LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND YOUTH AFFAIRS

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

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 12 OCTOBER 2017

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 1.00 pm.

HOPKINS, MR MICHAEL, Acting Executive Director, Master Builders Association of the ACT
SPENCE, MR CAMERON, Director, Legal, Master Builders Association of the ACT

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

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. Witnesses are asked to familiarise themselves with the privilege statement—the pink card—in front of you. Please confirm for the record that you have read the privilege card presented before you and sent to you by the secretariat and that you understand the privilege implications of the statement. Would you like to make an opening statement?

Mr Hopkins: Yes, and I have read the privilege statement. Today I am here as the CEO of the Master Builders Association ACT, but also, importantly, MBA Group Training. I have brought with me Cameron Spence, who is our director of industrial relations, and Cameron will be able to help with some specific questions you might have around the law and how it applies in the ACT. Today we would like to speak to you about our experience as a member organisation and talk about the broad feedback from our industry. But, given that the terms of reference of the inquiry also talk about group training organisations, we can make some specific comments about MBA Group Training.

The first point we would like to make is that we think the best way, broadly, to ensure secure work in the ACT is to make sure that we have a strong economy, and in the ACT we do have a strong economy. I have spoken about that at previous budget estimates hearings. The budget papers talk a lot about the KPIs. In the ACT they signal that we have a strong economy. One of the first actions or recommendations out of this inquiry, we hope, is that government continue to focus on building a strong economy.

For the construction industry in particular, these positive economic conditions translate into strong trading conditions for the building and construction industry. They lead to higher wages. In fact, at the moment the majority of employees in the construction industry would receive well above award rates because the employment market is such that employers simply cannot do that.

Moving to some of the specific terms of this inquiry, the first point we make is that the law—employment law or industrial relations law—is vast in scope and effective in practice. Laws exist at both commonwealth and ACT level which provide both rights and obligations on workers and employers. Workers in the construction industry are covered by the Building and Construction General On-site Award 2010.

Much has also been said about the need to protect casual workers, and the award provides special protection for casual workers through what is referred to as the mandatory casual conversion clauses, and the building and construction award includes such a clause. So in our opinion this law is adequate to ensure that secure work is provided in the ACT.

The next point is around apprentices and group training organisations in particular, given that they are mentioned in the terms of reference. This is really important to us because it gives us an opportunity to highlight some of the extra protections available to apprentices if they are employed by a group training organisation, or a GTO. In fact, we think it would be a valuable contribution from this inquiry to recognise this and to recommend additional support be provided for GTOs because they provide such important protections and secure work for apprentices.

The GTOs allow all the benefits of a traditional direct employment apprentice model, which means apprentices get on-site work experience, supervised in our industry by a builder, but they also have the additional protections a GTO provides. In the case of MBA Group Training, these additional benefits are significant and lengthy. For example, MBA apprentices receive ongoing full-time employment over the term of their apprenticeship, annual leave, personal leave, full national employment standard and award entitlements and generally higher than award minimums. They are paid for their downtime for inclement weather and for any stand-down times, and this compares to some other GTOs who do not pay apprentices for that downtime. They receive personal protective equipment at no cost, hearing tests and regulatory protection from the ACT department of employment and through the national standards for GTOs.

In the MBA's case the apprentices are supervised by two full-time apprentice field officers and a dedicated workplace health and safety officer. They are enrolled in a certificate III trade qualification, they have their pre-placement short-course training provided—manual handling, first aid, bullying and harassment, power tool awareness and those sorts of courses—and they get exposure to a variety of different working environments and projects.

It is important to note that in the GTO model the hosts do not outsource their responsibilities under law to the GTO; both protections apply. In fact, the GTOs have additional regulations that govern their operation in addition to all of the other legal protections I spoke about earlier. I know you have heard about some of those details from the evidence provided by the Group Training Association, so I will not go into any further detail now.

The last point I want to make about GTOs is that they are different from labour hire companies. Under MBA Group Training arrangements we have a direct employment arrangement with our apprentices. We make a long-term commitment to their employment and their training over the life of their apprenticeship, and this is very different from labour hire firms that often do not integrate the work and training opportunities, and the employment arrangements are often short term. Notwithstanding all of this, labour hire firms still play an important role in managing the employment needs of businesses and also of government for that matter.

My last point is just about sham contracting and, in particular, to point out that it is often misunderstood. "Sham contract" has a legal definition, and we can expand upon this in the questions, if you like. Laws exist to deal with sham contracting, and the MBA's position is that any employer engaged in sham contracts should be dealt with fully under those laws. I am happy to take any questions.

THE CHAIR: We have heard evidence from charities, NGOs and unions that there is a problem with insecure work in the ACT. Your submission is a little bit different; you say there is not a big problem. Why do you think you guys come to different views on that?

Mr Hopkins: Firstly, our comments are limited to the construction industry. As I said, because the economy is strong that translates into a strong economy for our industry and into secure employment and higher wages in particular. The employment conditions are such that employers need to provide over and above the minimum requirements in order to retain good staff. Based on the feedback we get, we do not see insecure work as a major issue.

As I mentioned, we also have all those laws and regulations that apply. If there is an instance of an employer not doing the right thing, not paying the appropriate rates, there is plenty of recourse under law, and both employer and business groups as well as unions and employee groups often provide advice to their respective members about how to access those laws.

THE CHAIR: You raised the construction industry in particular, and part of your submission is quite interesting on this point:

> Labour hire companies provide a critical temporary work force to meet fluctuations in workload which are evident in the construction industry. Because the industry is contract based, and as such the industry has an overriding need for flexibility, a business in our industry may need 15 employees on a job on Monday, 45 on Tuesday and Wednesday, 30 on Thursday and 2 on Friday. If a tender falls through, they may have no need of a large number of employees for weeks or months. It is usually not possible in the building and construction industry to ascertain ongoing workforce requirements.

That sounds to me like insecure work management for those workers particularly specific to the construction industry, which is almost counter to what you are saying. I think you are trying to say that construction is better than other industries on this. I am not sure what industries would be worse than this if this is what the construction industry is like.

Mr Hopkins: The point we are making is about the insecurity that would exist if it were not for the labour hire firms. That problem is being solved by the existence of labour hire firms, and that is why we stress that they are an important part of managing employment in our industry, and other industries I am sure. They provide that vital role of helping to manage the fluctuations of work in the construction industry. That is why our position is that they should exist and they should continue to exist. Those workers working for the labour hire firms help to provide that security that without them would not exist.

THE CHAIR: So if there is an ongoing need for labour hire companies, like you have said, what protections do you think need to be in place for a worker that might be working for a labour hire company for their entire time in the workforce?

Mr Hopkins: Our submission is that those workers, like any worker in our industry, have protections already under both commonwealth and state-based law, and we believe those laws are adequate.

THE CHAIR: A few people have raised concerns regarding safety and insecure work, and specifically that an insecure work environment can lead to unsafe work environments, fluctuating pay and fewer workplace entitlements. Even if we disagree on whether there is insecure work in the ACT currently, do you think there are consequences to workplace safety if someone is working in an insecure workplace environment?

Mr Hopkins: Ensuring safety in the construction industry is a key issue irrespective of the secure or insecure issues. It is a key issue we know is being addressed with government at the moment. I am not sure if I understand the connection you are trying to make to secure or insecure work; work safety is something that needs to be committed to irrespective of the employment arrangement.

THE CHAIR: So a hypothetical is a worker who is constantly moving sites and might be getting short-changed on inductions, a worker who is not so secure in their ability to gain further employment and does not want to speak up and say something. I am talking about a hypothetical here; we are not going to go into whether or not there is insecure work in the ACT. If someone was in insecure work do you see how that might affect their safety on site?

Mr Hopkins: I think you have raised a few quite separate issues there. Again, irrespective of the employment arrangement—whether it is through labour hire or group training or direct employment—it is quite common in the construction industry that you would work across multiple sites and that you would be doing different things on different days. That is why our workplace laws and workplace controls need to deal with that as a key risk. But, as I said before, that risk and that measure exist irrespective of how you are employed. It is not something that would apply particularly just to labour hire workers, for example.

THE CHAIR: Could you also touch on the second point—someone being unable to speak up for fear of losing future work?

Mr Hopkins: Again, that is an issue that is being addressed by the industry and by the regulator, irrespective of the employment arrangements. I think what you are talking about is ensuring that there is a good culture of safety on a site. Everyone from the boss to those in the least senior positions on the site should feel comfortable to report incidents and talk up if they see a safety breach. That is a strong message we would support sending to any worker or employer, for that matter, in the construction industry. But, again, the point is that it would be sent irrespective of their employment arrangements.

THE CHAIR: Do you think there is a difference in safety cultures between the

general construction industry and group training organisations?

Mr Hopkins: Let me speak on behalf of MBA Group Training. The position we see is one of being a leader in the industry. We encourage our apprentices to report every incident they see or experience so that we can set a leading position in our industry. At the end of the day we are training young construction workers who in the future may be running their own businesses. The skills and the culture we can ingrain in them in their first four years are going to be critical to having a safer industry in the future. So to answer your question, group training organisations provide a higher standard than the general average industry.

THE CHAIR: I have seen some media reporting that says something a little bit different—that is, high injury rates in group training organisations and in the wider construction industry. You mentioned before that group training organisations need more support. What support do you think they need to reduce the injury rates for these apprentices?

Mr Hopkins: I did not say they need more support; I just think if the committee is looking for actions to provide more secure work—again, in the context that we believe the laws are adequate and work is secure—an area you could concentrate on is providing more support for group training organisations. But we are not coming here saying that we need more to survive. We play an important role; we are doing an important job. If you were to look to ways to expand what we already do to other industries or other parts of our industry or just simply provide other GTOs operating in construction, we think that would improve the overall position.

MR WALL: To draw on the scenario Mr Pettersson just put forward about group training organisations having a poorer safety rate, do you think the statistics may be geared that way because there is a higher focus on safety in certain areas of the construction industry and there are more incidents of reporting than there are in other areas where safety is not as paramount and there is a case of under-reporting of incidents?

Mr Hopkins: As I said before, that is certainly the case with MBA Group Training, where we encourage our apprentices to report absolutely everything. Obviously if apprentices are reporting in a higher way, you are going to see that in the statistics as a higher number of incidents, whereas it is just simply a high incidence of reporting. What you are uncovering here is that there is not necessarily a consistent standard of reporting across every industry and every business. Your question about GTOs, Mr Pettersson, is that the culture we try to set is to report as much as possible, to be as open and transparent as possible and to set that culture from day one of them entering the industry.

THE CHAIR: Let's say there is a culture in a certain company that they report everything and that is why their number is higher. How do we go about changing the culture of these other companies across the industry so that everyone is reporting accurately?

Mr Hopkins: That is a really good point. Without going into a whole lot of detail, that is something we are already working on and we would be keen to continue

working on with government. It is something we are doing with our own members. We are running our own information sessions and training courses and speaking directly to our members' principals as well as their safety managers about encouraging that culture. That is a consistent message we need to keep driving home to everyone in the industry, as I mentioned before, from the top to the bottom.

THE CHAIR: The thing is, though, I hear those suggestions all the time about all sorts of things. We keep talking about it. We keep engaging. Do you have any concrete ideas on it or are we just going to keep the status quo?

Mr Hopkins: I do not think we are talking about maintaining the status quo; I think we have identified that in order to improve safety in the construction industry addressing culture is a key issue.

MRS KIKKERT: Thank you, gentlemen, for coming in today. I have a simple question about the 29 students under the kids assist program. Can you tell us a little more about that?

Mr Hopkins: Yes, certainly. The kids assist program is a great news story for Canberra to tell. It is one that we have been running for 16 years now, where we take three cohorts of year 10 students—

MRS KIKKERT: Per year?

Mr Hopkins: Three groups per year, around 36 over the year, and these are students who have generally disengaged from learning. We put them through a construction program which includes both some practical work experience and classroom teaching as well as all the support that the MBA would provide to try to set them back on the right path of life, if you like. I would not describe it so much as an employment program; its intention is not necessarily to find short-term work opportunities for these kids. It is a more holistic life skills program, if you like, to take students, as I mentioned, that have disengaged, and put them back on the right path.

We would love it if those 36 students found a future career in the construction industry, and many do, but they may also just find that they want to go back and finish their schooling and maybe find employment in a different industry, if that is what they choose. But it is really successful, and probably a story that has not been told well enough is the types of community and social benefits that come out of that program.

MRS KIKKERT: It sounds wonderful. How many females are attending this kids program?

Mr Hopkins: I would have to go back and confirm how many we have in there at the moment, but there is always a mix of gender, a mix of backgrounds and a mix of different schools where the kids come from, and always generally in that year 10 bracket in terms of age. I am happy to take that one on notice.

MR WALL: There has been some suggestion in some of the submissions and the evidence that the committee has heard that, essentially, unless employment is full time or, at a minimum, part time and in a direct relationship with an employer or an

individual, it could be deemed insecure. What is your take on that? If only secure employment was to be applied to, say, the construction industry in those terms of being full time or part time and a direct employer-employee relationship, what impact would that have on the industry?

