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, 8 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 12.30 pm.

THE CHAIR: I would like to open the select committee inquiry into working families in the ACT. I welcome committee members, the committee secretary, officials and representatives and also Clive Haggar and Penny Gilmour from the AEU. 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 by witnesses, the committee would appreciate responses within five working days of receipt of the transcript. It is the responsibility of witnesses to meet any commitments they make 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. Mr Haggar, would you like to make an opening statement?

CLIVE JOHN HAGGAR and

PENELOPE ANNE GILMOUR

were called.

Mr Haggar: My name is Clive John Haggar. I am the Secretary of the Australian Education Union ACT Branch. I have with me Penny Gilmour, the Assistant Secretary, Industrial. We appreciate the effort the committee members have gone to to provide us with the opportunity to attend today. As you would appreciate, we have sent a large number of papers to the committee for consideration over the coming months relating to the terms of reference of the committee. They are the product not only of our own organisation's research work—some in collaboration with the National Tertiary Education Union—but I believe there are also significant papers from such community organisations as ACOSS on the issues of work and family pressures.

I want to talk from the perspective of AEU members in the ACT. We represent generally between 93 per cent and 95 per cent of the teaching work force in public education in schools and TAFE. That figure would certainly apply to the permanent work force, the permanent part-time work force and full-time casual work force. We are a largely feminised work force. Seventy per cent of the work force is comprised of women. We are also a work force that has very much gone through the baby boomer expansion and recruitment issues. So we look now at a situation where, whilst our average age is 43 in the ACT compared to a work force age in teaching of 47 nationally, we have a very large number of members who will be retiring in the next few years and, obviously, we will require significant recruitment.

I believe there are some elements in what we have been able to achieve in recent years in cooperation with other public sector unions and ACT government employers that will support our capacity to attract people. One of the major points is that, for the next few years at least, we will continue to offer permanent employment to teachers. We will be providing people with opportunities for permanent part-time work. We will also be in a

situation of providing associated support, such as parenting leave and extended maternity leave. Although we are a small system with around 100 schools plus the CIT, as a system we are committed to making sure, to the extent possible, that our schools and CIT operators work in family friendly environments.

The issues are particularly important for us because, under recent federal industrial changes and the general move to work intensification—increased workload and increased working hours—not only do our own members experience this directly in terms of heightened community expectations but it is also the situation that the children who front to school each day are bringing with them significant social issues as a result of their own families' working relationships. The parents may be unemployed, or in peripheral employment areas doing casualised or part-time work. Some of them are holding down two or more jobs and some are in a situation where it is absolutely essential for both parents to work to support the family but there are expensive childcare costs, et cetera.

There is mention in the papers of a Victorian study where we are looking now at some 45 per cent of marriages in Victoria ending in divorce, with nearly half a million children fronting up to school each Monday morning having come from a different home from where they will be spending the rest of the week. When you add into that mix the employment issues, the long hours, the insecurity families are experiencing at greater levels in this country—and we are in a situation where the capacity for students to learn, for children to be properly cared for—it does not bode well for the future.

It is also important to recognise that, with the current approach of the federal government to education and training in this country, allied with the industrial relations circumstances and the new legislation, we are very clearly moving down a path that does not value highly skilled employees. The reduction nationally in federal funding to TAFE, for example, coming on top of our local experience of massive reductions to the funding available for CIT in the ACT during the Carnell period, has meant that the kinds of opportunities we would have had with maintained funding to support people improving their skills in the work force are simply not going to be there to anything like the same extent.

We are going to be in a situation where, with the removal of industrial protections such as penalty rates, for example—and we are already picking up stories in the local hospitality industry of employers moving to greater levels of casualisation in their work forces, beginning to utilise the new arrangements even before they are actually in place—that level of insecurity will increase. A large part of the hospitality and retail work forces in this town—part-time or casualised—consists of college students. Many of our students work up to 20 hours, and some do more because the economic circumstances in their own families require them to do that. They will be experiencing much greater pressure to work longer hours and for less money, given the removal of penalty rates and so on.

If they are working longer hours, that impacts on their studies. We had some experience this year of students being pressured by an employer to work at times when there were very significant study pressures on them. It didn't quite get to the point of saying, "If you can't work these hours and these shifts at this point in time, I'll be looking for somebody else" but it was not far off it. In the new industrial climate, with no problem around

unfair dismissal in workplaces for under 100 people, we are expecting that that sort of issue will be replicated.

Even if young people are in a situation of wanting to go on to further study at university, they are very well aware of the need to supplement their parents' income with their own. The great majority of our college students are in some form of part-time employment, which they will sustain when they move on to university—again into greater levels of insecure unemployment. They will be leaving university with significantly increased HECS debts and other personal debts they could have accrued simply with the normal day-to-day costs of living. You cannot access the kind of study aid that is available unless you have been financially independent, and there are strict criteria for that. Many of our students of course take a gap year to try to meet those criteria.

Regarding that low skilled approach—remember the old phrase "the clever country"—we need to recognise that we ought to be investing to a very much greater extent in education and training to build a highly skilled work force. That is something we are particularly concerned about. We can also address the issue of work intensification among our own work force simply by the amount of pressure placed on teachers with increased workloads around accountability provisions. These are going to increase. The reporting pressures from the federal government are enormous because they are allied to threats of withdrawal of funding if we don't comply. We are in a circumstance now where we are having to set up an entirely new and additional reporting system to meet the demands of the federal minister to secure our funding. That has an impact on teachers' morale, when they know that the work they are doing around this new reporting is, in fact, meaningless in educational terms. It will not have positive outcomes. As they put their shoulders to the wheel once again around this issue, it is worse when they know it is for no positive purpose.

There are additional meetings—out of hours meetings, night meetings, weekend seminars and conferences—simply to stay on top of the game. We have a good budget in the ACT, and have had for the last few years, around professional learning. The complexity of teaching today means that teachers are doing a great deal of work in their own time to stay ahead of the game, whether they be studying for formal qualifications or lesser qualifications at university or simply attending seminars, conferences and the like. That has a clear impact on their family lives.

One of the papers quotes advice from one academic to teachers. Unlike past years, where you were always advised at teachers college to marry a teacher if you could because it was great to have the shared time, the suggestion now is to make sure you marry somebody who has guaranteed permanent employment with fixed hours, who doesn't have to take work home. Having two working teachers in the family environment puts considerable stresses and strains on balancing the rest of life. This is a highly unionised work force which has guarantees of permanent employment, which the rest of the community are going to be enjoying less and less as time goes on.

I refer you to the submission we made to the standing committee inquiry into balancing work and family, particularly pages 22 through to page 24. That gives a very good picture of the sorts of pressures they face. We remain very concerned about the general community position. We are now recording much higher numbers of parents who basically lose it in the school environment on their children's issues. We have had

teacher assaults by parents reported regularly. You expect this sort of thing from time to time from students but when a parent is so much at the edge—because of their home life, marital relations, employment insecurity, et cetera—that they will be fronting up at the school making threats, being abusive and even, in some instances, assaulting teachers, it is an indication of a society that is moving into a much more stressful period. That will be exacerbated with the WorkChoices legislation being promulgated.

We have given you a huge amount of material, knowing that what we were providing has been found by other jurisdictions to be highly relevant. There has been a huge amount of work put in by the organisations. We believe the work of the committee—as with all Assembly committees—is very important for the benefit of the ACT community. We thought it was important that the committee have the opportunity to at least become familiar with that work.

THE CHAIR: Thank you very much. Thank you also for the amount of information you have provided. Can you tell me how many members there are in your organisation?

Mr Haggar: The base figure is around 3,400 in the ACT. That includes about 300 full-time CIT teachers. A lot of the work force at CIT is casualised, with people working in other full-time permanent employment. Both with schools and TAFE, we have always had in excess of 90 per cent representation. At the moment it is particularly high because over the last three years we have had our greatest level of recruitment. In a sense, that has probably reflected on the increasing uncertainties around the industrial and professional lives of teachers, because of the actions of the federal government—whether in the industrial legislation arena or in the increasingly ad hoc and idiosyncratic policy approach of the federal minister to education and training.

THE CHAIR: From that membership, have you had feedback as yet on the new WorkChoices legislation?

Mr Haggar: Our membership is well informed about the impact of the legislation. They look towards the union as a protective barrier to that. That does not mean, though, that they are not very concerned with the welfare of their own families and their students under the new legislation. They also recognise the point I made earlier—that they are going to be dealing with the consequences of this in the classroom and in the schoolyard on a regular basis.

THE CHAIR: I want to give the committee—and perhaps the Assembly later on, when we report—a feel of your organisation, separate from some of the other union-based organisations. Would you agree with the assessment that, in addition to being an industrial organisation, the Australian Education Union is a professional association for staff in education?

Mr Haggar: In our organisation we don't draw a line between industrial and professional issues. You cannot do that in education. Every element of the work of a teacher has both a professional and an industrial component. The kind of teaching practice you can employ in a classroom can depend on industrial conditions. Our net covers such basic things as class sizes and hours of face-to-face teaching. It addresses what kind of backup support is available for students with particular difficulties and whether there is an adequately supportive inclusion policy operating in the school. If you

have students with disabilities or behavioural issues, for example, there is clear support.

The federal minister does not share the view of our membership—and nationally 166,000 teachers belong to the union. He has a view that we ought to be boxed in to the field of industrial representation. That has never been the view of any ACT government. Irrespective of who is in power locally, we have always been able to be involved in every aspect of the operation of the system. We are a source of ideas; we are a source of support for good practice in the system; we provide professional learning for members on professional issues; and we are a voice of authority in the eyes of the community and the media on professional issues. But at the national level we have been excluded by the two federal ministers who have operated in that area—David Kemp and Brendan Nelson—from every single body with a professional perspective established in the last 10 years.

Ms Gilmour: In terms of practical evidence for the claim that our organisation is as much focused on professional as industrial, any examination of our industrial agreements will bear that out. Having come here from the New South Wales jurisdiction, I can say that I have not experienced an agreement that has so many professional elements in it that are dealt with at the bargaining table. They are certainly not present in the New South Wales award. Now being engaged in my second EBA here, it is a pleasurable part of the bargaining process to sit down and talk about the professional stuff and wrap those things into the industrial agreement. It has implications for our members in how they do their work but it also means that the union is simply an accepted player at the table for consideration of any issue that impacts on the professional development and professional focus of the teaching work force here. I think that is a really positive aspect of the way the ACT system has been set up and the strength of the professional relationship between the department and the union and the government agency that oversights it all.

THE CHAIR: Again looking at the coverage of your organisation, how many students attend the institutions that employ your members in the ACT?

Mr Haggar: In the schools area, including preschools, we are looking at around 35,000 or 36,000 students. You then have CIT. Obviously not all CIT students are full time but you are looking there at around 15,000 students. That is down on what it used to be. A decade ago we were looking at around 18,000 at the CIT. There are different ways of calculating that. These days it is done on student contact hours within the VET environment.

THE CHAIR: What agreements or awards exist in the ACT that cover your members?

Mr Haggar: I will ask Penny to address that issue.

Ms Gilmour: I have been dealing with our awards this week. We have the ACT government technical and further education teachers award 1999, the ACT government schoolteachers award 1999, the ACT Department of Education and Training Teaching Staff Certified Agreement 2004-2006 and the CIT teaching component certified agreement 2003-2006.

MS PORTER: You mentioned earlier how important collective bargaining has been and what you have achieved through that. Do you think that has been more important in the

ACT than anywhere else? How do you think it is going to be affected in the foreseeable future by what is happening now with this legislation? The second part of my question relates to AWAs. Prior to 2001, AWAs were available to members in the public sector. What has your experience of AWAs been in the education system?

Mr Haggar: To answer the second part first, we had one member—a school principal—who was told that the only way he could access a salary increase for some very significant additional work responsibilities he was asked by the employer to take on would be through an AWA. He came to us and asked us to negotiate it. Because in a sense he was already doing a significant component of the work it was not really a negotiation, but we managed to get some limited improvements for him. As soon as the opportunity arose, he fled back into the single collective agreement.

At one point in time under the previous local government, our principals sought a separate principals agreement. They of course approached us and asked us to negotiate it. We were uncomfortable, organisationally, about doing that. We did it for them but then achieved much better outcomes for the general work force through direct bargaining. The principals, again given the opportunity as a group to come back within the teaching profession as a whole, took that up and have been very happily ensconced in a common agreement with classroom teachers over the last couple of years.

Even though the opportunity was there for AWAs, they were not offered—beyond the one I mentioned—because even the employer felt it was much better to bargain with the profession as a group to achieve a collective outcome and collective responsibility for that outcome, rather than a plethora of individual agreements, even for senior professionals like principals. I think that, in the last local election, the notion that we would have moved to school-based hire and fire, which was the policy put up by the opposition at the time, was something that got no support whatsoever in the profession as a whole. When the alternative is as stark as a collective union organised agreement, there is no doubt where teachers will line up.

