ours. At 60 years of age, what do you do?

THE CHAIR: Are you working now?

MsGazzard: No. I haven't worked since the medical centre closed, because they think you're too old at 60. It left me and a lot of others in a bad situation. I don't have a husband. So there was just me—I had nothing. It wiped out everything I'd worked for for 10 years, but that's life, I guess. I feel that people have to be protected, and there was no protection for us at all. The taxation department said that, if they'd known sooner—we started writing to them five years before it happened. How much longer do they need?

THE CHAIR: Nothing happened then?

MsGazzard: Nothing happened.

THE CHAIR: No investigations—or did anyone turn up?

MsGazzard: They kept writing us letters saying that, under the privacy thing, they couldn't tell us what was happening with the Szmerlers—until it was too late. Last year they wrote us a letter saying they've got no money. We already knew that. So the taxation and everybody let us down. I feel there's got to be protection. As I said, it's not going to help me but there are a lot of young people coming up who will be in casual work or contract work who need to be protected. Maybe this can help them. I don't know.

MS TUCKER: Obviously this bill will address long service leave, but what's happening with the other entitlements that Lauron also missed out on, like her superannuation?

MrsTutty: We've been to a solicitor. We've gone through the whole process of trying to find out if there's any recourse whatsoever for Lauron, because she was a member of our union. There's nothing that can be done. Because of the way the court case ended up, and because of the fact that they were declared not to have any money, there is no legal

recourse whatsoever for any of those women who worked for so long and lost hundreds of thousands of dollars of entitlements. Virtually nothing can be done now.

MS TUCKER: I understand that, but is there something that needs to be done, or is something being done, federally or anywhere, about protection of workers' super, for example?

MrsTutty: Not that I'm aware of.

MS TUCKER: Has anything changed there, or is that still a problem?

MsRyan: The most recent change has been the requirement for employers to make payments quarterly rather than yearly in relation to superannuation. That doesn't affect a lot of our members because they're covered by federal awards that always required monthly payment anyway. That is one of the things the federal government said they had done, to help to ensure that people received their entitlements.

MS TUCKER: Was this recent legislation?

THE CHAIR: It is recent.

MsRyan: The last amendments to the superannuation guarantee legislation, but it's really a half measure. It hasn't done a lot towards protecting entitlements—and whilst there has been a great deal of discussion about it, there hasn't been a lot of action as yet.

THE CHAIR: What court was that case in, Christine?

MrsTutty: It was in the ACT Supreme Court. They were found guilty of \$3 million fraud, but there was no jail sentence imposed.

THE CHAIR: That's fairly typical here, at times, unfortunately, for a lot of things—but I shouldn't say that. I wasn't too sure if it was the Federal Court or the Supreme Court.

MrsTutty: No, he was excused. You know the story, don't you, Lauron?

MsGazzard: Yes. He was excused because she took all the blame. I believe she took all the blame so that nothing came back on him, and he could open up the practice again. If he'd been found guilty, he couldn't have operated as a doctor. So she said it was all her doing.

THE CHAIR: Did you have to pay any money yourself? Were you out of pocket? Apart from missing out on the entitlements, did you have to pay anything personally?

MsGazzard: For about the last 10 weeks that they were operating as medical services, I can't tell you how many cheques they bounced. When I had a business, if you bounced a wages cheque you were in big trouble. They continually bounced wages cheques. We were involved with the fraud squad, but even the fraud squad couldn't do anything. In the finish, I told her I wanted cash. I was one of the only employees getting cash so that my cheques wouldn't bounce. Everything was totally illegal.

If they don't pay your superannuation payments quarterly, they eventually get a letter—I have copies of letters they got—and all they do is pay the fines. They don't pay the back money. It might be \$10,000 back money, but whatever the fines are—that is how they kept getting away with it over the five years. They didn't pay the tax. If they found out that the super wasn't paid—she got numerous letters—they'd just pay the fines and not pay the back money. That's how they never put any of our money away. It was all totally illegal.

THE CHAIR: Was that the department not chasing it up, or was it the court not ordering them to pay back money—apart from the fines?

MsGazzard: The court says you have to pay it. But as long as they paid the fine, they didn't have to pick up the back money. That needs to be changed as well.

MS TUCKER: The federal amendments haven't dealt with that?

MsRyan: Not to my knowledge—no.

THE CHAIR: Is that because there's a problem in the act—that the act doesn't mandate or make that necessary—or is it simply the court not ordering that to occur?

MsRyan: One of the significant problems Lauron identified is that, when you make a complaint to the taxation department about someone's superannuation not being paid, they do not inform you about the progress they are taking. They say it's a matter of confidentiality. So the person who's owed the money can never find out whether the taxation department is pursuing that on their behalf or not. They are brilliantly constructed letters, as you can see, from the taxation department.

THE CHAIR: There is probably something wrong with the Privacy Act there too, isn't there?

Mr Fotheringham: There is one point I'd like to make in relation to the situation where firms go into liquidation. Quite often, the best employees are the ones who are worst affected. It tends to be the best employees who show some understanding towards the firm being in difficulties—so they make concessions and keep working. The wise employee, if I can put it that way, makes sure they get their entitlements while there's still money to pay their entitlements. The best employees tend to find out at the end of the day that there's nothing for them to get—that's the tragedy of it.

MsGazzard: It worked a little bit differently with them. One of my friends—Jenny—had been there for about 15 years. They called her into the office one night after hours and had a meeting. She was supposed to have a meeting only with Mrs Szmerler but they snuck Dr Szmerler in the back door—it was incredible. They fired her on the spot. She took them to court for unfair dismissal. They weren't going to pay her long service leave. She worked a lot of hours—she was permanent. She got her money, but she was one of the very few. If they had been smarter, they wouldn't have done it the way they did with her.

As I said, they were Teflon-coated. It seems that, whatever they did, they could slip out of and everybody else suffered. These laws are there but they're not guaranteed. For

people like us, there was no comeback on them. There still isn't any comeback on them. Because they were proprietary limited, you can't even sue them personally. It makes it very hard.

MR HARGREAVES: There's a bit of a fear that, if you do have a fund into which people pay their money to pick up these entitlements, these people won't do it either—that they'll be taken to court, cop a fine, pay the fine and still not pay it.

MsGazzard: Yes. This is why it's got to be changed—that if they're behind, they must make up the money, as well as pay the fine. But it's also got to be so that our money definitely goes somewhere. There's got to be some check on them. Can you imagine what they took from 100 girls over 10 years? Those are just the ones I can remember. There were a lot I couldn't remember. That was a lot of money—whatever they did with it. I don't know what they did with it.

MsRyan: Regarding the operation of the cleaning industry long service leave fund, as board members I, Chris and Rod receive reports on compliance. Compliance rates are very high in both construction and cleaning. The inspectors are quite conscientious about how they perform their duties.

We don't have the same sorts of problems with long service leave that we have seen with taxation. People are informed of their credits. Employers who do not make contributions are pursued. Where necessary, they are followed through to prosecution. That is done by the board, not independently as in the case of Chris Wagland, where a group of individuals had to take legal action. I'm sure the boards could give you statistics on the compliance rates in both areas. They are very high and very good. I think that is because of the way the legislation has been written. The involvement of the board ensures that people are followed up.

THE CHAIR: Are there any further comments any of you five would like to make?

Mr Fotheringham: I will make two brief comments. A lot of the focus in the discussion has been in the context of virtually a wage for a job. There are a number of jobs where you have an incremental structure, so that the contingent liability for employers which accrued 10 years ago is not only on a much lower level, as far as the effects of inflation are concerned, it's also a much lower level in respect of the salary paid.

In the case of our teachers, a teacher recruited 10 years ago may have been recruited on a salary of \$26,000. Ten years down the track, they're at the top of their scale and they're on \$58,000. If the employer doesn't make provision for long service leave, they can be in real strife.

We had one school here in the ACT that went belly-up. Part of their problem was that they hadn't provisioned for long service leave. They'd recruited people on the basis of 13 weeks long service leave for 10 years service. When they went into liquidation, the liquidators would allow only the statutory minimum, not what the employers had contracted for. There was no money there anyway, so it was more a theoretical exercise than anything. Good employers will provision, but there are a lot of employers out there who don't, and it comes to light only after 10 years.

The other point I wanted to make was that, as Peter Malone indicated, we shouldn't see long service leave as being immutable. Long service leave has changed over the years. It started out as a benefit for colonial civil servants, to allow them to go back to the mother country. Many of them became public servants in the original Commonwealth public service. The condition was carried over. That was one context.

That changed in the 1930s and the 1940s and 1950s. It has changed again in respect of the duration, the entitlements you get under long service leave, when you can access those entitlements, and what happens in cases of termination. This is just another change to reflect the changing pattern of employment. It's a change we really need to make.

MS TUCKER: Perhaps I can comment on the first remark you made. This scheme would actually help the employer because you've got the interest that's accruing. So their increased liability is going to be dealt with by the interest that's raised within the fund. Right?

Mr Fotheringham: For some employers, yes.

MS TUCKER: That's where you were arguing it can be an advantage.

Mr Fotheringham: Yes. That's one of the advantages.

MS TUCKER: I realise you are saying there are more than one, but I am just talking on that one. Thank you.

THE CHAIR: Thank you all very much for your attendance.

Mr Fotheringham: Thank you.

CHRISTOPHER BRIAN PETERS and

ALEXANDRA ALLARS

were called.

