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, 10 MAY 2007

Secretary to the committee:
Ms G Concannon (Ph: 6205 0129)

By authority of the Legislative Assembly for the Australian Capital Territory

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

WITNESSES

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The committee met at 2.40 pm.

SATTLER, MS KIM, Secretary, UnionsACT
SHANNON, MR CRAIG, Industrial Officer, UnionsACT

THE CHAIR: Welcome to the Select Committee on Working Families in the ACT inquiry into the federal legislation. Before we go ahead, I will read you the privileges card.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

Just for the information of members and witnesses today, in a prior committee meeting the chair and deputy chair have decided that we will try and shorten that statement so that you do not have to wait each time.

Mr Shannon: Just a question on that: I take it that this is held under the jurisdiction of the committee until you give authorisation for release.

THE CHAIR: That is correct, yes.

MRS BURKE: We were just talking about that before you came.

MS PORTER: Yes, until we do that.

MRS BURKE: Because we have not had time to—

MS PORTER: We have not have time to read right through it. When we have done that we can—

Mr Shannon: As long as you can let us know so that we can distribute it to our affiliates.

MS PORTER: Yes.

MRS BURKE: Yes, thank you.

Mr Shannon: Thanks.

THE CHAIR: Ms Sattler, would you like to make an opening statement?

Ms Sattler: I would, thank you. I would like to thank the committee for the opportunity to come and give evidence. I will just give you a bit of my history. I have been in the job of Secretary of UnionsACT for five months now, but six months prior to that I was actually working for the Australian Services Union, specifically working with employers and workers in the community sector to assist them to navigate their way through WorkChoices—because it was such a nightmare for them: they are an award based industry, and they were particularly badly affected by WorkChoices changes. Prior to that, I had a long history of being an employer myself in the community sector.

The work I did with the Australian Services Union was basically trying to help employers understand how they could transition from an award reliant environment to coming up with some agreements. We trialled a strategy of multiple business agreements where we got groups of up to 15 employers signing onto a core template document—a bit like the public sector process. The first group of 15 have gone through; now we are just awaiting the final tick-off from the OEA.

The experience of lodging that with the Office of the Employment Advocate was an absolute nightmare, I have to tell you. Most of the questions that the OEA asked had already been provided in the evidence that we gave them. They clearly had no understanding of the nature of non-profit and non-government organisations, and most of their questions related to that. Most employers in that sector do not have the resources, the time or the expertise within their organisations to deal with complex industrial relations matters. Mary will be thoroughly aware of what that is like. Most of them chose to come to the union rather than go to the chamber of commerce, because they had already had fairly bad experiences in the past around the implementation of the SACS award. That gives you some idea of how many people are lost in all of this process.

The two groups that I would nominate in the ACT as being the most badly affected by WorkChoices—in particular, in relation to their work and family arrangements—would be young people and women. They tend to be the group that are lowest paid. People who are earning less than $50,000 in this town do not fare very well—and they have not fared very well for quite a while, because of the nature of the work and the lack of stability in the work that they are often going in and out of, which is hospitality, retail, aged care, community services, childcare and all of those sorts of areas. The wages are poor.

Only recently did the childcare industry achieve a significant increase, and that happened before WorkChoices—just before WorkChoices came in. For the rest of the sector, there are lots and lots of aged care workers, disability workers, women's

refuge workers and drug and alcohol workers who have not seen a pay increase inside five years. WorkChoices did not in any way assist them to try and achieve a pay increase. Under the terms of the multiple business agreement that we negotiated, we built in the indexation rises that were applied through the community services grants funding process by ACT government. That is the only way those people achieve a pay increase.

What we noticed in other parts of the sector is that some of the worst offenders, in terms of starting to utilise WorkChoices, have been the large charities. Nearly every one of them has tried telling people that they will be given AWAs, trying to institute 17-hour shifts. We have got a situation at the moment where one charity is telling people that they have to work 17-hour shifts. They incorporate a sleepover. People do not get paid for the 10 hours they are supposed to be asleep. I have to tell you that anyone who does sleep over with young people these days does not sleep during the sleepover. It is not worth it, for your safety, to go to sleep.

That gives you a picture. One of the problems about the introduction of WorkChoices is that it has given permission to some employers to do the wrong thing, and that is what they have been quoting back to workers on the job. What it has done on the other side is create an enormous amount of fear. People have particular fear about even declaring their union membership. In addition to that, you have a whole lot of people who are too afraid to join a union because they have been told that if they do they will be punished in some way or they will be isolated on the job. Basically, people choose not to give themselves the grief.

One of the things that we have experienced at UnionsACT is this: people will be aware that we have been out there campaigning against the legislation; that is no secret. But we have been doing a huge amount of outreach activities—everything from the National Folk Festival to the multicultural festival, sporting matches and other activities where people are free to come up and talk to us. At every single one of those events, we have got people coming up telling us personal stories. We also have a radio show every Thursday morning from 8.30 to 9.30. We get calls every week now—and we did even from the first week. People just ring up unsolicited, anonymously, saying, "This is my story. This is what happened to me. What can I do?"

MRS BURKE: What radio is that, Kim?

Mr Shannon: 2XX.

Ms Sattler: It is 2XX. What is interesting is that a lot of these people are not union members. We are also getting walk-ins off the street. We have had people in tears seeking medical help and having a complete breakdown in the office because of what has just happened to them. They do not know where to go, they do not know who to see and they have no idea what access they have to help. They are not union members. They just walk in through our door and say, "We hope you can help."

As someone who has been involved in unions for a long time, that is a change—for people in that situation to feel so desperate. They are still approaching unions because they do not understand who else can possibly offer them help. The problem for a lot

of people is that a whole chain of events has already happened before they actually seek help: they have already signed an agreement; they have already signed away their rights; they have already agreed to a redundancy provision that they did not understand. This is really common.

Another group that is particularly badly affected are people whose written English or ability to read English is very limited. Their spoken English might be quite good, but their ability to read complex documents is very limited, and they are often too embarrassed to tell somebody that they do not understand what they are being given. A lot of pressure and duress is being placed on people to sign on the day. You are treated as though there is something wrong with you if you are not prepared to sign an agreement on the day.

We have had situations where people with disabilities have been given an agreement who should not even be signing on their own volition. For example, Down syndrome applicants for jobs are being told they have to sign a contract straight away—clearly against the law. They are clearly not protected in that situation, and once they have signed the contract it is too late to overturn it. That is the nature of the legislation; there is no going back.

That gives you a broad picture of where some of the information has come from. With our submission, we have included a number of attachments. We have included an article by David Peetz. That is probably the most well annotated document in terms of statistics. There are two people who have done the most significant academic research on WorkChoices and analysed who are the groups most badly affected. David Peetz has done the most sophisticated work around the gender equity pay outcomes, and the cut to those pay outcomes—by half in the nine months; he was looking at it only up to nine months of implementation. The gains that women had made in the previous 10 years had already been reversed by half in the first nine months of WorkChoices.

THE CHAIR: In nine months?

Ms Sattler: Yes. That is pretty staggering evidence. The other area which has caused us a lot of concern—and we have been quite vocal about it—is the impact on occupational health and safety. WorkChoices, in combination with the changes to federal OH&S legislation and to workers comp arrangements, has placed a lot of workers' safety in jeopardy. We have quoted the Thiess construction site in London Circuit, which is getting the guernsey for the worst construction site in Canberra. They are now up to accident No 5 on that job. The last accident was yesterday.

THE CHAIR: In what time frame?

Ms Sattler: Five very serious accidents since November last year. In all of those cases, there has been no prosecution, there has been no action by WorkCover, and there has been no action by the Federal Safety Commissioner to date. We have certainly been exploring some other avenues to have them investigated. The key issue about what happened in those situations is that those workers, some of whom were very seriously injured, were not allowed to call an ambulance and were not allowed to go to a medical practitioner of their choice. They had to go to the company doctor. The

company doctor in Kingston issued a certificate "fit for light duties" in every single case. Some of those workers were made to go straight back on the job, sit in the work shed and watch the OH&S safety video so they could qualify for being fit for light duties.

MRS BURKE: So you are casting doubt over the doctor who has given those?

Ms Sattler: Very much so.

MRS BURKE: Where are you taking that?

Ms Sattler: We have raised it with the Federal Safety Commissioner. We have certainly publicised it through the media. The union itself has raised it with WorkCover.

MRS BURKE: What about the—

Mr Shannon: Medical practitioners?

MRS BURKE: General practice, yes. I cannot think of the name.

Ms Sattler: ACT Division of General Practice.

MRS BURKE: Yes. I wondered if they were aware—

THE CHAIR: Why can't they call an ambulance? What is the reason?

Ms Sattler: Because the company policy is that you have to follow a certain procedure if an accident occurs, and that procedure prescribes only contacting this doctor in Kingston—who never comes to the site, by the way, no matter what happens to the worker; you have to go to Kingston. And they have to be accompanied by one particular person on the site, not the first aid officer—

MRS BURKE: That sounds very odd to me.

Ms Sattler: —but a supervisor. It has been well publicised.

MRS BURKE: You will have to excuse my voice, I am sorry; it is coming and going. I am trying to let you finish, but I might just forget. Is this just with the one site you have mentioned or is this—

Ms Sattler: There was a death on another site in Canberra that—

MRS BURKE: But this one particular doctor was for all construction sites—

Ms Sattler: No, no. Theiss use this particular doctor.

MRS BURKE: Okay, that is what I was trying to ascertain.

Ms Sattler: Everyone has a different policy.

THE CHAIR: You said that there was an accident as recently as yesterday.

Ms Sattler: Yes.

THE CHAIR: What occurred yesterday?

Ms Sattler: Yesterday a key was left in a forklift; somebody jumped straight in and—obviously without knowing what they were doing in a forklift—emptied a pallet of construction materials all over the driver. He is in hospital at the moment.

THE CHAIR: Was he supposed to go to Kingston first before he went to hospital?

Ms Sattler: I do not know exactly. I have not been given the details about how it proceeded yesterday, because I was giving talks at other places. I have only been able to try and piece the details together.

MRS BURKE: I would like more details on the ambulance issue. It seems absolutely incredible that one cannot call an ambulance if a work person—or any person—is injured. That beggars belief.

Ms Sattler: The reason it is happening is that that construction company is on a preferred contractors list with the federal government. That is a federal government site; they do not want to compromise their preferred contractor status, and it would be compromised if they had too many accidents—serious accidents.

MRS BURKE: I find that so hard to believe. That would not be in anybody's interest. Anyway, you might want to find out some more information and let us know.

