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THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON WORKCHOICES LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY 7 DECEMBER 2006

Mr SIMON COCKER, SECRETARY UNIONS TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Sturges) - Thank you very much, Mr Cocker, for appearing. I thank you for making the time to provide the committee with a submission and also for taking the time today to come along and provide verbal testimony to the committee regarding the implications of the WorkChoice legislation in relation to Tasmanian working families and Tasmanian workers.

Mr Cocker, you will be given time to present your submission and we will then have some questions to seek clarification or maybe elaboration on matters that you have raised. I will hand over to you and you can start it.

Mr COCKER - Thank you, Chair.

I am here in my capacity as Secretary of Unions Tasmania, the peak body of the Tasmanian union movement, representing some 50 000 Tasmanian workers.

I do note with some disappointment that the committee does not have a representative from the Liberal Opposition. They have declined to face up to the responsibility of what their Federal colleagues have done and I think that is disappointing.

As this is the first time that we have appeared before this committee, I would like to use the opportunity to do three things. I would like to make some general comments to the committee and put some analysis of this legislation on the record. I recognise that the terms of reference of the committee are a little bit more practical. I think there is some important information that I would like to present which leads into the more practical aspects of what we will talk about. In particular we have three case studies I would like to talk about to the committee that highlight the extreme nature of this legislation and how workers are being exploited and badly treated under it.

The prime case study involves the company United Petroleum which we have been involved with and w have been working on the case for several months now. A number of aspects of the shortcomings of this legislation are highlighted through this case study. I anticipate that we will be joined during the submission by two workers from United Petroleum who would like to speak to the committee about their experiences.

CHAIR - Mr Cocker, if you could advise us when they arrive, we will have a brief suspension and they can take the oath and come to the table.

Mr COCKER - Thank you, Chair.

Regarding the case studies, one is a brief comment on the process of contracting and how the wages are being run down through that process. The second is a rural company and

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we are looking at how they have used this act to create a working environment that is totally incompatible with family life and, as mentioned, United Petroleum is essentially a ruthless company that has exploited workers to gain market share to boost its profits while treating its workers as disposable commodities.

It is our view and my submission that any employment relationship should be based on respect, cooperation and the basic principles that have existed for a hundred years in Australia of a fair day's work for a fair day's pay and a fair go all round.

It is my view that in a small community like Tasmania prosperity for all is only possible where cooperation and goodwill exists and appropriate mechanisms for establishing standards and resolving disputes can exist alongside it. In a wonderful place like Tasmania the balance between work and family life should be accepted as normal.

It is our view that a fair and decent system will always have the following features. There will be an independently established set of minimum conditions that exist as a safety net. There will be the capacity to bargain above the safety net and that bargain should include the enforceable right to collective bargaining where the workers so choose. There needs to be unfair dismissal protection so the workers have security of employment knowing that when they have agreed to an employment contract it will not be unfairly terminated and there needs to be an independent umpire to deal with disputes and to set and resolve minimum conditions.

Until March this year, these mechanisms all existed and those ambitions have been met but with the advent of the Howard industrial legislation these mechanisms have all been savagely attacked. Cooperation has been replaced by fear and the fair go all round has been replaced by greed. The fear and greed policies of the Federal Government have changed the Australian workplace and, as we will see this morning, it is starting to have its effect here in Tasmania.

The Federal Government called this legislation WorkChoices. I refuse to use this title, as it is a deceitful and misleading title. WorkChoices does nothing for the choices of workers, it simply removes them. It provides more power in the workplace to the employer.

The new legislation represents the greatest legislative attack on the rights of working people that we have ever seen in Australia. The laws threaten living standards and democratic rights. They aim to destroy collective bargaining and union organisation. They are fundamentally biased in favour of business.