THE CHAIR: You've both been here before, but you should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. It gives you certain protections but also certain responsibilities. It means you are protected from certain legal action such as defamation for what you say at the public hearing. It also means you have the responsibility to tell the committee the truth because giving false or misleading evidence will be treated by the Assembly as a serious matter.

That might be relevant. That could apply to some of the evidence we have just heard, but I assume that was all public knowledge because there is a court case as well. If that wasn't the case, it would certainly be protected by the privilege aspects of Assembly committees.

You probably don't have to worry about that particularly, but we have to give that warning to everyone. For the purpose of the transcript, could you both please state your names and the capacities in which you appear before this committee.

THE CHAIR: Before we take your evidence, you will note from the card before you that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. This gives you certain protections but also certain responsibilities. It means that you are protected from certain legal actions such as defamation for what you say at the public hearing. It also means that you have a responsibility to tell the committee the truth because giving false or misleading evidence will be treated by the Assembly as a serious matter. It might be possibly relevant because I think some of the evidence we just heard then—

MR HARGREAVES: Could be a tad—

THE CHAIR: It could be, but also I assume that that was all probably public knowledge because there was a court case as well.

MR HARGREAVES: Possibly.

THE CHAIR: Possibly but if that was not the case that certainly would be protected by the privilege aspects of Assembly committees. You probably do not have to worry about that particularly but we have to give that warning to everyone. For the purposes of the transcript could you both please state your name and the capacity in which you appear before this committee.

Mr Peters: Christopher Brian Peters, Chief Executive of the ACT and Region Chamber of Commerce and Industry, the Retail Traders Association of the ACT, and the Contract Cleaners Guild of the ACT.

Ms Allars: I am Alexandra Allars, a senior workplace relations adviser with the ACT and Region Chamber and Commerce and Industry.

THE CHAIR: I don't know who wants to go first—Chris perhaps?

Mr Peters: Thank you, Chairman. We arrived early by mistake because Alex had it in her diary as 2.30 and I had it in my diary as 3, so we thought we had better take the safer option and get here at the earlier time. I am glad we did because we heard some interesting things a minute ago which we would like to comment on.

THE CHAIR: Sure.

Mr Peters: Long service leave as far as the business community is concerned is a long recognised reward for long service by a particular employee to a particular employer. It is been a system that has been in place for all of our working lives and it is well understood by employers and employees what their entitlements are.

The chamber of commerce not only here but each of our colleagues around Australia and, indeed, the national Australian Chamber of Commerce and Industry supports flexibility in working conditions. We are currently going through the policy argument federally at encouraging structures to allow people to purchase extra leave to allow them to take extra time off when they need it so that there is more flexibility. However, we strongly believe that that is a workplace level issue, not a systemic issue that should be dealt with by legislation but should be dealt with by individual negotiations.

If this bill was to become law it would impose an immediate extra tax effectively on wages, starting off at 2 per cent, and businesses would then have to find some way to deal with that. Contrary to what people might think, businesses don't put their hand in their back pocket and drag out an extra 2 per cent from their savings to deal with this. They have to either meet it by increasing the price that they charge consumers for their goods or by reducing the wages paid to their other staff or by reducing the number of staff they have. Indeed, if this bill was to become law, we the chamber of commerce would be seeking in the next round of national wage case adjustments for any additional cost to be absorbed in wage increases.

We have conducted some surveys of our members in relation to this proposed bill. We have just under a thousand members and we survey them quite frequently on varying issues, whether it be the economic performance of the ACT or particular government proposals.

In relation to this issue, on the question "As an employer are you opposed to the introduction of a portable long service leave fund for private sector employees?", 99 per cent of those surveyed indicated they were opposed to it, 1 per cent indicated they were not opposed to it.

MS TUCKER: Was that the whole question?

Mr Peters: That's right, one question.

MS TUCKER: So what else did you give to them?

Mr Peters: There's a series of other questions, which I'll come to.

MS TUCKER: No, but when you asked them that question, what was the supporting information you gave them?

Mr Peters: Several pages of explanatory information.

MS TUCKER: Can we see that, too—can the committee see that?

Mr Peters: Sure. We don't have it with us but we can supply it certainly.

MS TUCKER: Thank you.

Mr Peters: And in the next question, which was “If a portable scheme was introduced, how would you fund the additional cost?” we had 20 per cent indicate that they would pass the cost on to the consumer; 30 per cent indicated that they would reduce the salaries or forgo other over-award entitlements and wage increases to their employees; 26 per cent indicated that they would reduce staff; and 18 per cent indicated that the business owners would have to absorb it out of their own income. We are happy to leave that one with you as well.

THE CHAIR: Thank you.

Mr Peters: We also surveyed and asked the question about what industry particular businesses came from. There is a huge range of them so that also gives you a breakdown right across from cleaning to retail to video et cetera. Another question—

MS TUCKER: Sorry, did you say that you asked the cleaning industry this?

Ms Allars: Our members that are members of the—

Mr Peters: Including the cleaning industry.

MS TUCKER: Doesn't the cleaning industry already do it?

Mr Peters: No, not necessarily. There are quite a few that have made complex arrangements to make sure they are exempt from the current arrangements in the ACT by using contracting-out arrangements, and the prime reason that some of those businesses have moved to contracting out is specifically over the portable long service leave issue. That was the trigger that caused a number of employers in this town to no longer employ any staff. They use contracting companies interstate to provide their labour.

MS TUCKER: Is this the same in the construction industry?

Mr Peters: Yes.

MS TUCKER: So have you also interviewed construction industry people on that?

Mr Peters: We have. Yes, those of our members who are in the construction industry include that figure.

MS TUCKER: And so they have also been contracting out to avoid paying?

Mr Peters: No, some of them have.

MS TUCKER: So some of these people are actually under the current scheme?

Mr Peters: Yes. A small percentage of the total number, yes.

MS TUCKER: But you asked them what would it be like to have this scheme?

Mr Peters: Sorry?

MS TUCKER: What was the question you were asking them if they're already paying?

Ms Allars: We just asked them what industry they worked in to start with. That was this question to get an indication of which industries.

MS TUCKER: Yes, but your question was: "What would you do if this was imposed on you?"

Mr Peters: Yes.

MS TUCKER: But they already have something imposed on them but they have answered your survey.

Mr Peters: That's right, and about 2 per cent of our members come from the construction industry.

A further question we asked was the number of employees that they have or full-time equivalent employees, and 47 per cent of those are between six and 15 full-time equivalent employees, 10 per cent of them are zero to five employees and only 10 per cent of them were over 36 employees.

I am sure you would be aware that under current Australian accounting standards businesses are required to account for the liability of long service leave as an expense to the business and a liability in the company's balance sheet but there is no requirement to physically put the money aside separately.

The final question we asked was about how many of them do put the money aside separately. Fifty-three per cent indicated that they do put the funds aside and 47 indicated they don't separately identify the funds.

There is a rapidly changing way in which people choose to be employed. We have seen our working arrangements move from predominantly full-time lifetime employment when our parents were entering the work force to when we were entering the work force, where typically we might be expected to have two or three jobs in our careers. A young person leaving school today and entering the work force is expected to have seven

separate careers during their working life. Some of those are driven by industry requirements, many of them are driven by the choices of the employees as to how they want to work, what hours they want to work and what jobs they want to work at. So we are in the period of quite remarkable change.

In the 6½ years that I have been at the chamber of commerce I am only aware of one problem that occurred with long service leave and other entitlements not being paid, and that was the case that was referred to by the previous witnesses in relation to the Florey Medical Centre. They were members of the chamber of commerce at the time.

What you have heard is one side of the situation. What you need to know to put that in perspective is that that was the largest private sector medical practice in the ACT. It has been operating here for a long period of time. Several factors happened in fairly quick succession that sent the company broke. Firstly, they were operating the only all night Medicare charging facility in the ACT, where people could go in at any time of the day or night and not pay the private sector fees. Against our recommendations to them to close that part of the practice down because it was unprofitable, they chose to maintain it as a service to the community. That decision sent the business broke.

In addition to that, there is probably a public perception that if you walk into a medical practice and there are seven doctors' names on the wall, they might be partners in that business. In this particular case that was not the case. The business was owned by one medical practitioner and the rest of them were all independent contractors who were running their own private practices operating out of those facilities.

At a similar time when the business suffered its cash flow problems, all but one of those medical practitioners advised Medicare to change the crediting account for the fees earned by the practice from the practice account to their own personal account. You can argue about the ethics and legality of that but from our situation those medical practitioners stole that money from the medical practice, and there was a considerable amount of money involved.

As a result of that the business went broke and the doctor concerned that owned the practice did not walk away without having any negative impact. He lost the lot. He lost his home, which was compulsorily sold by the mortgagee. He ended up with a huge liability which will not be paid—he hasn't got the assets to pay it. The guy has gone from being a well paid or well income earning respected member of our community, to having been dragged through supreme courts of this state, and in every case without a court convicting him of anything, although in the event of his wife there was a conviction for misappropriating one cheque of fraud, but the penalty was no jail term; in fact, no financial penalty.

So there was a whole heap of reasons behind the cause of that particular insolvency. Certainly, businesses do go broke from time to time. It is a matter of our free enterprise system. And in many cases employees will lose entitlements when that happens, as do the people who own the business.