Mr Spence: I have read and understood the privilege statement. I am not intending to cavil with the question at all, but once you are employed under Australian law you have that relationship that is set up automatically under the Fair Work Act, which is vast legislation and is very powerful in its scope and in its enforcement. Once the employment contract is in place, a whole slew of rights and obligations automatically fall into place on both parties. These are rights and obligations for the employer that carry serious civil penalties if they are not adhered to.

To try to address what you were talking about in regard to the security of the employment, if you look at someone who for any number of reasons might want to only work three days a week, maybe school hours three days a week, they could be part time, ongoing on a contract with those hours set, or they could be a casual if they wanted to structure their hours that way, if they were not sure, for example, which days they might want to be working in any given week because they needed flexibility. That is not necessarily any less secure than an ongoing full-time employee.

As for rights around unfair dismissal, I do not think I need go into the individual rights there. They are so numerous in the Fair Work Act; it is an absolutely behemoth piece of legislation. All those rights accrue to that employee. It is not in any sense really less secure.

MR WALL: I guess from the construction industry perspective there is a wide gamut of types of employment from, as we have discussed, labour hire employment through to group training, contracts and the like. If it was only a traditional employer-employee relationship that was the prerogative of achieving secure employment, as it has been defined by some, what would that impact have in removing contract labour and the like from an industry that is as transient and as fluctuating as construction work?

Mr Hopkins: In simple terms, the industry would be much less productive.

Mr Spence: It would be much more expensive. The nature of it is that it is a contracting industry. There is work when there are tenders, and that is the way it goes there. If a company had to keep on 200 employees at all times on a full-time, ongoing basis, there would be costs with that and construction would become more expensive.

MR WALL: So what you are suggesting is that the greater the flexibility that exists in types of employment, the more agile and the more economic the industry can be?

Mr Spence: Precisely.

THE CHAIR: By having people engaged in casual work because, as you have described, of the nature of the contracting of the industry, are we not just transferring the risk from the company to the individuals?

Mr Spence: I do not follow how that would take place. You would have to elaborate on that.

THE CHAIR: Normally a business, by employing people, is somewhat shouldering that risk of ongoing work. By having people employed solely in casual employment, the risk of the company no longer receiving work is transferred to them instead of being borne by the company.

Mr Hopkins: There are probably two points. First of all, as I mentioned in the opening, there are some laws around limiting the length of time that you can remain casual. If that were to be the case it would be for a limited period. But I think, more importantly, as we said, the economic conditions at the moment are such that an employer that tried to do that would find that they would not be attracting the highly skilled employees that they would be after. If you are an employee that has skills that are sought after at the moment and you have one employer that is providing you an employment agreement that you are after and the other might be offering casual, you would take the one that is more attractive to you. I do not think the employers are in a position where they have such freedom and flexibility as you are describing.

Mr Spence: Sorry, if I can just add to that: certainly not in our industry. There is such a shortage of skills in some areas, and the demand for those workers is high, that they do not get paid the award; they get paid well above it because that is what they can demand and that is what they get. The same definitely applies to casualisation.

Mr Hopkins: I can give you some stats on that. For example, from MBA Group Training, our typical intake of construction apprentices is 25 per year. Last year and again this year we will increase that to 35 per year and still we have builders demanding more and more apprentices. An increase from 25 to 35 per year is quite a significant jump in percentage terms and we still cannot keep up with the demand. That is just apprentice workers.

MR STEEL: My substantive also relates to casual employment. You mentioned that casual conversion is mandatory in your industry award. How long has that existed?

Mr Spence: I could not answer that; I would have to take that on notice. I believe it came into the building and construction award in—I would be guessing. I will have to take that on notice.

MR STEEL: Have you seen an uptake in the number of part timers transferring or making an application to transfer from casual to part-time employment?

Mr Spence: No. Actually, I have seen the reverse. I have seen many employees choose to stay on casual for the flexibility, largely, and also, frankly, for the 25 per cent loading that attracts to it. If they want the money up-front the casual employment offers that flexibility. It is actually my experience in our industry that many employers would wish that more of their employees would avail themselves of that, because the costs are then borne over a longer period. You pay the personal leave and annual leave out the whole year, whereas with a casual employee that is taken up in the 25 per cent loading which is paid every week. I definitely have had firsthand experience where many employers would rather a greater percentage of their workforce were not

casual and would avail themselves of becoming part time or full time or ongoing, as the case may be, but the employees themselves do not wish to do that (a) for the flexibility in time and (b) for their flexibility in how they are remunerated.

MR STEEL: You mentioned before that the same unfair dismissal provisions apply to casual employment as to part-time or full-time employment.

Mr Spence: After a set period, yes.

MR STEEL: Is it not the case, though, that the key difference between those types of employment is that the employer may, for a genuine reason or not so genuine reason, just stop their shifts?

Mr Spence: No.

MR STEEL: They are still maybe technically employed but they are just not receiving any work?

Mr Spence: That could be construed as constructive dismissal under the fair work law. That is where, technically, you have not been dismissed but the circumstances are such that, effectively, you have. No, there is provision in the fair work law to deal with precisely that scenario.

MR STEEL: I would imagine that constructive dismissal would be fairly hard to make out in the Fair Work Commission. It would require a substantial amount of evidence.

Mr Spence: Not necessarily, no.

MR STEEL: How many casuals do you employ in labour hire firms in the industry?

Mr Hopkins: In the MBA specifically or the industry more broadly?

MR STEEL: Both would be useful, if you have got numbers.

Mr Hopkins: The MBA does not employ any labour hire firms. In terms of the broader industry, I would not know. We would have to take that one on notice.

MR STEEL: Is it substantial or are they mainly employing part-time to full-time workers in those labour hire companies?

Mr Hopkins: You are talking about the employment of the workers in the labour hire company?

MR STEEL: Yes.

Mr Hopkins: Again, I am not sure. I would have to investigate that one.

Mr Spence: Sorry, just on one point that you raised about constructive dismissal necessarily being a higher bar to prove in the Fair Work Commission, that is not my

experience. I have been involved with that on and off since 2001 in what was the Industrial Relations Commission and what is the Fair Work Commission nationally now, since the 2006 referrals of state and territory powers to the commonwealth. The commissioners are highly experienced. They all come from industry or the union movement as a rule. They have got many years of experience and they are extremely astute at ascertaining the facts. No, I would not accept the suggestion that it is necessarily, in and of itself, a higher bar to show a constructive dismissal.

MR STEEL: I am just thinking about the relationships. You have got one level of insecurity of the casual but then you add another layer of insecurity, which is that they are employed by way of a hire company so that they are actually quite far removed from the employer by that point. I just wonder whether that creates some further vulnerabilities in terms of their insecurities.

Mr Spence: They are employed by the labour hire company.

MR STEEL: Yes, that is right, as a casual. So you have got two levels of potential insecurity working together. I just wonder whether you have any comments about that.

Mr Spence: I do not see the second level, frankly. They are not employed by the head contractor in that instance. They are always employed by the labour hire company.

THE CHAIR: They take direction from that company, however.

Mr Spence: And they work on those company sites, yes. But they have that employment contract which I spoke of with the labour hire company and that accrues all those rights under the Fair Work Act, which are numerous.

THE CHAIR: But if you work for a labour hire company, let us say, and you are on a construction site and the principal contractor says, "No we do not like that guy," what protections are there for that worker?

Mr Spence: With great respect, that is a hypothetical. That is unanswerable.

THE CHAIR: I have come across it numerous times in my life and I am far younger than you are.

Mr Spence: Sorry, I did not—

THE CHAIR: I have come across that circumstance numerous times in my life and I am far younger than you. I am going to assume that you have been in the construction industry longer than I have. I find it strange to believe that you have not seen or heard of that occurring.

Mr Spence: Under a head contract, if you like, contracting a labourer, again, the individual, the worker, has their work relationship, their employment contract, with the labour hire company. If that contract is not being properly met there are legal avenues open to them. If there is discrimination—if that is what I think you are getting at, some type of discrimination, "I do not like this person for X, Y, Z reason"—and if it is a discriminatory reason then all the laws around discrimination

apply to that relationship.

THE CHAIR: I know we are talking about a separate relationship here. The head contractor says, "We do not like this particular worker from your labour hire company. Don't send them to the job tomorrow." And the labour hire company says, "Okay, we will just get another body in that place."

Mr Spence: It is a matter for the labour hire company to handle that situation according to the law.

THE CHAIR: How do you think the aggrieved individual would feel in that circumstance?

Mr Spence: I would be guessing. I do not know. But what I can say is that that labour hire company has an obligation to obey the Australian workplace law, including the discrimination provisions in that law, and they should.

THE CHAIR: I agree. Thank you for coming in, gentlemen.

MAY, MS JESSICA, Chief Executive Officer, Enabled Employment

THE CHAIR: Thank you for coming along. Witnesses are asked to familiarise themselves with the privilege statement. Could you please confirm for the record that you have read the privilege card presented to you by the secretary and that you understand the privilege implications of that statement?

Ms May: Yes.

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

Ms May: Yes. I am the Chief Executive Officer of Enabled Employment. I am also the founder of the company. We are a labour and recruitment company that specifically exists to help people with disabilities, ex ADF, carers, seniors, Aboriginals and Torres Strait Islanders to get employment. We use labour hire practices as well as permanent placements.

I think the main thing that we want to get across in this is that whilst there are people who may be operating in the industry in the wrong way, individually we are a national service. We comply with over 100 pieces of legislation—legislation that is different in every single state and territory. We see labour hire not as a way of doing sham practices or insecure work but as a foot in the door for people who come from disadvantaged backgrounds.

I am a person with a disability. I have mental illness. How I made my break into the public service was on a three-month contract as a labour hire employee. They use it to get to know people, to understand your work, and we see that as an opening and a way to get through the door. One of the biggest issues that face people with disabilities and other people from disadvantaged backgrounds is that when they leave school they need to get work experience and people are often inclined not to employ them because of their disability or their background, whereas they may take them on a labour hire contract. Everyone that you get through the door changes people's preconceived notions and ideas about what those people are capable of.

We actually see that there is a positive to the labour hire industry in the work that we do and we believe that further regulation, further legislation, just adds to the onerous amount of work that people who are doing the right thing in the industry have to do to comply.

THE CHAIR: I will lead off the questions and we will make our way down the line. You make reference in your submission numerous times to unscrupulous labour hire operators. Can you expand on that? What does that mean?

Ms May: How we would see an unscrupulous labour hire company is someone who does not comply with the law, who sets up for six weeks, advertises, gets people on a labour hire contract to do fruit picking or construction and closes down. They are never going to comply with the legislation and requirements anyway. They would not have a recruitment agents licence. We see those people as that, as unscrupulous or sham contractors, people who are not complying with all the legislation anyway. If

they were, they could not act in the ways that are described in your request for submissions.

THE CHAIR: So these people are, in essence, your competitors. Are they numerous? Is it rare to see one of these organisations pop up or are they out there all the time?

Ms May: I think in our submission we say that we are not aware of anyone in our industry who is doing it or we do not know anyone in particular, but we have heard of it. As you identify in your request for submissions, that is definitely who we are referring to.

THE CHAIR: When you say you have not seen it, is it in the context of disability employment that you have not seen someone train or operate outside the law?

Ms May: We follow the law to the letter—absolutely, completely, to our detriment—all the time and we make sure that the people that we associate with and whom we work with in labour hire companies are ethical, especially because we deal with such vulnerable people. We make sure that they are paid above award wages. We actually want to see the best for them. We want this to be a foot in the door for them. We offer support to them and the employer. We would not interact with any other people around labour hire companies who we would see as not doing the right thing.

THE CHAIR: I am not asking if you interact with them. I am just trying to ascertain how commonplace it is that these companies pop up. You made reference to there not being any in your area. You do not see these unscrupulous operators popping up in that disability employment sphere?

Ms May: No. We are the only labour hire company in the whole of Australia for people with a disability. I have not seen others pop up for vulnerable workers as such.

THE CHAIR: You do worry that it is possible that they might try to operate in that sphere?

Ms May: It is possible, but I do not think so. One of the reasons that we exist is that there was not anything like what we do out there at all. And we are actually open and we make sure we are completely ethical. We are transparent, for that reason. Someone could potentially, but I do not think they would get a lot of support in the community, especially because there are so many people who prey on the type of vulnerable people that we represent already and who are not received very well in the industry. If someone wanted to open up and be completely unscrupulous and not follow legislation, the community would identify them quite quickly.

THE CHAIR: Who are these people that prey on disabled people?

Ms May: There has been a lot of recent information about education and training providers offering people with disabilities the chance to go and study something that may be completely outside their abilities because they get a kickback from the government to continue that. I think everyone is well aware of that out there. There are definitely a lot things like that, where you get offered an iPad if you sign up or you do this, and they particularly prey on people who are disadvantaged. That is why we

made sure that we are completely ethical and transparent in everything that we do.

THE CHAIR: In the context of the workplace, do you see disabled people getting preyed on?

Ms May: No, because that—

THE CHAIR: Or they just cannot get a foot in the door?

Ms May: We would not let that happen.

