LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON WORKING FAMILIES IN THE ACT

Members:

MR M GENTLEMAN (The Chair)
MS M PORTER (The Deputy Chair)
MRS J BURKE

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 1 DECEMBER 2005

Secretary to the committee:
Ms E Eggerking (Ph: 6205 0129)

By authority of the Legislative Assembly for the Australian Capital Territory

The committee met at 12.12 pm.

KATY GALLAGHER,

MARGARET COTTON,

HELEN LAMMING and

ERICH JANSSEN

were called.

THE CHAIR: I now open the inquiry of the Select Committee into Working Families in the ACT. I welcome the minister, officials, committee members and MLAs. Witnesses should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

As the first part of the program, we are hearing from the Minister for Industrial Relations, Ms Katy Gallagher. For any questions taken on notice, the committee would appreciate responses within five working days of the hearing. It is the responsibility of witnesses to ensure that they meet any commitments they have made regarding the provision of information or answers to questions on notice. The secretary will email a transcript to all witnesses as soon as it is available.

Questions for today's inquiry are to be from the committee and be relevant to the inquiry's terms of reference. A schedule has been provided in regard to the minister's generous availability of time. I ask all members of the committee and other members to adhere to this program. I would like to ensure that all committee members have an opportunity to put their questions to the minister before moving on to other members' questions. Members are reminded of standing order 235, which states:

> When a committee is examining witnesses, Members of the Assembly not being members of the committee may, by leave of the committee, question witnesses.

Minister, would you like to make an opening statement?

Ms Gallagher: I will make a few brief comments. I am mindful of the time. Thank you for the opportunity to appear before the committee today. To begin with, I will make a few comments about the legislation, how it will impact on the ACT, the concerns we have and maybe a bit of a history about how we have got to where we are today. As you would be aware, it has been about a year since some of these changes were flagged by the commonwealth government. The whole process of how this legislation was put together has been very difficult for the states and territories in terms of being advised of or involved in the drafting or input into the legislation from the early days.

We have a forum of workplace relations ministers called WRMC, which is a ministerial

forum where ministers for industrial relations meet with the commonwealth minister around a table and talk through issues of mutual interest. This would normally be the forum where some of these ideas would be progressed and certainly where some of the dialogue could occur around involvement in, or discussions of, the intentions of the commonwealth in this area. I have to say that forum wasn't used at all for this legislation. In fact, there has only been one meeting of that council since announcements were made. Several meetings were cancelled. At the meeting that was held there was no advice given about the legislation.

What I am trying to say to you is that the ministers for industrial relations, those with the responsibilities for this area, were kept out of the loop and had to download a copy of the legislation at the same time you would have, Chair, when it was tabled in the parliament. That has put us on the back foot in terms of being able to have a good look at what this means for the ACT and how we respond to this legislation. As you know, it is a very large volume of work; the legislation is large; the work that we are having to do to go through it to see its impact on the ACT is significant. We are a bit behind the 8-ball, frankly, because we haven't had the time or the opportunity to be involved or understand any of the features of this legislation before it was tabled.

Having said that, we are in a situation where this legislation, once passed—and it looks like being passed tomorrow, with an enactment date of possibly March next year—will come into force straight away in the ACT, as it will in Victoria and the Northern Territory. And we are concerned about that, frankly. We have been trying to do everything, in the lead-up to the legislation being debated, to put forward our views. We appeared before the Senate committee. The states and territories forwarded a joint submission. We appeared as witnesses. Our federal counterparts are doing the work from their point of view.

Having said that, at the end of the day the ACT will become the guinea pigs for this legislation. Our job now, as the territory government, is to look at areas where we can provide the protections that we feel will be removed from people, whether we can provide those protections and how we provide those protections. That is where we are positioned at the moment. We are still formulating our ideas on that. The department is giving me advice on that. If there are areas where we can address, in our own legislation, some of the inherent unfairness of this legislation—and our powers there are very limited—we will be doing that work next year.

I am happy to go through other areas of concern or maybe, if I answer questions, we can take it from there.

THE CHAIR: If you were to compare that consultation process with other legislation that you have dealt with—for example, education program legislation that comes through from the federal government—what would be the amount of input you have to that sort of process, as opposed to this?

Ms Gallagher: I guess we haven't seen this magnitude of drafting work being done under any of the ministerial councils I am involved with. In education, of course, where money is tied to it, we have had discussions with the federal government about what they are trying to do; so you are at least advised much earlier on in the piece and have time to put forward your views and provide submissions about why that wouldn't work in the

ACT or why that would be a problem. The fact is we weren't involved at all. I had commitments from both federal ministers, Minister Abbott and Minister Andrews, that, on matters which would have an impact on the ACT, the commonwealth would consult prior to introducing legislation.

Specific recognition was given to the ACT that, because of the system we work under—because the federal laws have such a significant impact here, particularly on industrial relations—we should be considered differently, in the sense that they have enormous impact here whereas some other state-based awards and state-based systems wouldn't be impacted and there wasn't that need for that special recognition. I had sought on a number of occasions, I think at three meetings, to have in the minutes that the commonwealth would consult with the territory. I think Victoria included themselves in that. That agreement simply wasn't followed; it was ignored.

I accept there is a federal government in power that has views on industrial relations that are different to mine, but the opportunity that consultation presents gives us the capacity to put forward ideas or arguments about why this would not necessarily be good for the ACT. We were in the dark until the WorkChoices booklet was published. The first real indication we had about what might be in this legislation, outside the Prime Minister's speech that he gave very early on, was when that booklet was published. That was on a Sunday. I managed to download it from a website at home and have a look at what that meant.

I accept the realities of the position we are in, but there was opportunity there for us to be involved and to have a say—not necessarily to agree, because I don't think we would have. I think they knew that. It was an absolute ignoring of the rights of the states and territories to be involved in any discussion on this.

MRS BURKE: I hear what you say. You said in your preamble that it has been one year since the changes were flagged. I wonder—and I have wondered this out of my own thinking—why. You have always flagged concerns about rates, penalty rates and other things; you have a core of things that you really want to protect workers for. I respect that.

Are you telling me that at these meetings you tried to make representation or at least get it on the agenda? It seemed to me that the unions and so forth made a very late run, probably because they were feeling that they hadn't got the information to hand to make a run on. I see over the past year a very strong stance that you and other Labor ministers have made.

Did you make an attempt to make a submission or say, "These are things that we are concerned about, if you are considering these in the legislation"? Did you do it the other way around? Did you ever try at any point to make a submission to the federal government or the federal minister?

Ms Gallagher: I certainly had discussions with him, seeking that commitment on consultation with the ACT. But every meeting that was scheduled to have those discussions was cancelled by the federal minister. I think it was on four occasions.

MRS BURKE: Did you write to him? Did you put it in writing?

Ms Gallagher: Yes. I am sure, I am absolutely positive, we would have written. I certainly wrote of my concerns about the meetings being cancelled at short notice, usually within two days of the meetings to be held. I put forward—

MRS BURKE: I am talking about the actual content, though, and your concerns.

THE CHAIR: Let the minister finish the answer to the question before we go to the next one.

Ms Gallagher: I wrote to the federal minister. It is very difficult for me to write a letter about something I don't know anything about. We didn't have any detail at all, other than what the Prime Minister had said on wanting a uniform system for Australia. Again, my concerns on that are different. I have differed with my state colleagues on that because we have one system. We are not in their position. The comments that the Prime Minister made were on a simple, national system. I don't know how I could have responded to that in terms of putting concerns forward because we have a simple, single system here.

As I said, once the details became clear in that WorkChoices booklet, which was about three weeks before the legislation was tabled, we have been chasing our tails, seeing how it impacts on the ACT, what it is going to mean for people. But in terms of trying to say to the commonwealth, "Let's have a chat about this. I understand you want to put forward a fairly aggressive legislative reform agenda," we have had those discussions. I accept the reality of the political world we live in.