The previous witnesses were talking about the National Textiles case, which was very public—about where employees lost entitlements when a listed public company went broke. However, you weren't told by the previous witnesses that since that time the

Commonwealth government has put a rescue system in place, referred to the GERS system, which effectively guarantees all employee entitlements, but they are capped.

So if a business goes broke and someone is owed a year and a half of annual holidays and they have never taken annual holidays, they won't get their entire entitlement. But if they have taken them in the normal course of business, I think 2½ years of untaken holidays are protected by the Commonwealth scheme.

One other qualification is that the entitlements are on average weekly earnings—they are not based on the actual salaries of the employees. So there is, in the last 12 months, a new nation-wide scheme to protect employee benefits that has been put in place by the Commonwealth.

Before doing that, the Commonwealth examined a number of ways to protect those entitlements. One was to establish what effectively has been discussed in this bill—a statutory bank system where employers were required to contribute. Another system they considered was an insurance scheme where employers would be required to provide an insurance policy ensuring the liabilities of the business for the benefits for their employees.

In all of those cases the Commonwealth found the cost of providing such a scheme would send small businesses out of business. As you would be aware, in the ACT 97 per cent of our businesses are small business. So for those reasons, the Commonwealth decided not to proceed with a statutory scheme but to provide taxpayers' funds to support those very small number of business that go broke without the funds to pay worker entitlement. So there is already a system in place. That system has been in place for over 12 months.

MS TUCKER: Does that deal with long service leave, you are saying?

Mr Peters: The lot. Long service leave, superannuation, et cetera.

MS TUCKER: Yes, okay.

Mr Peters: We have also seen in the last few months—I think it took effect from 1 July this year—another Commonwealth change to the legislation in relation to superannuation, where previously the law only required an employer to pay annually.

Many superannuation arrangements that were put in place by employers in fact did require them to pay monthly, but that was a contracting obligation with many industry funds rather than a legal obligation. But as of that change in the legislation, employers are now required to pay three-monthly, and are required to certify in writing to their employees every three months that the funds have been paid and on what dates and to whom.

In addition to that, we are seeing an increasing number of superannuation funds, and particularly in the major industry funds, where they are supplying monthly statements to the members of their funds so that employees can also double check it by seeing that the money has been paid into their accounts.

We supported the government's move to make other changes to the long service leave provisions here, and that was in relation to the qualifying periods. And whilst the ACT was certainly not at all unusually difficult in having a seven-year qualifying period—indeed, most states and territories in Australia do have a seven-year term—we recognise that New South Wales had the most generous scheme in Australia with a five-year qualifying period. We are surrounded by New South Wales and that did bring a disadvantage to ACT people, so we supported the change which has now taken place in reducing the seven-year qualifying period to five years.

So we don't have an issue with modifying superannuation arrangements as times change, but there is an extremely strong opposition from the business community about long service leave. They see this as a benefit to employees in recognition of long service served for that particular employer.

The commercial realities of it are that in these times very few employees work with a particular business long enough to collect long service leave. In the days when our parents were in the workplace it was a standard lifetime role with one employer and every employee would expect to go on long service leave.

Just as one anecdotal comment, in the chamber of commerce we have 13 employees, and one of our people recently, as recently as last month, hit the 10-year period for an entitlement to full long service leave pro rata. So as we are seeing the gradual change in our working conditions where people choose, particularly in the sectors like IT, to work on one-person contracts and not as an employee, because it gives them more flexibility in their working hours, we are also seeing the relevance of long service continue to decrease.

So at the time we are seeing long service fading away under its current system, the ACT is considering a bill that would put it back on the agenda so that it will apply to everyone, whether they served a period of time with one employer or not.

I think, Ms Tucker, you asked a question of the last people about what impact it would have if this scheme was in place when someone went to go on long service leave, and certainly the businesses would have contributed in the past and there would not be the obligation on the current employer. But can I suggest that if someone knocked on an employer's door looking for a job and it was known that they were one year away from qualifying, chances are they wouldn't get the job.

You can argue the ethics of that, you can argue the discrimination of it, but the reality is that that is an issue that would discriminate against people who were just short of qualifying because, whilst it wouldn't cost the business money, they don't have to pay for it, they have to go through the inconvenience of having just put someone on and then having to just replace them for a short-term period.

Can I ask my colleague, Alex, to pick up all the extra things that I have forgotten?

THE CHAIR: Sure.

MS TUCKER: Can I ask you a question first?

Mr Peters: Sure.

MS TUCKER: Just on your general philosophical position that long service is about giving reward to an employee for sticking around, basically. But is there an aspect of that which is about acknowledging that if someone has worked that long, they might need a break?

Mr Peters: It comes in various ways. I am one of those unusual people who are not an employee. I am a contractor.

MS TUCKER: But, no, with the philosophy, let's get back to your basic point. I am just trying to understand what the point of it is. So you are arguing that the initial rationale was a reward?

Mr Peters: Yes.

MS TUCKER: It is a thank-you present?

Mr Peters: Yes.

MS TUCKER: But was there not also within that an understanding that if you have worked for that long, you might need a bigger break than your annual leave?

Mr Peters: Different people will have different needs in that area, which is why we support the flexible working arrangements. So that there are some of us who are workaholics and believe we don't need that break; there are others who will need considerably more than what would be provided under this proposal. The individuals that do need considerably more should have the flexibility to be able to have their arrangements so that they might take less in salary and have greater leave periods. We support that on a workplace basis.

MS TUCKER: I understand that argument. But what I don't understand is, in terms of providing a reasonably equal working life for people who, through no fault of their own, are not going to be able to stay with one employer but are still a human being who has worked for 10 years, or whatever is, who needs a break. So if you are accepting that that was part of the rationale for it, then I don't quite understand what your argument is for saying that you don't give this break to that human being who, through no fault of their own, has not been able to get the tick because they have stayed with one employer.

Mr Peters: But it is also no fault of the owner, the employer, if they haven't stayed with that employer, so why should the employer fund that? People will choose to move between jobs—in most cases their choice, not the employer's choice.

MS TUCKER: No, not the employer's choice. I agree that society's structural pressures—

Mr Peters: Yes, and people might choose to have a month off between two jobs.

MS TUCKER: Yes, but they can't often afford that. You look at cleaners and so on, and I think there would be an argument that you can't. I understand your argument but I am

interested from employer's position. But I am still trying to get an understanding from you of what your view, the chamber of commerce's view, is about the situation for those employees. What do you say to the employee that puts that argument, who has worked hard for 10 years and the nature of the work has meant, for all sorts of reasons out of their control, that they don't stay with one employer, but there is a break needed?

Mr Peters: That is a commercial decision for the employer and if the employee is a valuable person, the employer in many cases will voluntarily come to an arrangement with the individual employee.

MS TUCKER: What, if they have only been there for a year?

Mr Peters: No, if they have been there for—

MS TUCKER: Yes, see, the point of this whole legislation, as I understood it, is you have got people forced into a situation in their working life where they move from company to company. They have worked for 10 years, company to company, but they have still worked the same as you have—the guy who has worked for the one boss who is then going to reward them. Right? This other person, the ethnic person who is cleaning, no control, really, of the work situation, has equally worked hard for 10 years. I am wondering what you think the corporate responsibility is for that person, who is also a worker. Unless you are saying that the break bit isn't part of the philosophy—I think it is pretty obvious it would be—how do you think that person's welfare can be looked after?

Mr Peters: But many of those industries where we are talking about people having rapid changes of employers are industries where people don't work full time. If you are looking at the cleaning industry as an example, in many of those cases they are part time.

MS TUCKER: So you think part-time people don't need a break?

Mr Peters: No, I am saying part-time people have chosen to work part time because it fits their own lifestyle.

Ms Allars: Can I jump in there?

MS TUCKER: Do you know the profile of the part-time cleaner? It's not that they sit around all day and work at night for fun. They are looking after families or they are carers or whatever. So, you know, you have got to be a bit careful about saying people work part time because they don't need much money or it's their choice.

Mr Peters: Some people choose to work part time.

MS TUCKER: Yes, some people do.

THE CHAIR: I think there would be a whole series of reasons why people are part time, Kerrie.

MS TUCKER: There is a lot of different reasons. If that is your argument, that is interesting. I am just trying to understand the arguments. So your argument seems to be

that if someone is working part time for 10 years then that means that they would have a lesser call in any way, even for the part-time wage for them to have long service leave. You would say that, would you?

Mr Peters: Yes, and the converse of that argument—

MS TUCKER: If I was your employee and I had been for 10 years and I worked part time, would I be entitled to long service leave?

Ms Allars: On a pro rata basis.

MS TUCKER: On a pro rata basis. I still would be?

Ms Allars: Absolutely.

MS TUCKER: So you are not distinguishing between part time and full time when you are talking about someone who actually has worked with one employer. But when I am asking you about portability, you are saying, well, the person who is in a portable, in a casual working relationship might not be entitled in some way because they work part time. So how does that fit with your first statement that if you are employing someone part time and they have worked for just you for 10 years, you do think they are entitled to a break?

Mr Peters: I am having a bit of trouble understanding the question, sorry.

MS TUCKER: Are you? Okay. Do you understand it?

Ms Allars: No, I'm a bit confused. Under the legislation, part time and, since the changes were made in '97, casuals now have access to a pro rata entitlement.

MS TUCKER: If they work for the same employer.

Ms Allars: Yes.