The new industrial relations laws deliver workplace power to employers by promoting individual contracts and by discriminating against collective bargaining. They drastically weaken the comprehensive protection of wages and employment conditions through awards, replacing them with an inadequate set of basic minimum standards. They destroy the ability of the Australian Industrial Relations Commission and also the Tasmanian Industrial Commission to maintain the safety net of pay and conditions, to carry out the functions of an independent umpire and to ensure fair treatment for all parties. They criminalise the normal functioning of unions by unreasonably limiting the representation rights of union members and by imposing a series of prohibited activities, which have in the past been taken as normal. They allow employers to dismiss workers

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without regard to fair treatment or natural justice. They aim to eliminate the State industrial system which has provided very effective and efficient protection for workers in Tasmania for well over 100 years. The are in breach of fundamental international standards and the ILO conventions to which Australia is a party.

Finally, they fail to ensure free and fair collective bargaining by restricting the subject matter and the level at which agreements can be made. They impose barriers to protected industrial action that have the effect of restricting the right to strike and delivering employers legal means to avoid or walk away from commitments that they have made in their agreements.

The question has been asked on a number of occasions, is there an economic argument for these changes? The simple answer is no. A key group of Australian academics released their assessment of these conditions earlier in the year. The group represented a major cross-section of experts researching in the fields of labour law and economics and if I may quote from their statement, they said:

> 'As independent specialists in industrial relations and labour law market issues, it is our view that industrial relations policies should be informed and led by research and evidence. Accordingly, we have pooled our expertise to review the actual evidence, as opposed to claims, speculation and anecdote, about the impact of Australian workers and workplaces of the policies of the Howard Government.
>
> On all the evidence available from this wealth of research, there is simply no reason to believe that the Federal Government's proposed changes will do anything to enhance fairness at work for most employees or to address in a serious and systematic way the complex, economic and social problems facing Australia today.'

There is no economic answer, economic solution or economic reason for making these changes.

As we have seen over the past 100 years, a number of conservative leaders have tried to achieve these outcomes and they have all failed. You can go back to Stanley Bruce in 1929. You can go to John Hewson in 1993. You can go to a series of State conservative leaders who have all tried to make these kinds of changes and have been thrown out or rejected.

John Howard said on national television that these laws are an article of faith for him, that they are his ideological obsession.

I have prepared for the committee, with the assistance of my colleague, Kath Bowtell at the ACTU, an analysis of the legislation. With your permission, Chair, I would like to table that document rather than read through it.

CHAIR - Yes, that is fine. Are there any matters in that document that you might want to refer to in your submission today?

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Mr COCKER - Yes, I would like to draw the committee's attention to some of the matters in the document. We will start on page 2. It is quite clear that the relationship between the Federal and State systems has been fundamentally changed. The Commonwealth has set out to cover the field and to remove the rights of the States to legislate for industrial relations in all areas where it carries the constitutional authority to do so. The High Court, subsequent to the preparation of this document, has upheld that these changes are constitutional. They have not of course made any comment on whether they are fair, reasonable or decent, but they have said that they are constitutional. I think the decision has sweeping consequences for Federal/State relations, particularly in relation to industrial relations.

CHAIR - Perhaps, Mr Cocker, if my colleagues at the table have any questions as we are going through this very detailed submission it might be appropriate if we seek clarification or elaboration at the time. Is that okay with you?

Mr COCKER - Yes. I will take you to page 5, under the heading of 'The Safety Net'. Paragraph 13 sets out what is laughingly called the 'Australian Fair Pay and Conditions Standards'. Again, it is a classic use of language by the Howard Government - to describe this little bundle as 'fair' is a joke. These are the minimum standards which the legislation sets out for Australia: a wage classification structure, which is in the hands of the so-called Australian Fair Pay Commission; a 38-ordinary-hour week; four weeks annual leave; 10 days personal and carers leave; two days compassionate leave; and 52 weeks of unpaid parental leave.