His response was thanks for the interest but no thanks. The only comment Minister Andrews made, when he was pressed on it at a meeting, was that it was the single biggest legislative drafting that the federal government had undertaken and that we would be advised shortly of what that meant. You have got to understand that, at those forums, you can keep hammering on at them; if they don't want to answer, they don't answer.

The states and territories have put forward positions at previous ministerial councils. I know we supported the Victorian submission, which was 10 steps for a way forward. It has all been out there and in the mix. "Listen to us, talk to us." But the reality is that the commonwealth—and I don't think they are ashamed of that or are trying to pretend they did anything else—were being quite clear that this is their piece of work and they weren't prepared to negotiate.

MRS BURKE: As governments do.

Ms Gallagher: The thing that they did seek cooperation on was the handover of the states powers to the commonwealth and, when it was clear the states weren't prepared to do that, it was: "Right, this is the way we move forward."

MS PORTER: We are aware, from a lot of what we heard and now that we have legislation, that AWAs are a main feature of this legislation. Does the department have figures on how many employees we have under AWAs at the moment and how many we would expect to have under AWAs after the implementation of the WorkChoices bill?

Ms Gallagher: I am not sure I can give you those figures in terms of the ACT government. Margaret Cotton is here to help. Can you give numbers on AWAs?

Ms Cotton: AWAs are administered by the federal government and, in particular, by the Office of the Employment Advocate. So information on numbers like that wouldn't be held within the ACT government. That would be federally administered. I think there is information available through the Office of the Employment Advocate on numbers.

Ms Gallagher: The ACT government have a policy of not offering AWAs and have had that since we came to government. They have been wound back since we have come in. There are AWAs that are still operational; they are largely historical. Under the new certified agreement, we have a clause called a special employment arrangement or SEA, which gives capacity for us to respond to areas of workforce need or shortage in a flexible way outside the AWA process.

THE CHAIR: While we are on AWAs and before you go to the next topic: we have seen some stats from the Australian Bureau of Statistics that ACT workers represent 2 per cent of the Australian workforce and that ACT business, both private and public, have in place 4 per cent of all AWAs signed in the last three years. It is quite a low number. Why do you think there has been such a small take-up of AWAs?

Ms Gallagher: People prefer to stay on agreements or awards. In the public sector, what we have seen is that AWAs suit particular areas of the bureaucracy, particularly the higher areas where negotiations can be around wages. For those that might not be in that upper echelon or who have a choice about being under a certified agreement or another employment arrangement, the attractions of a collective agreement have been taken up. I don't know whether that takes out common law contracts. I know, in the private sector, there are common law contracts which wouldn't necessarily be viewed as AWAs.

We run a public service, as everyone knows, of 17,000-odd workers—probably 16,000 full-time equivalents. We have demonstrated that you can employ a workforce of that size without needing to offer AWAs. In relation to the arguments on AWAs—the flexibility, the attractiveness of them, the ability to meet individual needs—we can demonstrate, through our workforce, that those add ons or what makes things attractive to employees can be accommodated within a certified agreement and a level playing field for all employees.

THE CHAIR: You may remember that I raised in the chamber the case of the Krispy Kreme worker Jasmin Smith who was under an AWA that took away her overtime loadings, Saturday penalties and uniform allowance, which resulted in a 9 per cent drop in wages for her. In your opinion, is it usually young workers who are placed at a disadvantage in bargaining Australian workplace agreements?

Ms Gallagher: What we have seen with the awards system is protections in the awards for young workers. Again, most large employers of young people operate under federal awards. You are looking at areas like retail and hospitality. There are protections offered for those young people through those award protections—just having them there. Part of what is being sought through WorkChoices is to shift large portions of the workforce off the award system and into individual contracts.

Again, I don't think that. I know that. The federal government hasn't been shy about saying that is the intention of these changes. That is where we are going to see increasing numbers of cases of young people being forced to trade off or sell off entitlements in order to get a job.

An area of great concern to me, both as a parent of someone who will be entering the workforce, not shortly—as someone who is looking post my generation and looking at the impact of this—and as someone interested in industrial relations is that, under WorkChoices, if you are under 18, your parents will need to sign your AWA for you and, therefore, parents will be required to have those negotiations or trade off your conditions in order for you to get a job.

I don't think there is a choice there for young people because the competition is so vigorous at that age when you are looking for jobs. Therefore, there will be no choice. Some of the rhetoric is that you can either choose to stay on the award or go onto an AWA; you don't have to sign an AWA. The reality will be that the employers are quite entitled to only offer you an AWA and, if you don't agree to sign an AWA, then you simply won't get the job. That, to me, isn't a choice. Young people, or their parents, will be put in the position of having to be competitive on their employability before they are even 18 years old.

MRS BURKE: On that point: don't you feel that, by making the statements you have just made, you are being a little bit condescending toward people and are treating them somehow as having some lesser intelligence in that they can't talk with an employer about what is going to be good for them in the workplace—their skills. It certainly says something for the education system that we need to be teaching young people how to have skills anyway. You have always had to be able to talk to your employer about what is going to be best for you. I know I did. Maybe we are losing those skills, and that concerns me.

Put that to one side. I get quite hurt and angry at the fact that, to an extent, we somehow seem to have now grouped people as second-class citizens that are unable to negotiate their own pay. I know there are a lot of ins and outs in all this. What would your comments be on that? You don't feel that we are somehow saying, "I'm sorry, you don't have the intelligence, somehow, to debate your own pay"?

Ms Gallagher: No. I just say, "You're not on an equal playing field in order to have those negotiations conducted in a fair way." You hit the nail on the head. You said you were able to ask for those things and engage in that discussion. I was, too, but I had an award safety net for people who have come after—

MRS BURKE: Won't that still be there?

Ms Gallagher: Not to the extent that the award safety net is there. There will be five minimum standards, which is quite different to a safety net. Recently there have been no-disadvantage tests, that is, the AWA needs to be tested against the award. The award sets the minimum standards. That has gone. What becomes the minimum standards are the five minimum standards.

If you can sit there and honestly think a 16-year-old going to work for a big employer

can say, "I feel I'd like a bit of extra time to do this," and have that engagement with an employer, you are living not in the real world—or believing that that will be how this will operate—because this will drive the labour market in terms of rates of pay and costs of labour. To think that there would be a reasonable exchange between employees and employers when those safety nets that have been historically provided to underpin the system, including an arbitration system if there is a dispute or the right to have that dispute heard, the right to protection from unfair dismissal—once you take all of those away—and to think there are equal protections there for employer and employee is simply not the case.

THE CHAIR: Let us clarify that, for the committee. Under the existing legislation, AWAs are tested against the relevant award and must meet a no-disadvantage test. The WorkChoices bill no longer requires AWAs to be tested against that relevant award?

Ms Gallagher: That is right.

Ms Cotton: The no-disadvantage test doesn't apply anymore under WorkChoices. The only thing that it is going to be tested against is the new Australia fair pay and conditions standard, which contains the five minimum things that the federal government said are gong to be the standard from now on.

THE CHAIR: Minister, is it true, then, that the WorkChoices bill excludes overtime and shift penalties as minimum standards?

Ms Gallagher: Yes.

THE CHAIR: Are there other entitlements that are excluded?

Ms Gallagher: Does the committee have the five minimum standards? They are: the maximum ordinary hours of work—there might be some changes to that; we haven't seen the amendments that might be put, based on the coalition parties meeting last night—annual leave, personal leave, parental leave; basic rates of pay; and casual loading. They will set those minimum standards, and everything else is up for grabs. Again, there are some amendments being talked about this morning to the hours of work. At the moment it is an average over a year—you have 38 hours a week, averaged over a year, which Barnaby Joyce has had some concerns with.

THE CHAIR: What guarantee has the federal government given to ensure that ACT workers will not be worse off under the proposed legislation?