THE CHAIR: No, I am not saying in your company. I am saying: in general, are you aware of it? You work with a lot of disabled people and you would be aware of their experiences before encountering your company. Are you aware of disabled people maybe getting exploited in the workplace?

Ms May: Yes. One of the reasons that we do not accept government funding and subsidies for people is that we do see a lot of employees come to us and say that they had a job whilst their employer was getting the subsidy and, as soon as the subsidy finished, they moved on to the next person to get the subsidy again. That is why we do not do that. We charge businesses for our services, because they should be paying for highly qualified and able people to do their job. We find the right person for the job.

MR WALL: You stated in some of the recommendations in your submission and also in your opening statement that there is a significant amount of regulation and legislation both at state and commonwealth levels that you need to abide by and hoops that you need to jump through to be compliant. Do you believe that the current legislative and regulatory landscape is sufficient to address the types of issues that this committee is looking into around employment? Is it possibly an overreach and has it gone too far? What I am trying to get at is: are there loopholes that people are exploiting unknowingly because there is a gap in the legislation or is it a case of people that are doing the wrong thing and setting out to do the wrong thing in the first instance?

Ms May: Yes, I think there are probably two. I think the people setting out to do the wrong thing are setting out to do the wrong thing. But then I can understand that there would be people who would not be aware that they are breaking the law by what they are doing, because the requirements are so vast and are different in every single state and territory. As an example, we have an employment agents licence in the ACT. For most states and territories that allows us to act nationally, but in Western Australia if we do permanent placements we actually have to have an office in Western Australia, whereas if we do labour hire placements we do not have to have an office in Western Australia; our ACT licence applies.

There are little things like that, as well as different rates of payroll tax in every state and territory. In Western Australia all the people with a disability that we employ are exempt; in every other state they are not. Some state thresholds are less than $60,000 a month in turnover. Whilst the governments are making money out of these sorts of practices, they need to ensure that the people who are paying them that money are complying with the legislation.

But if it is different across every state and territory, you do not know what you do not know. My background is in government. I spent 10 years in government. When I set out to create this business we researched everything in every little detail because we did not want to do anything wrong, but it could easily have happened. I would have thought maybe I just needed a recruitment agents licence here; I can do whatever I want, just follow the ACT laws because we are physically in the ACT. But that is not the case. We need to follow the law in every single state and territory.

I think what needs to happen is that there needs to be consistency. The biggest issue is the inconsistency, because it would be easier to comply with something that you know is the same in every single state and territory. I can see how people could fall through the cracks, but I do believe that if you are out to take advantage of a person you are out to take advantage of a person.

MR WALL: So, regardless of what the regulation or the legislation is, someone that is going to do the wrong thing is going to flout the rules regardless?

Ms May: Yes.

MR WALL: Given that there are going to be unscrupulous operators regardless of what the law is, do you think the legislative framework is sufficient to protect both you, your company as an employer in a labour hire space, and also the employees and the companies that you are hiring to?

Ms May: I think the biggest issue that we have seen is the changes that make the labour hire company the employer and absolve the person who is hosting that contractor of responsibility. They are half responsible but they are not fully responsible; the labour hire company is responsible for any workers compensation or any injuries that are sustained. They then have to be the one that follows that through. Within each of our contracts with employers we have put in there that they need to provide support for us to get that person back into the workplace, to do light duties, all those sorts of things.

But most people do not and would not think of that. We should not be putting that kind of onus on someone who might have 300 people on their books, to then have to continuously be the one that looks after someone. Of course if someone's contract ends they are going to end that contract; whereas if there are things in place that the host is responsible as well for the ongoing wellbeing of that person then I could see that the pressure could be released a fair bit. If you are looking not at a normal employer who might have 10 to 20 people on their books but at someone who might have 300 people on their books, putting all that responsibility on them can cause some issues. I can see why.

MR WALL: And how has that then been received by the hosts of your staff in those agreements: to take on some of that responsibility for, as you described it, the wellbeing of those people?

Ms May: We work with vulnerable people. We want to make sure that they are looked after and we make sure that we work with people who understand that. We are

just as picky about the people we work with as the people who work with us. If someone said that they wanted to do that sort of practice, we would not be involved with them.

MR STEEL: You mentioned in your submission that you do not think there is adequate compliance action being taken in relation to the legislation that governs you, the regulations. Is that at a commonwealth or a state level or both?

Ms May: Both. I can, hand on my heart, say that we follow everything that we possibly can but I have never had anyone check. The only thing they ever check is payroll tax. And they over, over, over-check on payroll tax because it is money to the government. On everything else I have never had anyone question anything, and we have been in operation for three years. I have had people hound me for payroll tax every two weeks, though.

MR STEEL: And you are suggesting that what might help with compliance is a single piece of legislation that deals with—

Ms May: Yes, if it is consistent. If it is consistent, if it is clear, if you know exactly what you have to comply with, then it is very hard to get away with saying, "I didn't know what I had to do," whereas at the moment if you found someone who was doing the wrong thing, who had just missed something, it would be very hard to prosecute them because of the amount of stuff out there. They actually have to go looking for it to know. It is not in their face when they start a labour hire company. You do not get a book that says these are all the things you have to do. You have to find it yourself and that is in every state and territory.

MR STEEL: It has been put to us that we should consider a labour hire licensing scheme in the ACT which is currently being considered in other jurisdictions. Do you think that would help in providing harmonisation across states, by establishing one in the ACT as well?

Ms May: I already have a recruitment agent licence in the ACT. Do I need one for recruitment and one for labour hire and then one for every single state and territory as well, because they all have their individual ones? Introducing one into the ACT is just another piece of regulation and red tape for me to follow.

MR STEEL: Do you think you are in a unique position in that regard, having both those roles?

Ms May: No, because most labour hirers work nationally and most of them do permanent recruitment and labour hire. That is the general thing.

MR STEEL: And do you think you have got more compliance with your contractual arrangements as a disability employment service provider?

Ms May: We are not a disability employment service provider. We are a private company. We act exactly the same as any other recruitment agency in Australia. We do not have extra compliance put on us because of that requirement. The compliance that we follow is as a recruitment agent.

MR STEEL: So you are working with those providers?

Ms May: No. We are a private company. We work with businesses. We charge them for us to place the person into a job.

THE CHAIR: In your opening statement you talked about providing pathways for people with disabilities into permanent employment. How successful do you think labour hire is in transitioning people from a labour hire position to a permanent, ongoing position?

Ms May: Probably the way that most of the people I know in the public service got their break or got their job was that, most of the time straight out of school, you get an APS 3 three-month contract; they like you; it continues; then you apply for a permanent job. I know specifically that that is probably the best way to get into government. As with any organisation, most people want to try before they buy and this gives them an opportunity to do that. As an added bonus, it gives our people an opportunity to actually have something on their resume as experience, which is probably one of the hardest things to get when you are a person from a vulnerable background because most people are not willing to give you a chance or give you a go.

THE CHAIR: Could you maybe expand on why you think the public service is so inclined to try labour hire as opposed to just directly employing someone?

Ms May: I spent 10 years in the public service, as an executive level 2 for six years. I came in on a three-month contract. Most of the people I knew came in on three-month contracts. I saw them used continuously. Especially at the moment with the cuts that are happening and short-term contracts for pieces of work that only have a finite time limit, they are not going to hire someone permanently if it is only for one year. You cannot hire someone because then it increases the actual size of the public service, whereas if it is a one-year project you hire someone for one year on labour hire.

MRS KIKKERT: What is the youngest person that is working for you, their age?

Ms May: We represent people from 18 years old but we also represent seniors, anyone over 55. It is a very broad range. We do not represent anyone under that age just because of the nature of the work that we do.

THE CHAIR: Thank you for coming in and making time for us.

Ms May: No worries; thank you. I hope you have a good day and get some answers.

WATERS, MR ALISTAIR, National President, Community and Public Sector Union
KNOX, MS AMY, Political Organiser, Community and Public Sector Union

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

Mr Waters: I confirm that I have read and understood the privilege statement, and I do have a short opening statement. Insecure work in the public sector is a critical issue for members of the Community and Public Sector Union. The CPSU has members and workplaces with many different types of insecure working arrangements, including the direct engagement of staff by an employer on a casual or temporary basis, the use of contractors sometimes hired through a third-party provider, and the use of labour hire employees working within organisations alongside directly employed permanent staff. We also have members who have seen their formerly secure jobs outsourced.

We stand by our written submission to the inquiry. However, on the question of labour hire we go further and say that its use should be eradicated from the ACTPS. This picks up a key recommendation of the UnionsACT submission, which we support. We also note there is a general call in a number of submissions, such as the United Voice submission, to maximise direct employment for ACTPS work. This is an area where a clear change to government policy and practice is critical.

The CPSU has considered the government submission to the inquiry and the evidence of Minister Stephen-Smith, the ACT Public Service Standards Commissioner, Ms Overton-Clarke, and others at the 8 September hearings of the committee. The ACTPS currently has a rate of insecure work of 23.3 per cent. This includes fixed-term contracts and casual workers directly engaged by the public service. It does not include the use of labour hire.

On the latest figures we have available to us, Access Canberra engages 103 people through a labour hire company. It is clear from the evidence of Mr Tomlins of CMTEDD on 8 September that there is significantly greater labour hire usage across the ACT public sector. In our view there is no justifiable reason why ACT government has such high rates of insecure employment. Contributing to this issue is the fact that there is no central oversight or central regulatory checking of recruitment and staffing practices across the ACTPS. Those practices are managed by the individual directorates. Mr Noud confirmed in his evidence of 8 September that decisions on use of labour hire, contractors or temporary or casual employment are made by directorates. We consider that greater central oversight and compliance checking is necessary.

By way of example, let's look at the use of labour hire in Access Canberra. Ms Overton-Clarke, in her evidence to this inquiry, and Mr Dave Peffer, the deputy director general responsible for Access Canberra, in his evidence in the budget

estimates process, both indicated that significant use of labour hire in Access Canberra is because of difficulties with opening hours and staffing them. We have checked—we may have missed something—but we can find no serious engagement with the CPSU or staff in Access Canberra to resolve staffing issues for the public access hours before or after the decision to engage labour hire was made. To be clear, we say no serious effort was made by relevant managers to resolve the extended opening hours, rather, they went straight to labour hire. This lack of serious engagement continues. In the current bargaining process the CPSU has invited a discussion about covering Access Canberra's opening hours on numerous occasions, but we are still waiting for ACT government representatives to pick up the invitation.

What we know from our experience with labour hire at the federal level is that it costs agencies or directorates more than direct employment and it provides lower wages and conditions and significant job insecurity for the affected workers. The commonwealth DPP has recently provided evidence to that effect in Senate estimates hearings. It also has significant negative consequences over time for the capability of the service, and the same will apply to labour hire usage by the ACTPS.

We are deeply concerned that the implementation of Contractor Central, which Mr Tomlins gave evidence about on 8 September, is about facilitating the use of labour hire in the ACTPS. A clear policy position can and should be adopted by government to eradicate the use of labour hire and ensure far greater central compliance checking of directorates' actions against the commitments in enterprise agreements and under the Public Service Management Act. There are a variety of mechanisms for the government to take action to do this. One might be the local jobs code where the Chief Minister has established an objective to have that code apply to government agencies and statutory authorities according to the government's submission to this inquiry.

Labour hire is bad for taxpayers, bad for the affected employees and bad for the capability of the service. The ACTPS can and should have the flexibility to manage with direct employment. The ACT's rate of insecure direct employment—temporary and casual employment—is also consistently high at 23.3 per cent, and it has been slowly climbing over the past five years. Employment of employees with a disability and culturally or linguistically diverse employees is only slightly above the overall rate for insecure direct work. However, it is worth noting that 30 per cent of the Indigenous workforce are employed on a non-ongoing basis. These rates can be significantly reduced.

Employee conditions suffer under insecure work. Job insecurity has far-reaching implications for these workers' lives. This inquiry has very significant evidence including in our submission and in many other submissions of this fact. We commend the inquiry and see it as an excellent opportunity to reduce levels of insecure employment, including in government service, and to improve the situation for insecure workers in the private sector in the ACT.

THE CHAIR: You have said labour hire contractors have to consistently reapply for the same positions as opposed to being made permanent, especially in admin and shopfront roles. If these staff were made permanent how would that affect the financial and physical wellbeing of these workers?

Mr Waters: Having to consistently reapply or be reconsidered adds to significant mental stress. We are aware of one case where an employee is on their third three-month contract: two weeks out from the expiry of the contract it is renewed. You clearly cannot apply for a loan, you cannot buy a house. That kind of security is just not available to you when you are working under those sorts of conditions. It also puts an enormous pressure on you being able to raise issues or concerns at work. Every time anything is worrying you at work there is a natural question mark in your mind about whether speaking up might affect whether you are going to get a contract renewal.

THE CHAIR: Where is this happening most often?

Mr Waters: From the figures we have seen from the state of the service report the Health and Education directorates are the largest users of direct insecure employment, so temporaries and casuals. We have much less transparency about the use of labour hire arrangements in the ACTPS. We are aware from being directly provided with figures about the use in Access Canberra. The evidence from ACT government before this inquiry appears to suggest that there is significantly greater use of labour hire than that, but we have no idea how much labour hire is actually being used by the government.