CHAIR - Mr Cocker, could I pick up a couple of points there and seek your opinion, if I may? The committee has had a deliberative meeting and during the course of that meeting we received advice from Professor Andrew Stewart. Professor Stewart explained that in the case of the 38-ordinary-hour week those 38 hours can be averaged over a 12-month period. Is that your understanding?

Mr COCKER - Yes.

CHAIR - Are you aware where that might be applying in Tasmania at the moment?

Mr COCKER - There is an example that I will talk about where that is exactly what his happening - a company that is using that provision.

CHAIR - I won't take you off track from your submission. Another matter I would like your opinion on: we also understand that with the four weeks annual leave, which is seen as a minimum standard, two weeks are able to be cashed in.

Mr COCKER - That's correct.

CHAIR - Are you aware of any situation or situations in Tasmania where workers may be being coerced into cashing in those two weeks?

Mr COCKER - Not yet. What the act provides is that those two weeks can be cashed in at the request of an individual. Of course what we are finding in practice is that people are being offered AWAs and it's a take-it-or-leave-it proposition. If they refuse the AWA

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then they are refusing the job. I haven't yet seen an example of where the two weeks has been written into an AWA, but I am very sure it will happen.

As will become obvious as we go through this, the capacity to reduce the take-home pay of people is considerably enhanced by this system. In theory, people could have their two weeks' pay cashed out into their take-home pay but still end up with less than they used to have under their award - significantly less. The United Petroleum people will be able to talk about that as well.

To be honest, I think the 38-hour week is a joke. The act says that there will be 38 ordinary hours every week. It provides for additional reasonable hours but it provides absolutely no definition of what 'additional reasonable hours' are. It provides no penalty rates or any additional payment, other than the standard hourly rate. If, for example, someone decides that an hour a day is a reasonable additional hour then someone suddenly is on a 45-hour week. On the other hand, the act provides no minimum provision so somebody can be working 38 hours one week, 45 the next, three the next at the whim of the employer. As I will demonstrate later, those provisions are being written into AWAs and agreements, and becoming the norm.

Ms SINGH - If I can just draw on the terms of reference, would you say that is inconsistent with minimum standards?

Mr COCKER - It makes a mockery of the minimum standard because it's not as it appears. There is no such thing anymore as a standard working week under these provisions.

Ms SINGH - Also, who appoints the commissioner for the Australian Fair Pay Commission?

Mr COCKER - Hand-picked by the Prime Minister through the Minister for Workplace Relations. From memory, I think that the commissioners are appointed for a five-year term.

CHAIR - That's the advice we have received.

Mrs BUTLER - And 'reasonable hours' is only determined as reasonable to the employee.

Mr COCKER - There is no definition of what reasonable means. A rule of thumb that has operated in the past is that one block of additional hours a week is reasonable, but I think it is one of those things that will have to go through the courts. It is no longer a dispute that can be taken to the Australian Industrial Relations Commission. Some time sooner or later the courts will have to have a look at it, and in the meantime the employers will be able to decide what is reasonable.

Mr McKIM - Does the Fair Pay Commission have the capacity to play any part in determining what additional reasonable hours are?

Mr COCKER - I don't think so.

Mr McKIM - So it would have to go to the courts.

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CHAIR - Sorry for taking you away from the thread of your submission, but we are interested in the 38-hour week as it stands, and I would like to just provide you some information that we received from Professor Stewart and get your opinion on this. Professor Stewart said that if, for example, the workplace agreement said that the ordinary working hours would be 38 per week averaged over a month, then it would not matter if you had variations, as you have said, of anywhere from zero up to a much higher number, as long as the average period was compliant. But that can extend over a year, which means that in theory you could have someone under a workplace agreement doing zero hours a week for six months of the year, and 76 hours a week for the remaining six months, and that would be perfectly lawful. Is that the way Unions Tasmania also -

Mr COCKER - I would absolutely agree with that.

CHAIR - And are you able to perhaps indicate that that is starting to happen in Tasmania?