Ms Gallagher: They haven't given that commitment to any worker across Australia. This legislation is clear; it is about creating flexibility within the labour market, with flexibility going down; it is about setting the minimum of what is appropriate; and the rest is up for people to negotiate individually. We hear these arguments about flexibility and choice and all those nice words, but if you read the legislation, if you apply it to employment situations here in the territory, what it is about is taking what we have got now and reducing it to a very basic minimum

I don't think you could get much lower, although, again, there are some amendments which are looking at tinkering around the edges to improve it in certain areas. You

couldn't get much lower than what is on offer. Then you go out—and all of us are equal and we are all given the same capacity to negotiate what is good for us—and negotiate. That is how the legislation has been drafted. I am fundamentally opposed to that. That means that people will lose out and workers will be worse off, particularly vulnerable workers.

MRS BURKE: My mind always goes as well to the employer, having been one myself for many years. You pay people for the job that they're doing according to the award or higher. We've had debate on that, but I'll talk to you at another time about why I think you're wrong on the comments you've made about me personally and the way I employ people. But would you get rid of good employees? No. Surely this is still about hiring people who are good for the job; that it would be good for them. It's about merit and that those people will be paid according to the job and remunerated according to that job.

There will still be recourse for people who feel they're being unfairly treated. We have some excellent unions that do great jobs. I think there will still be a body there that will be representative of people. I don't get some of the arguments around this, that it's going to be such doom and gloom. Employers will pay people—and they'll need to pay people—to keep them in the workplace and they'll also want to look at the merit side. What are your comments?

Ms Gallagher: I think you're probably right in relation to particular workers, but if what we're looking at here is a uniform system to operate across the country, do I think that's the case for all types of employment? No, I wouldn't agree. I think in areas of skill shortage, yes, people will have to pay reasonable rates of pay in order to meet areas of labour market shortage. In areas of professional qualifications and the upper higher end earner market I think you're right; I think there's more capacity for employees in that market to negotiate and to remove their labour and move elsewhere if they're not happy. But, if we're looking for a system that operates fairly across the board for all types of employment, I don't think that's the case.

Where people are working on minimum wages, where it's unskilled labour, where it's high turnover labour, where there are lots of people vying for jobs—this is the link to welfare to work there—do I think that it's going to offer protections for those workers? No, I don't, and I think this legislation gives enormous capacity to employers to deal with that and to reduce conditions even further for that area of the market than ever before. We're not having a living wage any more; we're going to have a minimum wage set. It's unclear how that's going to be set yet, and we won't find that out for some time. We're looking to shift people out of collective bargaining frameworks, which have offered those in the lower end of the labour market suitable protections. We're looking at shifting those off. We're looking essentially at removing the rights of unions to get involved in disputes and cases. That is contained in the legislation—that unions cannot be named as parties to be involved in dispute resolution, so that role that unions have traditionally played in sort of pursuing and looking after those individual cases will be significantly lessened under this legislation. So it's no surprise, Mrs Burke, that we don't agree on that.

MRS BURKE: No. I'm just interested in your view.

Ms Gallagher: The evidence is not only in my rhetoric or my background; it's actually

in the legislation. They're not making a secret about that. Again, it's a very blatant, reducing of entitlements from where they are now down further, and I don't think they're making a secret about that.

THE CHAIR: Minister, just on the back of the statement about excluding unions from the dispute resolution process, is it your experience as Minister for Industrial Relations that it's important to have the role of employee representation at dispute resolution processes?

Ms Gallagher: Yes, that's my personal view and it's certainly my view as industrial relations minister. I don't know if politicians are professional, but that's my professional view. The ACT government won't be changing the way we deal with these situations regardless of the legislation. In any bargaining that we do, we will be seeking to include unions. We will be wanting collective agreements that unions are a party to. We'll of course have to follow the law and how that impacts on our bargaining, but our intention is very much to keep unions as representatives of employees inside the tent, and work with them.

There have been a couple of strikes on my watch. Certainly from my point of view, there are times when you don't always agree, but the majority of potential disputes, the majority of problems—there are problems in any workplace; that's just the reality of workplaces—can be easily avoided and amended if you have an employer and employee organisation working together. This is the view of the ACT government: we want a cooperative work force and we want to facilitate that through working together in the interests of all, and that means working with the employers as well, but treating everyone on a fair level. If you have that approach, you can have significant benefits coming from that.

What we see with the WorkChoices legislation is it's shifting that balance, skewing it, quite significantly outside of the interests of the employee as an individual. Again, I don't think anyone can dispute that. All you need to do is read the legislation and you can see that that's the intent of the legislation and that, if this legislation is passed, that is what will come into effect.

MS PORTER: On page 53 of the joint submission of all of the state and territory governments it says that the proposals contained in the bill will result in the low paid working long hours to make ends meet. We're both aware that there tend to be wider social problems amongst lower paid workers and their families. I was just wondering if you want to comment on a few things. If lower paid workers are working longer hours, as the submission does suggest, will it be the case under AWAs that we'll have further social impacts? Also, will we have an interaction between this bill and the welfare to work reforms? Perhaps we'll have the same sort of people affected in similar ways by the welfare to work impact, so that interaction between the two. In particular, I'm wondering if this is going to have a greater impact on women in the work force. It has always been difficult to make sure that women get equal pay for equal work. Is that going to be exacerbated by this? And what about parental leave? You did mention parental leave as being one of the five things that are going to be maintained, so I just wanted some clarification around parental leave. I was wondering if you could answer those few things?

Ms Gallagher: Yes, sure, I'll try. Women: it is one of the issues I've raised and I raised it before the Senate inquiry, too. The push to AWAs we know will already unfairly impact on women and I should say that we haven't provided the government's submission to the inquiry yet, but we will be doing so shortly and it will contain that data for you. But we know that AWAs don't deliver. The information we've got is that they don't deliver the same family entitlements as collective agreements do; that people usually earn less than on an award from the protections the award offers, and that women on a certified agreement or collective agreements do a lot better than women on AWAs. That data, I think, is in the joint submission as well, but it will certainly be provided to our government submission.

Here in the ACT we have the highest rate of female participation in the work force, so, again, that area worries me. We have the highest level of women with children under four in the work force across the country. So conditions around family-friendly entitlements are a concern to us and I put that forward at the Senate committee. In terms of working longer, one of the concerns I have is around the maximum hours of work. That it average out at 38 hours has the potential for periods of very intense work to periods of no work at all. The flexibility that that offers employees and the impact that that will have on families worries me, going from working excessive hours to having to manage your family's budget on no hours potentially. I think there are amendments being flagged around that, to make it an average of 38 hours over a month is what I've heard, to try and rein that one back in.

The predictions are that the changes being talked about in this legislation will mean that protections will be taken away. Say you make the decision to go onto an AWA or you're required to go onto an AWA and you trade off certain conditions, either you're not going to be remunerated as you were before, in which case you're going to have to fill the gap somehow—and for most people that means either taking a second job or working longer—and that is going to have a significant impact on families. And it does link to the welfare to work proposals. I think everyone knows about Billy, who is unemployed and who engaged a bargaining agent and got a job. The second part of Billy's story, part 2, was that, if he'd said no to that job after he'd traded off everything into his AWA, he would have been penalised under the welfare to work provisions and would have lost income support. We are told that choices are available to people, but "choices" is the wrong word. Take a case of someone who's on income support being required to get a job. In order to have some sort of income and not be penalised, they are going to have to be competitive in the labour market. What I mean by competitive is trade off conditions in order to get a job because, if they don't, then they're facing a comeback from another way. We're going to have to wait and see how the interaction between those dual pieces of legislation, the full ramifications unfortunately, roll out. The impacts on individuals, particularly those in the vulnerable area—and I'm not being patronising here—of the labour market or outside of the labour market trying to get in will be significant.

MS PORTER: And what about parental leave? You did say that that was one of the protected areas. I just want a bit of clarification about that.

Ms Cotton: It's a 12-month unpaid entitlement, so there is a basic entitlement in the WorkChoices legislation. However, the parental leave act, which applies in the ACT currently, hasn't been protected under what they're proposing. They're proposing to override any leave except for long service leave, so acts in our jurisdiction that provide

protection will be overridden.