Ms Sattler: That story has gone all over the country. A lot of people are quite outraged about that situation. But that just—

THE CHAIR: Are you suggesting that the reason they send these people to the doctor instead of ringing the ambulance, for example, is that they do not want the incident to be notified?

Ms Sattler: That is right.

Mr Shannon: If I can just supplement what Kim is saying, the preferred status relates to time lost due to injury, not the number of injuries on site. In effect, our supposition is that the reason why they are getting referred for light duties is that there is no time recorded—

Ms Sattler: No time off.

Mr Shannon: —due to injury, even though there might be injury stats relating to incidents.

THE CHAIR: Has this sort of thing ever happened before?

Mr Shannon: Not since WorkChoices was introduced—

Ms Sattler: I have not been aware of it happening—certainly not with large, well established construction firms. They would never have practised this sort of behaviour in the past.

MRS BURKE: Sorry, Craig; what was your position again?

Mr Shannon: I am an executive member of UnionsACT. I am the honorary secretary of the United Services Union. As you probably note from one of the attachments, I worked with the Federal Police Association for approximately 10 years, which is why that attachment is included as part of the brief.

MS PORTER: I do not want to get stuck on this particular issue, but it is quite critical that we get to the bottom of how they can refuse to allow a person to call an ambulance. That is critical. I was in another committee only a couple of days ago. We were discussing incidents in another place. It was said, "If it is a serious thing we call the ambulance." Do you override that policy and call the ambulance if a person is seriously injured?

Ms Sattler: You would probably be aware that that first aid officer was sacked after he did not agree to follow the process of sending them off to the doctor in Kingston, with the authorised member of management, because he wanted to act more quickly than that and because he was really concerned about that person's health and wellbeing. He has since been sacked for acting as a first aid officer should act.

It will become a major case. I believe that case will not die; it will go on. There is national interest in that case and interest from other states about what has happened with that firm and the way they have used WorkChoices to operate in that way

THE CHAIR: You still have more of your presentation to give?

Ms Sattler: The other work that we have done a lot of is sitting down with young people and trying to explain to them their rights in going for their first job. We ran workshops at the Youth InterACT conference. I did one this week at Ted Noffs, working with young people who are about to exit that rehab program. There are a lot of young people entering the labour market and they are completely unaware of the process about finding out how much they should be paid, what letter of offer or contract they should agree to.

At the conference we had a group of young people who work for Domino's. They all work for different Domino's. Lo and behold, they were all being paid different hourly rates. They also told us about an 11-year-old that was working in one of the Domino's outlets in Canberra. As a former youth worker, I do not think the employment laws cover 11-year-olds, to my understanding. This person is probably not being officially recorded on the books, I would say. They are probably being paid cash in hand.

When I talk to the group of young people at Ted Noffs, it is very common for that group of young people to have had some fairly negative employment experiences. They are often paid cash in hand. It is not uncommon here for the young people who

work for the trolley-collecting agencies to never see a payslip, to never sign a contract, to be paid in kind, to be paid with drugs or alcohol or other means of payment that do not represent cash. They are the warnings that I give to groups of young people like that, because their chance of sinking into relapse in that work environment is very high, because the temptation is too great.

THE CHAIR: Have these instances just come about? Did they occur before this federal legislation?

Ms Sattler: They occurred before. Trying to take action against those situations is much more difficult now. It is very difficult to find protection for those young people. They do not have a lot of redress, particularly if they have not signed anything and have not received a payslip. If they go off to the Office of Workplace Services and have a complaint, they are going to say, "It is your word against the employer's." Why would you do that? Why would you work under those conditions? It allows exploitation. It gives permission for exploitation to happen on a broader scale.

Many women and young people are working in the hospitality industry—cafes, restaurants. Babar's, for example, recently issued all of its workers with AWAs—a place I used to eat at but I do not anymore. They basically were presented with an AWA which cut their penalty rates, cut their shift allowance and basically for doing exactly the same number of hours they were going to get less money the next fortnight.

MRS BURKE: Not after 7 May, I hope, when the new fairness provisions came in.

Ms Sattler: It is too late. They had already signed.

MRS BURKE: I am saying that, if it was after 7 May, then they could be in—

Mr Shannon: We are happy to discuss that in detail if you wish.

Ms Sattler: No, this was a month ago. That is a real problem for all those people who have already signed unfair agreements.

Mr Shannon: It is also unlikely in the hospitality and retail sector that that provision will have any application, given the test that the employer can utilise as far as the cost to the employer and the viability of the business are concerned.

THE CHAIR: Mrs Burke suggested that there will be a change from 7 May. Could you let Hansard know what that change is?

MRS BURKE: I am referring to a document that I got hold of today. I am happy to table it for the committee. It is *A stronger safety net for working Australians*, dated 4 May. This has come from the federal government. I am happy to table that for us to have a look at.

THE CHAIR: Is that in force at the moment?

MRS BURKE: If I may, with your indulgence, chair, it talks about the simple fairness test. The federal government will introduce a simple fairness test to protect all

workers who would otherwise have been entitled to the benefit of protected award conditions, such as penalty rates, in an industrial award and are paid under $75,000 a year. The fairness test will apply to agreements lodged on or after 7 May 2007. If an agreement has been removed or modified those award conditions, then the employee will be required to receive fair compensation for their removal. It is on or after.

Ms Sattler: It won't help the workers at Babar's.

THE CHAIR: Is it in force?

MRS BURKE: Yes.

Mr Shannon: I understood the legislation was due to be tabled this week and the operative date was 7 May, but they are looking at the legislation.

THE CHAIR: It is retrospective, yes.

Mr Shannon: It is not retrospective prior to 7 May; so anyone who has got a certified agreement won't have any intervention.

MRS BURKE: But surely they would have some comeback on the—

Mr Shannon: No, not if they were done prior.

Ms Sattler: No. He will say he has no jurisdiction because it is already done and dusted.

Mr Shannon: There is another problem with the application, in that the Employment Advocate is not required under the act to vet every agreement on lodgement. In fact, they do not even have the resources. Apparently 1,000 agreements are lodged a day and there is no way the physical resources exist in that office to go every day through 1,000 agreements and verify, according to the basis of the document you just read out, whether or not any of those agreements meet that test. Part of the dislocation in setting benchmarks of wages, terms and conditions across industry on a national basis for the award system, now that that has been dislocated, is: what do you hold them against as a comparison base?

That document does not state, as far as I am aware, how the compensation is to be assessed, on what basis it would be assessed, the test for the employer to claim that they do not have the financial viability to meet that test. If the government was committed to a fairness test in those terms it would have been easy to reinstitute the no-disadvantage test from the prior AWA provisions pre WorkChoices.

MRS BURKE: It goes back to the protected award conditions that were in place before, like penalties. That is where they would probably have to start. Anyway, that is a debate for another day, obviously, but I am happy to table this for the committee.

THE CHAIR: Thank you.

Ms Sattler: Can I give you one more example?

THE CHAIR: Yes, if you could.

Ms Sattler: This is a lovely example of duress: a young person working at the Hog's Breath in Civic. All the casuals that worked at the Hog's Breath were required to report every Sunday morning for several weekends until every one of them agreed to sign an AWA. A couple of those young people would not agree because they could see they were going to lose their award conditions, and they held out.

MRS BURKE: They were not replaced with anything else, you are suggesting?

Ms Sattler: No.

MRS BURKE: The pay did not compensate for any of the losses?

Ms Sattler: Not at all. They were agreeing to a pay cut if they signed onto an AWA. The process the employer used in order to get compliance was to make them all report for duty on Sunday morning and sit around the room and get the others to pressure the two that were holding out.

Mr Shannon: With the committee's indulgence, attachment B of our submission pretty succinctly sums up the whole nature of this scenario in the hospitality and retail sectors relating to the employment initiatives activities in the ACT and New South Wales, where the employers quite clearly pushed the agenda that Kim has referred to.

THE CHAIR: Thanks for that. We are almost out of time.

Ms Sattler: Sorry.

THE CHAIR: We have not had a chance to ask too many questions.

Mr Shannon: We have got more time.

THE CHAIR: You have a list of recommendations, which we will go through. I guess we need to look at the specific strategies the ACT government can implement to assist working families with these impacts that you have highlighted today. There are some recommendations. Perhaps you could give us a synopsis of those.

Ms Sattler: What is clearly missing in the ACT is an advocacy advice service for anybody to ring, whether it is a parent, a child, a woman, anybody wanting to work or find out what their rights and pay and conditions would be in the ACT. In Victoria we have the Job Watch agency. In the Northern Territory there is an industrial advocate employed by the government. We are in the same situation as Victoria and the Northern Territory. We have had absolutely nothing in place for people. That is why people are going wherever they can to ascertain whether someone might know the answer to the question.

If you ring WageLine you are often dealing with someone in a call centre environment who has absolutely no industrial expertise whatsoever and is trying to identify which award you should be paid under. They are very unsatisfactory

responses. If you ring the Office of Industrial Relations in the ACT—and I know because I worked there on the community sector task force project—the response was: "We cannot give you that advice; you need to ring WageLine." We have left our population adrift; they are not supported in this situation. The most vulnerable are the ones who need that information most critically.

THE CHAIR: I need to ask another question about UnionsACT. Given this federal legislation is under consideration, why is it not the responsibility of unions to help employees with their industrial needs and not the ACT government, as you requested in your submission?

Ms Sattler: We are helping our members and people who are not members. I am the only full-time paid officer of UnionsACT.

MRS BURKE: It is not the role of governments, though, is it? I would not have thought so.

Ms Sattler: That has not been the choice of the Victorian and the Northern Territory governments and the New South Wales government either.

THE CHAIR: Would you say the employees in those states are getting a better deal from their governments?

Ms Sattler: A much better deal than they are getting here. People have to know where they can go and get unbiased advice and support.

MRS BURKE: But is it not your role to tell people that? I know it is for women and young people, but UnionsACT got a $10,000 grant to do just that.

Ms Sattler: No, we did not. We got a $10,000 women's grant to run super advice seminars and advice for women about investment, a very specific project which is designed to help people take advantage of the—

MRS BURKE: You did not discuss anything about WorkChoices?

Mr Shannon: No.

MRS BURKE: Rights at work?

Ms Sattler: No.

MRS BURKE: In those seminars?

Ms Sattler: What do you expect for $10,000? It is a small project.

MRS BURKE: I do not know how many you did.

Ms Sattler: It has not started yet because that money has not even been released yet.