THE CHAIR: The number of temporary or casual workers you keep mentioning is 23.3 per cent. Is that trend growing? Have you noticed any trends as to the direction casualisation is heading?

Ms Knox: We had the table in there from the past few years. It was remaining at that 23 per cent but it is slowly increasing; it is not decreasing.

MRS KIKKERT: Which table is that?

Ms Knox: It is under "Temporary work in the ACTPS trends", figure 1.

MRS KIKKERT: Figure 1, employment modes?

Ms Knox: Yes, and this is all from the state of the service report.

MRS KIKKERT: So casual was 6.5 per cent in 2014-15 and the same the following year?

Ms Knox: Yes, so casual has gone down a bit; it is the temporary work that keeps going up.

THE CHAIR: You spoke about the effects on the individual. In the context of the workplace morale does casualisation have an effect?

Mr Waters: Yes, it absolutely does. Again there are a number of comments in our submission from members. An example is about two permanent jobs going out of the workforce and three fixed-term employees being hired into the same workplace. That creates concerns about your own security as an ongoing employee. There are concerns

about the loss of capability in their areas because obviously people in insecure work are looking for more secure work and tend to move on. That is one of the ways it affects capability over time. It does not build skills and an experience base, which our members are committed to. Our members are committed to the work they do and they want to be in a position to do the best job possible for the public in the ACT. So there is a direct impact on the employees. There is the impact on their permanent colleagues and there is also the impact it is having on the service to Canberrans. There are a number of other comments that I would refer the committee to in the submission.

MRS KIKKERT: I am looking at figure 2. I am very interested in Education and Health where the number for non-ongoing is quite staggering—1,696 for Education and 1,914 for Health. In comparison with the others, can you explain that?

Ms Knox: That is probably a question for the government. But, based on what we hear from our members, Education would include things like casual teachers. But we also represent admin staff at schools and a number of our members said that they have admin staff on yearly contracts who keep coming back every single school year.

In Health we also have a lot of anecdotal evidence from the people who work there. In the submission I included some evidence from clinical psychologists who we represent. There was a story a couple of months ago in the *Canberra Times* about how there are so many vacancies for clinical psychologists because they are all on non-ongoing contracts. They spend years studying to be able to get to that point and then they leave for better opportunities elsewhere because they are so specialised. We have anecdotal evidence from our members that in Health there are a lot of admin staff who are non-ongoing. I cannot give reasons why but they are some of the stories we have heard.

MR WALL: I have a supplementary on that. My understanding is that a lot of specialists, doctors and the like in the health system are engaged on a contract basis. Would they be captured in that non-ongoing figure?

Mr Waters: They would be captured in those non-ongoing figures. Those would apply beyond our coverage, which is more on the admin side and some of the para professionals. We have more knowledge about the para health professionals and the admin workers than we—

MR WALL: Yes, obviously relief teaching and support staff in a school setting are required. There would be a casualisation there or a non-ongoing employment cohort there. I also thought that in health a lot of specialists tend to prefer to be engaged on a contract basis for various reasons—operating in private practice as well as doing public practice and for other reasons that—

Ms Knox: Yes, that is entirely possible.

MR WALL: Would they have been captured there and is there a reason for them being higher than in other directorates but—

Mr Waters: We are not really in a position to comment on that.

MR WALL: Yes, that is okay. I have a couple of unrelated questions. In respect of the incidence of insecure work in the ACT, you make reference to the Public Sector Management Act, which requires a directorate to seek ultimately your approval for a contract on a casual engagement over 12 months but for not more than five years. How many incidences are there where you are approached for that consultation?

Mr Waters: It is consultation rather than approval. We are approached on a reasonably regular basis. I cannot give you a number but it would probably be fair to say that there are some directorates that are more assiduous about it than others. I do not think we have necessarily consistent application of those requirements.

MR WALL: Are you suggesting that some directorates are better at engaging in that consultation than others?

Mr Waters: Yes.

MR WALL: What drives that culture of whether or not they are engaging with you?

Mr Waters: I think it would be speculation on my part if I went to what is driving their particular cultures.

MR WALL: Which directorates are conforming with the Public Sector Management Act in its spirit and which ones are not?

Mr Waters: Based on the anecdotal feedback I have had on where we get contact, they are normally very clear-cut cases of why it would make sense to have a contract for more than 12 months.

MR WALL: So anecdotally, as the secretary of the union, wouldn't you be aware of the approaches that are being made?

Mr Waters: Obviously, we have a significant operation. I do not have direct operational day-to-day responsibility for ACT gov. So I have sought some information out before coming to this inquiry. As I say, based on that—I do not want to put it any higher than this because it is important what I say in these circumstances—

MR WALL: You are protected by privilege, Mr Waters.

Mr Waters: as high as I am prepared to go is—

MR WALL: You are protected by privilege, Mr Waters.

Mr Waters: I understand that. That is right, but I am also not particularly interested in dumping directorates into it unfairly. What I would say—

MR WALL: If there are directorates that are not complying with the intent of the Public Sector Management Act, that is a serious issue.

Mr Waters: What I am saying to you is that the anecdotal reports I have had tend to

be of very clear-cut cases for extending beyond 12 months rather than some of the circumstances that we find more difficult to explain, like the labour hire arrangements at Access Canberra. That does not go to the Public Service Act. I acknowledge that. But I think we would need to do a much deeper inquiry into—this may be something that the inquiry wants to consider—how many of those non-ongoing employees have actually been engaged for more than 12 months as opposed to how many of them are on shorter-term, fixed-term contracts.

MR WALL: Yes. You do note Mr Peffer's answers to questions that I actually asked during estimates regarding the engagement of labour for Access Canberra. You have reference to the transcript in your submission. It was due to the business needs of the call centre shopfronts to be accessible outside normal public servant hours. What scope is there in the enterprise bargaining agreement for the ACT public service to work outside core hours in regard to overtime, penalty rates and the like as opposed to what the staff that are employed through the labour hire firm might be subject to, whether it be under an EBA or just the modern award?

Mr Waters: There are a range of mechanisms available for covering public access hours. Those sorts of mechanisms are already used in a number of other workplaces. What we say about Access Canberra is—again, we have conducted a bit of an investigation—that we cannot find any serious effort to actually engage in a conversation either with the employees of Access Canberra or with the union about how we could deal with the extended opening hours before the decision was made to go to labour hire.

There are a range of mechanisms. Some of those do involve shift penalties. Some involve just being very clear about what the necessary hours for public access are. There is a variety of mechanisms that could and should have been worked through, in our view, before a decision was made to move to a labour hire solution.

MR WALL: What do you think the main driver was then to go to a labour hire solution, from your experience and your perspective?

Mr Waters: Notwithstanding that it is more expensive for the government, it provides fewer benefits for the employees and it generally weakens the capacity of the area affected, it is easy for managers.

MR STEEL: My question also relates to table 2. I think you may have alluded to it before, Mr Waters. Is there any sort of breakdown around the number of employees who have been on non-ongoing contracts for a number of different contracts? Is that data available anywhere that you are aware of?

Ms Knox: Not that I could find in my research. This is all from the *State of the service report.* We had put in our recommendation that there be more data available on labour hire but it would be good to know who are on rolling contracts as well.

MR STEEL: Yes, and you have mentioned a couple of cases that, I suppose, have just come to you from your members. I think one particular employee had been employed for 10 years on non-ongoing contracts?

Ms Knox: Yes.

MR STEEL: It is pretty extraordinary. How do we get these numbers down? What strategies do you think the ACT government should be looking at? What changes to policy should we be looking at in order to reduce the percentage of non-ongoing employees?

Mr Waters: Certainly in terms of labour hire, I think there are some very direct policy positions that the government can take with respect to using those sorts of contracts. Also, the delegations about where decisions are made both in terms of labour hire and direct insecure employment is an area that can be considered. We do think greater central compliance vetting with the PSMA would probably lead directorates and agencies to more closely consider particular decisions they are making. There is always going to be a level of casual and non-ongoing employment.

MR STEEL: Sure.

Mr Waters: We do not say that it can be done away with but we do think that the level can be brought down significantly. Both that reporting and regulatory compliance, with the obligations that already exist, I think could be tightened. There is an open question. I think it would make sense for there to be greater central control over some of these employment decisions rather than those sitting with the directorates.

MR STEEL: Do you think the strategies will differ in each directorate? Health may have particular needs that they need to deal with, for example. The strategies to reduce the number of non-ongoing employees may differ there as opposed to education, for example.

Mr Waters: I think that working through those questions would be part of the process. While there are differences, often a very similar strategic approach can actually be adopted across the board, recognising that it may have some different outcomes because of the particular operating circumstances of different directorates.

MR STEEL: Are there any good practice examples that you have across the ACT public service or from other jurisdictions that the ACT government should be considering? I know that education, for example, currently does. But perhaps they could expand the number of full-time roles that support substitute teachers, for example.

Mr Waters: It is looking at those sorts of arrangements. In most operational areas you know you have particular levels of annual leave that are going to be taken. You can actually do workforce planning so that you are employing on an ongoing basis rather than needing to rely on temporary employment to cover those sorts of arrangements. It is good workforce planning but also rigour in terms of applying the obligations that exist under the Public Service Management Act.

Certainly with regard to the use of labour hire, we are saying that we think it could be and should be eradicated. Certainly, there should be far greater consideration before contracts are entered into. We are concerned that the ACTPS appears to be going in

the opposite direction in terms of facilitating the use of labour hire, in terms of contract central.

MR STEEL: In relation to labour hire, one of the questions I asked the ACT government related to the difficulty that may arise when people are employed under labour hire companies. They may be very good employees but then they actually cannot transition into the ACT public service and transfer their skills with them. Do you think that is affecting the capability of the ACT public service as well?

Mr Waters: Based on information that we have coming out of the federal public sector, I would be very surprised if it were not affecting ACTPS. We do not have the same visibility over the arrangements in the ACTPS. But a federal example is the national disability insurance scheme. Over 50 per cent of their staff are now labour hire contractors.

They are effectively training and churning them out to private sector providers because the private sector providers pick them up and offer them secure employment. Those penalty clauses that all labour hire providers apply to the direct employment of somebody who has been provided through labour hire effectively make it very difficult for the agency to employ them directly.

THE CHAIR: Your submission raises some concerns about the level of oversight in the ACT public service. What concerns do you have in particular about the lack of oversight in temporary and casual contracts?

Mr Waters: These decisions are made at the moment on a directorate-by-directorate basis. There does not appear to be a consistent practice with regard to the level at which those decisions are made across directorates. It is clear that there is not any central reporting of those decisions within the ACTPS. I think far greater central oversight would be very valuable in reducing insecure employment. Regulatory compliance both in terms of the level at which these sorts of decisions are made and the reporting on those decisions against the obligations under the enterprise agreement and the act would be very helpful measures, in our view, to reduce the level of insecure employment.

THE CHAIR: I am in no way an expert on the topic but how does the ACT public service compare with the Australian public service in terms of oversight?

Mr Waters: The level of regulation contained in the Public Service Act, I think, probably moves a bit beyond what is dealt with in the PSMA at the moment, although the acts deal with it in slightly different ways; so it is not necessarily an apples-with-apples comparison.

There is very clear and regular reporting in terms of the numbers of casual and non-ongoing fixed-term employment. There is certainly a lack of transparency at the APS level as well when it comes to labour hire. That being dealt with, effectively, as being procurement employment for a triangular labour arrangement means that that is very obscure at a federal level as well.

In terms of direct employment, the APS level for casual and fixed-term employment

is about 11.5 per cent as opposed to the 23.3 per cent here. On the other hand, we are seeing very significant use of labour hire arrangements at the APS level—probably more significant—although the transparency makes it very difficult to be definitive. But quite probably there is more labour hire usage with the feds than there is in the ACTPS.

THE CHAIR: That is interesting. Thanks for coming in.

Mr Waters: Thank you.

BOERSIG, DR JOHN, Chief Executive Officer, Legal Aid ACT

THE CHAIR: Witnesses are asked to familiarise themselves with the privilege statement in front of you. Could you please confirm for the record that you have read the privilege card presented before you and sent to you by the secretary and that you understand the privilege implications of that statement? Before we proceed to questions would you like to make a short opening statement?

Dr Boersig: Yes, I have read the privilege statement and I accept it and acknowledge it. Simply, thank you for the opportunity to make a contribution. We have canvassed a number of areas that we thought might be of assistance.

Legal Aid, by its nature, deals with the underbelly of our community and in that sense our submission reflects mainly the concerns about people in need, the most vulnerable and disadvantaged, and where they are having difficulties. You will see in our submission that we run an employment clinic on a weekly basis. That is overseen by a private firm. In fact they provide specialist advice to us but it is actually conducted by our own staff so that we have got a relationship with that firm, and that works out very well.