MS PORTER: And they will be overridden as soon as it's brought down? We will have no protection, no way of stopping it?

Ms Gallagher: No, not on the overriding, no.

THE CHAIR: Minister, will that have an effect on our industrial manslaughter laws as well?

Ms Gallagher: They haven't specifically named industrial manslaughter. The commonwealth areas are already exempt, but then they move to another level of crown immunity. Other areas of work—I think Australia Post falls under that—have been exempt from industrial manslaughter. I think they've got bigger fish to fry at the moment, but maybe once all this drafting's over they'll come back and try industrial manslaughter. But that won't be overridden at this stage. At the beginning of the legislation there is a list of areas of legislation that are exempt.

MS PORTER: Minister, page 68 of the joint government submission talks about superannuation guarantee and it mentions the fact that employers will not have to pay superannuation for staff earning less than $450 a month. I'm pretty sure that currently people are required to pay superannuation for workers earning less than that. How many people would we have in the ACT who would earn less than $450? How many people in the ACT does that superannuation requirement affect?

Ms Gallagher: We'll take that on notice. I'm not sure we can even answer it in terms of—

MS PORTER: But is that right, that there will be a certain—

Ms Gallagher: My advice is that under the legislation employees who earn less than $450 per month are not required to make super payments. However, some of the awards have included it in terms of allowing provision for entitlements. There are people nodding at me over there, so that's good. So, for example, here in the liquor and allied industries ACT award, employers must make contributions for employees who earn over $257.50 in a four-week period, so there you can see an award has got an enhanced condition from the legislation. They will be conditions that obviously will be seen as enhanced conditions to the minimum standards. If people are currently receiving them, those people may be all right, unless there's a shift to moving them off awards onto AWAs in those industries, which I imagine there will be, but those ones will obviously be—

MS PORTER: So that'll have quite an effect in the future, won't it, long term? If people are not getting superannuation, we're all going to suffer long term because those people won't have an income beyond when they retire.

Ms Gallagher: Yes. If anyone goes for periods of time without earning superannuation through their employment, that has significant flow-on effects into the future, not only for them but for the community, who will need to provide support to them—income support or some other kind of support—once they finish work. Again, the provision of

super is an area where women do very badly; they're always miles behind men.

THE CHAIR: Minister, I wonder if I could just move on to the industrial relations commission.

MRS BURKE: Excuse me, chair. Can I get one question in? I'm just sitting very patiently here.

THE CHAIR: Actually I've recorded the questions, Mrs Burke, you've had four and I've had four as well.

MRS BURKE: There are two of you and one of me.

THE CHAIR: Minister, could you explain to the committee the changed role of the Australian Industrial Relations Commission after this bill goes through?

Ms Gallagher: Yes, sure. The Australian Industrial Relations Commission will be watered down, effectively. They will have a role in mediation, not arbitration. They won't have a role in terms of doing the living wage cases, which they have previously been able to do, or in terms of unfair dismissal. Areas that have traditionally been theirs, that they have had responsibility for—certified agreements and all of those things—have been removed.

THE CHAIR: And that will differ quite a bit from the Australian Fair Pay Commission?

Ms Gallagher: I don't think we really understand how that's exactly going to be worked, the fair pay commission. Collective agreements now go through the commission process, you have them certified and they're checked against the no disadvantage test et cetera. That's an area that will change and that goes now to the Office of the Employment Advocate, and those agreements will operate from the day of lodgment rather than going through that full certification process. So essentially what's happening to the workplace relations commission is that it is being completely relieved of its responsibilities and its enforcement capabilities.

THE CHAIR: Do you think that will impact on the safety net increases that we've seen in the past; you've touched on that earlier?

Ms Gallagher: Yes, because the whole way the living wage case has been managed will change. Again, we'll wait to see how that works in terms of the fair pay commission and the process. We've had a process where the commission has a view and that view translates into the decision, which flows on through the award schemes. That will change. We've had the capacity for the federal government to oppose every single one of those increases, which they have with business, and you've had the states and territories and the unions all providing a submission in evidence to a commission, which has then considered the submissions, taken expert advice and come to a view. And the view of the commission has been that pay increases for those operating on minimum award conditions should be commensurate with the outcomes that are being received across the community. There certainly haven't been generous pay increases. They've been increases of between 3½ and four per cent, which are exactly, if not a little less than, what's being achieved across the country in terms of wage outcomes.

Here we're a bit higher—four, 4.3 per cent or so, looking at what's happening now because of the commonwealth government's pay rises, particularly. We'll see how it comes down. Again, it is no secret that their desire has been to move away from an independent umpire making a decision about what a safety net increase should be and putting it in the hands of a completely new body, which will not have the same powers to hand down those sort of decisions. We'll see. We might have a very generous chair of the fair pay commission who takes up where the industrial relations commission has left off. But, if that was the case, you would wonder why they were changing it.

MRS BURKE: Thank you. There are lots I want to ask.

Ms Gallagher: I can come back.

MRS BURKE: I am just trying to think practically. Much is talked about award simplification. I can speak from a personal experience. Working in two different jurisdictions, let us say New South Wales and ACT, Queanbeyan to ACT, don't you believe—well, you wouldn't—or what are your comments about it providing, hopefully, across the board a system that all employers will be able to operate more simply? Please can we assume the base that not every employer is good but most are; same with employees. We seem to slag on at the business people, employers, here—that they're all going to do the wrong thing. But I have to say to you that we have to protect businesses as much as we have to protect employees, if not more—I agree with your comments on that—with simplification, trying to cut the red tape for businesses to be able to operate better, to run their businesses better, to be able to employ more people. Don't you believe, specifically in relation to the ACT/New South Wales as a close home example, that award simplification will help?

Ms Gallagher: I guess you answered the question for me when you said I wouldn't agree. I don't. Read the state and territory submission and some views that are coming now from, particularly, small business representatives, who are saying, "Hang on a minute. This is not more simple than what we have now." We have 1,000 pages of new regulation. This is no deregulation at all. You can watch the ads as much as you like, but how do you deregulate and cut red tape by introducing a 600-page piece of legislation, creating a whole new range of areas of responsibility? Why do you need 500-odd pages to explain the 600-odd-page bill.

The advice from the states is that large areas of their work forces are not covered under this legislation at all, so for some of them they will try to protect their state systems and then they've got those under federal law who work there and then there's another group of workers that don't look like being covered by this legislation. It's actually complicating the systems that are already there. So I think it's a big leap of faith to say that this creates one uniform system of industrial relations. It simply doesn't do that, and I think the Senate committee heard that. There's enough evidence to support that and the fact that in many cases this is going to make it a lot more complicated, particularly for small businesses, who might have to actually engage IR experts and advisers and bargaining agents in order to be compliant with a law that they know nothing about.

I wouldn't cop that. Here in the territory we're in a different situation, but in terms of that working across the borders I think you're going to find the Queanbeyan situation to

be quite a mess. One thing for sure is that people here in the territory will know what law they operate under. Whether they understand that law and are able to work within it without engaging consultants to help them, or significantly rely on business groups such as the chamber or the Canberra Business Council to advise them, remains to be seen, but I think there is a lot of concern, which businesses have talked to me about, about how to understand all of this. It will take some time once it comes into effect.

In terms of making the one system, this legislation doesn't do it, and I think the commonwealth accepts that as well. They know that that's the case, that there'll be large pockets of workers who won't be covered. Whether they look to amend in order to bring them in, or whether they move to the state systems or try to be protected through court action, remains to be seen.

THE CHAIR: I'm aware of the time.

Ms Gallagher: Chair, I'm very happy to come back at another time as the hearings progress and certainly to speak to our submission once we provide it. There are probably a lot more questions around this and perhaps we'll know more about the amendments.

MRS BURKE: That will be good.

THE CHAIR: Minister, thank you very much for your time. We will take that opportunity and will call you back in the future.

Meeting adjourned from to 1.08 to 4 pm.