MS TUCKER: So you are saying there that whether you work full time or part time, you are entitled to long service leave. Is that right?

Ms Allars: Yes.

Mr Peters: Yes.

MS TUCKER: Then I just asked you a question about how do we look after the interests of the employee for who, not by their own choice because of the nature of their work, are in a situation where they don't have the luxury of working for the same person for 10 years, but they still work hard? And I asked you that, and you said well a lot of those people who are in that high turnover of employers work part time. Now what is your point? Because if they work part time for the same employer, you think they are entitled to long service leave. So why aren't they entitled to it if they have got different employers?

Mr Peters: Let me try to answer that by giving you two examples. If you are talking about those particular industries where short-term employment is endemic because of the changing nature of work, and the construction industry is a classic example, that is why there is an agreed voluntary system in place—it's not compulsory but the employers didn't object to it; they accepted the need for it as the workplace changed.

If you take another example, which is more relevant to this city, you will see younger people in the IT industry working 20-hour days by their choice of working pattern because that's how they like to work, and then collapsing in a heap and taking two months off and then going back and doing it again. Now, that's their choice. That's the way they operate.

We had a new server put in at the office of the chamber of commerce a couple of months ago and they came in at 4 o'clock one afternoon and worked right through till 3.30 on Saturday afternoon—a ridiculous situation in my view. But that's the way they prefer to operate. They prefer to get on with a job and do it and work right through the night. And then they will collapse in a heap and take two days off.

MR HARGREAVES: Can I go down the track just a little bit that Kerrie has gone down. You talked about, in my words, a responsibility nexus—like the responsibility for long service leave is a specific arrangement, or an arrangement between a specific employer and a specific employee in terms of rewards. And yet I think my understanding of long service leave is it has got more to do with occupational health and safety than it has to do with reward for long service to a company. Usually you get a gold watch or a badge or something, or a plaque on your wall, if you have been really wonderful to them.

But I am trying to understand whether or not you believe that the provision of long service leave is really a discretionary thing for companies to actually come up with. I am having difficulty working out, for example, what is the difference between, say, workers compensation payments, which is all about OH&S and for which provision has to be made regardless of where the employee works, and if an employee has cause to claim on workers compensation they do so. And yet we are saying that the long service leave provision is in a completely different category to that.

Mr Peters: Yes.

MR HARGREAVES: I am having difficulty understanding what the difference is, particularly in relation to the administrative cost of that. As I understand it, for long service leave and, say, super, all companies are required to make provision for that and, by right, they are actually required to make cash provision for that.

Mr Peters: No, they are not.

MR HARGREAVES: All right then, we might go down that track a little later on in a legislative sense then.

Mr Peters: They are required to make an accounting provision for that.

MR HARGREAVES: Okay. But they have to make some provision for it in some sense. So the administrative burden is on small business, which is I think the major cause of your concern. I would expect you would consider that large companies cope with it anyway, whereas the burden is on small business where they don't have that capacity to administratively change.

But if they have got administrative arrangements in their accounting systems and their cash flows to take care of super and workers compensation, where is the extra burden if they just tack another one on top, like long service leave provisions? Where is the extra burden in the cost to small business? And what is the difference between making a provision for workers comp, which is an OH&S issue, and making provision for long service leave, which, in my view, is an OH&S issue?

Mr Peters: If you are talking about the administrative cost of processing it, I would agree, there is no difference between if this bill was to become law and a monthly 2 per cent levy was payable. It is a repeat of the superannuation obligations. From an administration and accounting point of view there is the additional work of doing it but it is no different to as they do it now for superannuation or they do it for workers compensation.

MR HARGREAVES: I think you made a point that the probability is in fact the cost to be passed on to consumers, the actual amount of money.

Mr Peters: Yes.

MR HARGREAVES: And the problem with that is?

Mr Peters: Well, I think we are talking about different things. I think on the one hand you are talking about the administrative cost of processing. The second—

MR HARGREAVES: You have just said that that is not going to be too much of a hassle, given that the processes are already in place.

Mr Peters: But the second issue is the 2 per cent, or whatever the surcharge is.

MR HARGREAVES: Yes. Didn't you just say earlier on that the probability is that will get passed on to the consumer anyway?

THE CHAIR: No, I think he said about four different areas.

Mr Peters: There are four different areas. The first probability is from a small business point of view that very few people ever qualify for long service leave.

Ms Allars: Can I jump in as well. They don't set the cash aside. What we are saying—and we are seeing this with a lot of small to medium businesses—is they don't have the cash handy. They don't set that cash aside. They certainly set aside that there is an entitlement for these employees to get to this, but they don't start to set the cash aside until, for example, they get to the pro rata entitlement after five years.

So what we are finding with a lot of our members is they don't have that cash sitting in the bank or set aside anywhere. So if a scheme is introduced and they have to go back and find the cash that they hadn't set aside for employees that may leave them before they even become entitled to the five-year now pro rata entitlement, they don't have the cash there. And it is going to cause big cash flow problems for a lot of our small to medium-size business members.

MR HARGREAVES: So does that mean—

THE CHAIR: Let her finish.

MR HARGREAVES: No, I want to clarify what you said because it is a really important point.

Ms Allars: Yes, sure.

MR HARGREAVES: What I am hearing you say is that, firstly, the small businesses ought to get the discipline actually to put the cash away, and, secondly, if we introduced it tomorrow then they have got a problem backcasting on it. Are both of those two issues—

Ms Allars: I didn't talk about discipline. I am just saying to you this is the nature of small business in the ACT and the people we represent. They don't have that cash set aside. They absolutely acknowledge there is an entitlement. The second point I am saying is that there could certainly be, for a lot of small business, big issues as far as coming up with the money, which could see them having to make staff redundant, having to restructure, having to even go belly-up. That is a real concern we have. I think it is a legitimate concern. That is what our members are telling us every day when we talk to them about this issue.

MR HARGREAVES: Are you talking about the possible imposition of backcasting at the point of introduction or are you talking about the ongoing imposition of 2 per cent?

Ms Allars: That, as well as the ongoing one, yes.

MR HARGREAVES: And wouldn't they immediately just pass on the 2 per cent to their consumers and therefore cover it?

Mr Peters: No, what they have said is that 26 per cent of them would pass on the cost to the consumer; 30 per cent of them would reduce the salaries of their existing staff; 26 per cent of them would reduce the numbers of staff they employ; and 18 per cent of them would take less money home themselves.

MR HARGREAVES: Did you canvass the reasons for that?

Ms Allars: No, and we can go—

MR HARGREAVES: Do you have a gut feeling as to why, for example, they would try to reduce the salary of existing staff?

Mr Peters: Because if you added 2 per cent additional cost to their labour costs, which for most service businesses is the substantial part of their costs, it has got to come from somewhere.

MR HARGREAVES: But aren't they all being treated the same way, so the industry they are providing the service to would be expecting this, wouldn't it?

Mr Peters: I'm sorry?

MR HARGREAVES: All of these companies that are providing the service are in the same boat. They are all in the same boat. They are all going to be increasing their salary vote by 2 per cent, aren't they?

Mr Peters: Sorry. I think you might be confusing that with what you heard previously—

MR HARGREAVES: No, I wasn't here.

Mr Peters: Where that particular industry has as its main client base government, who is already used to that system. Forty per cent of our members are in the retail business. Their customers are not other businesses. Their customers are you and I in the shop.

MR HARGREAVES: And would we not be expecting to see a slight increase, 2 per cent of the wages cost going on top of the whole global range of products that we have got?

Mr Peters: Well, 26 per cent of them would do that, yes.

MR HARGREAVES: I am trying to get a handle on why the other people wouldn't just instantly follow suit. It just seems to me the easiest way out.

Ms Allars: Because it is competitive in some businesses. They can't afford to increase prices so what they will do instead is cut back on staff and they won't pay people above award rates; they will just pay them the bare minimum.

Mr Peters: And the owners of the business would—

MR HARGREAVES: It strikes me as being a bit of double dip. If everybody in the industry has copped in effect a 2 per cent increase in their costs, then presumably the people to whom they are providing services and goods are going to expect it from each and every person in there.

Mr Peters: No, and let me give you the examples for why I say no. Every year we go through a national wage case, and every year that is argued by the employer bodies and the employee bodies in the Australian Industrial Relations Commission. And once that is set, then every state—and in this state it is us—goes through amending all of the awards to counter for that. If what you said was the case, on the day after the national wage cases were implemented in the ACT, retail prices would go up 2 per cent. They don't.

MR HARGREAVES: No, but that is the argument that the business sector actually runs against an increase in the wage case anyway, and that argument has a certain degree of

weight in terms of the amount that is actually handed down. It has a valid role to play in that. But if workers compensation goes up, nobody squeals—they just pass on it, don't they?

Mr Peters: Sorry. When workers compensation goes up, business squeals dramatically. We are seeing businesses now leaving the ACT and relocating into Queanbeyan as a direct result of workers compensation. Because whilst in the ACT workers compensation is more expensive than New South Wales, in many industry cases it is not dramatically more expensive. It is more expensive. In some industry cases it is dramatically more expensive.

Just as an example, we have got one business in the ACT that is currently paying 46 per cent of the payroll in workers compensation premiums. Why wouldn't they move across the border?

THE CHAIR: What is it across the border?

Mr Peters: It is about 18 per cent; 12 per cent in Victoria; 6 per cent in Tasmania for the same industry.