The statistics that we have supplied do not specifically indicate the number of insecure types of matters that we have dealt with. Our reporting mechanisms do not go down to that gradation. We have relied on the anecdotal views of our staff and given you a couple of examples of case studies where we have dealt with people in these difficult situations.

We tried to provide a balanced submission and in that sense we wanted to say that in terms of the definition section it is important to recognise that not all casual or temporary contracts are insecure. That is, I suppose, something crucial from our point of view in terms of delivery of any kinds of services. What we are talking about essentially is that, where these forms of contracts are arranged, the relationships are clear and the duties and responsibilities are set out.

But let me underline, not all casual or temporary contracts are at all inappropriate and, in fact, even in my own organisation we have to utilise them. The important thing is to utilise them appropriately and fairly.

They are my short opening remarks. I am happy to take any questions. I do not have my key service providers here but I will do my best.

THE CHAIR: I will lead off the questions and we will go down the line. You have mentioned the clinic that Legal Aid runs. I was wondering if you could give us some more detail on that. Who are the sorts of people that normally need help in these matters?

Dr Boersig: The employment clinic is open to all members of the public. It is un-means tested. We see a full range of people, from students through to public service employees, and indeed in our wider work we deal with contractors and employers. In fact, on a different day we run, in conjunction with the University of

Canberra, a small business clinic so that we pick up some other aspects of this question. The clinic is designed to give people enough information so that they can determine the best course of action they can take in their circumstances.

From time to time we provide minor assistance negotiation and take the matters through and try to make a resolution. Occasionally we work, arising out of that, with a private firm. For example, if there is a Supreme Court action that needs to be taken we will usually link on a pro bono basis with a private firm to do that. We had one of those last year where there was a restraint of trade. A young person was working in a jewellery store and wanted to move to another jewellery store in the same precinct and her employer objected to that. We were able to assist in managing that situation so that she was able to deal with that restraint of trade. Getting into the Supreme Court on your own is quite difficult.

Clinics are a way of bringing in people and then winnowing, "What are the real issues? What are the kinds of issues that really need legal action and what are the matters you need to talk through?" For many people, and in particular this is true for our small business clinic, it is often an opportunity to talk through what is the best course of action. I will give you an example of that. Many tradies will put on an apprentice. They are really good at their job. They are a great plumber but they just do not know how to deal with apprenticeship conditions and so forth. You are able to work with them and make that explanation. In general, clinics are a way in which we can really identify those people and refer them to appropriate places where they can get the most appropriate assistance.

THE CHAIR: In your submission, you mention:

> … it is unlikely that the ACT regulatory arrangements can operate effectively to address the concerns around insecure work … in the absence of a uniform national approach …

Victoria has forged ahead on this. I guess the wider question is: do you think what Victoria is doing is going to be ineffective?

Dr Boersig: No I do not think it would be ineffective. I suppose the point we are trying to make is that there is a complex legislative framework here and that the best way of dealing with all these issues is where they are worked in concert. That is really the point we are making at that stage. There is an opportunity here for a policy decision around, for example, the meanings associated with insecure work to be better clarified, and the opportunities at the territory level are certainly there. We are just trying to say that, because of the complex regulatory framework, it would be best if they were working in tandem across a national basis where both sets of legislation apply.

THE CHAIR: I agree. I think a national approach is the best approach. But in the absence of a national solution, is something better than nothing?

Dr Boersig: Certainly, and I think that is the opportunity that you have here in terms of formulating appropriate policy. No, we are not saying that the territory should not be taking any action here by any means.

MR WALL: You did mention obviously the complex area around a lot of employment regulation/legislation. Is a bigger part of the problem that employers are not fully aware of their responsibilities or, on the other part, employees also are not fully aware of their responsibilities and rights? Or is there a practice that you are seeing through Legal Aid where certain employers or industries are just actively seeking to flout the rules?

Dr Boersig: I would not be seeking to make a generic comment across the board in relation to that. In regard to what you say, it all applies. There are employers operating who are quite unscrupulous, and you will see some of the examples that we have provided there. But there are also employers—and I am thinking more of small business employers—who I think genuinely are not aware of their responsibilities or adequately informed. We come across it in another circumstance, in landlord-tenant issues. Mum and dad investors who may have one property and have a difficult tenant do not always make good decisions about how to manage that. It is because they do not know what their responsibilities are.

I think there are occasions, certainly in small business, when we see that the employers do not have a sufficient understanding of their obligations. The example I gave you about tradies who are great plumbers but not good managers is a good example. In the kitchen, the chef has an apprentice who does not turn up and he says, "Go away, and I'm keeping all your knives." That kind of an issue is one which can best be addressed by information and what we would call community legal education.

But, sadly, as we demonstrate in here, there are unscrupulous people and, in particular, certain categories of people that we talk about in here, people who are on temporary visas and so forth, students, are subjected to unscrupulous practices.

MR WALL: And why is it, do you believe, that, as you say, students particularly on temporary visas are subjected to more of this unscrupulous practice than, say, a regular Australian citizen that is attending a university and is in the same age bracket, in the same part of life where they are doing continuing study and looking for part-time work? Why are you seeing a—

Dr Boersig: I think I am going to say yes, students across the board are generally vulnerable to these circumstances. But where there are cultural, linguistic—well, language—barriers, this is exacerbated and, again, that is partly why we have used the example we have here of people afraid that if they take action they will lose their job, people on visas who feel very insecure. It is very hard to get advice, apart from places like Legal Aid, about your duties and rights. Like lots of people, they leave it too late to come to see us. It would be a lot better if people came and saw us before they got into strife or during it than afterwards. It is often very difficult to shut the gate after the horse has bolted. But that is a lot of what Legal Aid has to do.

Thankfully over the past few years we have seen an incredible, exponential increase in our telephone help line. I think last year there were just under 16,000 calls here in the ACT. Five years ago it was nine. That, to me, is a good indication that people are starting to think about what their rights are and what their obligations are.

People make better decisions if they are best informed. We put a lot of weight around community legal education, outreach, giving people a chance to get the information they need to make good decisions. From a fundamental policy point of view it is that, if you want a civil society, you need people to know what their duties and rights are.

MR STEEL: What needs to be funded to be able to provide legal support on employment matters?

Dr Boersig: We have got no specific funding on that. It is just that we utilise our resources. We recognised a couple of years ago that there was a major need. You may recall that a few years ago there were some disruptions around public service changes. We saw at that time an increase in inquiries to us, because people were looking to get advice around that. So we started opening our door and, once we open the door, we have more and more people coming to see us around employment issues. No, we have just allocated that. We need to work with the private profession, with the other CLCs, to maximise our opportunities to open all these doors so that people can come and get the advice they need. But no, no specific funding.

MR STEEL: And how many young people are you seeing? You mention in your submission that young people are particularly vulnerable to insecure work. Are there a significant number of young people coming to see you around issues of casual work? I know you have got a case study in here of a University of Canberra student.

Dr Boersig: We saw or spoke to around 950 people last year in relation to employment-related issues. Some of them would have been through the Youth Law Centre. Those kinds of questions tend to pool through the Youth Law Centre. I do not have the specific breakdown of that, but I can probably cross-tabulate that and get back to you.

MR STEEL: And is casual employment particularly the issue that is—

Dr Boersig: Yes. Restaurants and retail centres are full of people on those relationships.

MR STEEL: And have any of those matters gone to the Fair Work Commission or have they all been—

Dr Boersig: Yes is the answer but I cannot remember the detail of that. It is not a high number. The matters we tend to take through are through to negotiation.

MR STEEL: And do you feel that there is adequate support from the Fair Work Ombudsman in the ACT to be able to assist people, rather than having to rely on your legal advice?

Dr Boersig: No I would not be critical of the Ombudsman at all. I think we are certainly optimising our relationship in that context, as they would be. No I would not be critical.

MR STEEL: I wanted to ask you about casual work in particular because we had a conversation about it with the Master Builders Association who were claiming that

there is no difference between casual work and full-time employment with regards to unfair dismissal, but this case study seems to suggest that there is a pretty fundamental difference between casual employment and full-time work in that an employer might choose just not to provide someone with hours and then they do not have any work. Is that a situation that comes up regularly?

Dr Boersig: Yes. Our experience would indicate that there can be tremendous fluctuation, and that is the nature of casual work, partly, and the nature of the arrangement. Sometimes it suits people. They are students, they have flexible hours so that around exam times they do not have to go. It can be a win-win but many students are in a more vulnerable position because their hours of employment are subject to the needs of the business. That might mean that they get fewer shifts or irregular shifts or indeed that their shift hours are shortened.

MR STEEL: And have you come across a situation where the employer has cut someone's shifts and the reasons for cutting those shifts are not justified?

Dr Boersig: I would have to get back to you. That is more detail than what we provided in that case study.

THE CHAIR: You have called for reform to the current common law test for employees. What needs to change?

Dr Boersig: Again, I think from our point of view the test needs to be an indicia of activity rather than being too concrete. We argue in our paper that you look at a range of circumstances for criteria. It is not simply the case that a certain casual contract or temporary contract is not appropriate. You need to look at the circumstances. The kind of reform is one in which you would elaborate the indicia around that. We have talked about that.

THE CHAIR: I am not a lawyer in any way, but indicia?

Dr Boersig: You would look at the criteria by which you identified in the law whether a certain relationship were inappropriate or exploitative. You would look at things like changeable working hours, unpredictable or changeable pay, limited access to leave and other types of entitlements. You would look at the length of the contract, whether it varied, how often it was renewed, and fundamentally in any kind of relationship it is the capacity of someone to negotiate. If the person is not in an empowered position to negotiate then that affects their capacity to influence the type of contract they are entering into. We are suggesting in our paper it is that kind of an approach that should be taken to identify or critique the nature of a particular contract, particular arrangement.

THE CHAIR: I understand that that is the legal approach to how you want to approach insecure work but that almost runs counter to what you were talking about in your introduction when you said you were looking for a better definition of insecure work, a more easily agreed upon—

Dr Boersig: I think we can clarify it by talking about the kinds of things that I have just espoused. Instead of us saying, "This kind of arrangement is inappropriate," I

think we need to look at the criteria upon which we make a determination. That is what I mean about clarification.

MRS KIKKERT: How many clients have come to Legal Aid who have culturally and linguistically diverse backgrounds?

Dr Boersig: About two years ago we created a cultural liaison unit and we employed a couple of people who are from a Muslim background. We have started expanding. Since that time we have had an exponential increase in a whole range of communities, non-English speaking, who were not accessing Legal Aid. I can send you a report that outlines this. We have gone from a relatively small, identifiable number to some 450 people who would not have otherwise been receiving our services. That is across the range. That is in particular around family law and domestic violence. Yes, we have seen a tremendous increase. I do not have the actual numbers but it is somewhere in the order of 450 people, which I do not think we would have seen otherwise because they would not come in our door.

MRS KIKKERT: What is the report called?

Dr Boersig: It is really a report that is to me and my board which outlines the work of that unit. I will send it to you.

THE CHAIR: I guess we will end the party there.

Dr Boersig: Thank you for the opportunity. I always love talking about Legal Aid. I think it is fantastic. I relish these opportunities.

THE CHAIR: Thank you for coming in.

Hearing suspended from 2.45 to 3.15 pm.

CLOHESY, DR LACHLAN, Division Organiser, ACT Division, National Tertiary Education Union

THE CHAIR: Witnesses are asked to familiarise themselves with the privilege statement in front of them, the pink card. Please confirm for the record that you have read it and that you understand the privilege implications of that statement.

Dr Clohesy: Yes, I have read and understood that privilege statement.

THE CHAIR: Would you like to make a short opening statement?

Dr Clohesy: Yes. Thanks for the opportunity to appear before the standing committee. The National Tertiary Education Union represents members in an industry which, according to Innovate Canberra, adds $879 million to the ACT economy per year and is largely responsible for the ACT's 8.5 per cent export growth, mainly through international students. You have already received the submission from the NTEU as it relates to secure work in the higher education sector in the ACT, and I would like to add to that some of the broader national picture.

While the use of fixed-term contracts and the increasing casualisation of university staff are problems in the ACT, they are also part of a broader trend nationally. Analysis by the NTEU policy and research unit—I will table that—has identified a trend over the last 15 years that has resulted in: four out of five teaching only staff being employed on casual contracts; four out of five research only staff being employed on fixed-term contracts; less than one per cent of new university jobs since 2005 being ongoing or tenured teaching and research positions; at least half of university teaching being done by casually employed academics; only two out of 10 newly appointed staff being employed on a permanent basis, or three out of 10 using an FTE basis; 64 per cent of the total number of staff in universities being employed insecurely; and constant restructures and redundancies leaving more in ongoing fear about the security of their jobs.

From our point of view that data is clear: the prevalence of insecure work has been increasing for a couple of decades now. What it does not show is the impact of this on the people affected by it. Fixed-term staff, for example, find it difficult to gain finance for loans to set up their life with any sort of permanency or even to plan having a family. For casually employed staff the situation is even worse. Casual academics, for instance, do not know how much teaching they will have from one semester to the next. They can be let go with one hour's notice. Casually employed teaching academics often endure three months or so of unemployment over summer during a non-teaching period as well another month or so midyear. An NTEU survey commissioned in 2015 found that the average casual academic made $30,000 annually, which is below the Australian full-time minimum wage.