Mr Shannon: I think you are confusing us with Heather Ridout in the employer

groups who have been getting substantial sums of money to promote WorkChoices.

MRS BURKE: No, I was not. I was trying to suggest that it seems odd that the government would take the role of a union official's work. I do not see that part of—

Ms Sattler: It is not a union official's work.

MRS BURKE: Sorry, union's work.

Ms Sattler: Advocacy about people's basic rights of employment is society's responsibility; it is not just one stakeholder's responsibility. The fact that people who are not even union members are seeking that advice from union organisations indicates that people have no knowledge of where else they can get that information, and they are not getting it from the federal government agencies.

MRS BURKE: I am confused now, because you said people were fearful about coming to unions or joining, yet you are saying they are coming to you for advice.

Mr Shannon: They are coming to us as the peak body. We are not a union. We are not a constituent membership organisation. I think it is worth explaining in relation to the questions you have been asking that we get a lot of direct contact from non-union members, more so than union members. An average union will be contacted by their members directly or the people that know that they work in an industry sector where their union is a particular organisation, but people come to UnionsACT because it is not a membership organisation. It is a shopfront, in effect, for all unions.

MRS BURKE: But you direct them.

Mr Shannon: We try to refer them on to our affiliate entities when we identify where they come from, but what is becoming manifestly apparent is there is a whole plethora of non-union members out there in the Canberra community who are coming to us as the only point of support or information because they are dissatisfied. In fact, employer groups have been complaining about the support they have been getting from WageLine and OES.

MRS BURKE: You have clarified that it should be at arm's length from government. It should be a stand-alone body.

Mr Shannon: Some statutory entity would be a good option.

MRS BURKE: Is that what you are seeking for that?

Mr Shannon: Yes; I think that's in the recommendations.

Ms Sattler: We are having to do it in an environment of a lot fewer resources than exist in Victoria, for example. But we have a large workforce here and we have a very large group of young people who come into this town: 5,000 university students. A lot of the regional workers who move into this area have no understanding of the labour market in the ACT.

MRS BURKE: What about the unions themselves setting it up, though?

Mr Shannon: The unions are at the moment fully occupied servicing their own membership needs in a range of areas with the impacts of these agreements.

Ms Sattler: Why would unions seek to do that?

MRS BURKE: No, as a group, all of you, all the unions setting up something that you are asking government to do.

Ms Sattler: And where do you think they would get the resources to do that? Unions live off membership fees.

Mr Shannon: I think it is worth noting that the IR act that the federal government introduced quite clearly states what it doesn't want unions to do; that is, to go into workplaces where they don't have an existing membership constituency.

MRS BURKE: Employers have a right to exercise their rights.

Mr Shannon: Part of the issue that was raised by, I think, the chair was—

THE CHAIR: I think we are getting into a bit of a debate.

MRS BURKE: We are, but I am not disagreeing with what you are saying.

THE CHAIR: Members, we are supposed to be listening to these expert witnesses giving submissions, rather than debating the issue.

MRS BURKE: I thought it was question time, chair, sorry.

Mr Shannon: We are happy to answer the questions. I think it is relevant that the right of entry test is one of the key issues relating to some of the questions you have asked today. Historically, a union would go into a workplace where they had members and non-members, identify a circumstance that applied across the board to both categories of employees, and address that matter on behalf of their members, and that would then spill through in a flow-on effect to the non-unionised components of the same employer.

The removal of the right of entry test and the capacity for most unions to actively enter into a workplace at all—the construction industry part of our submission shows quite clearly that the health and safety issues in that industry are being exacerbated by the refusal under the new legislation to allow the unions to have ready access to sites—leaving people in workplaces with no direct access, no visitations from union or other personalities that they could traditionally rely on to get the support you are referring to.

The government federally have quite clearly stated they don't want unions to have outreach to anyone other than their own membership base. In fact, that is quite codified in the act. In effect, our only relationship is meant to be with our union members, and it is being made more difficult yet again to go and recruit those people

who might have these issues to sign up. Our view is that, if government wants to regulate the marketplace like that, then it has a responsibility to pick up the slack where the private sector—ergo unions—used to have a lot of that responsibility.

MRS BURKE: It seems that it has changed from the award conditions, because the things that you are saying were applying to businesses before WorkChoices came in.

Mr Shannon: WorkChoices is a massive regulatory intervention. As a piece of legislation, it regulates down to a finite degree the operation of unions as entities and the rights of both those officials and the individual employees in the workplace in a way that has never been done before.

MRS BURKE: That's right.

Mr Shannon: I think it most manifestly relates back to the educational issue that we have raised in the submission: that the federal government has seen fit to overturn 100 years of custom, practice and culture and left the emerging workforce that are currently in educational institutions having to go for the first time into a workplace where they have to worry directly about their own capacity to negotiate their terms and conditions of employment, to understanding the marketplace in which they are involved, and to deal with those outcomes on their own terms, whereas when we all walked into the workplace in our first jobs the award system was in place and we didn't have to think about anything; we just got on with our job.

MRS BURKE: It is a new way of learning how to work, isn't it?

Mr Shannon: It is.

MRS BURKE: Let's not treat people like idiots, please.

Mr Shannon: But it's self-development at the moment, because the federal government has put no money in to fund this jurisdiction or any other that I am aware of to reskill students in education in preparedness for what they are required to do when they leave those education institutions. So now they are spilling out into the streets on the same terms as we all did with a lot less knowledge about what they are entering into than we had.

Ms Sattler: And these are sophisticated skills. It has taken me 30 years to learn my negotiation and advocacy skills. It is not something that a young person going into their first job is even going to know how to begin the conversation about challenging conditions in a contract.

Mr Shannon: It is interesting that the federal government likes to refer to the penetration of union membership. If they keep relegating us to 15 per cent exposure in the marketplace, who is responsible for the rest of that marketplace?

Ms Sattler: Who is helping them?

Mr Shannon: If it is not the government, then who is it? At the end of the day, we can't leave 75 per cent or so of the marketplace without any support base whatsoever.

That's why our argument is that government has a role.

THE CHAIR: Thank you, Ms Sattler and Mr Shannon, for coming in this afternoon. We have gone over time.

Mr Shannon: We would like to come back, if we may.

THE CHAIR: Could we invite you back?

MS PORTER: Yes, could we? I have a list of questions here which I haven't been able to ask you, so I would really like you to come back.

Mr Shannon: Give us an afternoon and we will come.

Ms Sattler: If you want to send us a list of questions, we will do some research.

MS PORTER: Probably some things need to be teased out a bit.

Mr Shannon: We would certainly urge you to read the attachments as much as the submission because they are very pertinent to your considerations.

MS PORTER: Yes. It would help us if we had another meeting, because we haven't had time to read them yet.

THE CHAIR: Thank you very much. We will go through those and get back to you. We will also send you a copy of the transcript as soon as it is available.

Ms Sattler: I think you are aware of this document. I only just received it this week, but it is excellent academic research on the impact of longer hours and changes to working arrangements which has been released by the Relationships Forum Australia.

MRS BURKE: That sounds good.

THE CHAIR: And that is called, for the *Hansard* record?

Ms Sattler: It is called *An unexpected tragedy: evidence for the connection between working patterns and family breakdown in Australia.*

THE CHAIR: We will grab that document and have a read through it. Thanks very much for coming along.

EARLE, MS JENNY, Human Rights and Discrimination Policy Adviser, ACT Human Rights Commission

THE CHAIR: I now welcome Jenny Earle from the ACT Human Rights Commission. I will read the privileges card for you. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

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Ms Earle, thanks very much again for coming in to present to us. Would you like to make an opening statement?

Ms Earle: Thank you very much for the opportunity to appear before you. I am very pleased to be here. I have some material in writing. I do not know if you want me to hand it over to you piece by piece or in a clutch now. I have only got one copy of each item but I will draw your attention to things as I come to them.

MS PORTER: The secretary will copy them for us anyway.

Ms Earle: The first thing I should remind you is that we are now the Human Rights Commission, not the Human Rights Office. When I made the original written submission to your committee we were still then the ACT Human Rights Office but since then, with the commencement of the Human Rights Commission Act on 1 November and even more so with the launch of the Human Rights Commission on 4 April, we are very much in place as the Human Rights Commission and we therefore have a broader remit than the original Human Rights Office had.

I am very much focusing on the human rights and discrimination law area, so it is with that hat that I come to talk to you. I note that the committee is now focusing its line of inquiry on potentially vulnerable workers, so I thought it might be useful to provide more information about the Discrimination Act that we have a role in administering, and the work generally of the Human Rights Commission that relates to the position of workers who are vulnerable to exploitation.

I have given you some information about the role of the Human Rights Commission. One of its principal functions is to promote the objectives of the Discrimination Act. I think it is important to remember that we have a responsibility to eliminate discrimination and to promote recognition and acceptance in the community of the equality of men and women, and in fact the principle of equality of opportunity of all people. That is section 4 of the Discrimination Act, and I have provided you with a copy of that.

The other provisions that I have given you a copy of are section 6 of the Human Rights Commission Act 2005, which sets out our objects, and section 14, which sets out the commission's functions. I will not go through them all in detail but, as I say, we do have an important role in promoting the human rights and welfare of people in the ACT and the provision of community education, information and advice in relation to human rights, and some of that is, as I will say, in relation to employment rights. So we are interested in the work of this committee because of those overarching responsibilities that we have.

One of our primary functions is to consider and, where possible, conciliate discrimination complaints. We receive and investigate around 100 discrimination complaints a year, often involving multiple allegations, but work and employment is the single largest area of discrimination that we receive complaints about; nearly 50 per cent of all complaints are about employment and working conditions. We cover all areas of public life, so we receive complaints about education, goods and services and so on, but the bulk of the complaints are about employment.

Many, if not most, of those complaints are from women, and the grounds on which they bring complaints include sex discrimination, sexual harassment, pregnancy, status as a parent or carer, and disability. Pregnancy discrimination is one of the more common grounds of complaint still. Despite years of publicity and, you would have thought, increasing awareness about the fact that it is unlawful, it is still sadly common. Some of those complaints involve requests to work part time or flexibly because of family responsibilities, and some of the complaints around part-time work relate to disability. So we see people whom you have cast, and indeed the federal legislation casts, as vulnerable workers.

I can explain our process in more detail, if you want me to, about how we investigate discrimination complaints, which involves a process of seeking a complaint in writing from an individual, usually an employee, and then checking it with the employer and seeing what the response to that is by the employer, the manager or perhaps the individual person complained about. Then, with however much more fact finding is necessary in the circumstances, we determine whether or not there is some substance to the complaint, and if there is and if we think it is capable of conciliation we invite it in for conciliation. We have got a high rate of resolution through the conciliation process, and the conciliated outcomes often include an employer's agreement to improve their policies and practices.