They are also reasonably educated on the experience in Victoria under Kennett, and in Western Australia under Court, where state-based equivalents of the new federal arrangements were tried out for a number of years. The impact on the work force in both those states was appalling. The one thing about the good operation of a school is that it is meant to be a team led by more experienced and very able professionals in the principal, deputy principals and executive teachers. But it is a team that requires significant trust and it requires people to focus 24/7 on what they are actually delivering for students educationally.

If you are in the situation of working alongside people who would have differing working arrangements, supposedly negotiated separately, that is a recipe for lower morale and far less in the way of collegiality and therefore cooperation. Our experience, as it has been tested in other jurisdictions, is that the teaching profession much prefers collective agreements. It is also the experience of the independent education union—a colleague union that represents teachers covered by both the Catholic Education Office and the Association of Independent Schools—that the benefits of collectively negotiated agreements and organised and collective sharing of responsibility for the outcomes far outweigh what can be achieved by AWAs.

Ms Gilmour: I would like to add something on the matter of employment practices. This system does not get too caught up around the local hire and fire issue because there is significant involvement at the principal level in staff selection anyway. The difference is that it happens in the context of a system-wide recruitment process where, having interviewed all new applicants and having had all the people in the system who wish to submit a transfer application—whether it is a voluntary transfer or they are required to do so because of some provision in the system that they need to meet—the applications are all sorted and principals come in and read individual applications and submit their wish list, if you like, of the applicants they would like to see appointed to their vacancies. The vacancies themselves are all advertised clearly so teachers know what jobs are available at what sites, doing what and for what fraction of time if it is not a 100 per cent full-time job.

I guess, again coming in with an outside perspective, it is a very respectful process here but it is also one where people have engagement in a way that is not possible elsewhere. To put that in context, in New South Wales they do not have local hire and fire either. Geographically you could not do it in New South Wales because, if you did rely solely on local hire and fire, you would not staff remote locations.

We don't have that problem in the ACT but, in both systems, it all ties back to Clive's comment about the collegial nature of teaching and the need to do things with a system perspective. In New South Wales principals don't have the opportunity to read the applications of those who might like to come and join their staff, they simply submit the requirements they have to fill the vacancy, which are identified by four-digit codes and put through a computer to produce a perfect score. They are then matched against a huge pool of applicants for transfer or appointment. Whoever has the perfect match with the highest number of points gets the job. You can see from that example that there is a much closer relationship here. For that reason, it is my observation that principals do not have a great attachment to issues of local hire and fire here because they already have engagement in the process. It is simply that it happens within the framework of a system approach to managing staffing and employment issues.

Mr Haggar: There are a couple of other points that are worth making about schools' recruitment. I will give you the numbers for this year. We had 1,263 applicants to join the public education workforce, the workforce. So far there have been 180 offers of permanency. Of those, you might get a major area, for example, English. There were 28 offers of permanency to applicants whose major teaching area was English. Of those, 17 were local. All of those 28 grouping had the very highest ranking of suitability following the recruitment process, which involves written application, referees and personal interviews.

That process is run with our support and our commitment. There are teachers in our system that have special needs and special considerations provided. That kind of flexibility, matching people as the best fit to jobs, would be impossible under a decentralised system of local hire and fire. You would never know who was available, for a start.

MS PORTER: You have been working with that system and with the collective bargaining system up to this point. What effect will that have on what appears to be a well-oiled machine?

Mr Haggar: I think at the moment—and our members understand this—as long as we can sustain the arrangements that we have, and that is collective bargaining and the level of systemic involvement we have got as a professional organisation in the running of public education, then they are reasonably protected from the very blunt instrument that WorkChoices is. But if any of those actually change, and we have it on record in terms of our previous ACT government political party policy and the support that exists at the moment in the Liberal Party for WorkChoices, that protection will be ripped away. If we are in a situation where individual teachers, particularly young teachers and particularly female teachers are fronting up to individual principals, I would be very concerned that the kind of employment practices with a focus on equity, diversity and procedural openness would disappear.

A large component of our work is to try and ensure that the negotiated procedures and processes around human resources are implemented in an appropriate way. Sometimes some of our members in senior positions give us cause for concern, although it is many years since I have heard the quote: send me no more women of childbearing age.

MS PORTER: But as you rightly point out—and you told us this before—the workforce has many more women in it than it has men. Obviously you are concerned that, should this all unravel, we are going to have a lot of problems with this.

Ms Gilmour: We already have some particular difficulties, and they are relative difficulties. Part-time work is a bit of a difficult issue with teachers. It is something relatively new in the mindset of many principals. Those who have teachers engaged on part-time work programs seem to find no difficulty with it. But for some of them, actually getting to the point where they agree that somebody could be part time has been a real challenge, and many of their colleagues in the system are still to deal with that challenge.

For us the concept is one of having government supported family friendly work practices, which is then supported by framework activity in the department around helping people develop the tools, and that work is going on in the department as we speak. They have actually put together a tool kit and, as part of the EBA discussions, we have been trying to link into that work so that the teaching workforce in relation to part-time work and how it might operate and how it might be offered will be in a less difficult position than they have sometimes been.

The difficulty is not just the principal as the local site manager. There are, from time to time, concerns to be managed about parents. I think it is fair to say that most people who are concerned about part-time work envisage school as a place where their child probably has one, or maybe two, teachers during the day. They have not realised yet that even in primary schools kids are exposed to a range of teachers across the school day and across the teaching week. It seems to do them no harm. In fact, my professional view is that kids thrive on diversity but sometimes parents are a bit unsettled about the notion that their child will have a change of teacher in a job-share arrangement and that might be unsettling.

The evidence does not appear to support that. From the professional point of view of the teachers themselves, the evidence seems to suggest that if you have two people working

at 50 per cent job share in the same position, you get effectively more than 50 per cent of work out of both of them because they are both bending over backwards to make sure that the job works and the students are not disadvantaged. Part-time work is one element that historically has been quite difficult to manage. The changes in industrial relations policy mean that the gains that have been made to date in education, which in my view have a long way to go, stand to be lost and what minimal benefit there has been for teachers in actually seeing it implemented reasonably can be stripped away.

For those people who have experience of part-time work, which I guess at the moment is probably more prevalent in other public sector agencies than in teaching, all it takes is a change in policy locally for the things that apply in the public sector to be lost. I guess, really, for us much of what underpins the nature of the agreements that we can strike with government and the working conditions and commitment of the workforce comes from the attitude of the government. So while WorkChoices does not have a direct impact today potentially it will have very great impacts. Certainly I think it has immediate indirect impacts because the people who are most likely to be affected by it from our perspective are our members' children or relatives who do not work in public sector employment.

Mr Haggar: Can I make one further point? You might be interested in pursuing this line. I was in New Zealand this time last year and we have had several meetings with our New Zealand colleagues this year to discuss the impact of the change in the industrial relations environment that took place more than a decade ago now. The New Zealand teachers union survived, and I think to some extent thrived, in the confrontationist environment in New Zealand, but they still recorded significant levels of social disruption within their schools, particularly secondary schools.

The income gap between rich and poor grew at a very serious rate during the previous National government in New Zealand. You had very real poverty appearing—once again, the diseases of poverty. This is reflected in what children at school were exposed to back in their home environments, particularly if they were of islander or Maori extraction. There was significant disruption and hostility between classroom teachers and school principals and boards of management because they did go to local hire and fire and principals were on individual contracts, whereas teachers were on a collective, nationally negotiated contract.

There were differentials—which we do not have in this country—between primary and secondary school teachers salaries. It was something that we saw as being absolutely archaic and we got rid of it.

Ms Gilmour: We do not have it here, but they do have it elsewhere.

Mr Haggar: Well, not the classroom teacher rate. Even in the ACT we got rid of it in promotions positions. We want top quality educators working right across the board. We do not want people swapping sectors simply because there is a few dollars more available there. But that kind of so-called "let a thousand flowers bloom" approach to wages setting is a recipe for disruption and the New Zealand experience reinforces that for us.

Ms Gilmour: Certainly although it was not done under a legislative framework such as

the current federal one, when I worked with the teachers federation in New South Wales there was a significant issue at one point around the hire of casual teachers. The anecdotal evidence was almost incontrovertible that there was a subtle "employ the least expensive" model being applied to engagement of casual teachers. They have a different arrangement to that which applies here, where there are only two rates of casual pay. In New South Wales they have access to part of the incremental scale and, as people became more expensive, they began to find that their casual employment opportunities for day-to-day relief dried up and they were only engaged on those occasions when the school did not actually have to pay, which was for longer term engagements which were paid centrally.

Even though there was not any kind of legislative framework that encouraged that, when schools went to local budgeting in New South Wales, it was a demonstrable outcome that teachers who were casually employed could demonstrate what was occurring to them. So in a framework like that which is now available under WorkChoices, local hire and fire, coupled with local budgeting pressures and, you know, how much you turn over, it seems to me that you encourage the worst case practice where decisions such as employment are made simply on the basis of dollars rather than on the basis of the competence and confidence and experience of the individual or, indeed, the subject need. You end up being what teachers call warm and vertical. If you have got a beating heart and you can stand in front of a class and you are cheap, that is it. It is not a recipe for maintaining the quality that a system such as this one has prided itself on.

THE CHAIR: While you have touched on dollars there, can I just draw you back to AWAs for a minute? Is it true that universities and technical colleges like the CIT receive additional funding for offering staff AWAs?

Mr Haggar: Under the Skilling Australia Act, if they do not offer AWAs, they lose the commonwealth funding. That is certainly the case in the universities as well. But the preference, the absolute preference is for the workforce at CIT to be under a collective agreement. That is the preference of the workforce and that is the preference of the employer. Obviously sometimes you have to respond to some market pressures, but there is the capacity within our collective agreement to do that when you are hiring people. As you would know, with CIT sometimes some very specialist skills and professional skills have to be purchased to sustain some of their degree level courses or their associate diploma level courses. But again it is done within that broad framework of a certified agreement, not an ad hoc approach via a so-called individual contract.

I also flag for a moment the notion that the AWA is, in reality, an individual negotiation. When you are dealing with a mass professional workforce, that is absolute nonsense. The individual contract regime in Western Australia, in particular, was a one-size-fits-all exercise. There was no individual variation. You simply were offered an individual contract that was the same as that for the person next to you. The individual negotiation was an impossibility. It was one-size-fits-all, take it or leave it.

THE CHAIR: You touched on the Victorian experience earlier on. What is the situation there now?

Mr Haggar: They have a collective agreement and they have a much more harmonious workforce. Interestingly enough, if you track the educational outcomes of Victorian state

schools against the Kennett intervention of shutting over 300 schools, dismissing 8,000 teachers and providing no permanent work opportunity in Victorian schools for seven years, the Victorian results were at one stage the worst in the country. They have improved significantly since then because of the participation of the AEU down there through certified bargaining arrangements, professional learning arrangements and a government that actually discusses educational issues with them representing the profession.

THE CHAIR: Your original submission to the inquiry on workplace agreements gives an insight as to why AWAs do not work and should not be implemented in educational settings. That is in section 6, page 6. It talks to improvements made by collective action for improvements in education. Changes to the definition of "lawful industrial action" specifically prohibit political strikes or action. The action taken by education staff in respect to class sizes and facilities, for example, I would assume would be classed as political action.

Mr Haggar: I would say that if you look at our history here, certainly since self-government, which is really, I suppose, the relevant period, although we have been a separately operating educational entity since 1973, we have taken industrial action on very limited occasions. Those occasions have been around the decisions of government to reduce staffing in schools, which has led to increases in class sizes and reduction in curriculum choice, et cetera. We have taken industrial action on salaries, not often, but once in the last five years. There was one particular campaign in 2004 around bargaining for the appropriate wages outcome and that saw us resolve the recruitment problem for that year by getting a decent outcome.

We are not an organisation that takes industrial action lightly, but we are particularly concerned under the new WorkChoices arrangements about the restrictions that we now face, not simply in pursuing better wages and conditions for the profession, but better learning outcomes for students and, without being offensive, I hope, resisting the often Treasury-driven desperate assaults on things like the number of classroom teachers that are in our schools. There is a history of that sort of ad-hoc, short-sighted nonsense. It just makes our job very much more difficult if we take, as we do, a longer term vision of the needs of the ACT community in terms of the education of their children and of the workforce through CIT.

Given the penalty clauses that exist against so-called illegal industrial action, which anywhere else in the world—at least the educated first world—would be seen as legitimate industrial disputation, I would hate to see us falling into a situation where those penalty provisions would apply. I do not believe that teachers would pay fines incurred as a matter of principle. I think we now have a legislative regime set up with very harsh and punitive penalties that will see union members, whether it is our union or other unions, actually wind up going to jail in defence of what they would believe would be a democratic right.

THE CHAIR: Just on costs, but not costs and fines, your joint submission with the NTEU briefly discusses the financial impact of changing awards and agreements to comply with the previous round of award simplification. Are you able to give the committee an understanding as to the cost and time involved in the last round and some insight into the cost and time possibly involved in this new simplification?