To give you some examples of experience in dealing with casual academics across a couple of jurisdictions, I spoke to a casual academic whose partner is also a casual academic and they were worried they would have to take back their children's Christmas presents as the university had failed to process their time sheets in time. These academics were employed teaching online over summer and this error was no fault of their own. Needless to say, a promise that it would be sorted out in the

following fortnight's pay provided no comfort. I have worked with a casual academic who, after 10 years teaching year round at the one university, had her first child. Despite working for one employer for 10 years, this person received no parental leave of any kind.

Recently the NTEU uncovered that casually employed academics at ANU's Fenner school were underpaid a figure which may end up in the hundreds of thousands of dollars. Audits are still ongoing. What is not known is whether this particular practice spreads beyond the Fenner school to the wider college of science or the university more broadly. This has likely been going on since mid-2016 and was only uncovered this September. It provides a stark example of how difficult it can be for casually employed staff to both know about their rights and then actively enforce their rights.

It is also the case that casually employed staff are unwilling to pursue issues such as the ones I have outlined above. Given the precarious nature of their work, they know that speaking up to enforce their rights may jeopardise future casual contracts or ongoing work. The result is that exploitation is not challenged, unpaid work becomes the norm and the cheaper casual workforce becomes increasingly attractive to employers.

I am aware that the submission we provided highlighted other issues; gender equity, for example, is a significant factor which contributes to the gender pay gap. I am also aware that the recommendations we provide overlap in jurisdictions; our institutions also overlap. In the ACT the ANU is established by federal statute while the University of Canberra is by ACT statute. Other universities present here include the Australian Catholic University and the University of New South Wales that are set up in other jurisdictions entirely; nevertheless, they employ people here.

You are in a much better place than I am to know how the different jurisdictions will interact with each other and how different levels of government can work together to achieve any of the recommendations we have outlined. We also note that obviously members of the committee are in political parties which are represented federally and in the jurisdictions that have employees here.

THE CHAIR: One of the things you mentioned was the period of unemployment for casual academics over summer. You probably need to generalise the answer to the question, but what do these academics do over the summer?

Dr Clohesy: It depends. Some of them pick up other work. They might be pizza delivery drivers; they might be Uber drivers. Many of them are on Centrelink; it is not uncommon. We have members who go to Centrelink and then run into their students because they are getting welfare over summer. Their students are asking, "What are you doing here?" and for an academic that can be a very difficult question to answer. They have to explain the entire nature of casual work in the sector to answer something like that. It might be other bit piece work; it might be living off credit cards; it might be relying on money from family; it might be Centrelink.

THE CHAIR: One of the things we have heard from previous witnesses is that they find it very hard to juggle multiple casual jobs because of rostering requirements. This sounds like an entirely different problem—because they have that completely open

period they have to find another job for that period.

Dr Clohesy: Yes. There is summer school work at universities but the summer school offerings are a small fraction of what is offered in the other semesters, so the teaching work is not there. They have to find work usually in an entirely different industry. But the problem you have highlighted is also a problem in this area. People may be teaching, for example, at both ANU and UC within the same week.

THE CHAIR: So how does scheduling work? Say you are a casual academic and you are trying to manage the scheduling between one campus and the other. Are universities accommodating of that or do they say, "Too bad; tough luck. We need someone for this class at this time."

Dr Clohesy: A bit of both. Normally the timetable for a semester is set at the start of the semester. Where you pick up casual work, that timetable is set for 12 weeks of the semester. If you know you have teaching at one you can then fit your other one around that, depending on when they are worked out. Different unit coordinators or course coordinators give you contracts at different times. Late contracts can also be an issue. But generally there is enough flexibility so that you can work that out.

Part of the problem that comes up is where you have been promised work at one and turn down work somewhere else in the expectation of that work that then does not materialise or it materialises for a couple of weeks and then the university says the class size is too small and the class is cancelled for the rest of the semester. The opportunity cost is big.

THE CHAIR: In that situation where they cancel class, there is no redress? You are just out of money because you are lacking hours for the next 12 weeks?

Dr Clohesy: That is correct.

THE CHAIR: I want to go to the broader context of how individuals respond to this situation. Do you find that people try the academic way of life and they see what that career path is like and drop out of it?

Dr Clohesy: Absolutely, yes. Some people go to ongoing jobs. But, as I said, few ongoing jobs are offered in this sector and most of them are casual. But often they need independent means; they need wealthy parents or arrangements where they can live with someone else or a have wealthy partner to make this sort of career work. Examples like the one I mentioned—the two members who are both casual academics—those people struggle. They are at one university in Victoria which is one of two universities in Australia where they can actually convert to some form of ongoing work. Conversion is not a thing at all really.

These people get in this role. They are teaching and often doing research for free because it looks good on their CV and they might get an ongoing job one day. But they get in to this and then get trapped in a cycle where they are not going up because they are teaching so much to live or they go to a different industry and leave academia altogether.

MR WALL: Is the practise of casualisation in the tertiary sector a trend that is being

seen across the country or is it happening particularly at institutions in the ACT? What is your account? Your submission shows that there has been a dramatic decline in reporting from University of Canberra on the number of FTE casual employees they carry.

Dr Clohesy: Yes, with the University of Canberra example you have mentioned, I am almost entirely convinced that that is false. I think they have missed a zero or something there. But there is a year space before that is reconciled with actual figures. I think in a year it will show that that is roughly what it was the same year and the year before. With casualisation we really we need to look at the sort of 15 to 20-year picture. So my answer is, yes. It is a national trend.

Even beyond that, you see this sort of thing in America with conditions for the casuals. They are called adjunct academics. You see it in Britain. So it is a trend in developed countries broadly speaking. It is certainly a trend in Australia over the past couple of decades. The ACT has its own. Every university has unique characteristics.

ANU, for example, is not as bad as UC. They have a lot more focus on research and those sorts of things. That might explain it. While there are slight distinctions between institutions, I would be looking at differences between institutions rather than jurisdictions. Nationally, though, the trends are pretty much the same.

MR WALL: What differences are you seeing between an academic employed on a full-time or part-time basis as against someone employed on a casual-contract basis in terms of actual take-home pay on a fortnightly basis?

Dr Clohesy: Basically, when we have fixed-term staff—is that what you mean?

MR WALL: Yes.

Dr Clohesy: A full-time, fixed-term staff member has the same sort of salary as an ongoing full-time staff member. The classifications are worked that way. If you are a level B academic, you would be getting at ANU roughly $93,000. That is the same whether you are fixed term or whether you are ongoing. So the salary difference is nothing. The difference is really the career security, sort of job security going forward, the ability to plan for the future, those sorts of things. We have had some issues that are likely to be addressed through this bargaining round where fixed-term staff for 12 months or less have not got the same superannuation as ongoing staff, but we are looking to address that this bargaining round.

MR WALL: You raised the ability for individuals to plan for their career progression and their futures. What is the balance then between an employee being able to plan for their future and the institutions that are employing them being also able to plan for the ever-changing landscape that is tertiary education?

Dr Clohesy: Yes, absolutely. There are some things that you are always going to need at universities. When you are looking at levels of casualisation, there are some people, for example, who are teaching in one course for 10 years. That is not flexible. If they have been teaching it for 10 years, the work is clearly there because they are doing it. When you have situations like that, what we would like to see is those people

converted to some form of more secure work. In this context, fixed term is more secure than casual work. Casual is sort of the lower end of the scale. Often they are converted into some form of fixed-term work, which is far better. But, yes, the ongoing work is sort of the Holy Grail of it.

Yes, there is a balance, clearly. I think that balance has shifted too far in favour of the universities. It does not respect the fact that we have a majority of teaching in Australia done by casually employed academics. When we get down to it, teaching and research are the core business of universities. If teaching is one of the key roles of the university and that is being done by casual employees, then there is clearly a problem, I think.

MR STEEL: In relation to the casuals being employed by universities, there would be a range of different people employed. I am assuming they are just tutors who might be coming in for a couple of hours a week, right through to full-time lecturers.

Dr Clohesy: Often it depends on the institution again. Certainly we have had members who are engaged casually to do things like supervision of honours theses which previously was something done by full-time ongoing academics. There is that sort of creep towards the roles that are being done. Unit coordination typically has not been something casuals have done but increasingly more casuals are finding themselves in situations where they are coordinating an entire subject. We have a range of them.

Predominantly it is tutorial work. I have heard of people having 20 face-to-face hours a week, which is almost two FTE. You have those sorts of roles. In that situation the casual does not turn them down because they do not want to give up that work because they do not know what they are going to get next semester. If they say no they will not get asked again. We have a range. It is predominantly the tutorial work but it does include some elements of supervision, lectures, unit coordination, those sorts of things.

MR STEEL: We heard earlier from Master Builders about the casual conversion in all modern awards. Is that something that has been in the tertiary education award?

Dr Clohesy: No, basically some agreements have the ability to apply for conversion which is, in our sector, effectively meaningless. The university just says no and that is the end of it. I think it is University of Technology in Sydney and certainly Swinburne University of Technology in Victoria that have conversion clauses in their agreements rather than in the award. Still, Swinburne, even though agreeing to that, resisted that through Fair Work and those sorts of things. Universities are hesitant to convert people for a range of reasons and those reasons are not necessarily financial.

A lot of it is tied up with university research rankings and who counts. Casual staff do not count but if they are employed in a more secure form of work they do count in terms of research outputs. It is not purely an economic decision for universities. Certainly, casual conversion is something that NTEU has been pushing for in agreements and something that NTEU would certainly support.

MR STEEL: But you are saying that at the moment when people are applying for

casual conversion they are being knocked back anyway even where those conversion clauses exist in agreements.

Dr Clohesy: What we are saying is that we are not really taking cases forward with those because there is no enforceability around the right. There is a right to apply, which is meaningless. There are no reasonable grounds sort of stuff for universities to knock it back. It is a pointless exercise really.

MR STEEL: You cannot take it to Fair Work Commission or is it just difficult?

Dr Clohesy: No. Right to apply—I mean, they will let them apply, but it just does not go anywhere. What is needed are enforceable things. If there were set criteria: if you have been working for so long in a certain role and that role is regular and systematic and those sorts of things, then you have a right to be converted rather than apply for conversion. That is like those examples I mentioned where someone has been teaching for 10 years in the same subject, similar hours for all of those 10 years. The work is clearly there. They are the situations in which we would like to see some form of conversion.

THE CHAIR: Your submission makes reference to present adverse action, not being re-employed for speaking out on things. What kind of things do your members want to speak out on but they are scared to speak out on because they are scared they are not going to have a job?

Dr Clohesy: You might have noticed the example I mentioned from the Fenner School at ANU. Originally it was six members. There are a lot more who are hesitant to sort of be part of that because they did not want to be speaking out against the school. Even those members, the academic casuals, who did sort of take a stand on it—you would have noticed if you saw that in the *Canberra Times*—were quoted anonymously. They certainly do not want to be publicly identified with it. So it might be that.

Another issue is unpaid work and that involves all sorts of things. It might be policy familiarisation. It might be research that contributes to the university research metrics and those sorts of things. Yes, I would say in general that it is unpaid work. It is bullying, which is another issue. Most of the issues that come up relate to some form of stress, anxiety, bullying or unpaid work.

MR WALL: I want to follow up on the statement you made before that casual academic staff do not count towards the university rankings. Can you expand on that a little?

Dr Clohesy: Yes. What happens is that often universities have a situation where they have staff and those staff are counted for research purposes. ANU, for example, does not want teaching-only staff. A lot of the positions we are after for conversion are teaching-only positions because we are looking to make more secure the work that they are doing. They want staff who are producing research.

Entirely separately to that, where casual staff are doing research, and that is unpaid because they are trying to progress their career and put it on the CV, universities are

encouraging those staff to sort of add it to a department's output. They are caught in this catch 22 where they do not want to count them in case they do not do research but if they do research there is a mechanism for them to add it into their department research rankings anyway. It benefits the employer in both instances.

MR WALL: What impact, though, would the counting of that casual work more likely have in their rankings? Are we talking about a very marginal shift in where their ranking may be or is it a—

Dr Clohesy: I would have to look more into it. My suspicion is that it is not a huge shift but we have a highly competitive market particularly for the international student. Those marginal shifts are things that universities still take very seriously. Again, that is more of an opinion.

MR STEEL: I have a question in relation to the overrepresentation of women working in casual employment in the tertiary education sector. Why do you think that is the case in particular in your sector?

Dr Clohesy: Yes, I think there are historical reasons why women are overrepresented in all forms of insecure work. I do not think that is necessarily limited to higher education, but it is certainly also the case in higher education. A lot of it relates to career breaks, where women have career breaks to have children, for example; where women have primary carer responsibilities. Women are still certainly overrepresented in looking after children and those sorts of things. They are all things that take away from the career. I think that while we do have it in tertiary education, it is related to the reasons that women in most industries are overrepresented in insecure work.