So we see the complaint process as not only capable of delivering a satisfactory outcome for the individual, which may possibly involve financial compensation if they have lost their job or lost wages as a result of the unfavourable treatment, but also the prospect of more systemic change to the workplace and workplace conditions.

We can see that in discrimination law at a national level some of the leading discrimination cases have established in some respects what is regarded as a right to request part-time work, say following maternity leave, and all of those things are very important to people who are trying to combine work and family.

I have given you a copy of a paper that was written by a researcher, Dr Patricia Easteal, and her colleague Susan Priest from the University of Canberra. We allowed them access to our employment discrimination files and they have conducted an analysis of those. I think you might find that useful, just in terms of some case studies of what employment discrimination complaints entail. You will also find information, de-identified because of our confidentiality provisions, in our annual report of the sorts of matters that come before us.

Of course we receive a lot more inquiries about potential discrimination or people inquiring about their rights, or employers about their obligations, than we do written complaints. That means we can help prevent problems from escalating, and we will often refer people in that situation to one of the community legal centres—women, of course, to the Women's Legal Centre or their trade union if they are a member. I picked up on the previous witnesses' comments about the importance of those services and the importance of employees' access to information about their rights, and I would add the importance of employers' information about their duties and obligations and what kind of minimum standards and best practice should prevail in different sectors.

We have got fairly limited resources for community education. We see community education as one of our key functions. Indeed, it is; we have a statutory obligation to conduct community information and engagement activities, but the Human Rights Commission has an incredibly broad remit, and now discrimination, and particularly employment discrimination, is only one small part of the kind of responsibilities that the commission has got. So it is very hard to allocate adequate resources to that.

We regularly run workshops and we work with other agencies, including the ACT Chamber of Commerce and Industry, to try and reach a wide range of audiences, but we are never sure that we are reaching either enough people or the right target groups and particularly reaching out to the most vulnerable sections of the population, including women of non-English-speaking background and workers with disabilities. Sole parents can be particularly challenging, labour intensive and resource intensive. You cannot just call a meeting or a workshop and expect people necessarily to get there.

A particular issue I want to touch on is gender pay equity. We see that as a very important issue for working families. Partly, of course, the gender pay gap is itself the result of women bearing a disproportionate share of family responsibilities, so I see it as coming within this kind of framework. Also, unless you have equal pay between women and men, there is much more limited choice for families in how they share work and care because it becomes a straight financial equation: if he earns more than her it makes sense for her to give up her job. The fact that this has long-term consequences for her financial independence and financial wellbeing is not factored into the original decision.

I have provided you with the papers from a workshop that we hosted last year on equal pay and fair pay for women. It was opened by the minister, Katy Gallagher, and there is some useful material there, including data on the pay gap, factors involved in that pay gap and the increased difficulties in remedying the pay gap now that we have WorkChoices in place, now that we no longer have an industrial relations commission that can conduct test cases, for example, and establish improved minimum standards.

The work and family test case was the classic. There were lengthy hearings and extensive evidence on what would be appropriate minimum standards across the workplace for people in relation to work and family. A decision was made on the evidence and then the rug was pulled out from under everyone's feet with WorkChoices; the new standard could not take effect and, because WorkChoices excludes state and territory law, there are no mechanisms now for testing equal value cases. That is set out in some detail in Alan Grinsell-Jones's paper. I think he sweated long and hard to make sense of it. It is not easy to work out what the effect of WorkChoices is in those areas, because the government has not really come clean about the effect on pay equity, for example. It simply points you to the fact that the Fair Pay Commission is obliged to take into account sort of international obligations in that area, but there are no mechanisms for it to be applied, and that is the thing that concerns us.

Issues of low pay and unequal pay are of increasing concern in the new workplace relations environment, particularly because the workers that we designate as vulnerable are the least likely to be able to negotiate satisfactory, fair and equitable employment conditions for themselves or to be able to complain if their rights are breached. As I say, we know that the number of discrimination complaints is but the tip of the iceberg. Most people whose rights are breached are not in a position to make a formal complaint about it and, similarly, there are many people who are not able to negotiate an outcome for themselves. Many people have commented, "How can you negotiate for paid maternity leave in your workplace agreement if you know that discrimination against pregnant workers is rife?" It is like flagging your intention to have a child and giving plenty of notice to the employer that you should maybe either not be hired in the first place or should be dispatched before they have to encounter that difficulty and inconvenience.

We hosted a forum for the president of the national Human Rights and Equal Opportunity Commission to report on their findings in *It's about time*. Have you been given a copy of that report?

THE CHAIR: I do not think we have seen that as yet.

Ms Earle: I would commend that to you, again as a national context for research and recommendations in this area and ones that we can pick up on.

In conclusion, antidiscrimination law is an important tool in the struggle for workplace equality. It itself has not been affected by WorkChoices and has arguably become more important in the wake of WorkChoices. I understand that unlawful termination claims, which of course are on discrimination grounds, in the Federal Court are skyrocketing at the moment—I can provide you with evidence of that later, if you like—and that is despite the fact that the process is cumbersome and costly.

Our process in the Human Rights Commission is very simple and it does not cost the parties anything, but it is still a big step for the individual worker to take to complain of unlawful discrimination and of course it is a remedial process; it kicks in after the problem has arisen, especially in the absence of really high-profile and effective education and compliance campaigns. It is not really a proactive tool in terms of changing practice and implementing improved standards before problems arise, and it relies entirely on individuals to enforce. Because of confidentiality the outcomes of individual cases have a limited impact on some of the more systemic problems, although of course, as I said, we use tools like our annual report to inform people of the kinds of cases that we investigate and the kinds of outcomes that can be achieved.

We think there is scope for beefing up the effectiveness of the Discrimination Act, and the Human Rights and Discrimination Commissioner has proposed a review of the act, to which the Attorney-General has agreed, and that will be the focus of our next human rights community forum on 29 June 2007. One of the proposals that we flagged is the possibility of creating a statutory duty to promote equality and an obligation, for example, on employers to accommodate particular needs; for example, in relation to parenting or caring or disability. As I say, there has been a kind of implicit right developing in the antidiscrimination sphere around the right to request flexible working but I think it would be to everyone's benefit if it was made more explicit, rather than something that people have to discover by accident. Those are my opening remarks. I am not sure what particular issues we can help you with otherwise.

THE CHAIR: Thank you very much. If I can kick off, I think you talked about over 50 per cent of the presentations coming from the workplace.

Ms Earle: Complaints.

THE CHAIR: Yes, complaints. Has that increased over years or has there been a—

Ms Earle: It is fairly steady. I have to say that our office has not experienced the kind of increase in complaints that has been experienced in some other jurisdictions and that was predicted as a result of WorkChoices. Part of the reason for that is that we do not handle complaints against commonwealth agencies.

MRS BURKE: And that is mostly our workforce, isn't it?

Ms Earle: That is quite a significant proportion.

MRS BURKE: And they are on agreements and—

Ms Earle: That is right, and really in that sense the scope of our operation is relatively small, given the nature of the ACT workforce. We might have expected more complaints from within the private sector. We know that vulnerable workers, minimum wage workers, are in the retail and hospitality sectors and so on. It is partly an issue of who makes complaints to antidiscrimination agencies, and I think a lot of the people who may be being worst affected—casual workers, part-time workers, shift workers—are in those sorts of industries. To be honest, I suspect they are the sectors where there is least awareness of their rights under antidiscrimination law.

That has been one of the problems with the kind of climate that WorkChoices has created. It has conveyed the impression that employees have been stripped of rights, which indeed in the industrial arena they have been. But the antidiscrimination remedies are still there for them. That is not to say they are as broad in their application as, say, the unfair dismissal remedy was. It can be more onerous to show discrimination because you have to show a link between any unfavourable treatment and, for example, your sex or your age or your disability, and that is not always possible to do. So the unfair dismissal remedy, although confined to dismissal, which of course discrimination law is not, was in some ways easier to operate for people.

HREOC, the federal Human Rights and Equal Opportunity Commission, have experienced an increase and I think that is because they have been able, because they are resourced, to be more high profile. I suspect some complaints that maybe could have come to us have gone to HREOC. We certainly get a steady stream of inquiries about employment entitlements, and every now and again I have had the impression that more people are being treated harshly in the workplace.

We have had calls from women who say they have been taken off shifts because they were asking for particular shifts and it turns out they have got a bit of a disability or they are older or whatever, so every now and again you can certainly form the impression from our workplace experience that people are getting a rougher deal. I think that is one of the perceptions of WorkChoices—that employers have got a freer hand and more prerogative to treat people as they want and then more vulnerable workers get the sharp end of that more easily.

THE CHAIR: Has there been a particular demographic that has come to you? We had a presentation—I think it was from the Youth Coalition of the ACT—that said young people under this new system now, if they are not happy in their workplace, do not complain. They do not go to their union, for example; they simply resign and go and take another job. Have there been particular age groups or have young people presented less?

Ms Earle: No. The thing is that because our numbers are small—as I say, we only get 100 complaints a year roughly, and that actually has not changed very much over the years—our problem from this reporting year on is that we are now a different body, so I think it would be hard. I have not done a demographic analysis; I have got the annual report I can look at but we analyse by type of complaint and the area in which the complaint is made. But we often get complaints from people who are outraged by what has happened. Do you see what I mean? There has to be something extra in many cases to prompt them to lodge a complaint—not simply the fact that they have lost the job, been demoted or whatever.

MRS BURKE: I was just thinking of the age group. The chair raised a very interesting point in my mind then. I think young people are more knowledgeable about their rights. I would have to say there is an age group and a generation now, given the internet, who know their rights. We hear a lot about rights. They will just go and take another job, but it may be—I do not know—vulnerable people as in a different age group, people with a disability, women, single women or whatever. Is there an age group of people who do not complain or are not as aware as younger

people, who would just not freely give up something and say, "Oh well"?

Ms Earle: There is also a confidence issue, isn't there?

MRS BURKE: Yes.

Ms Earle: As you say, younger people in some cases can be more confident about asserting their rights. Often women who have been at home for years—and this is another sort of work and family impact in a way—bringing up kids lack self-confidence, lack self-esteem and may be less likely, therefore, to complain if they are treated poorly. I think for young people there is also the issue of the kind of labour market we have got, which makes it easier to turn around casual jobs, and also how dependent they are on the income and so on.