SARAH SCHOONWATER and

GEORGE WASON

were called.

THE CHAIR: I welcome Ms Sarah Schoonwater and Mr George Wason of the ACT branch of the Construction, Forestry, Mining and Energy Union to the inquiry this afternoon of the Select Committee on Working Families in the ACT. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

If any questions are taken on notice, the committee would appreciate responses within five working days of receipt of the Hansard transcript. Members are reminded to provide questions on notice to the secretary by the close of business. It is the responsibility of witnesses to ensure that they meet any commitments they have made regarding the provision of information or answers to questions on notice. The secretary will email a transcript to all witnesses as soon as it is available.

Questions for today's inquiry from the committee should be relevant to the inquiry's terms of reference. A schedule has been provided in regard to Ms Schoonwater's and Mr Wason's generous availability of time. I ask all members of the committee and other members to adhere to the program. I would also like to ensure that all committee members have an opportunity to put their questions to the CFMEU representatives before we move on to other members' questions. Members are reminded of standing order 235, which states, "When a committee is examining witnesses, Members of the Assembly not being members of the committee may, by leave of the committee, question witnesses." Ms Schoonwater or Mr Wason, would you like to make an opening statement?

Mr Wason: Yes, thank you, chair. I thank the committee for the opportunity to allow Sarah and me to address you today. We will probably take it through in three stages. In the first stage, I would like to give people a bit of background in relation to the CFMEU and the types of activities that we involve ourselves in here in the ACT.

The CFMEU and its predecessors have been active in the ACT since the 1940s. Our principal responsibility is to advance and protect the interests of construction workers. I think I can say that, over those 60-odd years, we have been successful in achieving that objective. But the CFMEU does not look at just the industrial issues of the workers in the construction industry. We also look at the social issues and other issues which face our workers outside the confines of their day-to-day employment activities.

The CFMEU has involved itself in numerous community programs. It was the CFMEU which introduced a drug and alcohol program into the construction industry. That program has been operating for some 10 years. It would be fair to say that we received a fair bit of opposition from employers and building workers because our policy,

especially on the question of alcohol, was "not at work", that you should not consume drugs or alcohol at work, nor should you come to work being physically impaired by drugs or alcohol.

As I say, that was our initiative; it was not an employers' initiative. As I say, we received a bit of opposition from the employers initially and we received opposition from the workers because the workers were quite receptive to the idea of the boss putting a slab of beer in the fridge free and they were considered to be a relatively good boss if they filled the fridge up each afternoon. They did not quite worry about them driving home or whatever impact that was having at work. But, over time and through persistence, we were successful. After we had the program started for some years we actually received support from the ACT government in regard to some funding assistance to develop the program. It is also pleasing that other industries have adopted this program, such as Qantas. They adopted the program due to the problems they were experiencing with drug and alcohol in their workplaces.

The OzHelp Foundation is a relatively new initiative that the CFMEU introduced. The OzHelp Foundation is an organisation which the CFMEU established and we then went and had a discussion with the Master Builders Association—David Dawes, the ACT managing director—and they agreed to come on board and be co-supporters of the OzHelp Foundation. The OzHelp Foundation is basically a resilience program. At this point, it targets young workers in the construction industry, young apprentices and young trainees. Unfortunately, both organisations which operate group training companies in this town experienced several suicides of young people and we thought it would be safer if we took the initiative. It was pleasing to see the Master Builders Association come on board and support and promote the program.

It is also fair to say that the first funding we did receive was from the Liberal government, from Gary Humphries when he was our Chief Minister, and we also received substantial funding from the commonwealth government through the Department of Health and Ageing. This initiative is a program which has been, I would say, very successful. They are hard issues to talk about, but it has been received very well by the young people, because the young people out there are looking for support and processes in place. We have counsellors who travel round the workplaces and they build up reputations, trusts and relationships. We will be having a presentation next Friday at which the Minister for Health, Simon Corbell, will be awarding the apprentices who have successfully completed the two-week resilience training program. We are being supported by several worthwhile organisations.

Health and safety is another important issue in which the CFMEU is involved. When I first came here in the mid-1980s I was somewhat appalled to find that the ACT did not have an occupational health and safety act. It was quite absurd that the Australian capital did not have an occupational health and safety act. The CFMEU's predecessor, the BWIU, was the organisation which campaigned, and campaigned successfully, to have the ACT Assembly finally pass an occupational health and safety act for workers in the private sector in the ACT.

The children's hospital charity is another initiative of the union. The construction workers do have a good reputation for helping people out and are normally the first to put their hands into their pockets. We have raised in excess of $700,000. I have three

other trustees with me on that board. One is Gary Robb of G Robb and Associates. Another is Terry Chamberlain from Chamberlains. The other person is Jim Service from J J Service. We are the four trustees and, as I say, we have raised in excess of $700,000 to date. Most of that money has been spent on the children's ward at level 4 of the Canberra Hospital, plus we helped purchase some equipment for the postnatal wards.

CITEA, the training company which I referred to earlier, is a group training company which has been going for some 11 years. Once again, that was an initiative of the union. It was our opinion that, firstly, apprentices were not being employed properly. Also, and equally importantly, they were not being trained properly. It is no good handing someone a trade certificate if they have not received proper training. CITEA has won numerous awards in the ACT for apprentices of the year. We currently employ 240 apprentices and trainees. We are the biggest group training company in the ACT and we employ 50 per cent of all construction industry apprentices and trainees in this town. If CITEA had not been established some 11 years ago, I would hate to see what the skill shortage would be like in our industry as we talk now.

Those are some of the broader initiatives that the CFMEU has involved itself in over the years. We will continue to conduct our activities at the industrial level but also equally and importantly at the social level. That is a bit of the background. I want to look now at a proposed act, the building and construction industry improvement act, that is currently before the federal parliament. It is important that people understand one or two things.

When the Cole royal commission handed down its findings it was quite interesting to see that, if you took an objective view, there were no adverse findings against the ACT regarding any worker or, for that matter, any contractor, although the commissioner did draw a long bow when he referred to some obscure dispute down the South Coast which involved a Canberra contractor and therefore he deemed there had to be something going on in Canberra, whereas the dispute was actually between New South Wales and the ACT contractor.

It is also important to reflect that when the findings were first presented in the federal parliament they were referred to a senate standing committee. That committee, after an extensive review of the findings, then called for further evidence from all sectors of the industry and found that there was no substance or justification for the implementation of the Cole royal commission recommendations.

The fact of the matter is that this bill has been revamped since the Howard government took control of the Senate. That is the fact of the matter. There is no justification for it, and it is quite clear that there is no justification because that is why the federal government is restricting any debate and really pushing through the bill. What people should be conscious of here, though, is that this bill, apart from the impact it will have on the unions and the method of operation, is also going to have a huge impact on small business. It is quite common practice even today for people to be bullied into setting up small businesses because the principal contractor or the main contractor, such as a form work contractor or a dry wall contractor, does not want to have any employees or accept any responsibilities. So they are basically bullied into taking or leaving the job.

MRS BURKE: Sorry, was that through small business? I did not quite catch the drift of what you were saying there.

Mr Wason: What I am saying here is that the bill will have a major impact on legitimate small business because these other sham arrangements are set up and the legitimate small business cannot compete. The legitimate business is paying payroll tax, workers compensation, superannuation, long service leave and so on. They cannot compete against someone who advises a worker that they are self-employed, they must have an ABN number and they will be paid $15 or $20 an hour all in.

This bill is going to have a major impact on small business because it is going to restrict the union's activities in pursuing these sham arrangements and wage claims. We had a situation just recently up at the institute with the new swimming pool, which is commonwealth funded, where two workers had been promised certain conditions and had come down from Sydney. When they got here the goalposts were shifted and, as time went on, they were shifted again and again, and finally they were given a piece of paper and told to sign it; if they did not sign it, they would be sacked.