If we have what is now seen as the old-fashioned sort of family set-up where the man is doing the work and the woman is looking after the kids, that certainly frees up that man to pursue a lot more research outputs, a lot more career progression, which is great and fantastic. However, many women do not have those opportunities.

MR STEEL: You are suggesting that greater maternity leave support might be one of the answers to that?

Dr Clohesy: Yes, and certainly domestic violence leave support as part of that. I heard a speaker on this issue. Beforehand I thought, yes, I would support that; great idea. Then I hear someone who has been in those situations speak on it. I think this is a critically important idea when you take into account hospitals, lawyers, police, the house, finding somewhere else to live. Certainly, maternity leave as well.

MR STEEL: If you are employed on a casual basis are there currently difficulties in accessing maternity leave? Is that the position in the tertiary education sector?

Dr Clohesy: Yes, there is often no right at all to maternity leave.

THE CHAIR: Thank you for coming in.

Dr Clohesy: Thanks very much for having me.

EASTERBROOK, DR ROBERT, private capacity

THE CHAIR: Witnesses are asked to familiarise themselves with the privilege statement—the pink card—in front of you. Please confirm for the record that you have read the privilege card presented before you and sent to you by the secretariat beforehand and that you understand the privilege implications of the statement?

Dr Easterbrook: I do and I have.

THE CHAIR: Would you like to make a short opening statement?

Dr Easterbrook: Only to say thanks for the opportunity to say something.

THE CHAIR: Straight to questions?

Dr Easterbrook: Yes. Well, I would say that I agreed with everything Dr Clohesy, the union rep, said because I am a victim. I was very surprised because to everything he said I said, "Yes, that's right. That's true."

THE CHAIR: So where did you use to work where you had this problem?

Dr Easterbrook: I was doing my PhD candidature at the University of Canberra and I was offered casual roles halfway through my candidature, or even earlier than that. There was lots of talk that there would be lots of work in my field when I graduated, but then there was a change of government policy halfway through with Julia Gillard, I think, where she said every teacher at university has to have a PhD. So I thought, "Yes, I'm on track. No problem." After that the talk at the university became very negative and there was no hope after that. I was very surprised as I was trying to improve my chances or enhance my career by getting a PhD and I was doing the right thing, but it was not going to go anywhere. And that has been true since I graduated.

I did my candidature between 2009 and 2014. In 2011 I was in an interview for a position at the university. It was a face-to-face interview, and halfway through the interview I was told by the interviewers that I was their knight in shining armour, I was going to save their department and I would be the perfect person for the job. They offered me the position verbally. A week and a half later they took it back and I thought, "Is this the future?" And it was. That was my first experience of being rejected after being accepted.

THE CHAIR: So have you ever worked as an academic?

Dr Easterbrook: I worked as a tutor.

THE CHAIR: You were engaged as a casual employee?

Dr Easterbrook: Yes, I was.

THE CHAIR: For how long did you work as a tutor?

Dr Easterbrook: Two years all up; on and off over two years.

THE CHAIR: Explain to me what the scheduling process was like. What was it like to find out for the semester what classes you would be teaching? When did you find out? Was it a week before, was it two weeks before?

Dr Easterbrook: A day before sometimes. It was a bit like the lucky number in the hat situation. Basically, I had no idea what the future was and I had to wait. Sometimes it was maybe a few days before that I was told to do some work.

THE CHAIR: And this is while you were completing your PhD?

Dr Easterbrook: Yes.

THE CHAIR: How many hours per week would you have liked to have worked in that time in any given semester and how many hours would you get?

Dr Easterbrook: As a tutor the hours were set; you did not have any say in that. And off the top of my head it was anywhere between five or 10 to 20, depending on how many classes I tutored. In the first year I did tutoring I did two classes in the one semester, so that was quite a lot of work there. But I think 20 was the minimum.

THE CHAIR: How were you budgeting when you did not know if you were going to be doing five hours per week or ten hours per week next semester?

Dr Easterbrook: Very roughly, basically. It was very difficult to set a budget in concrete.

THE CHAIR: I am not an expert on working in academia. If you called in sick as a casual tutor you did not get paid?

Dr Easterbrook: True. In fact, you were probably taken off a tutoring job and replaced by somebody else. There was a chance of that.

THE CHAIR: Did you have instances where you were sick, for example?

Dr Easterbrook: No, not at all. I am very healthy and I was eager to keep working and get my career back on track. I think one of these gentlemen was talking about ten years' minimum of teaching in the same topic area. I did over ten years, in fact, so it was very challenging.

THE CHAIR: You mentioned that you are very healthy so you were not very sick—

Dr Easterbrook: I was not sick at all.

THE CHAIR: Were you ever scared of being unable to make a class?

Dr Easterbrook: No, not at all, no. Not scared of making a class, no.

THE CHAIR: More in the sense that if you could not teach those classes you might

get looked over in the future.

Dr Easterbrook: Yes, because I was out of my field. I did not teach in my field ever again. At the time at UC I did not teach in my field at all; I was not allowed to. And I use that word in its strict sense: I was denied access to my field of work to teach in it.

THE CHAIR: I worry about opening up a can of worms, but why were you not allowed to teach in your field?

Dr Easterbrook: I do not know. I never got to the bottom of it.

MRS KIKKERT: Following up on your interview when they had offered you the job and then they changed their mind, did you ask them why?

Dr Easterbrook: Yes.

MRS KIKKERT: And what was their reason?

Dr Easterbrook: They said they wanted a pay rise. They broke up the position to spread among the existing employees so they could give themselves a pay rise. That was the exact wording.

THE CHAIR: I am surprised they were that honest with you.

Dr Easterbrook: Well, I was very surprised to hear that myself.

MRS KIKKERT: How many PhD students were also casual tutors during your time?

Dr Easterbrook: I would say a few.

MRS KIKKERT: Were they grateful that they had some casual work during their busy schedule of studying and writing their theses?

Dr Easterbrook: I would say so, yes. Most of them were international students.

MR WALL: Dr Easterbrook, for the record, what is your area of expertise?

Dr Easterbrook: Cognitive science. I teach applied linguistics. I did teach applied linguistics.

MR WALL: I was just curious as to what area of study caught your attention. Your submission has some pretty out there solutions to—

Dr Easterbrook: "Out there"; that is an interesting statement.

MR WALL: I probably come from the completely opposite perspective to where you sit on this one, but the great thing about a democracy is we can agree to disagree. You say that work is a right and not a whim of an employer, especially in a society that wants you to pay for everything. You would restructure wages and salaries because there should not be a huge difference in salaries. How do you justify that?

Dr Easterbrook: Easy. I study ethics and I truly believe that if you are going to have a capitalist economy where everyone works, then everyone has a right to a living wage at least. While wages or salaries keep going up for some and going down for others it is not going to work because the expectation is still on those people who do not get the salary to be productive members of society and make a contribution somewhere. But they are unable to, especially if someone is trained and educated to do a particular thing and they are barred from or denied getting into that area and have to look elsewhere to try to be a productive person in society. It is not easy at all. I am a true believer in the living wage. I think it would be better if people had basically the same salaries and agreed to work because they wanted to, not because they had to.

MR WALL: That begs the question as to how many people would choose to work.

Dr Easterbrook: Good question.

THE CHAIR: I would; I would turn up to work.

Dr Easterbrook: There you go.

MR STEEL: I put it to you that it is not as out there as it seems. There is currently discussion around universal basic income and the difficulties with the development of technology putting people out of work and those people still being able to make a productive contribution to society through volunteering and so forth. It is very topical, so thank you for your contribution in that regard. What are you up to these days?

Dr Easterbrook: These days?

MR STEEL: What other experiences of insecure work have you had in your career?

Dr Easterbrook: Before UC, none. That was very surprising and very difficult to deal with because when you are used to a salary and all of a sudden it all stops and you do not have a career anymore, what do you do? When the employment situation does not let you transfer—I think that was the word—transition to something else very easily or at all, then things do not look very pleasant from where you sit if you are experiencing that. I have not gained any teaching employment in Australia since I graduated from UC. I did some admin work for the Australian Electoral Commission last year and that was the only work I have had in three or four years now. Since there was a funding cut to research, my field is the bottom of the list where the competition is great. It is not as important as economics or business.

THE CHAIR: Dr Easterbrook, thank you for making time to have a chat with us.

WELLER, MR GREG, Executive Director, ACT and Southern New South Wales, Housing Industry Association
HUMPHREY, MR DAVID, Senior Executive Director, Business, Compliance and Contracting, Housing Industry Association
BURT, MS KRISTIE, Workplace Adviser, ACT and Southern New South Wales, Housing Industry Association

THE CHAIR: Thank you for coming along this afternoon. Witnesses are asked to familiarise themselves with the privilege statement in front of you, the pink card. Could you please confirm for the record that you have read the privilege card before you and sent to you by the secretary and that you understand the privilege implications of the statement?

Mr Weller: Yes, I have read and understand it.

Mr Humphrey: I have read the statement and understand and agree with it.

Ms Burt: Yes, I have read the statement before me.

THE CHAIR: Do you have an opening statement? Take it away.

Mr Weller: HIA would like to thank the committee for the opportunity to appear today. As a brief overview of our organisation, HIA is a national industry association for the residential construction industry. Our members range from small builders, independent contractors right through to large apartment builders, large developers of greenfield estates, manufacturers of building products and also professional services related to the industry such as architects, designers.

We offer a number of services to the industry on behalf of our members. We have an economics team in Canberra that undertake a forecasting and analysis role. We have a group apprenticeship scheme, which we will touch on further today, and a training business. We also provide advice to our members in areas such as planning, building, technical, IR and legal. Obviously on the other side we provide an advocacy service for our members, which comes under the reason for being here today.

The terms of reference for the inquiry cover a broad range of matters that relate to insecure work in the territory. Our additional comments this afternoon are confined primarily to two aspects of the terms of reference that most directly relate to the home building industry and the businesses that we represent. Those are group training organisations and also independent contracting arrangements.

HIA agrees that it is important to address concerns about whether or not workers are being unlawfully engaged or mistreated. However, we are somewhat surprised that group apprenticeship training has been included in the terms of reference for this inquiry. Group training has made and continues to make an overwhelmingly positive contribution to skills development and employment in the housing industry in the ACT. There is nothing about group training that is inherently insecure. Apprentices are employees of the GTO and have the same benefits and lawful entitlements as any indentured apprentice.

The concept of group training arose from a need expressed by small employers in the building and other like industries who were unable to commit to a fixed three or four-year training contract, given the short-term and project-based nature of the industry. GTOs are able to play an effective role in assisting trainees and apprentices from commencement right through to completion because they have in place a pastoral care and support mechanism that may not otherwise be in place for directly indentured apprentices.

From host employers' point of view, GTOs are able to take on the administrative burdens of the training contract and training system whilst also saving these businesses time and costs by undertaking the recruitment and selection functions. Without group training, fewer apprentices would be employed in the housing industry.

We also note that group training organisations such as HIA are also subject to additional requirements which set out strict standards. We note that the ACT government's written submission to the inquiry set out in detail the various regulatory arrangements in place for GTOs in the territory, including the role of Skills Canberra in oversight of apprenticeships and trainees. We do not consider that there is a systemic failure that requires additional regulation.

Turning to independent contracting, despite assertions to the contrary, the fact that there are more trade contractors than employees in residential construction does not mean that sham contracting is rife. A contractor performing work that might otherwise have been done by an employee is not sham contracting. Sham contracting is deliberately or recklessly misrepresenting an employment arrangement as something else. The Fair Work Act already provides strong penalties against such behaviour. It is HIA's view, supported by evidence, that these laws are operating effectively. Large penalties leveraged against businesses that engage in sham contracting practices demonstrate that the laws are working. We would be happy to answer any further questions that you may have.

THE CHAIR: Following on from where you talk about GTOs and apprentices, you mentioned that there have been isolated reports of injuries in group training organisations. The *Canberra Times*, the biggest paper in town, say that the stats say one in seven apprentices gets injured in Canberra. That seems to be contradictory. I think one in seven is a shockingly high number, and I do not think that is particularly isolated. Would you agree with that?

Mr Weller: I cannot comment on what occurs in other group training organisations or the level which is being classified here but I know from the experience in our organisation we typically employ between 40 and 50 apprentices at any one time. We do not see injury rates at that level or certainly not injury rates that cause a level of alarm.

Touching again on what I see as one of the great advantages of a GTO, unlike perhaps in a directly employed or a directly indentured model, we have a field officer, a staff member who looks after our apprentices. As I have seen in a recent case where an apprentice required some treatment, our field officer attends doctors appointments with them and assists them through these processes, which is assistance that they just

would not have if directly employed.

THE CHAIR: In the ACT we have seen instances of apprentices in a GTO being on construction sites without supervision. How do you think we prevent something like that happening again?

Mr Weller: I think it is very important, whether an apprentice is directly indentured or within a group training organisation, and essential that they are given the right supervision, both in developing their skills and also from a safety point of view. Again, if we are drawing a contrast here—and let us face it, that is what part of this argument is, contrasting GTOs versus directly indentured—in the case of a GTO, just as we interview apprentices before employing them, we interview hosts as well. A host asking for an apprentice is not an automatic go-ahead that they will get one. If there are issues that we consider they need to address or there are issues that the apprentice brings back to us—which, again, compare to a direct employment model where the apprentice may feel that they do not have someone they can bring concerns to—they certainly have someone else who is in that employment relationship with them but is not the person supervising them on a day-to-day basis.