MRS BURKE: They are living at home longer now, aren't they?

Ms Earle: Yes, all of that. They may have other resources.

THE CHAIR: So can you think of any recommendations that this committee could make to the ACT government to alleviate some of these issues?

Ms Earle: I certainly would support any recommendations for increased resources or attention to go into promoting awareness of the fact that people still do have rights and still do have remedies. I think that is important. I used to work at the Women's Legal Centre, which provides a terrific service, and it was always our hope that there would be something along the lines of a working women's centre kind of attached to that. I think they have had specific funding now and again to run employment rights sorts of programs, but I think it is very limited. I think there is scope for a lot more community education and awareness campaigns.

THE CHAIR: And what about in the education system before these young people we are discussing—

Ms Earle: Yes, and at schools and colleges. Yes, I agree. So there are probably all sorts of innovative work that could be done there to ensure that people know that they have got rights and that there are minimum standards. It is really important whenever the ACT government participates in national debates or, for example, makes its submissions to the Fair Pay Commission and so on, which I know happens, that the needs and interests of, particularly, women are highlighted. I am not sure that always happens to the extent that it could.

In the report that I have given you a summary of—women's economic and social key indicators report—there are a lot of recommendations about the importance of having available gender-disaggregated data. I think that there is scope for the ACT government to lead the way in ensuring that whenever we talk about pay and conditions we are clear about who is getting what in terms of women, men, young and old, people with disabilities, people with a non-English-speaking background, so that we do not get generalised pictures, because that makes it easier to respond effectively.

I am hoping that some further government energy will go into reviewing the

Discrimination Act and using that tool in a more effective way to fill the gap left by the paring back of industrial standards. I think there is scope there to have a more proactive antidiscrimination and equal opportunity framework and to do more positive work with employers and service providers to oblige them to ensure that working arrangements accommodate people with caring responsibilities and people with disabilities, and to ensure they understand the business benefits of that; that it is not onerous, it is not costly, but that it is beneficial, especially in a tight labour market, to make those sorts of arrangements available to people.

There is loads of evidence about the business benefits of ensuring that a wide range of people have access to part-time work or flexible hours, but at the moment we still have a situation where part-time work is confined to fairly low-grade, low-paid employment. There is scope for the government to sponsor some pilot programs maybe around promoting good practice forms of employment and making sure that people from disadvantaged backgrounds or who have family responsibilities, who have disabilities are considered. I know there is a disability employment framework in the ACT. I am not sure what its current success is. But I think those kinds of initiatives are really important in terms of working on the ground to show that these things are not crazy science fiction but are cutting-edge, 21st century ways to work and employ people.

MRS BURKE: I think you have hit the nail on the head there. You talked about the stripping back of industrial conditions, but it is more of an evolving process. We have had what we have for 100 years. I do agree we have to keep up with the antidiscrimination, the fairness, all of the above. Do you know about the Silver Lining course at Magnet Mart, to hit on what you have just said?

Ms Earle: Yes, the—

MRS BURKE: Yes, for the aged and people with a disability.

Ms Earle: Yes, that is really important as well.

THE CHAIR: Can you just expand on that?

MRS BURKE: You did not come. It was at Magnet Mart out at Gungahlin, launched by the Chief Minister this week. It was in cooperation with Magnet Mart who have got hardware stores and are running a program called the Silver Lining in conjunction with the Chamber of Commerce and Industry.

Ms Earle: Yes, I did hear about that. It looks fantastic.

MRS BURKE: It is giving silver-haired people a go, which is great.

Ms Earle: Every now and again we seem to have a flurry of calls from older people, particularly older women, who feel like they are being sidelined in the workplace.

MRS BURKE: Yes, so good things are happening. I see this whole thing changing. But we do need, obviously, to be wary and watchful about people not falling through the cracks.

Ms Earle: Yes, and constantly put the message out there that—

THE CHAIR: Certainly if 50 per cent of your complaints are from the workplace it seems that we need to do more in regard to awareness.

Ms Earle: I think we do, especially because we know that represents a very small proportion of people who are experiencing problems.

MRS BURKE: Yes. What number are we talking about? You said 100.

Ms Earle: Overall, it will be—

MRS BURKE: Fifty people.

Ms Earle: around 50 a year—that sort of number. There is a lot of work to be done, especially, as I said, when you think that a lot of people are not going to be coming to us in the first place because they are commonwealth employees. So it is a smaller pool that that 100 are coming from.

THE CHAIR: Thank you very much for your presentation and submission. If there are any further questions members have got we will get them to you as soon as we can and we will send you a copy of the transcript as soon as that is available.

Ms Earle: Okay. Thank you very much for the opportunity, and good luck with it all.

HALL, MR DEAN, Chief Executive Officer, Creative Safety Initiatives

THE CHAIR: I welcome Mr Hall from Creative Safety Initiatives. Thank you very much for coming along to the working families committee. Before we begin I will read the privileges card. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

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Would you be able to tell us how your organisation, Creative Safety Initiatives, works and then perhaps give us an opening presentation.

Mr Hall: Yes. Creative Safety Initiatives is an initiative of the Canberra Tradesmen's Union Club. We are a company divided in half. Half is a not-for-profit registered training organisation that provides occupational health and safety training and consulting to the building construction industry. The second part of our company is a charitable works company which is just about to receive charitable gift deduction status. That part of the organisation provides counselling and support services, health promotion and charitable works to the building and construction industry and the wider community. So that is the sort of work we do.

Part of our work, and what I am here to talk about today, is with injured workers. We work with them and their family after they have been injured in the workplace and they are going through rehabilitation or legal services, to assist them to recover and also assist them through medical issues, legal issues et cetera. That is where we get interested in workers compensation. We also go onto building sites in the event of traumatic accidents, like yesterday where a 600-kilo-plus pallet was dropped or slipped onto a worker. That is where I have been all morning, providing trauma counselling to the workers on the site and also accessing the family of the injured worker and the guys who were there and performed the rescue and the first aid. That is the sort of stuff we do.

We have a hands-on approach and some of our workers comp guys we have been dealing with for four years and longer because many of them never return to work or

they are either so physically or psychologically damaged that they cannot return to work, so we continue to support them for the whole time. All those services are provided by a relationship that we have entered into by contract with the Construction, Forestry, Mining and Energy Union which gets us on a consultancy basis to provide these services to their members and also to the wider construction industry community, so also people who are not their members. They paid for all of today, basically; they paid for all the hours we were down there with clinical psychologists. They paid for all that. So that is part of what we do.

Comcare is what I wanted to talk about, and I will not bore you with the history because people know about Comcare. But some interesting changes have taken place that you may be aware of. The commonwealth government has changed Comcare to allow it to become a cross-jurisdictional insurer for private enterprise. So now what used to be the commonwealth government's workers compensation scheme basically has been opened up under the auspices of competition to large multijurisdictional employers like, for example, here Thiess or Bovis Lend Lease in construction, and a few others—Toll Logistics, Optus. People like that can opt out of the local jurisdiction workers compensation. So if they were located here they would do ACT workers compensation and if they were located in Queensland they would do Queensland's one.

In South Australia they participate in all the schemes and pay premiums to those schemes. I do not know but I imagine that would be logistically quite difficult but they managed to do it. They argued that because they are in competition with government, or in the past were in competition with government, they should be allowed to operate under the same terms, which would be to have a workers compensation scheme that operates across jurisdictions. I do not have a problem with that personally. There is a lot of evidence that a well-run workers compensation scheme across all jurisdictions would probably be smart.

The problem with what we are seeing is that Comcare was set up for the commonwealth public service, which over time and years ago had large, say, blue-collar industry parts to it, but that has sort of faded away. A lot of the employers who are opting into Comcare now are blue-collar based industries, so you have a situation where a scheme that was set up and evolved over time to support white-collar workers is now being applied to blue-collar workers who have totally different workplaces and circumstances.

A clear example is the large number of stress claims inside Comcare; the vast majority—a huge amount—of their claims are stress related, whereas in something like construction very few are stress related claims, though no less serious than stress claims. Stress claims are serious, but there is not the dramatic event claims that you see in something like construction—like the poor bugger who got squashed yesterday. We have not got the full report on him yet but he potentially will need modification of his house; he might need disabled showers put in, he might need ramps put in.

You do not really see that in Comcare. Comcare tend to focus on rehabilitation and weekly payments, not bulk payments. You can understand in their circumstances that they are trying to rehabilitate people so they pay them a fairly decent weekly amount, compared to other jurisdictions. But people do not have access to the bigger payments,

so they would not have access to things like having their house modified, plus the tendency is that it would take a long time to get a decision on stuff like that. What we have found, even under the ACT scheme, is that it is not too bad like that. In the time that I have worked doing this stuff, for 10 years, I have probably had five guys commit suicide in the time between being injured and then receiving payment.

One incident comes to mind and it is pretty graphic: a guy tore his head off with a rope through the back of a car that was going to be repossessed. How did he get to that stage? He had a lot of drug and alcohol problems, but that probably came out of the injury, a pretty severe back injury. He had a wife and three kids—a typical guy working in construction—and his wife was not working because she was at home looking after the kids. That was the wrong thing to say; she was working—looking after the kids. He lost his job. She had been out of the workforce for a long time. She tried to get a job but it was a low-paid job. They had a lifestyle that was of course geared to his construction wages—a mortgage and a car, like everybody has. He got some payments up front from the insurer that you can get access to; that allowed him to last for a while.

Twelve months down the track no decision had been made on his compensation claim. He started to default on his mortgage payments, so then the bank repossessed; they refinanced and then put on repossession. He started to take more drugs and alcohol and became violent in the house. Rightly so, the wife took the children for safety reasons and moved out of the house. Things escalated to a stage where the insurer was offering him probably one-tenth of his potential claim if he settled now. He took the option and settled, then committed suicide two days later. That is an example of if you delay—a scheme that is not set up right for the circumstances of the individual. That is a personal thing but I have seen five in the last 10 years along the same lines with people whose payment has been delayed when they needed it. That is one part.

Another part that is concerning is that because they have changed it to operate as a national system they have put through changes to Comcare itself. Workers only had to prove in material that they were injured; now they need to demonstrate that the injury was in fact caused to a significant degree by that employment, so it is how you contributed to your injury or was it a previous job that contributed to it. So what we are talking about is: did I contract mesothelioma in this job because I was exposed to asbestos or because I grew up in a fibro house in Sydney? They can have the right now to go back and say, "You probably had exposure when you were brought up in the house" or "You worked in another job in another factory or in a workplace and you were exposed to it there."