MR HARGREAVES: Can I take you back to something that you said before. You made a distinction between a company having the government sector as a client and others having the private sector as a client. I know, within particularly the cleaning game—this is particularly one that I do know well—and security guards, there are companies that have government clients and they have private sector clients, big ones and some not so big.

When an increase of, say, 2 per cent is passed on, usually the government will pick it up in a rise and fall clause or something of that order. That is coming out of my pocket as a taxpayer. What is the difference between it coming out of my pocket as a taxpayer and coming out of my pocket when I go down the road and buy a hamburger or something? It is coming out of the same pocket.

Mr Peters: No.

MR HARGREAVES: Why?

Mr Peters: The reality is that if a business knocks on your door as a government official that can approve a rise and fall in a contract and you agree to it, maybe because your government has a philosophical reason for wanting to, and if next I then knock on the door of a private sector person and say, "The government has just increased my costs, I've got to put your charge up 2 per cent," you can lay London to a brick what the answer is going to be—and that is, it's my problem, not the customer's. It is only government that would say, "Yes, that's a cost of the whole community. Government will pay for it." The private sector won't.

MR HARGREAVES: So what you are saying is that the government sector is quite happy to pick up the bill where a scheme is introduced to guarantee the provision of an OH&S regime, which is long service leave or workers comp, and yet the private sector is not prepared to pick up that one.

Mr Peters: So the private sector won't accept a cost increase from their suppliers because the suppliers had a cost increase.

THE CHAIR: The private sector uses its own money and the government uses our money.

Mr Peters: Yes.

MR HARGREAVES: Say that again, please?

THE CHAIR: Because the private sector uses its own money, I would image, and the government uses our money, the people's money.

MR HARGREAVES: Well, I might argue that the Discount Tyre Service uses my money when I buy their stuff. It's not the government's money and it ain't their money. I don't get any free tyres.

Mr Peters: Let me give an example that we have recently been involved with that exactly sets that example. It is one that we, as a representative of the business community, find quite fascinating. A large number of members of the chamber come from the community services sector. They are providing government-funded programs to our community. We have recently gone through the negotiations of changes to that award. In any other case, if you go to the business community and say the union has lodged an application for a 25 per cent increase in fees or whatever, the response you will get from the business community is along the lines of what we have spoken about here—"How the hell are we going to fund that? Gee, I'm going to have to put my prices up" or "I'll have to cut my staff" or that sort of response.

In this case, we experienced the absolute reverse. The response was: "Our people deserve more money, and because it is funded by government, government will increase their funding to pay for it." You can argue about the responsibility of that and who is bearing that responsibility, but it is just to highlight the difference between the thinking of the private sector and the community sector.

MR HARGREAVES: But isn't that just jacking the price up for the service? The government is buying a service. It is jacking the price up. Bang. "So, okay, the price has gone up. It's a legitimate price increase, we'll wear it."

Mr Peters: These are free services. These are provided by non-government organisations.

MR HARGREAVES: Yes, they are provided free to the community but they are not provided free to the government. The government is paying them for service. So they are saying the price has gone up and the government is saying, "It's a legitimate price increase. We'll pay it." I don't see a problem with that.

Mr Peters: And the private sector will say, "We have to cut our costs to reflect that price increase, or we have to increase our prices. They're the only two options we've got. And

if we increase our prices will we then turn over less, and that will therefore reduce our profits, therefore we've got to put our prices up again or reduce our costs again."

MR HARGREAVES: I think I have gone down that track as far as I can go.

THE CHAIR: Alex, did you want to say something?

Ms Allars: Can I just clarify a few points, because I am mindful of the time certainly. Just in relation to our survey and the mention of the construction industry, it actually was the engineers that were covered in that industry; and also the clerical staff that aren't currently covered by their long service leave scheme.

And also in relation the cleaning, it was actually dry cleaning. Some our members are in dry cleaning. The chamber, as Chris has said—

MR HARGREAVES: Huge difference.

Ms Allars: We will provide you with further details. But as Chris has said, the chamber supports long service leave for longstanding loyal service to one employer, and we acknowledge there have been huge changes in workplace structures, in the work patterns et cetera. I note that one of the proposals to introduce a portable scheme is to assist people to deal with working family issues and their caring responsibilities et cetera.

I don't know if you have seen what is going on in the working family test case before the Industrial Relations Commission and what the Australian chamber of commerce has put up as a proposal. We have mentioned that long service leave is a reward for long service.

Also you have brought up the issues of occupational health and safety and people needing a break. But we would say that there are other ways that can be worked out in individual workplaces between individual employees and their employers to deal with occupational health and safety issues, but also having a break from working more intensely, for introducing flexible hours. I can talk through some of them now and I can certainly provide you with a copy of the Australian chamber of commerce's submission on this if it would assist you.

MS TUCKER: Yes, in writing would good because we are way over time already.

Mr Peters: The executive summary probably would—

THE CHAIR: We have had some drop out. Have you got a couple of examples there?

MS TUCKER: Have we? Who has dropped out?

THE CHAIR: John Miller has dropped out.

Ms Allars: For example, some of them could be the 17½ per cent leave loading that is available under federal awards, which in the ACT most employees are covered by. You can forgo that and then purchase an extra 3½ days annual leave. You could purchase up to six weeks extra leave if you were discounting in your salary, taking 88½ per cent of your wage to equate to six weeks leave.

In relation to penalty rates, instead of taking the cash you could take them as a leave entitlement. There are lots of other ways that we would propose that people can take a break from work even during the year, not just when they get to the 10-year mark. But we would support people working that out in their workplaces.

MR HARGREAVES: I have a concern about this—and nobody has seemed to have addressed it yet. I agree with you absolutely that the arrangement with a bona fide employer is going to work to the benefit of the employer, the employee and the business, and to the people getting the service. It is going to work terrifically. But there are some real cowboys out there and there are people who drive their people to absolute death. Some transport companies are killing their drivers on the road because they don't give a hoot about their employees other than that they are a tool to earn a profit for that company. I just don't see the opportunity for those people to say to their employer, "Look, you know, I'd really like to have a bit of flexibility here because I've got problems at home."

Mr Peters: John, we acknowledge that.

MR HARGREAVES: So what is the way out of that?

Mr Peters: Well, 99 per cent of employers do the right thing. There is a small number of people who don't do the right thing. What we need to ensure is that we are not penalising the 99 per cent who do the right thing. Now, the transport case that you are talking about is an unfortunate example because they are all contractors. So they are not going to be covered by this legislation anyway. The entire transport industry has gone to contract, so they are not employees. But there are ways of dealing with those people. I happen to have a brother—

MR HARGREAVES: Well, I will use a different industry then—the hamburger industry is one that comes to mind. If you have a look at some kids that start working at Kingley's and end up working in my favourite Thai restaurant down at Erindale, they could be 20 years in the industry and work for 15 different restaurants in that time. But if they are put on casually, anybody who has ever gone behind the scenes of a restaurant knows just how hard these people are pushed by unscrupulous employers. How do we protect those people?

Mr Peters: I think there is a way of doing it. We acknowledge there are some industries that are more difficult and I have already said to the minister that we would be quite happy to discuss with her this sort of scheme on an industry basis, as has happened with the cleaning industry. There may well be arguments for particular industries which, by their very nature, have added problems. Cleaning and construction are but two, and I think the restaurant industry is probably another example of a third one. If we were dealing with the problem where it has occurred rather than trying to blanket everyone, including those that it's not an issue for, then we wouldn't have a problem with that.

MS TUCKER: Haven't you—

MR HARGREAVES: I don't know any that aren't. Sorry Kerrie.

MS TUCKER: Haven't you already told us that people have gone to fairly extreme lengths to avoid the responsibilities by contracting? I understand the argument against what you are proposing, as put in the submissions that we have received, is that there will be ways to classify people to make them not therefore fall under the legislation for that industry.

Mr Peters: And the sharp operators will seek ways to get solutions. The commercial reality of what happens is they pay a price for that so their former employees that are now contractors are taking home more money in compensation in the same way as a part-time employee gets a surcharge on their salary to cover the fact that they don't get long service leave, et cetera. So there is already built in a benefit to the employee for that.

MS TUCKER: If we are allowed to go on , which we seem to be—

THE CHAIR: Until about 4, I think, when we will talk to Mr Berry.

MS TUCKER: Can you just explain something to me, because I am not quite clear. Alex, you were explaining to me the pressures this would put on small business in actually finding the cash. You have just said 99 per cent of people do the right thing. But before you said 47 per cent do something and only 51 do the other, and I thought it was that they put money regularly aside to deal with this liability. So when you say 99 per cent do the right thing, how does that fit with the 45 per cent? It is probably easy for you to answer it but I am just a bit confused.

The other thing I am trying to understand is that if you are saying that industries will do the right thing on the whole, including small business—

Ms Allars: What we are saying and what our survey has found is that about half of employers set that cash aside every time they do the payroll. They have got a separate fund—for example, their long service leave liability fund. But about half don't. They certainly make provision from the accounting point of view on people's payslips, for example, that there is an entitlement that is accruing, but the cash is not there. The cash is not physically put away.

What Chris is saying with the 99 per cent of employers is when it gets to, whether it is the five year for pro rata entitlement upon redundancy or termination, having to leave the workforce for a pressing family necessity, the employer will come up with the money. And there might be some that don't come up with the money. Does that explain the statistics?