Mr COCKER - Yes. I would also note, in terms of this so-called minimum standard, the Government has already flagged that it will introduce provisions for what it calls cashing out of sick leave, as long as a minimum of 15 days of sick leave is retained in a person's entitlement. In my view - and we have to wait to see what the legislation is - I think that is code for saying there will be a new cap on sick leave and it will go the same way as the other cashing out provisions. There might be a nominal two cents or three cents an hour built into someone's rate, and then their sick leave will be run down.

Mrs BUTLER - Mr Cocker, on the question of sick leave being cashed out: it is so much per year, so are people doing that ahead or in retrospect?

Mr COCKER - That is an interesting question and, as I said on radio, I am prepared to bet a week's pay that it won't be retrospective. People who heard this announcement and got excited about their six months of sick leave will, I think, be disappointed. I can't imagine that the business would be interested in paying out six months worth of sick leave where it has built up. I think in reality, it will operate as a cap on sick leave rather than the other way around. But I could be wrong. We will have wait and see what the law says.

We have dealt, I think, already to some extent with hours of work. Again, in paragraph 28, it makes the same statement that we have been dealing with that in truth there is no guarantee at all. Under the standard, the employer will be able to require or request an employee to work a maximum of 38 hours a week, but the parties may agree in writing to average it or any other system. Given the power imbalance in the workplace it won't be a question of agreement, it will be a question of take it or leave it because without an unfair dismissal provision, people who don't accept what the employer thinks is reasonable can be dismissed without notice.

CHAIR - Again, Mr Cocker, just for the record, the terminology 'WorkChoice' indicates not only that there is provision for choice but the workplace agreement, we understood, was negotiable. In our investigations thus far we have found out that a number of workplace agreements are not negotiable. Is that what you are finding in Tasmania?

Mr COCKER - It is.

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CHAIR - I know you are probably repeating yourself but I would like to get these points clear.

Mr COCKER - We are probably almost going to end up with two classes of labour. We are going to end up with classes of labour that are organised and who are able to maintain a negotiated agreement and we are going to have those who can't, for various reasons. Whether they are not unionised or whether they are a small employer or whatever, those people who have no bargaining power will be in a take-it-or-leave-it situation. That is what we are seeing happening. That has been heavily impacted by the changes to the welfare system where workers can lose their welfare if they refuse to accept the job that is deemed suitable for them and by the failure to provide any protection in terms of unfair dismissal. The conditions that are put in front of you, you can take it or leave it and, while the act does talk about coercion in relation to AWAs, if you've got the power to enforce the act then you might be able to do it, but a lot of people don't. In that sense we build up this atmosphere of fear around the workplace, the fear of losing your job and not having your income, as has happened to the Union Petroleum workers this week. They have lost their jobs just before Christmas, with one week's notice. That level of fear is guaranteeing that the bargaining power of the workplace doesn't exist for those unorganised workers.

I would like to draw your attention to paragraph 40 in the document. It talks about an international comparison of this minimum standard and it quite clearly makes the point that it is not a generous set of minimum labour standards. It constitutes a significant reduction in the guaranteed minimum wages and conditions that apply to workers who aren't covered by workplace agreements. The reality of this act is that the mechanisms that have been built into it are a one-way street to get workers off agreements and awards. Under the act, once a worker has been taken off their workplace agreement or their award, they can't return to it. The most common mechanism for getting them away from the award or agreement is onto an AWA. Once that AWA expires, the only conditions that apply are the minimum standard or any protected award conditions to the extent that they aren't excluded, and I will come back to that.

CHAIR - Sorry for interjecting, but for clarification, I note here there is reference to public holidays and, again for the record, we would like your understanding of access to the opportunity for Tasmanian workers to have public holidays off. You may recollect some time ago there was a great deal of talk about ensuring that workers had Christmas Day off. Is that part of the minimum standard, that workers are able to avail themselves of public holidays?