Mr Haggar: It is an interesting question because, unlike the vast majority of unions in Australia, we only have two components to our membership, two employers to deal with and, therefore, two agreements and a very small number of awards. So the costs that other unions would incur, particularly if they are operating in the private sector, would be massive compared to that faced by us. It is not a reasonable response for me to say that a few days work is the answer to your question each time that the awards are varied. We are not engaged in anything like the coverage. The same could be said for our colleagues interstate. The government is the employer of Australian Education Union members in each state and the number of awards would be, in each case, less than a handful, I would imagine.

MS PORTER: You talked quite a lot about the effect that you think this legislation will have on families other than those of your own members and the impact that that will have on students and your teachers and other staff in the workplace. Do you have an idea—you probably do not—or could you imagine how much downtime might be created by this additional stress that is being created in the classroom and maybe outside of the classroom? As you said, parents may be coming to the school disturbed, or students may be disturbed.

Mr Haggar: I think it is fair to say that, despite some really high quality support that has been provided in recent years through employee assistance programs, professional learning programs around personal resilience, mental health and what have you, our Comcare premiums are a very serious concern to us. The cost to the employer of increasing numbers of psychological injury problems is of concern. I did emphasise that both the union and the employer have put in place supportive arrangements for staff. But it is an increasingly more complex and more difficult world for families out there, and that is being reflected in the pressures on our workforce, and I would think—not that I should be speaking on their behalf—that the nurses union could record some concerns.

Ms Gilmour: I think, too, that the New Zealand example is probably a basis of information on this matter. The situation there when the Employment Contracts Act went through was that a lot of families, because they had lost jobs and were forced into insecure employment, became itinerant, simply moving all the time to where the jobs were. The effect of that on the schools, of course, was an increasingly growing number of itinerant students. Each time a child presents at a school they need not necessarily to formally test, but to take some time to work out where the child is at, what class the child should be appropriately placed in, what kind of support the child might need, et cetera.

If you think about the stresses and pressures on the teaches trying to manage an increasing number of students presenting instead of just the normal little trickle and also on the kids, with dislocation all the time for them and their families of their normal domestic routines, there is another big hidden cost. That is the time of school counsellors and other support mechanisms to try and help these kids and their families deal with what really is the unable to be dealt with scenario of having to move to where the work is all the time but never knowing how long that will be for and what the job will be at the end of the time you are spending there.

It is really difficult to quantify at this point in time, but I think that is a very real prospect for us and I guess layered over all of that is whatever happens in teachers' own families

with regard to their own children and other relatives. I think really what we are potentially looking at is layer upon layer of stress from a range of different circumstances, not necessarily all generated by work, but the compound nature of those stressors may mean that people end up having to take time off because they simply cannot cope.

MS PORTER: I was also interested in actual downtime in the classrooms. On another committee there was an example about downtime that was caused by other behaviours of students, bullying and those kinds of things.

Mr Haggar: Time off task.

MS PORTER: Is that what you call it?

Mr Haggar: That is particularly applied to students, but it also can be applied to teachers. If they are distracted from the provision of the educational program by a need to manage behavioural issues in the classroom, it is time off task. It is unproductive time.

MS PORTER: I was just thinking as you were talking that it is not only about teachers maybe having to take time off because they are stressed or members of their family are stressed et cetera, but also it could be that you spend a lot of time managing the dynamic in the classroom.

Ms Gilmour: It is productive time in the classroom. My own teaching experience tells me that when kids are happy they are more likely to be engaged. I have not taught in the ACT, but for two years I had some students in two of the classes I taught that were part of a family that were itinerant, that travelled around in a caravan. You would see them for six or seven months and then they would be gone for a while and then they would come back again. I think the reason they did come back, apart from seasonal work in the fruit picking industry was that the school made them welcome. They used to camp in a caravan out at the river, but the kids always knew they could come into school early and use the gym and change room facilities to have a shower and give their uniform to the home science staff for them to put it through the washing machine so they could take a clean uniform home.

Those kinds of support things meant that, even though those kids were not in school for the whole year, for the time that they were at the school at which I taught they were engaged and they were happy and they were doing their best. You can see the evidence. For some kids school is the only certain place and the more that they are dislocated outside of that, the more likely it is that school will become something that they are not sure they can rely on either. They will act out and all those things will then flow from that. So the productive time in the classroom is quite likely to be reduced as teachers manage what is probably going to be an increasing number of kids with issues that they do not have right now.

MS PORTER: The college students that you mentioned might be working long hours and—

Mr Haggar: We have college students who are carers of invalid parents. We have college students who are self-supporting, having had issues with their parents. We have

college students living in group houses with each other and with other young people who might be unemployed or employed in other areas. So the diversity in the population and the vulnerability of the population is much greater than you would think from the traditional family model. Think of that figure I gave you earlier on: 450,000 Victorian children begin school each Monday having been in a different home on that weekend from the one that they will live in for the succeeding four nights.

THE CHAIR: I am aware of the time. I would like to thank you both very much for coming in and for your detailed submission. We have received quite a lot of information on this area and I wonder if, in the not too distant future, you might be available to come back.

Mr Haggar: We are always very pleased to talk to Assembly committees. We value the work that the committees do. We value the reports that come out of your deliberations. We would be very pleased to make ourselves available.

THE CHAIR: Thank you very much. We will have a break and resume at 2 o'clock.

The hearing adjourned from 1.36 to 2.02 pm.

SCOTT JAMES CONNOLLY,

ANDREW McGRAE,

PETER SILLIS,

MICK DEEDY,

RAY SMITH and

ALLAN McLEAN

were called.

THE CHAIR: I welcome you to this hearing of the Select Committee into 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 transcript of the hearing. It is the responsibility of witnesses to ensure they meet the commitments they made regarding the provision of information or answers to questions on notice. The secretary will email a transcript to witnesses as soon as it is available.

Mr Connolly, would you like to make an opening statement?

Mr Connolly: I would. Thanks for the opportunity to address you here today. I might briefly ask our members to introduce themselves, whom they represent and what industry they are from, so that you get a sense of the nature of transport in the ACT.

Mr McGrae: I am Andrew McGrae. I work for SITA Environmental Solutions at Hume, working in the waste industry. We pick up just about every form of waste product in the ACT.

Mr Sillis: I am Peter Sillis. I am with ACTION buses. That is about all that needs to be said.

Mr Deedy: I am Mick Deedy. I am an owner/driver. I work for Toll Holdings, in the express freight sector.

Mr Smith: I am Ray Smith. I am from ACTION buses. I am a union delegate cum driver.

Mr McLean: I am Allan McLean. I work for the ACT Ambulance Service.

Mr Connolly: I appreciate that the committee has received a lot of submissions. You

have got a copy of our written submission. I wish to make a couple of opening remarks about the nature of transport and why we are particularly concerned about this legislation and its impact on both the people we represent and their families and the overall community of the ACT. I will give you a brief outline.

In addition to the people here today, we also represent airline workers, truck drivers across all industries, administration workers, process workers and clerical workers. Across the ACT there are some 2,000 members of our organisation. In New South Wales and the ACT there are about 38,000. Nationally there are some 80,000 members of the Transport Workers Union. Organisationally, we are the largest small business organisation in the country, largely because some quarter of our membership are like Mick Deedy who are owner/drivers or subcontractors and provide their own tools of trade and operate small businesses in our industry sector.

We are largely concerned about the ramifications of this legislation which is specifically designed to cut the floor away from minimum rates and standards and conditions for the industry sector. I won't harp on it because I know the committee appreciates this concern and certainly has heard about the detail of the legislation, which is particularly designed to tear away minimum terms and conditions in the safety net or provide mechanisms, if not directly tear away.

I have outlined some specific provisions that will go from people in the ACT or will be removed from people in the ACT. They were hard-won conditions; they were bargained for in the last round of enterprise agreements. They were terms and conditions that our membership fought for and bargained for in good faith. They will no longer be allowable, come the end of March next year.

In addition, as the committee is aware, the whole thrust of the WorkChoices legislation, in particular, is designed to provide mechanisms for those employers who choose to, in relation to those clients of employers in our industry sector—particularly clients in our sector—aggressively pursue and use this legislation. People may have seen an article in the *Sydney Morning Herald*. One employer in particular, Qantas, has announced today that they are particularly delighted by this legislation and its capacity to cut some 40 per cent of its operating costs in its program to launch its Jetstar operations.

What we are saying—what the thrust of our concerns is—is that, if you cut 40 per cent out of our operating margins in our industry, one of two things will happen: one, the most terrifying, is that people, particularly in emergency services, will leave the industry. All of our membership provide critical services in critical industries like the waste industry. In our service sector—the bus industry; general freight deliveries, which is very much a service industry—people will leave.

The second is that the extremes that we are currently seeing in the long-distance industry, as you can see from our submission, will apply here. They will do whatever it takes to get the job done. They do that for one of two reasons: firstly, because they have got to put food on the table. People have a choice of putting food on the table by doing an extra shift or working six or seven days. Thirty per cent of truck drivers freely admit to being forced to take stimulants to be able to do their job. Members that come in our door admit to working in excess of 100 hours a week.

This is an industry where you can legally work—beyond the ACT, because I understand the ACT doesn't have regulations on maximum driving hours—in other states up to 84 hours a week currently, as a truck driver. In the ACT I understand you can legally work in excess of 83 hours a week.

They are the realities that people will be forced to accept. They will have to start doing those hours to make up their pay or they will take a second job. You might get a scenario of an ambulance worker who loses something like $120 or $150 in allowances potentially. Another operator comes into this industry and undercuts their terms and conditions, even though their employer, currently the ACT government, doesn't want to compete on that level or doesn't want to be forced to take away, undermine or erode terms and conditions. Because their competitor down the road is prepared to do that, they are left with no choice but to do it.

They are in a situation like that poor truck driver who has a choice of either working that Sunday, even though it is his tenth day straight, or lose that contract and he doesn't put food on the table. It is a choice. We understand, certainly, where employers are coming from, just like we understand where those individuals in our industry sector are coming from in terms of making that decision to basically survive in this environment.

They are our fundamental concerns and what that largely means, because of the nature of our industry. What does it mean for the ambulance paramedic, the truck driver or the bus driver who come off the night shift and, obviously, their families but also the rest of the community that share the road with our industry sector? It is not only the roads but the airlines and the railways. This has enormous implications.

If a bus driver falls asleep on a morning school run because he has just come off the production line at the distribution warehouse, it means school kids could get killed. If a truck driver falls asleep and ploughs into a bus, again it is school kids who get killed. They are the grim realities of what we are saying. It needs to be seriously thought about in terms of the implications of this legislation.

We are asking the ACT government and the legislature to consider what can be done practically if things are eroded from our industry sector. We have pointed out four brief things that we are urging the committee to look at. The first is the licensing laws for our road transport operators and transport sector operators in the ACT. The second is to look at one national precedent in terms of chain of responsibility of the legislation that has yet to be implemented in the ACT and that provides a mechanism to give that incentive to clients in our sector not to put pressure on operators or drivers to force them to do impossible working hours or take their conditions away.

The third thing is to look at the precedent in New South Wales where they have introduced a fatigue regulation that looks at licensing and providing fatigue driving hour parameters. They go towards making clients responsible and dare not breach, but more so make them think about the implications of the pressure they may put on our industry sector and what it means for all of us in the sector and for all of us who share the road with our industry.

The fourth thing is to look at the fair works contract provision which has already been tabled in the ACT parliament. It provides an alternative mechanism for owner/drivers

like Mick and his colleagues in this jurisdiction. It provides an alternative cost-free jurisdiction for them to pursue justice in terms of unfair contracts.

I will leave my comments at that and leave it to the committee to ask questions.

THE CHAIR: Thank you. We have limited time this afternoon, so we will try to share the questions around committee members as much as we can. I will go first. Mr Deedy, as an owner/driver, can you explain to the committee the costs associated with being an owner/driver?

Mr Deedy: Any small business is required to make a return on invested capital. The sad fact is that in the transport sector—I am a 29-year veteran—as a contractor, I can see that the thrust of the new industrial legislation is to make a lot more people into contractors. I am fairly aware of the pitfalls. Large companies with contractors tend to do what is known as risk shift. They will pay you the award rate of pay as paid to employees doing the same or similar work, they will pay you cost recovery on the investment that you make in a vehicle or equipment, but they will not pay you for recovery of any risk. Basically, they get the benefit of an employee and all the control that they have over an employee, without any risk exposure.

My experience, as my friend Allan McLean is fully aware, is that between 1995 and 2003 the fellows in my yard and I didn't get a rate rise; we went for nine years; we were still on $12.70 for labour in 2003. The company achieved this by the simple expedient of ignoring us. They were able to do this because of the position in the ACT. This is something on which the Legislative Assembly should act. In New South Wales there is contract termination for owner/drivers. There is a floor below which prime contractors or employers cannot set rates. In the ACT there is no floor; there is no contract termination.

In the ACT we, as self-employed people or, if you like, non-employees, don't have access to the federal commission. In New South Wales owner/drivers can access the commission. Because we are in the ACT, obviously we can't access the New South Wales commission. Because we are owner/drivers we are not classified as employees. We don't have any access to any dispute-resolution forum, other than the Federal Court, which we investigated. We found that it would take years and be very expensive.