So what it will do is again delay the whole process of settlement for people who get diseases like that, because, of course, lawyers will do the right thing by their client and trudge through every bit of evidence that they can to say that it was not that employer's fault. So again you are going to have a situation with probably reduced claims or delayed claims and, as you know, with diseases like that some people can live for quite a significant time after diagnosis and other people die very quickly. Everyone probably knows someone who has died from mesothelioma.

The other one is that journey claim travel has been removed.

THE CHAIR: This was where you were covered with compensation if you were travelling to and from work and during the weekend?

Mr Hall: Door to door they used to call it, yes. So you would get up in the morning basically and if you did not vary your travel to or from work you were covered for the whole time for workers compensation. Going to and from work now is not going to be covered for people opting into the Comcare scheme. Some people argue that that is fair because you are not actually at work and it is onerous on the employer because it will affect their workers compensation premium.

The other issue is what happens if the workplace contributes to your journey home and your injury. There are a lot of statistics out of South Australia uni that a shift worker is up to six times more likely to have an accident on the way home from work after a shift because of the fatigue levels, and that fatigue is four times more likely to cause a workplace accident or injury than drugs or alcohol. But if someone does a hard day's work and does the overtime, does the right thing by their employer, and then has an accident on the way home, they will not be covered by insurance.

MRS BURKE: I think it is relevant. I think that is why independent contractors are looking at it because they are covered seven days a week, 52 weeks of the year and that is a really big plus for independent contracting.

Mr Hall: Definitely. I know the CFMEU used to have that in their EBAs.

MRS BURKE: It has always been a contentious point.

Mr Hall: They used to have it, then they had it removed because of WorkChoices; it was not an allowable matter any more and they struck it out. But that again came down to the strongest employees; if you were in a well-organised workplace with a lot of collective bargaining power you could negotiate something like that. I agree that maybe there should be an insurance where people are covered 24/7.

MRS BURKE: But not everybody is going to be an independent contractor, although people can set themselves up to be nowadays, and that is a much better way to go.

Mr Hall: Yes, we see the ABN workers on construction sites. Most of those do not have any insurance.

MRS BURKE: And yet they could if they became an independent contractor.

Mr Hall: Yes, there is a bit of a loop how they get around it, which is quite interesting. I used to work as an occupational health and safety manager for a large construction company. It goes down to working families because these guys cannot work after they get injured and they cannot generate income. You would go along to a company site and 60 per cent to 50 per cent would be on wages and conditions which would be covered under the workers compensation scheme and the others would be ABN workers and they would be paid an hourly rate. We had one guy with a bandsaw, drop saw, who amputated his thumb; it went straight through the palm of his hand and amputated it. The saw had been running for a few hours so it is said that there was no blood. That is a bit graphic, but anyway.

MRS BURKE: Yes, enough information, thank you.

Mr Hall: Yes. But it was quite interesting because of course we had to notify—it was a notifiable accident—straight to WorkCover. WorkCover turned up and one of the first things was workers compensation: "Show us your certificate." It was a pyramid subcontracting system in place. You had the principal contractor to the principal formwork company, to a formwork company, to an ABN worker. He did not have any insurance. The littler formwork company refused to declare him on theirs, they were not carrying any—

MRS BURKE: The domino effect, yes.

Mr Hall: The principal formwork company said, "Well, he's not ours," even though they were paying down the pyramid line. It got to the principal contractor and basically I went into the office and said, "We are going to have to carry this bloke. He will not be on our compo. We are going to have to pay him everything—the whole lot, the operation." There was one phone call and the principal formwork company said "Yes, he is on our workers comp premium." How they got around that is that you do not have to name people and what that means—

THE CHAIR: I see; just allocate numbers.

Mr Hall: Yes. You can actually say it in your workers comp. Those guys had 130 formworkers on that job. It was a big job. I will not say which job it is. It was a really big job; they had 130 formworkers. I had access of course to their workers comp because I was checking their currency certificates and they were only naming 43. So which 43 is it? In the event it was okay: that pressure was there. We could leverage the pressure so that that guy got compensation.

The real issue is you do see a lot of these guys get out of the system and they have no compensation, or with a lot of them the pressure comes down on them not to make a claim. So if they fall and sprain their ankle or something they are told, "If you really want to work for me on an ABN, because it is a contractual arrangement, if you want more work with me you shut your mouth and just go home. I'll give you a couple of hundred bucks and when you are right you come back". In real life it happens to guys. So they just do not cop their wages or their ABN for a few weeks because they cannot afford to jeopardise the agreement that they have got with the guy.

MRS BURKE: Under WorkChoices I guess this is maybe a positive: people can negotiate for to-and-from-work insurance cover. That could be part of the arrangement.

Mr Hall: Yes. They used to have it in EBAs, but for most people now, from what I have seen for the guys when they bring theirs in, they are very minimalist. They go for the minimum bottom line with their AWAs. A lot of guys do not understand how it works either.

MS PORTER: No. Can I just go back to the business about not being covered to and from work. You said that you felt or believed that numbers of people were injured on

the way home from work because they were fatigued and more likely to have an accident. Are you seeing an increase or have you got any way of measuring whether there is an increase in people who are fatigued having car accidents on the way home from work since WorkChoices came in? Have you seen any evidence of that?

Mr Hall: I have not got any. If you have a look at the South Australian uni, they are considered—we had them up to do a workshop for us on fatigue—to be one of the leading universities looking at workplace fatigue and the effect of fatigue on people. They have some really good, latest statistics. If you have a look at their university—

MS PORTER: We will be able to see whether that is a factor or not.

Mr Hall: Yes, definitely.

THE CHAIR: I come back to Comcare. How were they able to remove this particular part of the coverage? They have simply taken that out of the act?

Mr Hall: It is just not there.

THE CHAIR: They have removed a condition of employment.

Mr Hall: But there is an advantage to big business on this because, a small, little subbie, which we do a lot of work with—we do a lot of work with companies with under 50 guys; we train them; and we subbie out OH&S management to them—can claim for 50 guys. A lot of them are based in Queanbeyan but they are employing all their guys out of Canberra. We do all their work with them. They cannot opt out; they have not got the sophistication to opt out and they cannot self-insure because you are not really insured under Comcare. You must show that you can self-insure. That is a distinct, different thing. You have got to have the money put up front.

It is a tough system. Give it credit, you must have a big quid to opt out. You cannot go in and be a two-bob job. It is $100,000 or something; you have got to put the money up front. The commonwealth government has said that, if you want to be in Comcare insurance self-insure, you have got to show bank security, show that you can pay people who get injured.

This is a distinct advantage because what is going to happen—and it should be of interest to you guys as it is going to affect a lot of families—is that more and more of the bigger employers will opt out. They are the big-premium players without the minimum liabilities. Have a look at someone like Bovis Lend Lease, a big multi; they pay into the scheme in Canberra. The majority of their guys are involved in administration. They do not go on the building site. But then you look at Jim Bob's scaffolding company; his guys are out there. He has to pay into the scheme. They are paying massive premiums. He is paying a little premium; it might be for four guys. He is carrying a huge liability.

What you have got left in the ACT under this is all the risk with none of the revenue. You do not have to go on my word on this; look anywhere and talk to any of the workers comp jurisdictions. A good one to talk to is the authority in Queensland. It is a very good scheme; it has been running at a profit in the last few years. It is an

excellent scheme. I went up and had a talk to a few of those guys at a workshop.

What they say is going to happen is that they will collapse the workers comp schemes in the states and territories because all you will need is a couple of big payouts, because you are not having the premium money coming in but you have got all the risk. You've got two blokes working together, paying their premium, as they have to, but they are not generating a lot of money. One of them hurts himself, breaks his back, falls off a roof; he is a roofing plumber. It is a high risk. They are on roofs every day. I have got mates who are plumbers; they fall off the roof all the time. All you need is one of them to fall off the roof the wrong way and break their back. He is in a wheelchair, the workers comp kicks in and pays, thank God. He gets his treatment, gets his wheelchair, gets his payment. Those guys would no way, over the whole life of their job, their partnership, have put in anywhere enough money to pay for that.

MRS BURKE: The workers comp premiums in the ACT are hugely high compared to other states and territories.

Mr Hall: Yes. A guy like that would get over $1 million as a payment. He would get a lot of money because he would have to support his family and look after himself.

MRS BURKE: The premiums became so high for some companies or industries, the cleaning industry to name but one, that one big company in Canberra has had to go self-insured because they cannot pay the premium.

Mr Hall: That is fine, and they can do that. Again, that is to their advantage; they are big ones. There is no problem with it, as long as the cards are stacked your way. If you do not have a big company, what happens to the person who is trying to start up their cleaning business? They want to have a crack for the first time, and they have decided they want to be a small business.

MRS BURKE: They are probably paying $75,000 a year to start with on workers comp premium.

Mr Hall: That is it; they will have to. If all of these others opt out they will have to pay more, because that is the only way you can operate.

THE CHAIR: What do you think this committee could suggest to the ACT government or recommend to the ACT government to alleviate this?

Mr Hall: It is hard, because the federal jurisdiction will override you. You have to make it quite public that by allowing these people—you need the public to realise—these big businesses, the high-paying premium businesses with low risk, to opt out of these schemes we won't have a workers comp scheme.

THE CHAIR: It will remove the workers compensation.

Mr Hall: People won't be insured or will have to look for an alternative. I do not know who or what because, again as a society, just on logistics, you cannot have people seriously injured and not be able to house them or feed them and their families. What happens to their families?

THE CHAIR: The burden then comes onto government as a community.

Mr Hall: You are going to have massive dramas in your health system, massive dramas in public housing. If I was taken out now—luckily my wife has got a uni degree—I would not be able to look after the kids. She would probably have to stay home and look after me. If I was that badly injured she would have to stay home and nurse me probably. Bang, straight away, I know I could not pay my mortgage. That is just me, a normal punter. I would be gone. I would have to sell the house. You would probably have to put the money into an account to live off, to feed ourselves.

We are going to be knocking on your door, saying, "I need a public house." I am not going to have any money for my bills. If you are seriously injured you do not get better, as you know. You probably deteriorate, get other conditions. You are going to hit the system for more. You are going to be a massive drama on the public health system for all the things that workers comp was set up for, to protect the rest of us, the taxpayers.

THE CHAIR: I want to clear this up. Comcare has removed this compensation to and from work, the travelling?

Mr Hall: Yes.

THE CHAIR: You worded it as travelling compensation before.

Mr Hall: It is called the actual journey claim.