They refused to sign it. They were subsequently sacked. We pursued the matter, because they never got paid either. Also, the employer went down to the house that they were living in, because he supplied accommodation, and told them at 4.30 in the afternoon to get out or, if they did not get out, he would call the police. These people had to go and live with the backpackers until they found alternative accommodation. You may have seen them on television a few weeks ago. They were on WIN giving an interview.

We successfully pursued that contractor and recovered all moneys for them, but when this new legislation comes in we will be extremely limited in pursuing that money or those claims. The other thing is that there is price fixing in our industry and I think it is the responsibility of this committee to report this to the ACCC, because it is not proper tendering. They are all told what the rate is going to be; whether it is so much an hour or so much a linear metre, the prices are set and there are no negotiations. That, in my understanding, is price fixing. That is one of the issues.

In relation to health and safety, there are some 50 workplace fatalities per annum in our industry, and those are the ones, I have to say, we know of. It is a bit like trying to put your finger on how many suicides there are in the Australian community throughout the year. You don't really get a true figure, and I can say that quite truthfully from the death claims we receive through the superannuation fund Cbus. There are some that just say "accidental death", so you just do not know whether it is a suicide or not.

We know that there is a minimum of 50 workplace fatalities each year in our industry. The reality for the ACT is that WorkCover is underresourced. WorkCover has been underresourced for years. This act which the government is pushing through will restrict the unions from pursuing safe workplaces for their members. It also supersedes legislation which the ACT Assembly passed recently giving accredited OH&S people the right to go into a workplace to check safety.

THE CHAIR: That is accredited OH&S union representatives.

Mr Wason: Yes. The other problem here is that, once again, it puts the burden back onto small business. There are quite a few small businesses which actually like the unions coming in and checking safety because it takes the responsibility and the cost away from

them. We do not go in and manufacture or look for health and safety problems but, if we see them, we are certainly going to advise the employees and the employer of the potential risks at hand. So, once again, it is putting pressure back onto small business in relation to the issue of health and safety and that, in our view, is not a good thing. Also, it should be noted that the cost to the economy of lost time due to industrial accidents is estimated to be approximately $8 billion a year. Surely any responsible federal government would be trying to look at how they can reduce the cost of safety to the workplace or to the economy.

Another area is security of payments. As I understand it, the ACT government had committed to enacting a security of payments bill to protect small businesses and bring them into line with the protection which the likes of New South Wales and other jurisdictions, Western Australia and so on, currently enjoy. Once again, this federal bill gazumps the security of payments bill and takes away any potential protection that the Assembly in the ACT puts into place.

Quite frankly, the union in the construction industry has been the one consistent organisation for all that time, in effect. The employers who were here 10 years ago are not the same as the employers here now. Most of them have changed. Most of them come and go. We have been the constant. So you are taking that constant out of the industry; that is what this bill is achieving. We have also pursued non-payments to contractors, to small business—quite a lot not members of ours—and we have actually recovered some substantial amounts of money for these companies to keep these companies afloat.

Without us recovering these moneys, these companies would be in liquidation. The principals would have lost their houses, would have lost everything. We have been able to step in and ensure that some of these unscrupulous developers, especially the ones from out of town, do not just walk out and leave all the bad debts in the ACT. So that is another area which this bill is going to have a serious impact on.

Also, it is our view that the legislation they are passing at the moment is more or less putting the Assembly out of business too. Because we do not have any state jurisdiction, we are totally under the control and the confines of the commonwealth. It does not matter what bills we pass in the ACT as the commonwealth, being the Liberal government, can come in and gazump and supersede whatever we try to put in here, whether it is here to protect workers, it is here to protect small business or it is here to protect the ACT community in general. We can be gazumped.

I think it is important that we also dispel a couple of myths which are being perpetrated by the federal government. One is that this bill will increase employment. That is not true. That is a false statement. It has actually got the capacity to reduce employment, especially in areas where shift work is a way of life, because there is no restriction on hours of work. You generally have a situation where your shifts are a norm of eight hours. What you will see happening is that they will extend these shifts. Instead of having three shifts in a day they will have two shifts; so one shift will be defunct, which will mean that all the people on that shift will be surplus labour and no longer required. That will be the method of operation.

THE CHAIR: Are you saying that they will extend the hours of employment?

Mr Wason: They will extend the hours of work and with the AWAs, the workplace agreements, there is nothing to stop them negotiating away penalty rates, shift allowances, these types of things. They can negotiate with each individual. We are fortunate at the moment that the economy is relatively strong and there are skill shortages in the construction industry, manufacturing and other sectors of the economy. But as the economy retracts—the economy will slow down; it is quite normal in economic cycles—and that slowdown really comes into play you are going to see massive restructuring and under this new legislation there is no rhyme nor reason the employer needs to give for the restructuring. All they have to do is say, "We are restructuring our business and, if you don't like it, you can leave." So you will find that it will not create employment; in fact, in our view, it will reduce employment.

MRS BURKE: So you are not giving credence to the statements being made that people will not receive less than the award that they are getting now; you believe that that is a furphy.

Ms Wason: Yes, I believe that. I believe that there are no protection mechanisms being put in place to support that. Look at the claim on annual leave, which they say will be protected by law. It will be protected by law and you can have up to four weeks leave, but it does not say that you shall be paid for four weeks leave. So you can take the four weeks leave, but you are taking it at your cost. It is not four weeks leave that you have accrued; you are taking four weeks leave at your cost. The same with the 38-hour week. That can be negotiated away too.

The other one is that it will increase productivity. That also is a false statement. The only way, in our experience, that productivity increases is if the employer ensures that the employees and staff are trained or they commit to a major capital expenditure to upgrade the equipment, machinery or whatever they have to do to bring their business up to speed. Just because you reduce the rights of people does not mean to say that you are going to work any faster. All it is going to say is that they can pay you less. So there will not be an increase in productivity but you will see an increase in profit. That is what will happen. The profit is really what will come into play. As to productivity, we cannot see a logical reason for productivity to increase.

As I pointed out earlier, industrial accidents cost the economy about $8 billion a year. The situation is that we predict that there will be an increase in industrial accidents, so you are going to see an increased cost enter the economy. Also, with the government tightening up the welfare system, people who do get injured at work and cannot go back to work will be forced after their workers compensation benefits dry up to go onto whatever miserly benefits they can receive from the welfare system. Quite frankly, as far as we see it, the government is shifting the social responsibility that it used to have to the families. That is what they are doing. It will be the immediate family that will have to pick up that cost because there are no mechanisms in place to assist these people whilst they are injured and trying to get themselves rehabilitated so they can return to work. That will be the end outcome.

It should also be pointed out that this federal government has also opposed every national wage case since 1996. Many of the wage cases have been, on average, for $20 a week, but the federal government was somewhat silent a few weeks ago when it was

showed that the top 200 companies paid their corporate executives tens and tens of millions of dollars. The government never stood up and opposed that. It is quite clear what section of society this government have supported and it is quite clear that they do not have any social conscience, nor are they supporting small business. I will close with that.

Ms Schoonwater: To expand on George's answer to Jacqui's question: it is important to remember, in relation to the Australian pay classification scales and standards, that, if you change employment or if you enter into a new AWA, then your rate of pay can drop. Further, there is no access to arbitration for any of those five minimum conditions. Instead, employees will be forced to go through the new alternative dispute resolution procedures. The current quick system that we know, which is conciliation and then arbitration, is gone. We now have to go through a complex and costly alternative dispute resolution procedure.

I can't really see 16-year-olds, negotiating their first AWA, being able to go off on their own and go through an alternative dispute resolution model nor being able to afford to pay for the services. This is not clear in the act. Remember we are not referring just to the Building Construction Industry Improvement Act; we are also referring to the new workplace WorkChoices act. It does not specify in the regulations who picks up the tab. Given the flavour of the legislation, you can guess who does. That would be the applicant.

It is also important to note that, in relation to the Senate inquiry, Families Australia and the Australian Federation of Disability Organisations put in fairly strong and concerned submissions. Given the size of those organisations and that they are not familiar with putting in such reports, it shows clearly the concern that people in the community have for the disadvantaged and the impact this bill is going to have on those who are least able to look after themselves.