Of course, there is your exposure to risk. If you mount a Federal Court challenge on something like that—and you are aware that you are dealing with a very large company with very large legal resources—and you lose, your exposure is such that it makes it not worth while pursuing.

To extrapolate from then to the present time: everybody is aware that fuel prices have gone up. At the start of this year the diesel price in the ACT was, in round figures, $1 a litre. Since then it has gone up to as high as $1.40; it is now back to around $1.30. We have a clause in our contract which says that fuel price negotiations will be in good faith.

In August I approached the company and said, "Fuel price negotiations in good faith." They said, "We're looking into. We'll get back to you." The expedient that big companies use to circumvent this, when they know that you are in a position of not being able to access a dispute-resolution forum, is to ignore you totally. That has been my

experience.

THE CHAIR: In Mr Connolly's opening statement he talked about safety issues for drivers. Would you agree that, with so much competition for drivers, most will resort to cost-cutting in areas such as maintenance and will increase working hours to remain competitive?

Mr Deedy: The sad fact in the transport sector is that it is hyper-competitive and has been for a long time. It is very easy to get into. There is no licensing requirement, apart from the licence to drive the vehicle. Basically anybody can get into the transport sector and pretty much set their own rates as they see fit. A lot of people do that. They come into the industry without an understanding of the costs that you have to bear in addition to things like fuel and vehicle repayments. People tend to say, "Workers comp, yeah; superannuation, yeah. Periodic replacement of the vehicle, we will worry about that when it happens."

The fact is that there are a lot of operators, especially small operators, in the industry who basically are not economically viable. The only way they stay in the industry is the race to the bottom. The race to the bottom is on, to get the cheapest rate. "I'll do it for $3." "I'll do it for $2." That is the kind of ethos that operates throughout the transport sector. In terms of efficiency, it is a super-efficient industry. It cannot get any more efficient. People are already doing it for cost recovery or less than cost recovery.

People in this industry, from my experience, are hard workers. People work hard. They work long hours. They work damn hard for their money. This new legislation strips away the few protections that drivers and owner/drivers have. I hesitate to think what it will lead to. My wife is always worried when my kid goes to Bali surfing. I say to her, "I am much more worried about him driving to Bermagui."

MS PORTER: You mentioned the risk involved with accidents. I would imagine all of you know of or have been involved in workplace accidents from time to time. You may have been on the receiving end of those Mr McLean, picking up people after an accident. Obviously the union plays an important role in occ health and safety at the moment. How do you think this new legislation is going to affect that role in the workplace? What do you think the ramifications are going to be?

Mr Connolly: It is likely to go one of two ways: we will see enormous pressure placed on OH&S legislation as a potential alternative remedy to addressing some of the imbalance, particularly in highly competitive industries like ours—industries that already have enormous injury rates. We are thankful at this stage for the provisions already provided to us under the OH&S legislation nationally, in the ACT and in New South Wales where we operate as well.

I am somewhat amused by the federal parliament's decision this afternoon to tear away another right of ACT citizens by removing our industrial manslaughter provisions. I understand that is happening this afternoon, as we speak.

In terms of the OH&S legislation, both from the workers' point of view and the community's point of view, it is going to become increasingly difficult to maintain. We will look to increasing those powers while moving in this environment. The flip side is

that it will become another empty shell of legislative protections, much like industrial protections currently operating in the long-distance trucking industry where, because people were so intimidated because of the realities of the marketplace operating, people aren't prepared to stand up. It takes enormous strength for someone to stand up, like all these people here, and say, "I want to be a union delegate; I want to be the union in my workplace." They are doing that now. In the long-distance trucking sector, they don't do that because they know that, if they do that, they don't get the work next time.

If that is the environment we move into and if the full impact of the, arguably, absolute right to hire and fire that this legislation provides is felt across our territory, then that is the flip side of OH&S laws. There will be another empty shell, much like the award safety net currently. There are transport companies operating in the ACT—we can go out and see them, if you like—that aren't paying the award. It is the law to pay the award. People don't pay it. They pay it in these guys' workplaces because they stand up and make them pay it.

MS PORTER: You mentioned hiring and firing. Some of you would work in workplaces—I don't know—with fewer than 100 employees. Certainly some of your members would.

Mr Connolly: The vast majority do, with the exception of our membership at ACTION. They certainly work for operations with fewer than 100. With entities that operate well in excess of 100 nationally, there is the potential, obviously, for a loophole for that to be exploited. We have 60 people working for Qantas in the ACT. They could be employees of Qantas, Canberra, under this legislation and easily be denied their rights to unfair dismissal.

MS PORTER: Do you think that you and your members would be able to afford to hire a lawyer to sue if they were dismissed from the workplace?

Mr Connolly: $30,000 is an awful lot of money. As an organisation, the union would certainly pursue as many cases as we possibly can. To have a day in the Federal Court you would need $30,000.

An example I might use is a dispute we had recently in the ACT that generated the need for the fair contracts legislation. It was with Boral. There were some 30-odd owner/drivers like Mick who were terminated; the contracts were terminated overnight. That is a matter we pursued through the Federal Court. It is a matter that cost our owner/driver membership some quarter of a million dollars. We negotiated and worked through alternative dispute-resolution processes. That cost us $50,000 to $60,000. That didn't get us anywhere; so we ended up pursuing the matter through the court. Half a million dollars later, the guys got a settlement that was an adequate settlement.

Compare that settlement to what was achieved for the drivers in New South Wales where they had an alternative dispute-resolution procedure. They took their dispute to the industrial commission. Those guys received some $60,000 extra in a period of three months, not 2½ years like our guys received the settlement in.

MRS BURKE: I am afraid I can't ask the same Dorothy Dixers. Frankly, I don't know why we have this select committee. I have to put that on the public record. I welcome

you here this afternoon. I thank you for the time that you have put into this. Firstly, I am concerned at the alarmist attitude that seems to have been spread across this country on something that—and I agree with you there—we don't know a lot about.

THE CHAIR: Is there a question in there?

MRS BURKE: Yes. I let you have your say; let he have mine, if you wouldn't mind. You talked about making it easier to have AWAs. There were a few questions I had, but I might put some on notice. Independent contracting is something that I am interested in because people are simply ignorant of what independent contracting is. Let us move away from that per se. I will go particularly to AWAs. The theme seems to be that people would almost be incompetent in negotiating their own AWAs. Scott, what is your opinion on that?

Mr Connolly: I don't think people are incompetent at all. There is enormous capacity in every individual out there. I defend the right of every individual that has made the decision to be part of a collective agreement, like the people I represent. That is a decision they have made. It is an informed choice. They have fought for the half a dozen or so terms and conditions that I have set out in that document. They are going to be taken away from them because the federal parliament doesn't believe that they should have them. Even though they made that informed choice, they were educated, there was a conscious decision, they negotiated and engaged a union on their behalf to strike that agreement, and their employer struck that deal, because our federal parliamentarians don't believe they should have the right to those terms and conditions, they are going to take them away next March.

It cuts both ways. Certainly people have an enormous capacity, but there is a reality about people's capacity and what can be achieved by collective negotiation. People make the choice to be represented as an individual owner/driver. We represent many of them; we represent people on AWAs as well; it is not an issue about whom we do or do not represent.

The realities are that AWAs will be used as a mechanism to come in and erode terms and conditions. Frankly, this legislation provides that; it provides blatantly that an agreement that erodes overtime penalties, allowances, come next March, will come in and erode terms and conditions and they are going to be 30 or 40 per cent cheaper. If an operation like—I won't say the ACT Ambulance Service—Thiess can run their operation 30 per cent cheaper, that is an enormous pressure that they are going to be under to do so.

MRS BURKE: I acknowledge the point you are trying to get across. I am a former employer. Why would an employer who values their employees try to dud them with a lesser deal than they are on now?

Mr Connolly: I will answer that question by saying "pressure".

MRS BURKE: I am concerned that somehow we are going to have this shift in the workforce and you are on lesser money. All of a sudden, employers, although we value you, are going to drop you down. I can't see it happening.

Mr Connolly: I realise what you are saying, but what we are saying is that in our sector

there is a reality that transport runs on about a 2 per cent margin now. If Woolworths or Coles, who dominate 80 to 95 per cent of the retail freight in this country, are in a position to bargain with Toll, a major transport operator, and Patricks can do that work 50 per cent cheaper, even though Toll like Mick, want to look after him and think he is a nice bloke and they have spent 20 years with him—and most of the people have spent 20 years together in this industry—Patricks are going to win that contract by cutting their work away and offering AWAs and doing the work for 10, 15 or 20 per cent cheaper.

The people in this industry have spent 20 years together. The guys at ACTION are in the industry. They have grown up together. They respect each other. If you are facing that decision, they will offer them the work for 15 or 20 per cent less, because they have got no choice; they have to win the contract. Just as the long-distance truck driver has to feed his family, he will do the work.

I empathise with employers who are placed in that situation because I don't believe they should be. That is why I am urging the Assembly to look seriously at how we remove that pressure that clients in our industry sector put on operators, just as much as operators are forced to put it on drivers.

THE CHAIR: The time we have available is drawing to a close. I thank you very much for coming in. Mr Connolly, you may be able to come back at a later time. You mentioned earlier that there were transport companies that don't pay the award rates. Would we be able to call on you, at another time perhaps, to visit these companies with the committee so that we can see what occurs in the workplace?

Mr Connolly: Most definitely. We can arrange a list of companies, if you like, within the reporting period of the committee—say, five days—and liaise with the committee or the secretary to arrange a time before Christmas or early next year, at your convenience.

THE CHAIR: I imagine it would have to be next year.

Mr Connolly: That is possible. If there are any additional questions you have and want to put on notice, we are more than happy to take those as well.

THE CHAIR: Thank you very much for coming in.

ARA CRESWELL and

LLEWELLYN REYNDERS

were called.

THE CHAIR: Good afternoon. Ms Creswell and Mr Reynders, thank you for coming to the Select Committee on Working Families this afternoon. 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 there are any questions taken on notice, the committee would appreciate a response within five working days of your receipt of the transcript. It is the responsibility of witnesses to ensure that they meet any commitments they have made regarding provision of information or answers to questions on notice. The secretary will email a transcript to all witnesses as soon as it is available.

Would you like to make an opening statement?

Ms Creswell: Firstly, I would like to say that ACTCOSS appreciates the opportunity to appear before you today. We are extremely concerned about the impact that numerous federal government reforms will have on Canberra families. We thank you for inquiring into this matter. We see it as extremely important. Working families matter a lot to the work that ACTCOSS does.

As you know, ACTCOSS is the peak body for the not-for-profit community sector for people living with disadvantage in the ACT and for low-income earners. Our membership is quite diverse, including community sector organisations, service providers and the social welfare sector, a range of community associations and networks, certainly a lot of self-help groups, consumer groups and a lot of very interested individuals. That bit is really important when we look at the makeup of families.

We are here today to highlight the effects of the commonwealth government's legislative changes on disadvantaged families here in the ACT. We are really concerned about the impact in the ACT. We encourage the committee to interpret the concept of working families very broadly. Firstly, many of the families affected by federal government changes are not currently working, although many probably wish they were. Secondly, many of the people we are concerned about are not living in family households but they still have families. They have parents and siblings, they have children, they have other loved ones and they will be deeply affected by the personal circumstances of their relatives.

We note that the terms of reference are very broad and in many ways it is actually quite difficult for us to know where to start. But we will concentrate on two very important matters, and those are the significant pieces of legislation that impact upon the people we deal with that passed through the federal parliament this last week. That is the

WorkChoices bill and the welfare to work bill. There are other federal government decisions that have an impact on low income and disadvantaged Canberrans but those are the ones we want to look at.

We apologise to you for not being entirely across those pieces of legislation as much as we would like to be and for not providing a written submission as yet. This is due to the speed at which this legislation passed and the fact that we have very meagre resources at ACTCOSS, as I know you appreciate. We have put those resources into concentrating on the ACT budgetary process at this point in time. The other point about that is that much of the national work is handled by our national peak ACOSS, the Australian Council of Social Service, who have been doing an extensive amount of work around this.

Having said all of that, we are really happy, if you have specific matters or specific questions you would like us to address, to take those away and see if we can address those in a written submission to you. We would be very interested in hearing from you about what those matters might be.

ACTCOSS is concerned that after nearly a decade of conservative rule at the national level, Australia is altering its approach to social policy in this country and quickly heading towards an American social model. The WorkChoices bill and the welfare to work bill, apart from being misleadingly named, are the most obvious examples of this. We are concerned that continued pursuit of this agenda will lead to the development of an extensive underclass of working poor in Australia, including here in the ACT. We will see a steady increase in income inequality and heavier reliance on social services as more people fall through the widening holes in the employment and welfare safety nets.

The WorkChoices bill will undermine most of the protections that have been built up for disadvantaged workers over the last century. The rights to loadings for overtime or shift work, public holiday entitlements, annual leave loadings and penalty rates are all threatened for low-income workers and their families. The proposed new Fair Pay Commission is designed to minimise any growth in wages for low-income workers and will prevent them from sharing the benefits of economic growth.