MS TUCKER: Yes, it does. That is not addressing the fundamental point that they are expecting to only have to pay that money if the person stays a certain length of time.

Ms Allars: Yes.

MS TUCKER: So there is a fundamental problem. You are still not arguing that business should take responsibility for people who do not have permanent employment for a period of more than five years or whatever. That is your fundamental argument—that if people have a turnover of employers, that is not your business as employers.

Mr Peters: Unless it is in an industry whereby the nature of the work in that industry is changed so that that is the norm. Then we are open to discussing how that can be handled.

MS TUCKER: But you have got the whole contracting out issue as well, haven't you, which is complicating it in terms of if you are looking at overall workers' health and family work balance, blah, blah, blah, which is what I see as the heart of this conversation—

Ms Allars: Yes, absolutely.

MS TUCKER: then what you are saying is not really dealing with that. You are kind of finding a position, which I respect, which is kind of a bit half way where you are saying, okay, there is some responsibility which is about particular industries. But overall there is the societal issue of the changing relationships of workers with employers. There is high turnover and there is contracting, and very unhealthy work habits, as you have just described, which I think need to be judged as very unhealthy and would be discouraged if there was a sense that there was some support for people to not have to go to the extremes that they will go to in some industries, which pressure causes them to have to work 40 hours without stopping. Right? And this isn't a good, healthy thing. I am assuming you are not saying it is a healthy thing?

Mr Peters: I am the first to acknowledge that, and the worst profession is the medical profession, with the interns down at the hospital. When you and I turn up being sick and that person in the white coat has been working for 30 hours straight.

MS TUCKER: Yes, I know. I was thinking that myself. It's broad. These are broader issues. I understand that your position is about arguing that you feel your members are going to suffer in this way and we have to balance that against the broader societal questions, particularly for people who are quite vulnerable within the workplace and work force.

Ms Allars: I suppose from the employees' perspective, a lot of employees today—and I can only talk from my experience and experience with people I know and have worked with—stay in jobs for two, three, four years because we want career progression, we want perhaps to seek out another career. Why then should the employer be penalised because I decide for my own career progression and of my own volition to go and seek other employment in another industry with another employer? You have got to balance that as well.

MS TUCKER: Against all those people that have absolutely no choice and are very socially unsupported, which is the other side.

Ms Allars: Of course. There is, absolutely.

MS TUCKER: And so you can say as an empowered person that you have these choices and you take them.

Ms Allars: And I absolutely take that point. But I guess we need some balance. We need to balance the interests of the employers and the employees in this situation. And if we talk about people working more intensely, working more hours a week, being put under more pressure, are long service leave changes the answer to that? I don't know. Are there other things that we need to do to look at the way people are working?

THE CHAIR: By the way, has any other state or territory got similar legislation to what we are considering?

Mr Peters: No. The system that is in place for the construction industry is pretty well Australia-wide. The situation that is in place in the cleaning industry is not Australia-wide. I think there is one other place—Western Australia, isn't it? There is one state other than the ACT that runs that. And portable long service leave doesn't exist anywhere in Australia.

THE CHAIR: Right, okay. Is there anywhere overseas that you are aware of?

Mr Peters: There are discussions happening in some countries overseas, but I am not aware that it is in place in any of those.

Ms Allars: They have different names for different sorts of schemes.

THE CHAIR: Okay. But nowhere else in Australia. Are you aware of any other jurisdictions bringing something in?

Mr Peters: I am not aware of any other country in the world that has portable long service leave. But that is not to say they don't exist—I am just not aware of it.

Ms Allars: And they don't have equivalent sorts of schemes for leaving work—it mightn't be called portable long service leave; it might be under a different name.

MR HARGREAVES: In terms of the types of employees who are not full-time employees, part-timers and contractors, I understand there are two types of people that fit that bill—the people who do it because they like to go skiing in the middle of the afternoon, and good on them. There are some other people who love their job and the nature of the job but, bad luck, the company decides to wind up for whatever reason, without going broke. There are family businesses, for example, that just give it away. The nature of the business run by some people is such that they have a transient contract and they have to have a transient workforce to cope with that. But again, we have got people who willingly go into that situation. There are people who don't like the idea but because of their own life experiences and skills they have got no choice but to fit in with that—the cleaners, the restaurant game, and even tyre fitters actually fit that bill.

But if we have schemes for full-time employees, such as long service leave, and we don't have a scheme for those contractors and casuals and part-timers—part-timers are okay, they are pro rata—isn't that an encouragement therefore for a business actually to go away from full-time employment and go into contractors because they don't have that burden that you are talking about?

Mr Peters: That is not the way it works. What is happening is businesses in the ACT are finding it increasingly more difficult to find staff and they are having to agree to allow people to job share because that is what they want to do, not because of what the business wants. The business wants a receptionist.

MR HARGREAVES: Okay.

Mr Peters: And they have got a full-time job.

MR HARGREAVES: Was that not the case with Boral? My understanding about Boral was that they had a whole stack of salaried drivers, decided it was too expensive to keep them on, so we'll go contractors. There are many other examples I can quote in the last 12 months where that has happened. Is part of the reason why they are getting out of that to actually escape their employee liability, to actually reduce the cost of their company in terms of its running costs?

Mr Peters: I think that's a reason. Another reason is the cost of employing people, and the complication of it is so complex that they are shifting that administration and that cost onto the former employee and the company simply pays a weekly—

MR HARGREAVES: All right. So in fact what we say here then is that this is a way in which we can shift the responsibility for workers compensation provisions and all manner of other OH&S provisions onto the employee and all the company has really got to do is pay out a certain amount of money and then not have to worry about all that sort of stuff. Is that a particularly healthy thing to do?

Mr Peters: Well, if you look at the ones that happened with the cleaning industry, the couple of companies I have got in mind, the trade-off was the employees received about 25 per cent more take-home money in return.

MR HARGREAVES: But that's not a norm though, is it?

Ms Allars: Under the ACT Long Service Leave Act 1976 casuals are covered under the act—that is my understanding of it.

MR HARGREAVES: So right now people are actually making provision for that in one form or another.

Ms Allars: Well, I can only talk on behalf of our members, and as we see it half do and half don't.

MR HARGREAVES: Yes, sure. But they are making provision in some form or another—either accounting treatment or cash in the bank. And what we are actually saying by this piece of legislation is that it is just going to be portable, so the provision that this company makes can go into a pool. So if they are actually making an accounting treatment provision and not a cash treatment, they are actually not honouring that commitment to their employee at all.

Mr Peters: Oh, no.

MR HARGREAVES: They are not.

Mr Peters: No, I disagree.

MR HARGREAVES: They are just saying, okay, when the guy takes his leave, hopefully the company will be in a sound enough position to take it. So they are actually carrying a risk and passing that risk on to the employee, aren't they?

Mr Peters: I would acknowledge that would include some companies that don't have any money but it will also include companies who in their ordinary operating account always have sufficient funds to meet that liability anyway. It is just a matter that they don't have a separate account for it. They are not obliged to. There is no requirement to have a separate account.

THE CHAIR: Thank you both very, very much.

MS TUCKER: You will give us a copy of the other accompanying material in the survey?

Mr Peters: Yes.

WAYNE BERRY was called

MR BERRY: I introduced the Long Service Leave (Private Sector) Bill. I understand the obligations of witnesses in these proceedings.

THE CHAIR: Were you present earlier, Mr Berry, when I read out the witness obligations?

Mr Berry: I was.

THE CHAIR: What would you like to tell the committee?

Mr Berry: I have dealt with long service leave issues in the public and private sectors since the mid-1970s. It has been obvious in recent times that the workplace has fundamentally changed. It is now quite clear that many workers have been, if you like, managed out of their entitlement to long service leave. That has come about as a result of changes to workplace relations with the introduction of the federal workplace relations Act, which carries with it the associated disempowerment of the work force and a reduction in work force unionisation. That means that many workers are no longer in an industrially organised position in which to defend their entitlements.

At the same time, employers have been moving to make workplaces more efficient by reducing their costs. I heard it said earlier in evidence that 99 per cent of employers were okay. I also heard it said that only 53 per cent of employers provide long service leave for employees. It is rather disturbing to me that it is regarded as almost normal not to provide for long service leave. That appears to be usual business practice. I refer to another interesting aspect about those figures. If 53 per cent of employers are providing long service leave for employees they are at a distinct disadvantage to the 47 per cent who are not, as the 47 per cent can trade in markedly better circumstances than the 53 per cent.

That deals with the issues concerning employers. However, I will come back to that in a moment. This bill is aimed at providing a portability scheme for the private sector. It has been said—and it is true—that a private sector construction industry scheme applies across the country, with the exception of the Northern Territory. That scheme, which began in the 1970s—it began in the ACT in the 1980s—did not come easy. Employers resisted quite strenuously that scheme and its portability aspects. Now that it is part of the scheme it has been accommodated and, in my view, it has improved the efficiency of industry and encouraged workers to stay in the industry and treat it as a career prospect.

More recently, a cleaning industry scheme was included in a bill that I introduced in the ACT. It is the only such scheme in Australia. Its success has led me to the conclusion that this important promise should have been made by Labor before the last election. Part of the development of this proposal was the promise of that scheme and its introduction. But that is not the end of the private sector story. We have only to look at what goes on in the public sector. I said in my speech in the Assembly when this bill was introduced that there were about 182,000 people in the ACT work force.