Mr COCKER - It's not part of a minimum standard. An amendment to the legislation, one of the 300 that the Senate managed to force through in the two days it was allowed to look at this bill, lists a set of conditions which are deemed to be part of an agreement unless they are excluded. Clause 83 lists the conditions which are deemed to be included unless they are expressly excluded. As we will see when we have a look at a couple of these AWAs later, it is becoming standard practice to exclude these things from AWAs. Public holidays is top of that list. The AWA has a clause in it which says, 'The following conditions are excluded', and that can include public holidays, rest breaks, allowances - all those things on that list on pages 25 and 26. Then a public holiday is no different to any other day. Of course, you note that shift and overtime loadings and penalty rates and leave loadings are also in that list, which effectively means if that list excludes an AWA

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then one day is no different to any other. It is a 365 24/7 operation. There is no difference between a weekend or a public holiday or anything else. You get them if the boss gives them to you, you don't get any extra pay when you work them and that is happening, and I have two examples of that.

CHAIR - When those workers turn up perhaps you could give us some more specific information.

Mr COCKER - It has been a standard for as long as I can remember that public holidays were off but if you worked them normally it was done by choice because you had the opportunity to get double time or double time and a half working those holidays. But that is removed by these provisions. If people are directed to work on Christmas Day then unless it is deemed to be unreasonable hours then they have to comply with that direction or they are in breach of their agreement. So Christmas Day for a lot of workers is now employer optional and the claims of the good senator that he would save Christmas Day, as predicted turned him into a Christmas turkey.

I want to quickly bring your attention to page 16, the relationship between awards and agreements. In clause 50 is the quote which reads 'indeed once a workplace agreement under the new system is in place for a given group or group of employees, they can never again be entirely covered by an award while working for that employer'. In other words, the award system is taken away from those people. Once they have signed up to an agreement - it could be an AWA or it could even be an employer collective agreement - then the award no longer applies. To take that to the next step, when that agreement expires the employer simply has to seek permission to have it cancelled, and I think there is a 90-day notice period for that. If there is no new agreement reached in that period to replace it then they fall back to the five minimum standards.

CHAIR - Mr Cocker, my understanding is, again from our preliminary investigation, that awards provide mechanisms for salary increments, for salary increases. What provision to your knowledge is contained in workplace agreements in relation to wage increases? My understanding from our initial investigation is that these agreements live for between three and five years and can live longer. Are you aware of provisions in relation to wage increases - CPI indexation, for example?

Mr COCKER - From our experience to date it is less normal to have that built into an agreement. They normally stipulate a rate and that rate applies for the life of the agreement. In the Norvac agreement, for example, it sets out $14.33 an hour for the console operators and that is in the life of the agreement, it stays fixed; there is no provision for automatic adjustment or an increase.

CHAIR - How long does that agreement go for?

Mr COCKER - This was particular because of the strange circumstances. It is only a 12-month agreement because they used a greenfields provision which I'll talk about later because it is a very strange agreement.

Page 25 talks about the content of agreements and talks about the new restriction on parties making agreements. It goes on and I particularly wanted to highlight clause 87. Clause 87 lists the things that have been deemed to be prohibited from an agreement.

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You will note that there is a common theme that runs through all of these. They are things that a union might normally seek to negotiate into agreements, such as payroll deductions for union dues, training for union reps, union meetings or renegotiating on agreement. It is actually prohibited to put a clause into the agreement committing to renegotiate, right of entry, and so on. The prohibited content section in fact confers more power on the minister, in that the minister can, by regulation, prohibit anything that comes along that they don't like being put into the agreement. The net effect of all that of course is purely and simply to make life much harder for unions to operate. It takes away a number of the things that were taken for granted for many years in terms of union representation and union delegates and union shop stewards, and people being out of work at the workplace.