The changes in protection from unfair dismissal laws will reduce job security for low-income workers. The removal of the no-disadvantage test and the ability to force new workers on to AWAs will cause the greatest hardship for people who are marginalised in our community as they have the fewest skills and no negotiating power to effectively bargain with their employers.

At the same time the changes made by the welfare to work bill will reduce the income of some of Canberra's most disadvantages people—that is, sole parents and disabled people. ACTCOSS maintains that the resources for assisting these people into employment remain absolutely inadequate. The real effect of this legislation will be to shift people from one payment to another. In addition, they will face a cut in income, higher effective tax rates as their benefits are withdrawn faster and they will be subject to a punitive system of suspension and compliance measures.

Throughout this whole debate the federal government has emphasised that it wishes to increase workforce participation. However, they have not been able to explain how cutting a person's income will actually provide them with a job. They have not been able

to explain how reducing pay levels and job security will help people get a job. In fact, there is very little in these reforms that will actually assist disadvantaged people into the workforce. Some of the changes will actually put up additional barriers to people entering the workforce.

We believe that the best way to assist disadvantaged people into the workforce is to provide them with the resources that they need to overcome the barriers to employment. This includes: assistance to help them contend with a disability or a chronic health problem; treatment and support for mental health difficulties, provision of childcare for their children; help to confront domestic violence or drug dependency; and provision of the means to acquire the skills necessary to compete in the modern workforce. None of this will be achieved with this legislation.

ACTCOSS would really like to bring to your attention the effect that these changes are likely to have on the ACT community sector. We are really concerned about the impact on the ACT sector. Firstly, we expect to see an expansion in the numbers of people seeking assistance from service providers. This is particularly the case with the numbers of people seeking emergency relief from charities and community sector agencies, such as assistance with paying bills or provision of free food. At no point have we seen that there will be any increase to any emergency relief moneys.

We expect that, along with increasing job insecurity, there will be a corresponding rise in housing insecurity as people find themselves unable to pay their rent. Therefore there is likely to be an increase in the numbers of people seeking homelessness services and increased waiting lists for public housing. It will result in huge pressure on our housing market.

We would expect increases in the need for crisis services as the pressure on families from income reduction and job instability leads to increases in mental health problems, in domestic violence, in drug dependency and child protection notifications. We are quite concerned about that impact in the crisis sector. The changes to industrial relations laws will also affect community sector workers. Most community sector workers rely on awards to protect their wages and conditions and we know that these protections will be eroded.

While ACTCOSS believes that community organisations do their best to reward their staff appropriately, the introduction of this legislation may mean that organisations will find it more difficult to implement wage rises and improvements in conditions without the impetus of award increases. In an environment of scarce resources and stretched capacity, the sector is in some trouble.

Organisations can expect a reduction in the number of people who are able to volunteer with them as potential volunteers face more uncertain work hours and job insecurity as well as increased pressure to spend longer at work to compensate for reductions in penalty rates and leave loadings. The likely reduction in volunteering will threaten the very viability of many organisations that rely heavily on volunteers.

Similarly, carers might find that they are no longer able to combine work with their caring responsibilities, including caring for people with a disability and old people. Some may seek to place their relatives in community care, increasing demand on services

where there are already significant shortages. Other carers may withdraw from work and rely more heavily on government transfer payments and community support workers. In essence, community sector organisations will be faced with increasing demands for their help while at the same time finding it much harder to provide assistance.

We have only covered a small part of the impacts of these changes upon families. There will be numerous others, including in the areas of health, education and human rights, which we could go into in more detail. But these are the ones that are concerning us at this point in time. We are really glad you are looking into this issue. We see it as very significant, and it is incredibly important that all members of the ACT government and members of the Legislative Assembly are vocal in their criticism of the commonwealth government policy. Indeed, we would see it as part of your role in representing the people of Canberra.

However, in our opinion it is simply not enough to catalogue the problems with commonwealth policy. We would encourage the committee to examine the ways that the territory government can work to counteract the problems that we in the ACT are looking at. We need you to take seriously the impacts that these bills will have upon the ACT community.

This would include strengthening our own support services in order to be able to catch those who are slipping through those ever-widening holes in our social safety net. It would include looking at ways of expanding the provision of social and affordable housing; increasing the range of locally provided concessions for areas such as health, transport and utilities; augmenting the provision of training opportunities and vocational education; and strengthening the capacity of the community sector to expand its services to meet the escalating demand.

ACTCOSS has been quite vocal lately about the viability of the community sector and the impacts of what we are facing. We are seriously facing a crisis in the community sector. These federal bills will place an enormous pressure upon the community sector. We need the ACT to respond in some significant measure.

We will hand over to you to ask us any questions. We will do our best. We do intend to provide you with a written submission.

THE CHAIR: Thank you, Ms Creswell. I know that Ms Porter has quite a few questions for you, but if I could open? How many people in the ACT in your estimate receive some sort of pension?

Mr Reynders: Certainly in terms of the welfare work bill, our peak body ACOSS has come up with a figure of about 1,600 families that will be shifted in terms of their payments. My understanding is that the number of disability support pensioners is in the range, certainly nationally, of three to five per cent and a similar number, or probably slightly smaller numbers of sole parents. But we can get those figures for you.

MS PORTER: Ms Creswell, you talked quite a lot about the effects on the not-for-profit organisations, the community organisations, coming out of the additional disadvantage that you believe will flow from both the WorkChoices legislation and also the welfare to work legislation. You said that the numbers of voluntary workers would be reduced

because some of their hours would be spent actually doing paid work in order to make ends met. Do you have any idea of the number of volunteers—you might need to take this on notice—that are actually in paid work at the moment? Do we have a large retired workforce that is actually providing that service so that we do not need to worry, or are the majority of volunteers actually in paid work? Will that have a flow-on effect? That is the first part of my question, which you may need to take on notice. The second part: do you have an idea of how many of your member organisations actually do work with volunteers?

Ms Creswell: We will need to take the number on notice. But I am able to say to you that any incorporated association has a board that is made up of volunteers. Our entire community sector in the ACT relies upon volunteers to run. ACTCOSS, for example, relies upon people coming in and volunteering their time to provide the governance structure for the organisation. That is a massive number of people in the ACT. Those are predominantly people who are employed.

We do have a lot of organisations in the ACT, though, who rely on volunteers to deliver their services. They are services such as Meals on Wheels that are critical to the ongoing welfare of a lot of Canberrans. They rely on people to volunteer their time. So a lot of volunteers are actually in employment. Then there are others who are perhaps retired people or people seeking employment who volunteer their time.

We know that things like the price of petrol have already had an impact upon that. At ACTCOSS we have some volunteers who do work with us who are finding it much more difficult at this point in time to do that work with us.

Mr Reynders: I had a quick look at the Volunteering Australia submission to the Senate committee inquiry and, according to their figures, 70 per cent of Australian volunteers are in the workforce. In fact, their volunteering peaks at the same time as the peak workforce age, so you actually see that most Australian volunteers are between the ages of 25 and 55, which is also the peak workforce age. They certainly perceive that the changes that are impacting on conditions of work, particularly the ability of employees to determine and control their own hours of work around their volunteering commitments, will impact on the number of volunteers that they receive.

MRS BURKE: Mr Reynders, in relation to those persons receiving pensions, either single parents or people with a disability, you gave a figure of 1,600 families being shifted. I guess my question is focused around those people with a disability. The feedback that I get is that there are many people and single parents who would love the opportunity to be able to work. Under these new regulations, is there not somewhat of a fear being spread? I have to say this. I know the Chair will be mad with me, but we do not know how this truly is going to impact. I think you said yourself, Ms Creswell, "potential impacts".

Mr Reynders, out of that 1,600 people, do you know how many people there are trying to find work that cannot and about whom we cannot fairly say, "Because of the federal legislation they are going to be badly impacted"? I hope you understand what I mean.

Mr Reynders: Certainly I am yet to meet anyone in either of those groups that would not be interested in working. These people are not on pensions and benefits because they

do not want to work or they are not interested in working. They either cannot find work that suits them or is able to incorporate the disadvantage that they suffer or indeed it is not actually financially viable for them to be able to work because of the on-costs, particularly with things like childcare and transport or with additional tools or clothing or other costs that come with having a job.

Secondly, one of the reasons that some of these people in these groups cannot find work is that they face discrimination in the workforce. Particularly with disability consumers, employers refuse quite often to employ someone with a disability because they see it as a risk or because they are not prepared to adapt their work place to the needs of that person. So shifting these people from a disability pension to a lower income newstart benefit really does not address the barriers that they are facing to get into the workforce.

It is interesting that in excess of 50,000 Australians will be shifted from the DSP to the newstart allowance, yet the government has only increased the high-level assistance places by 7,000. So we are really not seeing the assistance that these people need to actually address the barriers that they face to getting into employment. We are just shifting them to a lower payment and saying, "Now you have to look for work. Now you have to turn up to meetings with supervisors. Now you need to go to training sessions to learn how to write a job application." We are not addressing the disadvantage that they are actually facing.

We are also putting them in a system in which potentially, if they do not meet any of those requirements for whatever reason, particularly mental health problems, they can often get into difficulties that they are then unable to communicate to their Centrelink officers. So those people are put into a breaching system where their payments are cut off for eight weeks.

MRS BURKE: As a supplementary, if I may, Chair, I will pick up on a point on the back of your answer, Mr Reynders. Ms Creswell, you were saying really—I guess not in so many words—that once the changes get under way it may be debatable that the ACT government needs to do more. I think it needs to do more now anyway and I think we all agree with that. But it does say to me that the states and territories really need to start taking up their responsibilities in regard to leading the way and making sure that people with a disability and single parents are able to get back into the workforce. What would your comment be on that?

Ms Creswell: I would say it is really unfortunate that the states and territories are put in a position where, with only two per cent of the federal government budget surplus, we could maintain people at the level of payment they are on. To me it does not make sense that we cut people's payment in order to put them into the workforce. I still do not get the logic about why we make people poorer to try and make them work. It makes no sense to me.

What I would really like to see is the federal government maintain its commitment to keeping people with what was already pretty much an inadequate income, rather than decreasing the payment. There is no question that the states and territories will have an added burden now in order to deal with all the rest of those people who fall through those holes in the safety net.

MRS BURKE: So it is not a responsibility? You see it as a burden? You do not think we as a jurisdiction have a responsibility?

Mr Reynders: I think we would see that both governments have a responsibility.

Ms Creswell: Absolutely.

Mr Reynders: Our consumers, the people in Australia, are not interested in politicians saying to one another, "This is your jurisdiction" or, "That is your job." They do not care who does the work. They want to see governments commit to assisting people to have a decent quality of life. I do not think these arguments that politicians like to make about "that is someone else's responsibility; we're not going to do it" and the cost shifting that goes on between governments is what people in the street, and certainly disadvantaged people, care about. They want to see governments take action.

MRS BURKE: That is a good word. That is true. They want to see people take action at a local and state and federal level.

Ms Creswell: That is right.

Mr Reynders: We certainly do not see this as a fair thing that is being done to the ACT government and to the other state and territory governments. We think the federal government is—

MRS BURKE: So it is all the federal government's fault?

Mr Reynders: No. We think this federal government has the resources. We are looking at something in the vicinity of a $14 billion surplus. The savings from these cuts will be about $400 million. It is not as if they cannot afford to continue paying this. It is not as if they are stretched for resources at the moment. Yet they are taking this punitive approach. It is entirely unfair. But given that we are in an environment where we have four representatives in the federal parliament and this legislation has passed, we also need to look at what we can do to ensure that the worst effects of the legislation do not affect our citizens.

MRS BURKE: Thank you.

THE CHAIR: When single parents and people with a disability or long-term unemployed workers do find employment, is there a general industry or sector that they are employed to?

Ms Creswell: I think they are employed across the board. There is no question that the most under resourced sector is the community sector, which makes it really difficult. The community sector is in an ideal position because it has the philosophy to employ people with disabilities, but often they do not have the resources to support people in the workplace. They do not have the resources to make modifications to workplaces. So that makes it extraordinarily difficult for them to take extra people into the workplace.

There are certainly employers out there who, with a lot of assistance, would be able to offer more work. There are record numbers, really, of single parents in employment, but

single parents move in and out of receiving income support. Single parents find work. Those who do not are those who face particular disadvantage or who cannot find work appropriate to them. So, across the board, really, there are places to go. But, as Llewellyn has stated, it is a difficult market out there because of the disadvantage.

Mr Reynders: I would add to that. We are talking about unskilled labour here, so we are talking about those market segments of the employment market that employ unskilled people. We are talking low level manufacturing; we are talking cleaning jobs; we are talking contract work; we are talking about simple service industry stuff, stacking shelves, sales, checkout—those sorts of very low wage, unskilled labour markets. For instance, I think the figure is 60 per cent of single parents who are on the single parent support pension have education to year 10. As I have said before, the skills shortages of this group are not being addressed. They are just being shifted on to lower payments.