THE CHAIR: That is a removal of a condition of service. It was not bargained away or anything like that?

Mr Hall: No, that was just when they turned it into a national system to allow it to go national. They just removed that, legislated it out. There is no journey claim.

There are some other things that are concerning for normal working people. It removes coverage for injuries outside the workplace or off-site events that are not sanctioned by employers. Someone goes to their Christmas party. This is why it was brought in there, but there has been a backfire. People go to their Christmas party and get blind drunk and then jump in a car and have a car accident. Then they say, "It is a sanctioned party. I want to get compo and I want to get to sue you."

On the other side, there is the way that this is written. This is not coming from me; this is coming from the people in Queensland running the Workers Compensation Board. They are saying that the exemption would be a Telstra technician in a pit in a park is now covered by compensation while he is in the pit. But he looks at his clock and it is 9.30. He says, "I am going to jump out and have my ham sandwich and my cup of tea and sit on the park bench 20 metres away from the pit while I eat it." This is the example they gave us. While he is sitting on the bench a tree branch breaks down and hits him and kills him; he is not covered.

THE CHAIR: This is within work time. He is on a work break, but he is not covered.

Mr Hall: He is not covered because he is on a break.

THE CHAIR: You can see the difference. If they have removed "before and after work" you are not in work time.

Mr Hall: Yes.

THE CHAIR: But now this is in work time as well.

Mr Hall: Yes. The issue for blue collar workers—we do a lot of work with them—is that rarely do they have the nice lunch rooms. I used to be a school teacher. We had lunch rooms years and years ago. Rarely do they have the nice lunch rooms. They usually go to the local cafe down on the corner, or they jump in their utes and go off site to eat. They probably do it three times in a day because a lot of them start at the crack of dawn. They have lunch and they have smoko. A lot of them have afternoon tea, because they do overtime. During those times, potentially they are not covered. They will be moving around, not covered.

I do not know whether an employer can write it in that they will cover you, but you would get caned; they would get caned in their insurances. Imagine if they tried to write in that they would cover people, if they were going against an edict. This is mainly in the Comcare area for big business again. It won't be an issue for small employers because they won't be able to jump into it. They would be the big ones.

MRS BURKE: Again, it is about balance too, is it not?

Mr Hall: Yes.

MRS BURKE: There is a degree of responsibility required for everyone who is—

Mr Hall: Definitely.

MRS BURKE: We will have to think about that one a bit more.

Mr Hall: Yes.

MRS BURKE: The designated lunch hour area is a very grey area.

Mr Hall: It is designated, yes.

MRS BURKE: You could take your lunch to work and choose to sit there in the work surrounds, which a lot of people do. You see them sitting on their lunchboxes.

Mr Hall: They do that. People choose to do that sort of stuff.

THE CHAIR: Was there any negotiation with employees when this occurred or was it simply removed?

Mr Hall: They negotiated with boards. There were employee representatives from

unions. When they come and talk to us they cannot discuss what was discussed or how the negotiations were done. They signed confidentiality agreements. When we said, "You should tell us, because we need to know," they said, "What would be the point of that? We would be kicked off that and then there would not be a voice on it."

There is some other stuff. I am conscious of the time. There are some things. In the workplace we have WorkCover inspectors in the ACT. Under Comcare, when I wrote this paper, there was none. There are a couple; there have been a couple appointed because of the changeover. There are still very few inspectors. What you have got now is potentially very high-risk industries like construction, and technically ACT WorkCover inspectors do not have the right to enter the workplace.

They have told me that they can get around that. How they got around it yesterday was to say that Thiess is a Comcare employer. If it was a Thiess employee who had the accident, then they would not be able to go on. It was a subcontractor, and the subcontractors are still covered by ACT workers compensation and ACT OH&S. It is messy. I said, "How are you going?" They said to us off the record that they will go on and then deal with the issue at a later date; they will go on and make the inspection, because they see it as more important that they go on and make the inspection."

There is an issue about resourcing too. In Western Australia a lot of those big companies have gone over and will have to resource it properly if they want inspectors to go out, because these guys do not work in that area.

The other one is that a lot of industries have strict licensing and controls that had been written into OH&S acts and workers compensation over the years. After the Langford disaster when all those refineries blew up, they brought in strict, regimented inspection and licensing around refineries. That particular company—and you will see this as an example—jumped out of the scheme and automatically all those things dropped off. Now they have promised that they are going to bring them in but they are not there.

You would believe that human desire would be for those companies to hold onto those inspection regimes and continue them, but there are a lot of demands. I have seen what happens. As we know, there is a difference between regulation and—

MRS BURKE: Compliance?

Mr Hall: Compliance, yes. When it is not regulated compliance, people go, "How are you going?" "I am doing all right, thanks." People that regulate it do it. Those industries are potentially extremely dangerous.

MRS BURKE: Thank you very much.

MS PORTER: Thank you very much.

THE CHAIR: Thank you very much for the presentation. Are there any final questions for Mr Hall?

MS PORTER: No, I do not have any at the moment.

THE CHAIR: If we can think of any questions we will get them to you shortly.

Mr Hall: That is fine.

THE CHAIR: We will get a copy of the transcript to you as soon as we can as well.

Mr Hall: Thanks.

THE CHAIR: Thanks once again for coming in.

Meeting adjourned from 3.46 to 4.01 pm.

PINKAS, MR KLAUS, Organiser, Transport Workers Union

THE CHAIR: Good afternoon and welcome to the Select Committee on Working Families inquiry into the implications of the federal government legislation on working families in the ACT. I welcome Mr Klaus Pinkas from the Transport Workers Union. I will just read the privileges card for you. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on the record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

Thank you for coming in, Mr Pinkas. Your union has already made a presentation prior to this committee, so I will pass over to you now if you would like to make either additional comments to that earlier presentation or another presentation.

Mr Pinkas: I would just like to make a few points. I believe this committee would have heard numerous personal examples of problems raised by WorkChoices and the act. I will run through a couple of those that I have but there are countless examples. But I also want to raise another point that has been a problem for workers in the ACT with the Workplace Relations Act and the amendments made through WorkChoices. I will go briefly through some of the examples of individuals and some of the problems they have had. I am reluctant to use individuals' names, but I will be naming companies, because some of these individuals are still working at these companies and that sort of thing.

The obvious example that springs to my mind is the defence contracts out at the airport, at Fairbairn and at Duntroon, when Serco Sodexho took over the contracts. We have a number of members working in the transport section, which was under the old ESS contract which went to Serco Sodexho, and also members out at Fairbairn doing the VIP services there, so working under that contract.

THE CHAIR: Can I just interrupt there? You said VIP services.

Mr Pinkas: Sorry, the squadron—

THE CHAIR: Looking after the aeroplanes, were they, or—

Mr Pinkas: No, the guys were doing the loading and unloading of the aeroplanes and the baggage handlers, if you like, out at Fairbairn.

MRS BURKE: VIP aircraft.

Mr Pinkas: Yes, Squadron 34. Those individuals were under a certified agreement with their previous employer, the previous contract holders, ESS. Then when Serco Sodexho took over they contracted out their work and the new contractors were using AWAs for these guys. They have been moved onto AWAs, and there has been a significant loss in conditions there, with penalty rates, that sort of thing.

I think the biggest impact, though, with the defence contract was with the transport staff, the people who drove the buses and did the courier work within defence. Their overtime conditions just disappeared—the overtime, penalty rates, that sort of thing. So there were significant losses. They were told basically, "Sign these AWAs or you are not there any more." When people raised the idea of doing some collective bargaining they were told, "No, under no circumstances is that happening, and if you push this you will not have a job." So most of the people we had there have left. There are one or two still staying on and they are basically taking home less money at the end of the year than they were under the previous contract.

Another company which has gone down this path is Ensign, which does a lot of laundry, that sort of thing, delivery. It is forcing AWAs onto its employees which are with reduced conditions. Again overtime, out-of-hours payments, seems to be the problem. Previously they were under the transport workers award. The hours of operation are from 7.00 am to 7.00 pm and any work carried on outside those hours was paid at overtime rates. A lot of their work is done early in the morning and now those rates are currently paid under the AWAs at normal rates. So that was a significant loss of pay and conditions for those people, who were told to sign them or they would not have a job. So that is an example, if you like, of below-award conditions being forced onto employees in the ACT.

MS PORTER: Are those people still working there or are they similarly—

Mr Pinkas: One is, to the best of my knowledge, still working there. They were previously on the award. They did not have a certified agreement; they were on award conditions. But they have been forced to sign an AWA.

MS PORTER: So one has remained.

Mr Pinkas: One has remained, but there are a number of others there who are non-members who I believe have stayed on as well, but I can vouch for at least one who has stayed on; others have left.

MRS BURKE: So did you say they have done it all now, they have gone through it, or are they still going through the process?

Mr Pinkas: The people who stayed on have signed AWAs; they wanted to keep the

job.

MRS BURKE: So the whole company is now operating under AWAs?

Mr Pinkas: To be honest, I do not know if it is the whole company, but these employees who were previously on the award at Ensign, the drivers, are. On another angle, if you like, I am negotiating a number of agreements and I have to say—this is probably not this committee's business—that as a union official it is very complex to negotiate under the current legislation; it takes such a long time to negotiate agreements now. With the winding-up of awards it has to be checked that everything in the awards comes across to the agreements.

It is a very complicated business and I do not expect it to be any simpler next time around when we renegotiate these agreements either, because a lot of the conditions in the awards we use only very sparingly so that next time around those conditions there currently may not be there next time; next time around the employees will be saying, "Well, we used to get this and we don't any more," so we will be trying to get it back, if you like. So I can foresee problems with upcoming negotiations when the current round of agreements expires.

MRS BURKE: So you would not call it flexibility—an arrangement that could be flexible and work both ways? You see more problems than—

Mr Pinkas: I am talking about companies that have had ongoing enterprise agreements for a number of years, since the early nineties, so we are up to fourth time, fifth time around negotiating these agreements. Previously it has been easy: we just roll it over and everybody knows where they stand. There's a bit of toing and froing over flexibilities and that sort of thing and there is room for that in these agreements to make them flexible. You negotiate around that. The problem we have got is that there was a base there that you knew was a minimum, if you like—the award—and it was all based on the award, these conditions, with the flexibilities negotiated over the years.

What happens now under WorkChoices is that the awards disappear, so once you have signed a new agreement the award is no longer there. The issue is that you have to bring the awards into the agreements. It depends obviously which company you are in and where you are at, but it makes the agreements go from 20 pages long to 30 to 40 pages long. So you have got very complex agreements—

MRS BURKE: Just to contain the minimum base. Do you think that will go over time, though, as each industry gets a handle on agreements; certain things that you will have captured and retained in the awards will stay? Employees just are not going to wear it, are they? That is basically it.