THE CHAIR: Most of us would be familiar with the operations of your union but, to put it in context for the committee, can you tell me how many active building and construction work sites you have in the ACT?

Mr Wason: I can tell you we have got approximately 7,500 active members in Cbus who are domiciled in the ACT. That gives you an indication of the, shall we say, more commercially organised area in the work force where Cbus has a large penetration. We would estimate that in the industry at the moment there are probably about 10,500 or maybe 11,000 construction workers. That includes the housing sector, too. In regard to work sites, you will probably find that ACTPLA, who issue building permits, would probably give you a better number.

THE CHAIR: The second part of the question I was going ask is: you alluded earlier to the way some operations occur at sites, with people on contracts and different employment conditions. Would you be able to break down for the committee the arrangements at sites, like a superior contractor, a builder or whatever?

Mr Wason: You generally have the owner or the developer as the person who owns and ultimately controls the job. They engage a principal contractor like a Bovis Lend Lease, a Multiplex, a Project Coordination or so on. They then put out tender packages or trade

packages for bricklaying, concrete and steel fixing, scaffolding and so on. You generally find that the builder is not the major employer of labour. The builder would, on the other hand, for blue-collar personnel within their organisation, put on white-collar contract administrators, engineers and so on as project managers and would be the employer of most of the labourers, the form workers, bricklayers, steel fixers, plasterers, electricians, plumbers—these guys.

It is in that group you find that, because sometimes they have been forced to shave some money off the original tender price, they have then got to start cutting corners. Generally the first areas that get cut include payroll tax. They will avoid payroll tax; they will avoid workers compensation in various ways or take a nominal policy or declare so many people as employees but the rest of them as contractors. There are very few of them who would put it through the whole of their company because, as I say, it is a competitive industry out there and they have got to cut corners. Of course other areas get cut.

What is first to go is safety. They won't comply with all the proper safety regulations because there are costs involved, as I touched on earlier. That is why a lot of these small contractors like the union to come on board and organise the safety because the job is being done. It is not a cost to them; in fact, there is a saving because the fewer accidents they have, the fewer claims on their workers compensation.

Nationally, it is estimated that the commonwealth is losing somewhere like $2 billion in the black economy in tax revenues. You would work out a proportion of that. The ACT is certainly losing out in regard to payroll tax, workers compensation, people paying the proper rates. You are going to have a drain on the workers compensation pool, the supplementary fund, which under the act must have a certain reserve. If these things were enforced, once again it gets down to the resources of the ACT government. You need more inspectors to go out and enforce the compliance.

We would roughly estimate that, at the moment, non-compliance across the board, if you averaged it all out, would probably be 50 per cent. Some areas are higher than others but, if you took a mean average, you would probably say non-compliance is about 50 per cent.

MS PORTER: My question relates to your statement that this act is going to have all these detrimental effects that you were outlining. The explanatory note to the act says that the federal government adequately consulted with industry and stakeholders, including the unions, in 2003 and earlier this year. Did that happen? Obviously, if it is having all these detrimental effects and if they did consult with you, one would have thought that those things that you have just outlined would have been taken into account. Was there adequate consultation?

Mr Wason: I will answer you on two levels. I can say absolutely that the federal government never consulted with the ACT branch. I am absolutely certain that the federal government did not consult with the national CFMEU. As far as I know, they never consulted with any of the union movement; they have been too busy locking us out of the consultative processes over the years. Where they couldn't lock us out, they disbanded the company or the committee or they passed legislation.

Look at ANTA, the Australian National Training Authority, which had tripartite

representation on it. That company has now been disbanded and there is this new advisory council. At best, there is one position for some employee person. It is not a union person; it is an employee person. It doesn't mean it has got to be a union person; it could be someone from the Salvos or wherever, somewhere else, a worthwhile charity.

MS PORTER: You also said that you think there is going to be more industrial action. I thought I heard you say that. The right to strike, bargain and discuss these sorts of things in the workplace seems to be not allowed under this act. How will these sorts of disputes—

Mr Wason: I didn't say there was going to be an increase in disputation. I said we are predicting there will be an increase in industrial accidents.

MS PORTER: Are they going to be able to collectively bargain in the workplace for better conditions, to gather together and protest against some of things you are talking about?

Mr Wason: No. Collective bargaining under this new proposed legislation is nigh near impossible. You have got as much chance of winning a lotto as you are going to have of having a collective bargaining agreement in place. This legislation is designed to break down collective bargaining. This legislation doesn't even allow you to go out and go to a protest to save Medicare, save the trees or whatever, whatever ideological view you may have on a particular issue. You might want to protest about the treatment of refugees.

Under this legislation, you are in breach of the legislation and you, as an individual, can be fined up to $33,000. It is not only your industrial rights that have been taken away from you; it is your civil rights—your freedom of speech, your freedom of expression, your freedom of protest. The only time you will be able to do that is on public holidays and weekends, if you get your weekends off. Other than that, you will be at work.

Ms Schoonwater: To add to the question you are asking: in relation to OH&S, employees can face severe penalties if they choose not to work in an environment that they consider is a risk to their health and safety. For union officials, at the moment, as George has outlined—and statistics show—a unionised workplace is a safe workplace. Unions can no longer turn up and assist employees in those issues. Unions can only turn up at lunchtime and they can only meet in an area as directed by the employer. So we won't even know where the risk areas are.

MRS BURKE: But you will still have access. I will ask that in a minute.

Ms Schoonwater: Only if the employer gives—

MRS BURKE: Yes, the employer can ask.

Ms Schoonwater: But the employer can refuse to permit the union official entry into certain areas.

MRS BURKE: If it is to their benefit, like you have just said, it would be stupid of employers not to involve the union members. That is something I have been thinking

about, too.

You have taken great strides for the construction industry in the ACT, and it would be mad of any employer to sever that relationship if it has been so good. And it has. I sincerely recognise the work you have done in driving positive change for safety in this city. I mean that.

It is a bit of a furphy from you guys, perhaps, and a little bit of scare-mongering, to say that you are going to be locked out. Any employer would invite people in, like you have said, George, because of the reduction in costs to the employer. The imposts on insurances and so forth and in the workers compensation area, you just don't do that, as an employer.

THE CHAIR: Is there a question in this?

MRS BURKE: Are you telling me that employers can no longer invite you into the workplace?

Ms Schoonwater: Yes. I refer you to para 89 of our submission. That outlines some cases where the union has been refused right of entry by employers. I refer you to the last line.

MRS BURKE: I am not talking about that. I understand that. I don't think you understood what I was saying.

Ms Schoonwater: The facts are that there are some employers that are not good employers; there are some employers that are bad employers. There are some employers that don't care about the safety and the welfare of their employees. Unfortunately, those employers still exist.

MRS BURKE: I agree with the ramping up of WorkCover, too. I have been a big advocate of them over the years as well. I agree with George's comments there.

THE CHAIR: We had some conversation on subcontractors. You talked about forcing workers onto ABNs and that. Can you explain to the committee how forcing workers onto ABNs would affect working hours in the industry for other employees?

Mr Wason: It gets to a stage where, for example, people who are on ABNs tend to work long hours. On the days when the job is shut down—maybe it is a Sunday, maybe it is a public holiday or maybe it is raining—they can't work. They have then got to try to make up that lost income during days like today. So they will work now 10 or 12-hour days and they will insist that the job remain open.

When that happens, there is then pressure on other people to stay on site. The supervisor has to stay on site because a job is open. The first aid officer has got to say on site. The pressure flows on to other people who may not necessarily want to work. There is then pressure on them by the builder to be on site so that the site can remain open for these people.

THE CHAIR: What is the benefit for employers in that situation if they put people on

ABNs? Is it just profit?