MS PORTER: When you do put in your submission, could you spend some time thinking—I am sure you already have this in your minds—about the children of these single parents that are going to be going back to work and the effects on the children in particular, these eight-year-olds, these primary school children in particular, but also the teenagers. Some of these people would have children of 12, 13 or 14. You might have some information from New Zealand or the United States on what effects that might have had on children and young people. I would be interested to know about that.

Ms Creswell: We would really like to look at that, particularly issues of domestic violence. We are conscious that children who have been through violent situations require a lot more support, and with an exemption of four months in the welfare to work bill, we know that those kids will suffer.

MS PORTER: Yes, and any other information about their schooling and other things that might be the cause of increased behavioural problems in young people in the adolescent years. I have no idea, but I am asking you to have a look in the context of what your organisation might be concerned about, your member organisations.

Mr Reynders: We can certainly pursue that.

THE CHAIR: Ms Creswell and Mr Reynders, thank you very much for coming in this afternoon.

Ms Creswell: Thank you.

THE CHAIR: We will look forward to your submission. Would you be available, perhaps, at a later time to come back to the committee?

Ms Creswell: Absolutely, yes. We think this is a really important inquiry that you are undertaking. We would be happy to support it.

THE CHAIR: We will move on to the next part of our hearings. We will be hearing from the ACT & Region Chamber of Commerce and Industry.

MARION WHALAN

was called.

THE CHAIR: 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 transcript. It is the responsibility of witnesses to ensure that they meet any commitments they have made regarding provision of information or answers to questions on notice. The secretary will email a transcript to all witnesses as soon as it is available. Ms Whalan, would you like to make an opening statement?

Ms Whalan: Thank you for allowing me the opportunity to come along this afternoon and talk to the submission we made to the committee. As outlined in our submission, we represent a range and variety of sizes of businesses here in Canberra and the region. We have consulted with our members in relation to the new WorkChoices legislation and are hearing back from our members. The three key areas where they see that that will assist them are the simplification of agreement making; the simplification of the cross-border issues that arise because of our very close proximity to New South Wales; and the award simplification process for those of our members and businesspeople in the ACT who choose to stay with the awards they currently have.

THE CHAIR: Thank you. How many organisations do you represent in total?

Ms Whalan: At the moment we have around 700 members, ranging in size from sole traders right through to major employers of 600 to 1,000 employees.

THE CHAIR: You say in your submission that you are a not-for-profit organisation. For clarification, you say that your membership is "a wide variety of business types and sizes across Canberra and the surrounding region". Are all your members for-profit organisations?

Ms Whalan: No. We have a number of members in the community sector and we have a number of not-for-profit organisations that are also members of the chamber. Our membership base is a real mix.

THE CHAIR: In your submission you say that you have conducted a number of forums with representative sections of your membership. You say that, arising from these meetings, three key issues were raised—and you talk about them there. Can you give the committee an understanding as to other issues raised regarding WorkChoices?

Ms Whalan: The component in relation to the impact of unfair dismissal has certainly come up in discussions with our members. We have also looked to explain the use of the corporations power to our members, particularly those of our members who are not incorporated and may not necessarily be operating fully in the ACT and therefore may not necessarily be caught by the new legislation. Those would be the main ones. The majority of interest is in the new provisions in respect of simplification of the agreement-making process.

THE CHAIR: Would you agree that your membership sees this as an opportunity to increase profit?

Ms Whalan: The issue of productivity has come up. I think the main thing our members are realising with the various campaigns, from both the union and the government, is that many of the things they are doing at the moment are outside the law and that they need to really think about bringing the agreements they have in place—they are basically verbal agreements or handshake deals; they may be written documents that have never been lodged in the existing system—into the proper place where they should be, and have registered agreements. There are a lot of things happening out there. Employers have a number of arrangements in place with their employees to allow for flexibility to do things. Some of the protected provisions in the new legislation mean that they won't be able to do some of those things, like total cashing in of annual leave, anymore. They have come to realise that they need to do the right thing, both for themselves and for their employees, and make those agreements lawfully binding.

THE CHAIR: So whilst they have been operating unlawfully, they feel that, with this new law, they will be able to operate lawfully?

Ms Whalan: The penalties have increased and employee awareness has increased, thanks to the union campaign. We have noticed that employees are already much better informed about their rights in relation to the current laws, let alone the new legislation. The penalties are certainly there, and they have increased for individuals and corporations. Anecdotally, we are also envisaging that inspectorates—the departments of the federal government that will be responsible for policing this new legislation—will possibly be a little more active than they have in the past because we are envisaging the union movement being a little more active in looking at employers who may not be doing the right thing. Increased awareness has come about not only because of productivity but also because people have a better understanding of the laws. There has been a lot of public interest in them for some time, leading up to the debate in the last couple of weeks.

THE CHAIR: Thank you.

MS PORTER: You would be aware that this select committee is looking at the effects on working families in the ACT. Reading through your submission, there is a lot of detail about the perceived benefits of business. Could you address the effects of the bill and therefore the effects on working families?

Ms Whalan: Whilst I can only talk from the perspective of our employer members, I can talk in relation to the sorts of questions we are asked, the sorts of matters or issues we are asked to advise on or work with our members on in relation to resolution. Many of those

are around wanting to keep good employees, particularly women. A lot of the issues we deal with are around family issues, caring responsibilities, responsibilities and obligations following on from maternity leave and those sorts of things. At the moment many of our members operate partly under an award and partly under a common law contract. They are aware that there are maternity leave provisions and that sort of thing in the ACT. We see that the benefits of this are going to bring employees and employers to the table, to sit down and talk about the employment conditions they believe will be best for that enterprise.

One of the questions I got from some sessions we ran a couple of weeks ago was, "How do you go about starting to talk about an agreement?" My response was, "It is as simple as sitting down around a table and writing down what you do now. There will be benefits and provisions that you give to your employees now which, although not recognised anywhere, have a value and are certainly valued by your employees." Relatively, we have a fairly low unemployment rate in the ACT. Our members are constantly telling us stories about the poaching of a good employee from one like industry to another. We see that happening a lot.

We see the contacts we deal with moving around. Skilled, good employees are at a premium in this jurisdiction, so employers are wanting to talk to their employees and make sure they can offer them provisions that will encourage them to stay with them. It is not all about dollars. It is about flexibility; it is about other provisions; it is about women being able to purchase leave so they can salary sacrifice in one respect but then have that money paid to them so they can take six weeks leave at Christmas-time and take the other school holidays that fall during the year. They want to work, but they also need to be home when their children are on school holidays. Employers are looking at those sorts of flexibilities and arrangements all the time.

MS PORTER: You mentioned that you have held seminars and that people have raised questions about how they do this and how they do that. Other people we have had hearings with have mentioned that some small businesses have expressed a degree of concern about having to draw up individual AWAs. How many small business members do you have? Has the fact that, with the additional workload, they are going to have to draw up individual contracts, rather than having a standard already set that they can just link into, been of concern to them? That is the first part of my question. The second part of my question is: what effects do you think an increased workload will have on some of your non-government members—those small security organisations—in coping with the increased client mode they might have?

Ms Whalan: All right. I might have to get you to repeat the second part of the question.

MS PORTER: That is fine; I will do that.

Ms Whalan: In answer to the first part regarding perceived additional work, I do not think that is a particular concern of the small business owner members. They do a fair amount of documentation now in the way of common law contracts, policies and procedures. One of the things members get tired of me saying is, "If you don't write it down, it didn't happen." So documentation in terms of due process, doing things properly and having a record, is an important part of any small business that employs people. As I said, many of the small businesses we deal with have a document of some

description in place already which doesn't require an awful lot of changes or amendments to get it into a format acceptable for lodging.

We have seen the federal department of the office of employment advocate doing a great deal of work on baseline agreements, using the base formats and pro formas they have available on their website. They have a unit which focuses on small business. There are a lot of resources available at no cost to employers to show them how to put documents like individual agreements together.

With the WorkChoices and the changes that are going to occur because of this new legislation, collective agreements are looking more attractive to businesses of all shapes and sizes. There are provisions in there in relation to not having third party intervention and not having to appear before the commission. Having to appear before a commissioner and have the agreement certified has certainly put employers off under the current laws, whereas under the new provisions it will be the same as an individual agreement and will take effect as soon as it is lodged with the OEA.

There is less administration with collective agreements. A number of members have said that the way to go might be to do just one agreement that covers all our workers, with separate provisions for the things individuals or certain groups of employees might need. On balance, I would say that, in relation to getting an agreement into a format, there is probably no more work under the new legislation than there is now.

MS PORTER: The second part of my question relates to the effects on small community organisations. We have just heard from ACTCOSS. They are concerned that small community organisations are going to have an additional workload, with disadvantaged families coming to their various members for assistance. They expressed some concern about the resourcing of those organisations. What are your small, not-for-profit member organisations saying to you about that?

Ms Whalan: Our members in the not-for-profit sector are pretty busy much of the time with the clients they have and the issues they deal with on behalf of those clients. I probably haven't heard too much in relation to their concerns about WorkChoices and the associated moves by the federal government in respect of their welfare-to-work program. It is not something we have delved into too much at the moment, given that, for most of our members, understanding WorkChoices is the priority. I am afraid I cannot comment on that question any further than that.

MRS BURKE: On page 3 of your submission you talk about the Australian fair pay commission. Without doubt, there is a level of angst about the abolition of the Australian Industrial Relations Commission. Is that justified at this stage? Can you tell us why the AFPC will be a better replacement?

Ms Whalan: As I said in my submission, whilst we have had the industrial relations commission and annual safety net reviews, there are categories of employees who have fallen through the system. In relation to having a safety net adjustment applied to an award, someone has to make an application. I used the example of the award covering workers in the theatrical and theme park sector here in the ACT—places like Cockington Green. Their award has not had a pay increase since 2002 or 2003 because there is no active union. No employer in that industry has applied for the award to be varied and

have the safety net adjustment applied. So we have awards in the ACT—and we deal with about 120 of them—that offer minimum adult wages that are less than the 2005 safety net decision.

My experience is that the current system is certainly not perfect. We understand that one of the benefits of the AFPC in relation to minimum standards is that it will capture award-free employees for the very first time. We have a fairly big base of award-free employees in the Australian Capital Territory in industries like IT; in the professions; managers; people who operate above and beyond what is provided for in awards like the clerical award. There are quite a number of categories of employees who are award-free who therefore, at the moment, have no protection. The Australian fair pay commission minimum standards will apply to all those employees. It has as its base the 2005 safety net and will automatically bring many groups of categories of employees to a level they haven't had access to in the past.

In reality, places like Cockington Green pay above award rates because the employer acknowledges, as much as anyone else would, that the rates in that award are paltry; they are just not adequate. They have arrangements in place to pay well and truly above the award but, again, they are not always in the system now. They are certainly encouraged, and they see that it will be easier for them to get agreements in place under the new system.

Some of the minimum standards that have been set in the fair pay commission bill are more than we have now. There has been debate in relation to Senator Joyce's amendments; public holidays; and a minimum of four weeks leave which cannot be traded-off unless there is an agreement in place. That is stronger protection than we have now. So the federal government has made some guarantees that give workers more generous provisions than they may be entitled to as we speak.

MRS BURKE: Clearly from what you have said, it has not been a one-way street. Employers are going to be held under the spotlight—immensely so.

Ms Whalan: Definitely. As an example, the minimum standard for casual loading is 20 per cent in WorkChoices. We have a number of awards in the ACT that operate at 12 or 15 per cent. As soon as WorkChoices takes effect, those employers are going to have to pay the minimum standard casual loading, which is 20 per cent. There certainly are swings and roundabouts in relation to pros and cons for employers.

MRS BURKE: Yes, I see that now.

Ms Whalan: It is not all a one-way street with employers reaping all the benefits, I would have to say.

MRS BURKE: Thank you.

THE CHAIR: Simplification seems to be a theme in your submission. You highlight how the Australian fair pay commission pay and conditions standards will "significantly simplify the system". Is it not true that the Australian Chamber of Commerce and Industry, which is your national body has, on at least three occasions in recent years, argued for no minimum wage increase?

Ms Whalan: I have seen that written as well. I do not have direct knowledge of it. I can just refer to what I have seen reported.

THE CHAIR: Would you take that on notice, please, and come back to us on it?

Ms Whalan: Yes.

THE CHAIR: If that is the case, can you explain how an organisation that argues against minimum wage increases would not argue against increasing minimum conditions standards?

Ms Whalan: Would not argue?

THE CHAIR: Would not argue against increasing minimum conditions standards. If you are arguing against increasing the minimum wage, my suggestion is that you would argue against increasing minimum standards.

Ms Whalan: We have certainly been part of putting submissions and ideas forward to our overarching body, the ACCI, on minimum standards. We are not arguing against a fair system that gives Australian workers access to the conditions we all enjoy and have enjoyed for quite some time in relation to our existing system—and as it has been tweaked along the way. A great deal of the advice we give our members is about what is fair and reasonable in the treatment of their employees. The chamber of commerce is not out there to tell our members that they should take as much as they can from their workers; not reward them; not acknowledge that every single one of us needs a holiday every year; not acknowledge that every single one of us has a life outside of the work we do between 8.30 and 5.30 Monday to Friday; and not acknowledge that you need to have flexibility in place to do that.