THE CHAIR: I want to thank you for bringing a certain point up. You said that apprentices can bring back to HIA these concerns they may have about their hosts. Do you think they can? I think there is a power imbalance. They might be scared to speak out because they are scared about their ability to progress in the industry.

Mr Weller: I think they do, because we see that they do. One of the great advantages that we see of the GTO in terms of this relationship is that they are being hosted by an employer on the site, who directs them and trains them in their daily activities and their undertaking of work, whereas they are being employed by our organisation and it does give us the opportunity to be there to assist them with any issues that they may have, whether it is, as you mentioned, their physical wellbeing but also their mental wellbeing, where we are able to give them mentoring and also, where appropriate, refer them to other services. Certainly within that relationship we have seen that apprentices do feel that they can come to us.

I take your point that they may not feel that their boss, whom they are on the building site with, is approachable but in the case of a direct employment arrangement that is generally one of the only options they have, whereas in a GTO they can come to their employer, which in our case is the HIA.

MRS KIKKERT: That brings a lot of comfort, actually. Are the field officers specially trained to support people from different cultures?

Mr Weller: In terms of the training, we are fortunate, as I touched on before, in that we are a national organisation. Unlike other associations, both in our field and in others that have federated structures, we are a national organisation. We do have a central GTO national manager. As opposed to having one staff member here who receives training just within our office, we have a national network of people.

We do not, as a matter of course, give specific training that I am aware of in terms of cultural differences. That said, that is something that we do come across, that we are

quite cognisant of, particularly in our training business where we operate, along with other courses, white card and asbestos training. We do encounter a number of people from non-English speaking backgrounds, and we certainly are cognisant of the challenges around that and how to deal with people.

MR WALL: You mentioned in your submission a bit about sham contracting. It has been raised by a number of groups that have appeared before the committee but we have not really delved into the issue too greatly. Can you give, for the benefit of the committee, a brief description of what is considered or seen as sham contracting, how it applies to the construction industry and, from your experiences as one of the peak bodies, how widespread that practice might be within the ACT?

Mr Humphrey: I am happy to speak on that. I guess the starting point is: what is sham contracting? The Fair Work Act sets out provisions around sham arrangements which, without having the precise wording in front of me, is essentially a misrepresenting of an employment relationship as something else, being a contracting relationship.

Often there is some confusion about what exactly sham contracting is. Some people describe sham contracting in the building industry as builders lending their licence to another person who does not hold a licence and that is sham contracting.

Outside the building industry we find some people saying that if someone is engaged as a contractor and they are only providing labour they are a sham contractor. In regard to people who are only working for or are dependent on work from one particular source—and they might be engaged for years as an independent contractor but only working for one builder—some industrial parties will go and say that they are dependent contractors and that is sham contracting.

We come back to what the law is. It is when there is a deliberate attempt to mask what is a contract of employment as an independent contracting relationship and that is sham contracting, and that is something we certainly do not support and do oppose, because it illegitimates contracting for all the people who are running trade businesses and doing the right thing.

MR WALL: The second part of the question is: from your experience and knowledge of the local industry, how prevalent is the practice within the ACT?

Mr Humphrey: Certainly within the detached housing industry it is not rife or prevalent. We cannot speak in absolute terms because we do not know of every instance and what the practices of every builder are but we do know from the members who are coming to us for advice—and that could be the trade contracting business, or the builder who is engaging them—they are engaging them as independent contractors.

It is at times a very confusing kind of arrangement because of the fact that there are so many different laws and regulations relating to the relationship between builders and trade contractors or hirers and independent contractors and there are deeming laws relating to workers comp, long service leave. There is taxation also. It is very confusing, and we do need to give people guidance about what indicia need to be in

place to make sure that it is a contracting relationship and not an employment relationship.

MR STEEL: It has been put to us by Unions ACT that group training is an exploitative form of traineeship characterised by the use of apprentices as low-cost labour hire in the construction industry. How do you respond to that sort of statement in relation to the ACT's—

Mr Humphrey: I am familiar with the source of that particular allegation, which is fairly bare in its terms. In a basic sense, of course, because there is an on-hire arrangement, it is a form of labour hire but it certainly cannot be categorised in the same way as a labour hire business that works in the horticultural industries or those other industries where there has been shown, at least in some other jurisdictions, some malpractice.

We fill a gap in the market. We have got small builders and contractors who, for various reasons, just are not able to commit to a three or four-year indenture. We are not in the 19th century or the 18th century anymore. They are not willing to do so. We take on that risk for them. It is HIA's obligation to find work for the apprentice when there are downturns in the market. If we were not doing it, then there would simply be fewer apprentices employed in the industry. We do certainly refute the assertion that it is some kind of rip-off scheme for apprentices.

Mr Weller: Typically, to give the committee a feel for how our apprentice business operates, the vast majority of our apprentices are carpenters. We would like to see a few more in some of the harder to come by trades but they tend to be carpenters. Often they are looking towards a building licence down the track. And they typically tend, if the work is available and they are the right cultural fit in terms of the company—they get on well with the other people in the work—to be there for the full term.

Certainly, from our point of view, obviously the training outcome comes first—and we think that is very important—but even if we just looked at it from an economic point of view, in my business it is simply not economic to be moving apprentices around. My field officer has related it to me as being pretty much a similar amount of work to rotate someone as it is to employ them. She will go out on the site, she will do an induction, there will be paperwork with the new host employer. From our point of view, there is not an economic incentive to be moving apprentices between hosts. From our GTO, we would like to see them sticking with one host, both from the training outcome and also simply from the economics of the business.

MR STEEL: What are the job outcomes from your group training organisation? When people finish their training, where do they go on to? Do you track outcomes, whether they move into self-employment or the employ of another?

Mr Weller: Not being government we do not have a formal means of tracking. We certainly see a number eventually come back as members of our organisation—that will obviously be after a period of time in the industry—going through the process of doing their cert IV and getting a builders licence. We may see some back as builders running their own business. Others may go into the employ of a building company.

Some may go to work for subcontractors. There will be a general mix. Certainly a lot of them that go through, particularly the carpenters, often have a view towards becoming a builder one day.

MR STEEL: In relation to the revised national standards that have been implemented, you mention later in your submission that you would like to see greater compliance and enforcement of regulations. How are those standards enforced?

Mr Humphrey: There is the reality of the standards. Funding is dependent on compliance with the standards. If you do not get the funding, it is uneconomic to run a group training business because you are not able to subsidise the costs of the on-charge. So it is an indirect form of regulation. Not getting funding makes you not cost-competitive. There are provisions, of course, in the territory's training act relating to the obligations of employers with respect to the training contract. That, of course, applies to both GTOs and direct employers. But we say that those national training standards—they apply across the board and not just in the ACT—are probably the best form of regulation in the sense that they really hit the hip pocket of the business that does not comply.

THE CHAIR: There is a paragraph in your submission that I want to talk about:

> … the term 'insecure work' is neither a legal concept, nor and as suggested by the Discussion Paper, is it 'clearly defined'. Rather it is a pejorative label that creates a negative view of work arrangements that do not fit the ideal of the directly, permanently employed full time worker.

What are the benefits of a casual employment situation for a worker?

Mr Weller: From the perspective of our industry, casual employment is not a feature we typically see in our industry. Do you mean more in terms of arrangements such as independent contracting?

THE CHAIR: Are you talking about your group training organisation in which you do not see it, because I understand your employment situation there. But we are talking about the construction industry on the whole here. If someone were a casual employee, what is the benefit of that employment status as opposed to being a full-time employee? I am assuming that there is some benefit to the workers being casual employees?

Mr Weller: From a detached home building perspective, we typically would not see a great deal of casual employment, if at all. It is not a form of employment we typically see. Perhaps in terms of the genuine labour hire type-arrangements on larger building sites—

THE CHAIR: I will change the question. What are the benefits to an individual working as an independent contractor?

Mr Humphrey: The benefit to an independent contractor is that they are running their own business. They have the flexibility of taking or not taking projects. One of the advantages is that the better, more efficient businesses are rewarded with more work

and the ability to derive profit from the industry and then grow their businesses. As Greg has mentioned, many of the trade contractors start as carpenters and eventually move on and become builders in their own right after years of experience in the industry.

There are obvious advantages under the tax laws to do with running your own business. You get to claim expenses and reimbursements that you otherwise would not if you are a direct employee. Many of our members want to be their own masters; they do not want to be working for a boss, per se.

We are talking, of course, about detached housing, for the most part. We are not saying independent contracting fits the bill for every single industry. I know people from the IT sector will have a different view on what contractors are and what they might be doing. But for the most part that is the feedback we get as it relates to the detached housing industry.

THE CHAIR: What are the downsides of being an independent contractor?

Mr Humphrey: The downsides—and this normally happens between a builder and a subbie or a subcontractor working for another subcontractor—is when relationships go sour and all of a sudden you will find people saying, "Well, I was working for you for X number of years. Where's my X, Y, Z? Where's my superannuation? Where's my long service leave," and all those types of things. The downside is that you do not get the usual employment entitlements. That is a trade-off of the fact that if you are running your own business you have tax advantages. But if you are running your own self-employed business you do not have the security provided by the fair work system and the other employment laws.

THE CHAIR: Going back to my original question, are you saying no-one employed in cottage construction is casually employed?

Mr Humphrey: No, that is certainly not the case.

Mr Weller: We cannot say no-one, but typically the relationship will be with independent contractors. Compared to labour hire on commercial construction sites or in another industries like hospitality, casual employment as such is not one of the big features of the industry.

Mr Humphrey: It depends on the trades involved. You might find some casual labourers from time to time.

THE CHAIR: That is what I am getting at.

Mr Humphrey: If you are a casual labourer you get a 25 per cent mark-up on your rate of pay, so that is trading-off the full-time or permanent type of engagement. We run a service where we give members advice on wage rates and things like that, and the majority of requests for information we get from members tend to be around apprentice rates, carpenter rates and things like that. There are some casual employees; we cannot deny that and we do not wish to try to say there are not. Like every other industry, there are casual workers.

Mr Weller: To me there is a great advantage, whether it is a casual employee that through the awards system has certain loadings applied or in the case, as David said, of an independent contractor, how they are operating under that model of a business that has specifically been designed. I give the example that in the ACT between 2014 and 2015 the number of detached home starts went from 1,768 to 1,156. So we had a fall in a 12-month period of 612 detached homes being built. Likewise in 2017-18 our latest forecasts suggest we will go from 1,145 to 1,668, so that is an increase of 523.

When you have chosen to be in an industry in the case of detached homes that has an environment where you can see increases and decreases in the vicinity of 50 per cent in one year, having a model in terms of the structure, whether you are a company or a sole trader, that supports you as opposed to being directly employed and finding the only two options is being in a job or out of a job, to me that is one of the great advantages of having that model of an independent contractor.

THE CHAIR: I do not want to delve into sham contracting again as we had that discussion before. In the context of the labourers on site who are employees and are acknowledged by everyone as employees, what are the benefits to them of being a casual labourer? I am assuming there is a reason they want to be a casual labourer.

Mr Humphrey: You are skewing the question from the prism of there is only person who gets to make a choice about these things. There is a business that has needs; they might have only one particular project on at that point and they can only take on a casual worker. They cannot take on a full-time worker. Within the building award there are different mechanisms. There are things called daily hire workers but it also provides for casual engagement. There might be a cohort of people out there who would prefer not to be casuals, but the work will not be there for them to work in any other way but casual from time to time.

THE CHAIR: Do you think there is a trend for some people to be stuck working day to day or do you think everyone who wants a full-time job can get a full-time job?

Mr Humphrey: In terms of relating that to the home building industry, we probably cannot add anything more to that question. Of course there will be some people who would prefer to have a more permanent form of engagement. They could be working as a casual receptionist, for instance, for a building company and would prefer to be full time, but there just may not be that opportunity. But the award structure provides for casuals to convert or at least activate an entitlement to convert to a more permanent form of employment if they wish to exercise those rights. The building and construction award has had that provision for a number of years now, so there are rights and entitlements for people to convert if they wish to take advantage of it. We know not all awards have that type of provision.

THE CHAIR: Does the HIA think it is a good provision to be able to convert from casual employment to permanent employment? Is that a good thing for the industry?

Mr Humphrey: It is a vexed question. From the point of view of an employer we can have an argument over the wording of the clause in the award and who should provide the notice and if you do not provide the notice does the right persist. But we generally

think that if you are engaged as a casual, you are engaged as a casual. If you are not a legitimate casual there are already common law rules and provisions that will protect you. If you are systematically working each week nine till five and you are being told you are a casual, the law does not treat you as a casual in any event. But if you are genuinely casual and a business wants to take on genuine casuals, they should be allowed to continue to do that.

THE CHAIR: Thanks for coming in.

The committee adjourned at 4.23 pm.