Notwithstanding that, an employer might be happy to reach agreement on all or any of those things, but they are not allowed to. It is actually an offence, with a quite significant penalty attached to it, to either ask for those things to be in the agreement, for the parties to agree for them be in an agreement, or to lodge a document with those things in it. There is a $6 600 fine for the individual, or $33 000 for a union or an employer if they have those things in their agreements.

Ms SINGH - So with all agreements that are currently alive, come their expiry date, a new agreement has to be negotiated or put on the table. Even if the employer wants to include them, none of those things can be in there.

Mr COCKER - That's right.

CHAIR - Just following on from my colleague, Ms Singh, taking the first matter at clause 87, if an employer was of a mind to say, 'I'll continue with payroll deductions of union dues', that employer would face a fine of $33 000. Is that correct, is that your understanding, is that what I've heard?

Mr COCKER - No, but they would face that fine if they put that into their agreement. They could continue to do it but they can't commit to it in writing.

Ms SINGH - So informally they could do it, but it couldn't be written into the agreement.

Mr COCKER - One of the approaches that a number of unions have taken is to have common law agreements with employees to cover this stuff. You may have noted that the minister has moved to restrict that by banning them in terms of their own code of practice, so any company which is contracting with the Federal Government may not have those common law agreements as part of their industrial relations, or they can't have Commonwealth contracts. All of that stuff.

It is very odd, I think, in terms of the rhetoric we have heard for the last 10 years about employers and employees being trusted to make their own agreements, and the freedom of choice that Howard professes to underpin this stuff, in fact, as Professor Andrew Stewart said, these provisions make a mockery of the rhetorical commitment to freedom of choice in bargaining. The concept that employers have to be protected from being forced into agreeing to these things by unions, seems to mean that employers themselves can't be trusted to make agreements or make rational decisions in these situations. But,

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nonetheless, there are a number of employers who still seek to have respect for their staff and respect for the wishes of their employees and will deal with and talk to unions.

Ms SINGH - With that - and I am looking at the last dot point of matters not pertaining to employment relationship - presumably that would have an impact on family-friendly provisions in an agreement?

Mr COCKER - It could. A lot of what we currently have would be deemed to be partly employment relationship, but there would be - and I can't think of an example off the top of my head - issues that would fall outside the definition of the employment relationship.

I won't dwell at length on bargaining and industrial action other than to note that while in theory the right to strike exists, it is now so bound up in process and red tape as to be a very lengthy process. To carry out lawful industrial action under this act, there are a number a steps and hurdles that have to be gone through. At the end of it there has to be a secret ballot of all staff conducted by an independent person.

Mr McKIM - Who pays for that?

Mr COCKER - I think, to date, the Commonwealth has paid for it, but I do not know how long that will last. The Australian Electoral Commission has conducted the ballots I am aware of and has not charged.

Mr McKIM - Okay.

Mr COCKER - That could very easily change. But any industrial action has to be taken within 30 days of a secret ballot. So it is a process of several weeks to achieve, particularly with industrial actions.

Mr McKIM - Just to be clear, a lawful strike would require a majority of the work force, say 50 per cent plus one?

Mr COCKER - A majority of those who vote.

Mr McKIM - So it is optional voting?

Mr COCKER - Yes, it is optional. We have had, I think, two examples so far where we have gone right through the process and have had lawful industrial action under this act. Again, it is token commitment to international standard and, practically, it makes it very hard.

As we have seen, the Government is quite ruthless in its pursuit of what it deems to be illegal industrial action, particularly in the building industry. We have seen this week, the Government's secret commission has been meeting and a number of workers have been directed to attend and face secret interrogation in front of that commission, following what was simply a one-hour stop-work meeting, about this time 12 months ago. Incidentally, those workers are directed to attend. If they do not, they face the possibility of massive fines and even, in some cases, jail terms. They are obliged to answer any question that is put to them, again, on the threat of $28 000 fines. They are not allowed to talk to anybody about what happens to them inside the building

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commission's hearings, even though, as I said, it was a one-hour stop-work meeting. The employer and the union shook hands on a deal not long afterwards and they have been back at work ever since. I think it was March this year that letters arrived at home to about 100 workers, threatening them with fines and jail terms. That process is 12 months old and still going.