I go back to my earlier comments in relation to the skills shortage in this jurisdiction and the loss of our youth, where kids finish year 12, or stay and do uni, and then leave. In many cases, employers in this town are going way above and beyond the minimum standards. They have to do that to keep good people; they have to attract people to this town and they have to look at how, by working cooperatively with their employees, they can increase productivity. Many of our members are in the service industry.

I moved to Canberra four years ago from a small rural community in south-west New South Wales. I am amazed at the difference that choice and options make. I am speaking as a consumer now. If I walk into one shop that sells tiles and the people behind the counter, who should be serving me, continue to talk about what they did on the weekend, I can walk out—it is my choice—and go to the tile store next door and get better customer service.

Our members know that. They know that their people are critical to the success of their businesses, and they want the best. When they get someone and spend the time and effort to train them, orientate them and have them apply the values as to how that business runs, they want to keep that person. We have a large number of members. Under the current system members say to us, "This is the agreement we want to put in place. What do you think about it?" Quite often we can simply look at it and say, "You're paying

well above the award. You've got conditions in here that are not in the awards. You're not going to have any problems in getting this through."

We do not want the businesses out there that are paying minimum, close to minimum or under award rates to be members of our organisation. We see them from time to time because we work fairly closely with the inspectors from the Department of Employment and Workplace Relations. Quite often they will try to refer a business to us that is not doing the right thing—to get some help. You can lead a horse to water but you can't make it drink. Quite often those businesspeople are breaking the law in other areas as well: they are not paying their taxes properly or they are doing something else.

We don't for one minute suggest that we support or advocate what they are doing. In many cases our argument has been around allowing employers and employees—the people involved in the enterprise—to make the decisions. With the current system, they haven't always been allowed to be fully in control of the decisions made. They have had third parties interfering; they have been forced to go and stand before Commissioner Deegan, or whatever. They have not had the capacity to have those sorts of flexibilities and make those decisions where we believe they should be made.

THE CHAIR: You have touched on that again—that businesses operating unlawfully do not pay the correct rates, for example. Do you accept them into your organisation readily, or do you vet them first?

Ms Whalan: We don't have the capacity to vet them.

MRS BURKE: But you soon find out, don't you?

Ms Whalan: Yes, we certainly find out. Organisations which are not doing the right thing usually have other workplace relations issues. They have unhappy workers; they have high absenteeism; they have high levels of workers compensation or disputes in the workplace; compliance notices are issued by WorkCover and they ask us to go and help them get out of the situation. Very quickly, if we find a member who may not necessarily be doing all the right things, we will know who they are. We give advice. We can't force businesspeople to do anything. We don't have a policing role; we don't have the power to do that.

I'm a professional—I've been doing this sort of work for quite a number of years—and I will give my advice. I usually get a pretty good idea whether or not the member is going to accept the advice. I document that and, at the end of the day, it is the business owner's decision. We sometimes pick up membership of people who have done the wrong thing who find themselves being brought before someone like Commissioner Deegan. We will certainly accept their membership but we will then educate them as to how and what they should have done. We counsel them, saying, "This is going to cost you X amount of money" or "You are going to have to reinstate this person because you did the wrong thing." I'm fairly fearless with my advice. I'm not frightened to tell a business owner that they have done the wrong thing and that they need to change the way they operate their business.

MRS BURKE: Other people—I will not say who—have expressed concern across the sector about pattern-bargained AWAs. As a precursor, I should have said that I believe

we have to start from the base that at least 95 per cent of employers and employees do the right thing and that it is the five per cent we are concerned about. That is what you have just alluded to. Have your members talked about that, or have employees approached you about pattern-bargained AWAs—an AWA that is ostensibly an individual contract? Can you elaborate on what you might perceive that to be?

Ms Whalan: I think pattern-bargaining in relation to AWAs has evolved because of the perceived disadvantages of going down a collective agreement path. It is mainly around appearing before the commission. Yes. Previously I worked in the commonwealth public sector. There is pretty much a baseline agreement offered. Sometimes that is all the employer can offer, or it is all they are prepared to offer. We have concerns about pattern-bargaining. We see them coming from a particular union, focusing on a particular industry—say the cleaning industry, which was tackled a couple of years ago. There was an agreement they had to sign. It was suggested that, if they didn't sign it, they might not get certain government contracts.

We have seen that again recently in the clubs industry. We are not quite sure of the reasoning there, but we have seen another agreement floating around, suggesting that all clubs should pay the same. Our main objection to that is that all clubs are not the same and all cleaning operations are not the same. Giving flexibility and allowing employers and employees to talk about what is important to them at the enterprise where they work and with regard to the way they operate is at the heart of WorkChoices. Two different cleaning companies located side by side in Fyshwick can operate very differently and offer very different terms and conditions, and that will work for them. That is the most important thing. Being able to do things that work at the coalface, so to speak, generates jobs and is good for our economy.

MRS BURKE: Thank you.

THE CHAIR: Thank you very much for coming in this afternoon. Would you be available to come back to the committee at a later time?

Ms Whalan: Certainly. If you felt that was necessary, or if you think I could be of further assistance, I'd be more than happy to do that.

THE CHAIR: Thank you. We will get any questions on notice to you as soon as possible.

Short adjournment.

PETER MALONE and

LINDA MAREE FRANCIS

were called.

THE CHAIR: I welcome UnionsACT. 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 transcript. It is the responsibility of witnesses to ensure they meet any commitments they 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.

Mr Malone, would you like to make an opening statement?

Mr Malone: The submission that you have before you today has been prepared completely by my colleague Ms Linda Francis. She will be speaking to it.

THE CHAIR: For the Hansard record, would you state your name and the capacity in which you appear?

Ms Francis: I am Linda Francis. I am vice-president of UnionsACT. I thank the committee for giving us an opportunity to appear at this hearing today.

In relation to the UnionsACT submission, I ask the committee to note that the WorkChoices bill was passed fully on Tuesday, 6 December, that the bill included over 300 amendments which were passed on Friday, 2 December and that UnionsACT has yet to fully consider the impact of those amendments on ACT working families. They do not appear in our submission. However, I have with me a brief that I am prepared to speak to if the committee wishes or I could do that at a further time if the committee felt it necessary.

Our submission includes three main items for the consideration of the committee. These are: the better bargaining bill, the Building and Construction Industry Improvement Bill, which was prepared by the CFMEU, and the WorkChoices bill. It also includes the ACTU family impact statement which highlights a number of major concerns. Particularly for workers with family responsibilities, this is the issue of family wellbeing and the impact on working women. I am happy to answer specific questions from the committee in relation to the written submission.

This legislation will have a dramatic and devastating impact on all Australians through a loss of earning capacity, a loss of entitlements, a loss of job security and the stripping and rationalisation of awards. This, in turn, will have a negative impact on the ACT

economy. A loss of earning capacity and job security will reduce both capacity and willingness of ACT working families to spend. Any productivity gains by small business, through the implementation of WorkChoices, will be negated by a reduction in consumer spending.

The committee will note that a number of UnionsACT's recommendations specifically address occupational health and safety concerns. We believe this legislation will have a flow-on effect to the health and safety of ACT working families and that some of these issues may take some time to materialise. Therefore, it is imperative that we maintain a vigilant watch on the impact of the legislation, with particular regard to occupational health and safety.

Due to the complexity of the legislation and the lack of proper debate, UnionsACT believes that it is imperative that the select committee continue to monitor the impact of WorkChoices for at least the next 18 months. Given that the transitional arrangements will operate for up to five years, we believe that ongoing monitoring will be essential. We believe that there will be many matters concerning the implementation of the legislation that will require test-case decisions and that this must be considered in the work of the committee as these decisions may alter the interpretation of the bill and, in turn, the impact on ACT working families.

That concludes my opening statement. I am happy to speak in greater detail to the submission, if you wish.

THE CHAIR: Thank you. You mentioned you had a further document to read.

Ms Francis: We have received a brief in relation to the 300 WorkChoices amendments that went through on Friday. I am happy to speak to those.

THE CHAIR: Could you table them?

Ms Francis: I can do that. It is not a problem at all. I have with me only one copy. I table that. Do you want to ask me questions on it?

THE CHAIR: Due to the limited time this afternoon, we may get you back at another time if you are available. We can speak a bit further on it then. I will open with a couple of questions. UnionsACT is the peak union body in the ACT. How many unions are affiliated to your organisation?

Mr Malone: Twenty-two.

THE CHAIR: How many workers are members of unions in the ACT?

Mr Malone: I can only answer that in the context of how many members are affiliated to UnionsACT. That is not necessarily the same figure as actual union members in the territory. At the moment it is just over 30,000 union members affiliated to UnionsACT.

THE CHAIR: In your opinion, how important are unions to productive and harmonious workplace relations?

Mr Malone: The system of industrial relations which we have been operating under for over 100 years is premised on the essential relationship between workers, their choice as union members and their employers. In order to ameliorate a number of the conflicts which occur in workplaces, the unions' role is critical to ensure an ongoing and productive workplace.

THE CHAIR: What are the implications of removing unions from the dispute process?

Mr Malone: In the context of the total WorkChoices legislation, the better bargaining bill and building construction changes, it is not simply a matter of removing unions from the dispute process of course; it is in fact seeking to deny the legitimate role of collective activity in any way, shape or form. The removal of unions from the dispute process is simply one example of how the bill achieves that goal. A considerable amount of time is spent by unions resolving issues in the workplace before they get out of hand, before they escalate into more serious matters. To remove unions from the workplace, in our opinion, will simply heighten the level of dispute that escalates.

THE CHAIR: The committee heard from the CFMEU last week about how WorkChoices and the Building and Construction Improvement Act will force them to re-evaluate their commitments to broader social organisations like AusHealth and another one that they talked about in the training area, CITEA. Have you heard of other unions having to make similar assessments in light of WorkChoices?

Mr Malone: At this point, no, I have not. I believe that, because of the dramatic changes being imposed through WorkChoices, many affiliates will be forced to make that assessment.

MS PORTER: I am concerned about schedule 1 of the better bargaining bill and the restriction on the ability of employees to negotiate issues that arise during the life of an agreement. Have you any examples of those kinds of things occurring in the ACT and how employees may have been disadvantaged had their issues not been addressed during the life of an agreement?

Ms Francis: Certainly in relation to the reduction in bargaining power. At this stage the reports that we have heard have been very much anecdotal as the result of the suggestion that the WorkChoices bill would be passed. It is certainly already happening in a number of small areas. We have heard anecdotally that some franchise groups and some video stores have already removed the penalty rates that applied. They are telling their staff that the legislation is through and that they are entitled to remove those conditions now.

Those concerns come through to UnionsACT from time to time, and we pass those directly to the unions that deal specifically with that industry as it is not our role to be involved in the workplace dispute situation. What it has meant is that, in taking advantage of the new legislation, we are seeing a reduction in the capacity to earn and a reduction in the ability of employees to bargain effectively. They are being placed on individual agreements, with the threat of termination in the event that they don't accept the new agreement.

In some cases, they are not even being given a copy of an AWA. Certainly in a business that I know of that employs all of its casual staff under an AWA, they don't even see it;

they haven't signed it. They are certainly being disadvantaged and believe they have no bargaining power currently as they are casual employees. That situation is only going to get worse. We believe that the inability of individuals to act collectively will certainly impact on people's ability to get a decent outcome and to be fairly treated in their workplace.

Mr Malone: I will provide one particular example, in response to your question. Even under the current legislation, as Ms Francis indicated, there have been attempts made to undermine existing conditions and salaries. One particular example in recent months was in the electrical contracting industry. In a small workplace, with about seven employees, four employees were convinced to sign an AWA which reduced their total package by about $10,000. Under the existing legislation that should not have been allowed to be registered. Nevertheless, it was. Under the new legislation there would be no hesitation whatsoever for it to be registered.

Three employees, however, refused to do so, despite some considerable pressure. The employer in this instance then offered the same individual contract as a collective, non-union agreement, knowing it had the majority of employees in agreement with the new conditions. It was only by intervention of the union, being able to access the workplace under the current legislation, that the four individuals who had signed the individual contracts were able to be convinced to not vote for a collective agreement that would bind the other three who were choosing not to agree. Already, by that example, we can see that there is considerable pressure in the workplace to reduce salaries and conditions.

The WorkChoices bill goes even further in that it allows the complete undercutting of all existing award minimum conditions, bar five, and seeks to restrict access to workplaces by any union officials.

MRS BURKE: This may be a bit of a complicated question. I may put it on notice. Ms Francis, you cited some cases in regard to bargaining and the difficulties that employees of the future may or may not have. You probably know this. I am trying to make this as simple as I can. We have heard evidence that two industries in the ACT who negotiate awards through unions are placing equal pressure on those industries by saying, "You won't be eligible to tender for government work." What is the difference between what you are saying there and having what I perceive to be exposing bad employers?