The Commonwealth work force comprised about 56,000 people, the ACT government work force comprised about 18,000 and there were about 100,000 workers in the private sector. Portability schemes are widespread throughout the Australian public sector—in local government, state government and federal government agencies—but that is not the case in the private sector. Take, for example, the ACT public sector. Management standards show that departments and agencies in the ACT public sector have portability arrangements with the Commonwealth. Portability arrangements are in place across the country in 799 agencies as well as in schools, universities and hospitals.

The list includes zoos, railways, banks, quarries, art galleries, TABs, bus and rail systems, film corporations, state rifle associations, local government and airlines. There is expansive private sector. I see this legislation as an important step towards introducing portability for private sector workers in the ACT and bringing them closer to their worker colleagues in the public sector. At present about 100,000 workers in the ACT do not have access to portability schemes. The scheme that I have proposed is prospective, not retrospective.

The benefits of the 1976 Act will apply and there are provisions in that Act to enable discussions between board members and employers who have a liability under the 1976 Act to make payments. This legislation is not retrospective. Earlier I heard someone comment that employers should be held responsible for the lack of such a scheme in the past. They will not be held responsible, as this is prospective legislation. That is not to say that it will not widen access to long service leave; it unashamedly does. But, most importantly, it will apply portability to every aspect of work in which a worker in the ACT is involved, with the exception of the public sector.

That might come but it is not something that is dealt with in this bill. An issue that was raised that troubled me a little bit—and I will give it more thought—was the possibility of discrimination against employees who have long service leave entitlements. I think that is worth thinking about.

MS TUCKER: Is that something that employers would automatically know when they employed someone?

Mr Berry: No, they would not normally know that. I think that would be covered by privacy laws in the ordinary course of events.

MR HARGREAVES: I assume that is about the same as encroaching retirement age. Our possibilities of being re-employed outside the Assembly are jeopardised somewhat.

Mr Berry: Yes. This aspect of the legislation troubled me enough to look at it again. I will have another look at it to see whether it can be tidied up.

THE CHAIR: It is covered by the Discrimination Act.

Mr Berry: Yes, probably.

THE CHAIR: I think it can be found in section 7 or section 10.

Mr Berry: Thank you, Mr Chair.

THE CHAIR: One section has about 52 different subsections.

Mr Berry: On the issue of avoidance: it is difficult to rearrange the management arrangements to opt out. Now that I am aware of all those aspects I will make sure that avoidance is dealt with in the legislation. It is difficult to avoid these provisions in the bill but it is an issue that I will think about in the course of progressing the matter.

THE CHAIR: This scheme is a blanket scheme. I think you heard Mr Peters state earlier that it might be an issue for some industries if people wanted to stay with one employer for 10 years or whatever. Obviously the building and cleaning industries in the ACT have long service leave schemes. Workers move to different employers because of the nature of those industries. Are there any other industries in the ACT where this is a problem?

Mr Berry: It is a problem in certain places of employment in the ACT. This minimum scheme does not restrict employers from having better arrangements for their employees, for example, in the education area—something about which I heard in evidence earlier. Reference was made to a scheme that has more benefits than the scheme that is proposed here. This scheme would not interfere with that, but employers would be obliged to contribute under proposed arrangements. It is open to employers to implement more advantageous arrangements for employees if they wished to do so. It is a minimum scheme.

MR HARGREAVES: Are there any industries that still stand out that would specifically benefit from this scheme?

Mr Berry: I do not want it to appear as though I am evading your question. I do not know of any industry where access to long service leave is not a problem. It is a serious issue for employees. When I first looked at this issue I attempted to come up with some sort of industry scheme. By trying to identify a problem industry I established that this was a problem everywhere. If you deal with this issue industry by industry groups of employees will miss out for years. The most efficient and fairest way to proceed is to apply the scheme to everybody.

THE CHAIR: You propose to implement a system-wide scheme. I did not refresh my memory by looking at the bill before these proceedings commenced so I am not aware whether or not you have pro rata provisions for part-time employees, similar to the provisions that are available in other schemes?

Mr Berry: This scheme attempts to embrace every worker. The benefits that are banked are consistent with the wages that you earn. A levy has to be paid in relation to that. When you are due for an entitlement the fund works out your entitlement on the basis of the formula set out in the bill. As contributors to our society we are entitled to rewards for our work—a view that is becoming more widespread every day.

In more modern workplaces people move around a lot. Why should they be punished when they are forced to move around a lot because of the way in which workplaces have evolved? Basically, they are still part of the same economy and the same social structure. In my view we have an obligation to be as fair as we can to all workers. We should not

sit back and allow workers in the strongest position in their workplaces to negotiate better outcomes, leaving those who are not so strong to fall behind.

MR HARGREAVES: A couple of industries appear to me to fit into the category to which you referred earlier. People move out of small businesses in the retail industry because they have no choice and they go, for example, into motor vehicle sales in the motor trades industry. So the same people are doing exactly the same work but in a different industry. You are saying that those people should be treated no differently from public servants who chose to move from DUS into the Department of Education, Youth and Family Services.

Mr Berry: The cleaning industry scheme is working well and it is building up reserves. Cleaners in a modern shopping complex are entitled to portability schemes. However, if those cleaners get a job behind the counter in the shops that they clean they have no entitlement to portability schemes. That highlights the problems with which we will be faced if we try to develop schemes industry by industry. Employees will be missing out for many years while we tailor schemes for different industries.

MR HARGREAVES: Does the scheme address possible inequities? A person might work for a period in one industry while preparing to work in an entirely different industry. That person might have entirely different skills when he or she works in the second industry. If what Mr Peters said is true, people can now look forward to working in seven different jobs in their lifetime. As their skills and their education improve it is more likely that that will occur. This legislation protects those people's entitlements from the day that they start working.

Mr Berry: Workers are all contributors to our economy. As I said earlier, because of the way in which our modern workplace has developed, many occupations require people to move about. There is no reason in my mind for them to miss out on this entitlement. These days the term "long service leave" has a different meaning from the meaning that it had when it was introduced for civil servants returning home to the United Kingdom. Our economy and our society have developed way beyond that.

THE CHAIR: We heard today from most groups about the history of the long service leave award that was given to employees who had been with one employer for 10 years or more—be it in the public service or be it with a private employer. In recent times recognition has been given to industries that experienced problems because of the very nature of those industries. Those industries, which did not fit comfortably into those categories, made no provision for employees who had worked for them for any length of time. However, that matter has now been taken care of.

I think you said earlier that the workplace has changed and the nature of business has also changed. Are there ways of giving due recognition to workers other than through the implementation of this blanket scheme that you are proposing?

Mr Berry: I wish that there were many generous people who wanted to look after their employee's entitlements and apply long service leave standards to everybody. But, as the committee heard today, even though there is a mandatory scheme in the contract cleaning industry, people try to avoid it. There is a mandatory scheme in the construction industry. It was suggested in evidence earlier that some employers try to avoid that

scheme even though the overwhelming majority of workers are members of that scheme. When there is no such scheme the avoidance of long service leave benefits for workers is much higher.

It is not possible—it would be possible only if this were a perfect world—for us to expect employers to treat employees equally. Evidence throughout Australia suggests that the only way in which we can provide fair standards for all workers is to have laws and regulations that require schemes such as this across the board. It is important for employers to have a level playing field on which to conduct business. They should not be disadvantaged by the problems that have been created by unscrupulous employers.

MR HARGREAVES: You do not seem to have addressed the occupational health and safety aspects of long service leave. Those people who are ducking, weaving and avoiding these sorts of issues do not recognise the importance of the occupational health and safety aspects of long service leave. People who have worked for many years for different employers will miss out on these occupational health and safety issues.

Mr Berry: I will try to illustrate that issue. The other day I bumped into a chap who had been working for a labour hire organisation but who had been contracted out to another employer for three years. I said to him, “What are your prospects?” He said, “I will try to get a job with the employer to whom I have been contracted out for three years.” The problem is, when he gets the job with the employer, he loses three years of benefits that should have accrued to him. That illustrates the seriousness of this issue for ordinary workers. Does that address the point that you raised?

MR HARGREAVES: Yes, it does. In those industries where burnout is rife and it could lead to all sorts of health problems, people who work for a length of time ought to be given some time off.

Mr Berry: You get tired no matter where you work. If you work for 10 years for half a dozen employers, at the end of that 10-year period you will still be tired. If you work for 10 years for one employer and you do the same thing you will be tired. People should be given a chance to recharge their batteries. That is a simple way of putting it but I think it is a fair assessment of the contribution that workers make to our economy.

MS TUCKER: I am still not clear on the question of contracting. Why is that not caught up in this scheme?

Mr Berry: It can be. There is provision in the bill for contractors, more specifically for people who move from being workers to being contractors. They should be able to continue with the scheme if they wish to do so and thus retain their benefits.

MS TUCKER: But they have to be a worker first.

Mr Berry: That is one area. But contractors are also defined in the legislation. I am keen to ensure that people cannot avoid these provisions by contracting out. My intention was to try to implement these provisions across the board. After hearing some of the evidence today relating to contracting, I will have another look at that issue to establish whether or not more can be done in the detail stage of the bill.

This matter will be dealt with in the normal way in the in-principle stage. Debate on the bill will then be adjourned and we will deal with some issues in the detail stage. I am sure that the government will do something at some point to incorporate administrative arrangements in the legislation. In the best possible circumstances, this legislation will apply to contractors who have attempted to avoid their obligations by engaging subcontractors.