Ms Wason: Yes. If you put people on ABNs, you are arguing that they are self-employed contractors. Therefore, you don't have your responsibility for workers comp, allegedly. You don't have the responsibility for superannuation. You don't have responsibilities for pay-as-you-go tax deductions. That is it. It is a way of cutting costs for that employer. I must say that a lot of people who work on ABNs classify themselves as subcontractors. They are using the tax system. They don't pay 28c, 34c or whatever in the dollar—in some cases 48c in the dollar. They have all these write-offs. They are paying something like 12c in the dollar.

That was my point earlier. We estimate that the tax office each year loses about $2 billion in lost revenue because of the black economy. The black economy is the ABN. We had an example of a young kiddie's first job, a 17-year-old; the boss rang him up one night and told him that he had to have an ABN and he had to have his own insurance—this was 8 o'clock on a Wednesday or Thursday night—if he didn't have that by tomorrow morning, he would be sacked. This was on a project where apartments were selling for $1 million plus.

THE CHAIR: With terminations, if they are on contracts or ABNs—

Mr Wason: They would be sacked on the spot.

THE CHAIR: Unfair terminations aren't available?

Mr Wason: That is what they will argue.

Ms Schoonwater: The legislation is going to override what the ACT government was seeking to do, which was to introduce the fair works contracts legislation. It is pretty clear that, by intending to cover the field through the WorkChoices legislation, where the ACT is trying to take the initiative to look after contractors and to look after legitimate subcontractors, the federal government is not interested—not interested in protecting the interests of small business, not interested in protecting the interests of individual or independent contractors. That is clear.

MS PORTER: I wanted explained, more than anything else, an unusual term in the act. It specifically prohibits pattern and site bargaining. From my understanding, pattern is like a model bargaining; you make it that the rest of the workers that come in after that event can have those same conditions. Apparently it is prohibited under the act. Does that affect us here?

Mr Wason: Yes, it does. On some projects you will have a site project agreement. On some of the larger projects there will be the project agreement for that job. Parliament House, for example, was built on a project agreement. Then you have the enterprise agreements. There are a multitude of agreements.

We have this with the employers. There are about four main form work contractors in the ACT. They employ some 95 per cent of all form workers in this town. They all want the same agreement, because they all tender against each other. They do not want someone to have a 5 per cent or a 10 per cent comparative advantage on wages and conditions.

Bricklayers are the same; scaffolders are the same; concreters are the same.

All through the different trades who compete, they all want to have the EBA—I will call it—template agreement. That is what the industry wants, but the government does not want that. The government is opposed to that because that is a form of collective bargaining, and they are fundamentally opposed to collective bargaining. The irony of this is that, if you go to the Office of the Employment Advocate's website, they have a model AWA. They are offering a template; they are saying, "We'll give you a model AWA to have, but you can't have a model project agreement. You're not allowed. They're illegal."

Ms Schoonwater: There is nothing within the proposed WorkChoices legislation that would prohibit model AWAs. It is not the pattern that they do not like. As George says, it is the collective.

MS PORTER: Some of my questions were on the Cole royal commission, and you have answered all those for me in your introductory remarks. I am happy about that, thanks.

THE CHAIR: If I could touch on the BCII Act: that establishes the construction commission. Your submission outlines employee punishment, including imprisonment should he or she fail to cooperate fully with the investigation. Are you aware of any other industry in which this practice is undertaken?

Mr Wason: No. We have been singled out for special treatment in the construction industry. There is not an industry where, at this point in time in our history, if you refuse to answer a question, you could face up to six months imprisonment for your first offence.

MS PORTER: Why do you think that is the case?

Mr Wason: It is a form of intimidation as far as we are concerned. Also, if you recall, the federal government, through the Office of the Employment Advocate, in a court case against our Victorian branch tried to acquire records and information. They wanted a list of the names of all building workers who participated in union training, whether it be training for occupational health and safety representatives or elected workplace representatives. They took us to court, the Federal Court. We spent a significant amount of time and money there. Fortunately, we won the case, and we were able to refuse to give them the list of several hundred people that they were wanting the list of. These days, under this new legislation they have pushed through, people who refuse to cooperate can go to jail for six months.

As far as we were concerned, there was only one reason they wanted that list. They wanted to form a black list and run out of the industry people who were pro-union. That is the only reason that we could think of. They were wanting that list so that they could have the nice little black list.

Ms Schoonwater: It is also interesting to note—and we have highlighted it at para 23 of our report—that the housing industry is excluded from the operation of the BCII Act. Is the government really sincere? It says that there are all these rorts out there. That is what it was trying to campaign on. The housing industry is perhaps the most deregulated

sector of the building construction industry but it is excluded from these provisions. You have got to question the hypocrisy of the federal government.

As we have highlighted, non-compliance is a problem in other industries such as small restaurants and cafes. Surely those areas would also benefit. Woolworths, for example, is a particularly dangerous industry. They would also benefit from Woolworths.

Mr Wason: Woolworths have the highest number of industrial accidents of any employer here in the ACT.

Ms Schoonwater: And nationally.

Mr Wason: And nationally.

THE CHAIR: If we go back to WorkChoices and entitlements for a minute: you have talked in your submission about people in the industry that top up their income with penalty rates or overtime loadings. Given your experience with the non-payment of worker entitlements, what would you believe the impact of the proposed changes in WorkChoices—in other words, the encouragement of moving onto AWAs and the removal of awards—and the BCII Act will have on your members' entitlements and their ability to claim unpaid entitlements?

Mr Wason: As I pointed out earlier, the pursuit of any claims is going to be extremely complex and expensive. Most of our people won't have the skill nor the ability to finance such an action; so most of them will go unchecked. As to what degree of impact it will have on household income, we can only say at this point in time that it will have a significant impact on household income. For example, studies in America show that, in relation to what the single breadwinner in a family of four was earning back in the early 1980s, some 20 years later in 2000 the four people in that household have to be working to earn the same as that person was earning, in relative terms, 20 years prior.

What you are going to see is that more kids are going to have to go and find jobs at McDonald's and all these other places to supplement the income which the principal breadwinners were earning prior to this legislation. That will take an amount of time. It won't happen overnight, but over a period of a couple of years. If the economy hits a recession sooner than what some people are predicting, we can safely guarantee that, when a recession does come into play and this legislation is still in force, you are going to see household income being severely slashed and more and more people are going to have to be out there working to support that single family unit.

THE CHAIR: You talked about five programs that you have implemented over many years—the drug and alcohol program, Aushelp, health and safety, the Children's Hospital and CITEA. Do you think that these bills will affect your ability to implement these sorts of programs?

Mr Wason: Yes. For example, the drug and alcohol program. Once again, it gets to the issue of access on site. The rehabilitation counsellors have got to get into the workplace. Their activities shall be restricted under this bill.

CITEA is facing a major challenge, probably its biggest challenge in its 11-year history.

On CITEA, we have a bipartisan group of board members. We have employers. Between the three people whom you call employers, they have got over 100 years experience in the construction industry. They have worked as senior project managers in this town and for national and, in some cases, multinational construction companies. Of course, you have got union or employee representatives on the board of CITEA, too.

We are totally opposed, unanimously opposed, to the types of employment arrangements which the government is imposing on people especially in the construction industry. As a matter of principle, we will not be imposing these terms and conditions on these apprentices and trainees. Therefore, in a competitive market, when we hire our apprentices out to host employers, we are going to be competing against these other training companies who have all their apprentices and trainees on AWAs. Put it this way: it costs us to date $19 an hour for a first-year apprentice. That is building in the cost of training, off-site training, superannuation and all the other on-costs. There is nothing to stop, once this legislation is passed, an employer putting an apprentice on an AWA and paying them $10 an hour flat. We can't compete against that.

It may be that we will have to close the doors of CITEA once this legislation really takes full effect in the industry, which will affect in excess of 240 people. That is not counting staff. We have got a staff of probably 15 or 20. We will be closing the doors of that training company because we will not be able to survive. We can't compete. One of the most successful training companies in this town's record will be out of business.

THE CHAIR: I thank you very much for coming this afternoon and especially for giving us that extra time.

The committee adjourned at 4.57 pm.