Let us start with the basic premise that most employers and employees are doing the right thing. Won't this stamp out that sort of thing as well? The two industries I refer to—and let us be out in the open—are cleaning and clubs. It is coming to light, to me—and it was a revelation to me today—that some negotiation across industries is agreed to. What is the difference? Is that clear enough?

Ms Francis: Certainly. I am quite aware of the cleaning industry charter. There are some complexities there. I agree with your premise that there are many good employers out there; that not every employer wants to do the wrong thing by their employees; that there are many small businesses who recognise the value of their employees. However, there are many who see employees as a commodity; there are many who put profit before anything else, including the safety of employees.

The difference between addressing matters of broad safety and conditions in an industry and enabling employees to bargain collectively with an employer is that the bargaining world is not a level playing field at all. Anybody who believes that it is has never experienced what it is like to work in an industry where you have reduced capacity to bargain.

MRS BURKE: But isn't that the reality generally?

Ms Francis: Indeed it is. However, we have a 100-year-old industrial relations system that attempts to bring fairness and a level playing field into the equation. This legislation will further erode that and we will see greater haves and have-nots. You referred specifically to the cleaning charter—

MRS BURKE: And the clubs.

Ms Francis: I have not yet seen the clubs charter, but I am happy to speak to what I know of the cleaning charter. That was a charter that was developed because of the high incidence of employee abuses in the cleaning industry, particularly in relation to wages, long hours and safety issues with regard to chemicals, et cetera. The workers in that industry collectively determined that there should be some formalised and clearly understood, simple document so that they knew what the rights and responsibilities were for them and for their employer.

In regard to the government contracts that you speak of: given the government's desire to ensure that people who were employed by the government either directly or indirectly through contract and tendering, the government felt it was essential, to maintain their good record and their good name as an employer, that they enter into an agreement to ensure that the employers that they were offering contracts to were, in fact, abiding by their current legislated obligations. The charter goes no further than to ensure that the employer is fulfilling their legal obligations to their employees.

MRS BURKE: Wasn't that just a way of locking people out who didn't abide by what the union wanted them to do, would you say? I don't know how the clubs fit into this.

Ms Francis: It would be a similar process. No, I don't believe it was a way of locking people out. I believe it was a way of ensuring that employers who were keen to do the right thing were able to do so and that they were able to make clear and public their willingness to abide by their legislative requirements to treat their employees fairly.

That assisted the government considerably and was a cost-saving exercise through the tender process, given that these employers had already been assessed as a fair and appropriate employer. That meant that the people who were looking into the government tenders didn't have to spend additional time, money and other resources investigating whether they were offering a contract to somebody who was likely to publicly embarrass them.

MRS BURKE: Isn't it true, though, that what is being put up by the unions is somewhat of a fear-driven tactic? You are fearful, but I think there always will be a place for good unions; I have always said that. Don't you think that your fear is a fear that will never be

realised? You have said yourself that we start from the premise that 95 per cent of people—I believe that is the right figure—will do the right thing; five per cent won't. That applies to employers and employees.

Ms Francis: May I interject there: I certainly didn't use the number of 95 per cent and I do not believe that that is a correct number.

MRS BURKE: You think it's worse?

Ms Francis: I do think that it is worse. I would be loath to put a figure on it. This legislation clearly aims to lock unions out of workplaces.

MRS BURKE: I don't think it will.

Ms Francis: It specifically states that, if there is a non-union agreement in a workplace, a union may not enter that workplace. It specifically states that.

MRS BURKE: But employers have been inviting unions in because of OH&S stuff and advice. That will still continue, surely.

Ms Francis: Some do.

MRS BURKE: I think it's a furphy, but, sorry, do carry on.

THE CHAIR: It's in the legislation, isn't it?

Ms Francis: It is in the legislation.

MRS BURKE: Yes, but employers will still invite—and why wouldn't they if they are getting good help—you in.

Ms Francis: In some instances, but one employer that will not is the commonwealth government. The commonwealth government have been trying to remove the CPSU from their workplaces since l996. It is already all but impossible to get into the Department of Finance and Administration, Centrelink and some of the telco organisations. The commonwealth employs many thousands of ACT residents. People who you represent, your constituents, are currently being denied their right to organise under the current legislation. The commonwealth agreements in the main are non-union agreements. The workers in those workplaces already support the unions sitting at the table and negotiating their non-union agreement; that has been the case. But this legislation does not give them the option to have the union at the table and, in fact, the employer can refuse to have a union-based agreement under this new legislation, even more so than they currently can, and that will stop the union being able to be in the workplace. The legislation clearly states that. I have no doubt that, immediately after this legislation is in full effect, the CPSU will be locked out of representing your constituents in almost every commonwealth government department. That is the first example that springs to my mind.

THE CHAIR: Ms Francis, in your submission you state that WorkChoices will abolish unfair dismissal protection for people working in workplaces with less than 100 staff.

How many workers in the ACT do you believe would be affected by this change?

Ms Francis: The figure that we have is 105,000 individuals approximately. But, of course, the unfair dismissal legislation has gone further now, inasmuch as unincorporated entities will be excluded, which means that incorporated entities could in fact change some parts of their operation to unincorporated bodies, which means those people would lose their protection under the WorkChoices bill. In addition, the—spurious is the word that springs to mind—condition of operational requirements effectively means that, even if you work for an organisation of over 100 employees, you can be terminated with no redress under unfair dismissal if part of the reason you were terminated was due to operational reasons. "Operational reasons" are not defined.

THE CHAIR: So the unfair dismissal laws could be a loss for all workers—not just those in workplaces with less than 100 staff?

Ms Francis: We believe unfair dismissal protection has been lost for all Australians.

MRS BURKE: Why would a good employer—silly question perhaps—get rid of a good employee? Employers are going to keep good employees. I'm having difficulty understanding this fear-driven notion that employers around the country are going to get rid of people—why you believe an employer would get rid of, and treat badly, good employees that it currently has.

Ms Francis: I will give you an example of how things operated prior to the unfair dismissal laws coming into effect. There was a very large employer in this country—around the world really—called McDonald's. They had wonderful employees: they worked hard, they worked long hours and the majority of them were under the age of 18. They worked very hard and were reliable—they had to be because, if they weren't, they didn't stay there. Owners of franchises of McDonald's regularly dismissed their excellent, committed and loyal staff because they happened to have a birthday. We will see young people, most particularly, disadvantaged under this.

Yes, it is unlawful to dismiss on the grounds of age, and it will remain unlawful to dismiss on the grounds of age. However, now, if a young person turning 18, who has to go on to adult rates, is dismissed on the grounds of age, that person will have to go to the commission to see whether their case actually has merit to be taken to unlawful dismissal investigation. To go through the unlawful dismissal hearings will require that 18-year-old to employer a lawyer, to employ counsel, to be represented by a mouthpiece. That is abhorrent to me. Single mothers, single parents, in any situation, will be able to be terminated because suddenly they may need additional time off; they may need more flexible arrangements than they currently have. It doesn't matter how good a worker they are; if they come to you and say, "I can now work only three days a week, not four, because this is my personal situation with my child and I am the primary carer," it doesn't matter how good a worker they are, Mrs Burke; they will be fired and somebody who can work four days will be given the job.

THE CHAIR: Ms Francis, you mentioned a little earlier businesses that currently don't pay the correct rates and conditions and therefore act unlawfully. We heard, just before you two came into the hearing, from the ACT Chamber of Commerce and Industry, and I have to tell you that I was very surprised at their statement. They made the statement

twice that they represented businesses that have acted unlawfully. What do Unions ACT feel about that situation?

Ms Francis: It is typical. But it is also difficult to ensure that every employer is monitored the way they should be. In many cases, unless you actually hear about it, it is hard to find the time to go out, investigate and monitor every employer. However, currently, when an employer is found to have done the wrong thing, particularly in relation to wage claims, we have a very simple way of dealing with that. It is easily and quickly dealt with. Often it does just take a phone call and a bit of discussion between a union official and an employer; many times that is the case. But you can currently go to the industrial relations commission, where you can seek a conference and get advice from the commissioner. They assist both parties to come to an outcome and it is fairly inexpensive. The greatest expense is time. It will take perhaps a couple of hours to get that matter finalised.

The biggest concern with the new legislation is that, because the agreements do not have to be certified, because the Office of the Employment Advocate will not have any policing role, because those agreements do not have to be union agreements, there will of necessity be no-one monitoring it. The OEA have already said that they will not have a monitoring capacity at all. If it is a union agreement and we are excluded, even making the phone call is going to make no difference. We will see people doing the wrong thing, because they are doing it now.

MS PORTER: I am aware of the time but I have a question that you might want to take on notice. We have a fair number of women working in the ACT. I'm not quite sure of the stats but you would know that there is a higher number of women in the work force in the ACT than in other jurisdictions. My concern is: have you been able to track the effects of similar legislation in other places, such as the United States and New Zealand, on women. Do you have any concern about the effects on women from this current legislation that we have seen brought down by the commonwealth government and also the added effect of the welfare to work policy on single parents particularly and people with disabilities? If you could have a look at those two issues in relation to other jurisdictions and give me the answer on notice, I would appreciate that.

Mr Malone: Yes, we will take that on notice and respond accordingly. Certainly some of the issues are dealt with in the ACTU submission but in terms of further advice we will take that on notice.

Chair, may I make some brief comments in conclusion, particularly in regard to some of the points from Mrs Burke. What you essentially have here is a fundamental shift in ideology. The perspective that you have sought to put forward, Ms Burke, essentially is premised—as is this bill—on the goodness of the free market; that essentially the free market should be left to its own devices to provide the best outcome for individual employees and employers. One hundred years ago—actually 110 years ago—our industrial relations system was premised on exactly that principle, that the free market was the free market and there should be no intervention or regulation of it. In 1904, I believe, in terms of the commonwealth's arbitration act, both employers and employees recognised that the free market isn't the best method to produce the best and fairest outcome for both employers and employees; that it is essential for the market to be regulated to some extent in order for fairness and equity to take place. This bill rejects

that concept. This bill and the associated bills take us back to the fundamental principle that the marketplace should be left without any real regulation.

You suggested that our tactic is fear driven. I absolutely dispute that, absolutely reject it. We are deeply concerned that the fundamental nature of our industrial system is being stripped back to over 100 years in history. I will give a few examples under these proposals. You can be coerced into accepting any offer that is put by your employer, under threat of either keeping your job or gaining your job. Couple that with the unfair dismissal proposals, which Ms Francis has elucidated on, and what you have in this bill is a statement that employers really do have the right to determine unilaterally what the terms and conditions of employment of individual employees will be.

What we say is that 100 years of history have shown that, unless there are some guidelines—unless there is some strong legislative background—that prevent employers from abusing the processes of employment, that abuse will occur. That is not fear driven; that is simply a fact of human nature. It is simply a fact of the market. At the moment I would hazard the guess that whatever the percentage is of employers out there that are good, the majority of them are good because legislatively they are required to be. When you remove that legislation, when you remove the requirements to provide decent salaries and conditions, there is no longer the compunction or need to maintain that level of generosity to their employees. So it becomes a grace and favour situation: employers can simply say, "I think I feel like being good today and I will provide this condition or that level of salary." But what about when their competitors in the marketplace don't feel so good? What about when they undercut their competitors? Even the good employers will be faced with situations where the salaries and conditions being offered by competitors will force them to match them. That is the market and that is why no fair and just community should rely simply on it.

There are so many other factors associated with our life. The economy must work for people, Mrs Burke, not people for the economy. There is absolutely no point in having a system that simply allows the economics of the world to control people's lives. If we do that, we are selling our communities so far short it is not only undesirable; it is absolutely an atrocity. We must have regulation in the industrial scene in this country. If we do not, we are opening the market to follow its natural instincts—and those natural instincts are not in the interests of the Australian community. That has been acknowledged for 100 years. Only now have we had to revisit the historical fight and to regain recognition from employers—as we will, because this legislation will not stand. However long it may take, this legislation will be changed, will be torn up, because it is unjust and it will produce outcomes that ordinary people will not be able to accept.

Many employers do not want these changes. They do not accept the need for them. They do not see, in an economic environment that has produced substantial booms, that has produced substantial profit margins for companies, the need economically to cause these changes to occur. Only the federal government has, because of its ideological zealousness. But sooner or later the Australian community will speak, because these changes aren't just academic; they aren't just simply a small change in the way business is done in our nation. They are a fundamental attack on the accepted values, the accepted standards, of industrial fairness and equity in our nation.

MRS BURKE: We are not living in the 1900s and I think that you have to be a bit fairer

to employers of this modern age.

THE CHAIR: Mr Malone, Ms Francis, thank you very much for your generous time this afternoon. If we get in touch with you at some later point, would you be able to come back to the committee?

Ms Francis: Absolutely. I would be very pleased to come back and expand on what we have already put to you today, particularly in light of the implementation of some of these changes.

THE CHAIR: Thank you.

The committee adjourned at 4.20 pm.