Mr Pinkas: That is part of the problem at the moment, the complexity. I understand the argument that next time around it will not be so onerous, if you like, and so complex. And when I say it is onerous, it is onerous for me personally, but the main problem is it holds everything up for the employees involved and it takes a long time.

MRS BURKE: I understand that.

Mr Pinkas: But in the future I see problems there. People will see that the award has gone, there is no base there to protect them, so employees in strong unionised yards will be saying, "Well, we need to bring some extra stuff in here."

MRS BURKE: Safeguards.

Mr Pinkas: Safeguards, that sort of thing, and keep adding it in.

MRS BURKE: I guess the award system took 100 years, as I have said once today, so it is going to take a fair while to make sure we get this right for people, employers and employees alike, isn't it? Employees simply are not going to work if the conditions are not right.

Mr Pinkas: The trouble is employees will work because they need the money.

MRS BURKE: They need to; that is right.

Mr Pinkas: That is the basic thing, yes: they need the jobs. And it is all very well saying they should go and work somewhere else—

MRS BURKE: No, I would not say that.

Mr Pinkas: But somebody who has been, say, a bus driver for 30 years is hardly likely—

MRS BURKE: No, I would not say that.

Mr Pinkas: It is very hard.

MRS BURKE: I am not advocating that. I think you should get a fair day's pay for a fair day's work.

Mr Pinkas: Yes, so there is an issue there with the complexity of the current legislation, what you can and cannot put into agreements, and an issue with bringing the awards into the agreements.

THE CHAIR: Thanks very much. Mr Pinkas, your union presented to the committee back in December 2005, so that was well before the WorkChoices legislation came into effect. In that presentation you basically said to us that your union membership had fears that they would lose conditions of service and other issues around workplaces. Can you tell us: has that occurred?

Mr Pinkas: It has, especially in issues of OH&S training. Obviously yesterday there was a prime example of the problems you can have with OH&S and a lack of training. That may be a bit side-tracked because it was a subcontractor that was hurt with the courier company, Evolution Logistics, yesterday and that was just a straight lack of training. But, while yesterday's example applied to a subcontractor, it still goes through to employees as well. Now, under WorkChoices, there is the issue of getting leave for OH&S delegates for training. We as a union ran a lot of the training there

and as well used recognised training companies. That is a lot harder to do now under WorkChoices. It is a lot harder to get into agreements—it is impossible to put it into agreements. When you try and get an agreement through the OEA if there is anything that says OH&S training or training for employee representatives they will knock it on the head, so that is—

THE CHAIR: That is quite incredible, isn't it, in today's day and age?

Mr Pinkas: Yes. So while under the OH&S Act there are provisions for getting OH&S representatives training, it is fairly limited and we supply a lot more of that. It is still going on but it is a lot harder to get into agreements, especially for companies that are not all that strongly unionised; the employer will say, "Look, we are just not running it." In the strongly unionised yards we have agreements that they supply the OH&S training, but then there are a lot of, for want of a better word, mickey mouse companies, dodgy companies, out there that supply none at all.

THE CHAIR: That, as I said, seems quite incredible, especially with the statistics you gave us in your first presentation. I will just remind the committee that the union said:

> Last year alone, 102 people were killed in heavy truck crashes on NSW roads
>
> In the 4 years since 1998, over 742 people were killed in truck accidents on our roads and thousands more seriously injured
>
> Drivers are legally able to work up to 84 hours a week and are too often forced to work, without adequate rest days, often days at a time up to well in excess of 100 hours
>
> 30% of long distance truck drivers have consistently reported being forced to resort to substance abuse just to be able to do their job

So since the application of the new legislation have you seen an increase or has it remained about the same?

Mr Pinkas: I could not tell you off the top of my head if there has been an increase in deaths in New South Wales or the ACT on the roads. Obviously it is an ongoing issue and I would suggest that cutting back on OH&S training would not help the situation at all.

MRS BURKE: Are they drivers owning their own rigs who are doing that, or are they employees?

Mr Pinkas: Both.

MRS BURKE: You have not got a breakdown?

Mr Pinkas: No, I have not got a breakdown of that.

MS PORTER: Going back to what you were saying before about these workers when the new firm took over out at the airport, at Duntroon and Fairbairn, you said that they

were all asked to sign AWAs. Do you know how long those AWAs that they signed would last for?

Mr Pinkas: I am not 100 per cent sure but just from memory I think they were three to four years, that sort of time frame.

MS PORTER: Okay, so they won't be renewed in the near future.

Mr Pinkas: No. I could stand to be corrected on that but just from memory I think they are three to four years.

MS PORTER: So they are fairly long term in this day and age. You said that most of them had left. Where have they gone to?

Mr Pinkas: With the transport people, I know of one guy who has moved to another bus company. He had an O class licence so he is driving for Keir's now, I think. I am just trying to remember where they went to. To be honest, that is a hard question without notice, but they have got employment. The people who were employed at Fairbairn were fairly highly skilled. They were load masters, loading aeroplanes; a lot of them are ex-military people. To be honest, they do not have a problem finding work elsewhere. But the ones in the transport section were in a fairly low-paid job, driving 12-seater buses. They do not even need an O class licence, just a light rigid licence, to drive those vehicles. I know of one person who had trouble finding jobs. He was subbying for a courier company, a subcontractor, and that is a hard way to make a living.

THE CHAIR: It has been presented to the committee from other groups that it appears that the negative effects of the legislation have really impacted mainly on those with lower working skills and perhaps those that are discriminated against in some circumstances too. Have you found that to be the case in your—

Mr Pinkas: Yes, definitely. Like I said, with the guys at Fairbairn, who were fairly highly skilled, they did not like it so they moved on. It was not a major problem for them. But with the transport people at defence I know of two people who have had a lot of trouble—gone backwards in their income and that sort of thing. And, again, the people at Ensign are very lowly paid. They have gone backwards, which is amazing to me, and it shows how desperate some of them have been because they have gone subcontracting for some of the really dodgy courier companies out there.

MRS BURKE: You may be aware of this: I presented a paper today. The federal government have made some changes as at 7 May. How is that going to affect things now? Has it helped address some of the penalty rate issues? There are about six or seven things that—

Mr Pinkas: To be honest, I do not know how it is going to work, because I have not seen it in action, in reality. We have not had enough time to—

MRS BURKE: It is a bit like this whole thing really from the beginning; it is like shifting sand but—

Mr Pinkas: It is and it isn't because almost immediately companies started offering AWAs that were less than the award rates. Previously if I had had a member come to me and say, "I am getting paid this and I am not getting paid this overtime," it was fairly easy: you take the company to the commission, you get it fixed and they get the correct rates, correct overtime and that sort of thing. Under WorkChoices prior to these latest announcements you could not do that if they had signed an AWA. There is nowhere to go; you just—

MRS BURKE: But do you see it having a better impact—helping to pare back again?

Mr Pinkas: I can see what they are trying to do and maybe it will work; maybe it won't. I do not know; I have not seen it in action, whereas with the WorkChoices that was introduced in March last year it was almost an immediate effect—not across the board; do not get me wrong. There are a lot of people still working under agreements that have not expired, or old awards. But there were companies out there bringing in straightaway AWAs with conditions less than the awards.

MRS BURKE: Well, let us hope it brings some of those back.

Mr Pinkas: My understanding is that the legislation is not retrospective. So all those people who have signed the AWAs are on them—

MS PORTER: For the next four years.

Mr Pinkas: That is correct.

MS PORTER: So it is not going to help these people. We heard previously from people giving evidence about some fairly serious effects on people's mental health. Have you had any information about that, about people who are disadvantaged and feel that they cannot pick up from this; that these things have affected them fairly deeply as far as their mental health is concerned?

Mr Pinkas: Without a doubt. People come to me in tears because they are going backwards at such a rate. All I can vouch for is what I have seen and what people have told me, but, yes, people are going broke—it is as simple as that—under some of these agreements. One of the Ensign guys came to me the other day and said, "Look, I don't know what I am going to do because I just can't afford to live on what's happening now. I'm trying to find a job." Let us not beat around the bush about these people: they are not highly skilled and they are not well educated people. The option is to go long-distance driving and be out of town, away from their families, for the week. There is plenty of work out there driving long-distance trucks, but long distance is exactly that: you are away for a week; you are living out of a truck for a week and if you have a young family for a lot of people it is not an option.

MS PORTER: It interrupts their family life.

Mr Pinkas: Yes.

MS PORTER: Before you go, is there something that you think that this committee can do, in terms of recommendations or anything at the ACT government level?

Mr Pinkas: There is, and it is a round and about way. A lot of these people will go subcontracting and I understand that WorkChoices does not deal with subcontractors and contractors—

THE CHAIR: There is a fair contractors act.

Mr Pinkas: Yes, there is a fair contractors act and in New South Wales there are minimum rates you can get paid as a subcontractor. If such a system was introduced and some sort of tribunal for subcontractors in the ACT, that would flow through to employees as well. At the moment companies are feeling forced to drive down their rates through AWAs and whatever mechanism they can, because other companies are using subcontractors and paying them next to nothing to be subcontractors, and there are no minimum rates that subcontractors can get paid in the ACT. This is in the transport industry in the ACT.

So something that the ACT government could set up would be contracting rates, minimum rates, and a tribunal for disputes for subcontractors. It is something that is badly needed in the ACT. That is something that the ACT government has some control over. If you could get rid of WorkChoices we would be happy too! But I do not imagine the ACT government has got that sort of power.

MRS BURKE: We can't do that.

MS PORTER: Unfortunately.

MRS BURKE: We have not got the jurisdictional control.

Mr Pinkas: Yes, I understand that.

THE CHAIR: We had a presentation earlier today from the ACT Human Rights Commission and they suggested that perhaps the government could do an education program as well, in that there are rights available to people and—

MS PORTER: Through that office.

THE CHAIR: through that office, of course, that workers in the ACT are not aware of. So people could be educated about those rights. Also there was a suggestion that perhaps we should start in the schools and educate people on their rights to work.

Mr Pinkas: That seems to me like a very good idea.

THE CHAIR: Okay. Thank you very much, Mr Pinkas. If there are any other questions members have we will get those to you as soon as we can and we will also get you a copy of the transcript as soon as we can.

Mr Pinkas: That would be great; thank you.

The committee adjourned at 4.26 pm.