MS TUCKER: You are concerned about people who have worked for one employer for 10 years or more. Regardless of whether employers are trying to evade other legal requirements, I would have thought you would have wanted to cover contractors.

Mr Berry: Yes.

MS TUCKER: Will you respond to the concerns that were raised by Alex Allars about the impost on small business?

Mr Berry: I heard evidence to the effect that 53 per cent of businesses had long service leave provisions. However, you should bear in mind that that was a very small survey. The chamber covers about 1,000 businesses. That is a small number of businesses in the context of the ACT. The evidence that struck me as most interesting was that 53 per cent of those businesses provide for long service leave.

THE CHAIR: I would have thought that a survey of 1,000 businesses was a pretty big survey. *Canberra Times* surveys of 600 people are said to be fairly reasonable.

Mr Berry: The chamber has only 1,000 members.

THE CHAIR: Yes, but they survey them all.

MR HARGREAVES: Are there 17,000 or 50,000 businesses in Canberra? I have forgotten the number of businesses in town.

Mr Berry: There are many thousands of businesses in Canberra.

THE CHAIR: Even if the survey covered only 2 per cent of businesses it would still be a fairly significant sample.

MR HARGREAVES: But it is not representative as it is selective.

THE CHAIR: Statistically I think it is fairly significant.

Mr Berry: In any event the significant factor is that 53 per cent of businesses provide for long service leave and 47 per cent do not. The 47 per cent of businesses are advantaged if they are competing with businesses that are among the 53 per cent, as they are able to provide services at a lower cost.

THE CHAIR: I do not think that is what was said. We were told that 47 per cent of businesses had some sort of long service leave provisions. However, those businesses are not breaking the law as such.

Mr Berry: I am not suggesting that anybody is breaking the law.

THE CHAIR: They do not have to have a separate fund for it; they might simply get the money elsewhere.

Mr Berry: If you have a liability it makes sense that you should provide for it. If you do not you would have to borrow some money. I thought it curious that earlier witnesses said that they would pass on all the costs when provision had already been made for those costs.

MS TUCKER: I thought they said they were doing that for employees that they expected to be there for a long time. They said that they would not be putting it aside for casuals or whatever.

Mr Berry: They would not be putting it aside for casuals because they do not have to. However, they could do that for part-time and permanent part-time employees.

MS TUCKER: That is right. However, we were told that that might place an extra burden on businesses. If businesses had to put something aside for casual employees it could break them. Obviously they put it aside for part-time employees.

Mr Berry: If employers were to provide for this entitlement it would cost them about 1.6 per cent or 1.7 per cent. The start-up levy in the cleaning industry was 2 per cent. I expect the levy to be about the same for this scheme. To state that providing for long service leave might break a business is pretty much like stating that annual leave, workers compensation payments or any other employment cost might break a business.

There is no doubt about the fact that there will be increased costs to business. I do not hide from the fact that this scheme will provide more access to workers and that there will be increased costs to business. But in the end all businesses will contribute at the same rate. No business will be able to trade on the fact that it is contributing less. Does that answer your question?

MS TUCKER: Yes. I take your point. You said that it is not negotiable as it is a fundamental social requirement. The witness claimed that some members believe that to be the last straw, but you are stating that it is their responsibility. The argument that was put to us was that everyone would bear the same costs. However, in a competitive environment some people would penalise workers by reducing salaries or by reducing the number of staff in an attempt to deal with this additional impost. What is your response to that?

Mr Berry: That argument about workers entitlements has been around ever since workers first got entitlements. I recall reading the headlines in one of the Melbourne papers in the 1860s when workers got the eight-hour day. The headline stated, "We'll all be rooned." Every time there is a wage dispute before the Full Bench the same argument is put forward.

When it comes to workers entitlements we have to have a socially just system. Most importantly, we have to have a system that is seen by participants in our economy as being fair. Currently, 100,000 workers in the ACT do not automatically have their

entitlements protected. On the other hand about 80,000 workers in the public sector have their entitlements protected. Everybody is aware of the events concerning Ansett, the international textile company, and so on, when entitlements were lost. I heard evidence to the effect that we now have a scheme in place that partly looks after that. However, it means that ordinary taxpayers have to subsidise failed businesses. I give as an example the levy that was imposed on people travelling on aircraft to fund the Ansett collapse.

MR HARGREAVES: Which they have not seen yet.

Mr Berry: Yes, indeed. In this scheme at least the long service leave component will be totally protected.

MR HARGREAVES: Were you concerned when you heard from the chamber that some businesses were making a cash provision for their long service leave and others were making provision through their accounting systems?

Mr Berry: I am no tax expert but my understanding of it is that if you are making a contribution to a scheme like this it is part of your outgoings and you are able to claim a tax advantage straightaway. If you are storing money away I do not think you are able to do that so easily, though you might well be able to claim it as a liability in the scheme of things. I do not think you will be able to claim on your tax unless you have actually paid an amount.

MR HARGREAVES: That is true.

Mr Berry: Under this scheme employers will actually be paying an amount.

MR HARGREAVES: I was referring to a company that might say, “We are prepared to take a risk by not having the money in the bank. However, we will have the money in the bank when an employee takes his or her long service leave.” A company might be prepared to risk not having the money in the bank.

Mr Berry: With this scheme we have the best of both worlds. The employee has his or her benefits protected and, once the employer pays a levy, there is nothing more to worry about. The scheme is then managed by the fund. The construction industry fund in the ACT has a levy of 1 per cent. It started out at 2.5 per cent. We heard evidence to the effect that that levy has declined over a number of years. On top of that, according to the last annual report, the fund is worth about \$42 million and its liabilities are about half that.

So the fund is well in front. With prudent management—this fund will be managed in accordance with the Financial Management Act—there is no reason why the fund will not grow and the levy will reduce over time. However, in the initial start-up period the levy will be marginally higher than cost.

THE CHAIR: You would have heard the earlier comment that your proposed scheme will be the first of its kind in Australia. Is that correct?

Mr Berry: Yes. It really mirrors two other schemes.

THE CHAIR: True. Effectively, your scheme is a blanket scheme for all workers in the private sector.

Mr Berry: And it is an expansion of the cleaning industry scheme.

THE CHAIR: It was also said earlier that businesses have relocated over the border to avoid having to pay higher workers compensation premiums. That could well apply in relation to this scheme and, as a result, we could lose businesses and work opportunities. Does that concern you?

Mr Berry: No.

THE CHAIR: Do you have any comments in relation to the points that were raised earlier?

Mr Berry: I am not concerned about it, Mr Chairman. With the cleaning industry scheme there was no flow of cleaning businesses out of the ACT into Queanbeyan. In my view this bill will capture work that is done in the territory. The liability will still apply. I heard evidence from chamber representatives that people went to Queanbeyan because they thought workers compensation premiums were lower there. However, they omitted to state that, under the private sector legislation in the ACT, there has been a bit of a myth or a legend about workers compensation provisions and why businesses go to Queanbeyan.

In some cases workers compensation premiums would be lower in New South Wales, but so, too, would be the benefits. For example, employers have to pay workers full pay for the first week or two—I am not quite sure what the amount is—and they do not have to do so in the ACT. When you are making comparisons in relation to workers compensation you have to compare apples with apples. In the case of long service leave it could be said that a long service leave levy of 1.5 per cent or 2 per cent would provide employers with sufficient incentive to go to Queanbeyan. I do not think that is the case. There is certainly no incentive for employees to go to Queanbeyan.

MR HARGREAVES: It will be a more attractive for people to work in the private sector.

THE CHAIR: Earlier Ms Tucker asked you a question about the way in which employers would cope with paying this additional levy. One of your comments was that they might reduce staff. We all hear from time to time about various businesses that are employing family members, as they cannot afford to take on other workers. I have also heard business people saying rather reluctantly, “When this person finishes work we will not replace him or her because basically we cannot afford it.”

Some businesses run pretty close to the wire. You were quite open about the fact that this scheme might result in imposing additional costs on businesses. Are you concerned about the fact that it might lead to some workers becoming redundant and other people not being given job opportunities? Some of the disadvantages of this scheme might outweigh the benefits that you are hoping to achieve.

Mr Berry: I am not concerned about that issue at all. The benefits that flow to the whole private sector work force will far outweigh any alleged problems that might emerge because of a small increase in costs. Many employers are now providing for this requirement—53 per cent if we accept the figures that we have been given—so it will not be an extra burden on them. For those who are not, there are some benefits for them to be involved in the scheme anyway.

Whenever there are increased benefits for workers there is always argy-bargy about such issues. For example, from time to time when it is in the interests of business to promote the economy as a good place to be, surveys will be conducted about the employment intentions of employers. Employers who are questioned during some of those surveys state, “The economy is looking so good that we will employ more people.” At other times employers state, “Things are not so good so we will not employ any more workers,” or “We will put off some workers.”

In my view, that is the argy-bargy of business and workplace relations. It is an argument that will never go away. If the strong in the economy are doing well but a large group of people at the low end of the scale, in particular women, are falling behind, you are duty bound to do something about it. I think this scheme addresses some of the inequities that have developed in the workplace in recent years.

THE CHAIR: Mr Berry, thank you very much for assisting the committee.

Mr Berry: I thank you for the time that you have given me.

The committee adjourned at 4.44 pm.