CHAIR - This is under the umbrella of this legislation that you are talking about?

Mr COCKER - This is specifically under, what they call, the Building Industry Improvement Act which is specifically targeted at unions working in that industry.

CHAIR - What about representation before the commission you have just referred to? What access do Tasmanian workers have to take legal representation or union representation or, for that matter, a representative of their choice?

Mr COCKER - That is at the discretion of the commission, as to who may or may not be allowed into hearings. A union official will not be allowed in. In fact, the commission has, to date, even refused people having their chosen legal representation. It happened in Western Australia. A number of workers employed the same lawyer to assist them through the process. The lawyer went to first hearing and went along to the second one with an ex-worker and was refused entry. That was challenged in the Federal Court and the Federal Court decided that the act did provide the commission with the power to ban that lawyer from attending a second hearing, the theory behind that being that, if the lawyer gets to see and hear everything that is going on in the commission, they might be able to undermine the effect of the commission.

Think about that situation in Tasmanian terms, where 100 people received these letters. There are not 100 industrial lawyers in Tasmania and it created, potentially, a huge problem. I have not had a report yet on how the hearings have gone this week. But, at the end of the day, I am sure their intention is to impose fines on affected union. Even though there is an agreement reached, the matter is settled, they have gone back to work and it is 12 months ago, they are still being intimidated and harassed under those provisions.

CHAIR - But, again, coming back to our terms of reference - and we are specifically having a look at the impact of that these laws are having on Tasmanian workers and their families - you are saying that these workers who have been brought to account for action, do not have access to representation of their choice?

Mr COCKER - That is correct.

I wanted to note paragraph 127. The act removes the Australian Industrial Relations Commission's general powers to prevent and settle interstate industrial disputes by conciliation and arbitration. This has been a fundamental of industrial relations for 100 years, where we have had an independent umpire where we could go and have disputes heard and settled, normally by conciliation but where necessary by arbitration. That facility has quite simply been taken away. We have had the very effective, efficient Tasmanian commission doing the same job but they are now locked out. Wherever the employee involved is employed by a trading or financial corporation, they can't take their dispute to the Tasmanian commission either. So there is simply nowhere to go. That is,

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I think, particularly significant for people who have been unfairly dismissed, or believe they have been unfairly dismissed, because they simply don't have an avenue to have a hearing. We have seen a number of cases that range from kitchen hands to child-care centre managers who have gone to the Tasmanian commission to have their day in court only to have the employer representative jump up and say, 'These people work for a trading corporation, therefore there's no jurisdiction to hear the matter', and the commission has had to say, 'That's right'.

Mr McKIM - That's happened this year?

Mr COCKER - It has happened on three occasions that I am aware of, and probably a lot more.

Mr McKIM - So there is no capacity at all for the Fair Pay Commission to become involved in dispute resolution? Is that what you're saying?

Mr COCKER - No, none whatsoever.

CHAIR - You probably don't have specific figures, could you give an estimate of what sort of percentage of Tasmanians you think would be affected by not being able to go before the Tasmanian Industrial Relations Commission?

Mr COCKER - I think every Tasmanian worker is affected. They are affected because with the removal of unfair dismissal protection and the right to have their case heard they are significantly weakened in their position in the workplace, that the employer can treat them how they see fit and know that they won't be exposed and there is no accountability for it, unless of course they stray over into discriminatory behaviour on the series of matters that can be taken before the Human Rights Commission.

CHAIR - Or unlawful - we have heard about unlawful action that may be taken. Are you able to inform us about that?

Mr COCKER - Again, the Industrial Commission has provided a cheap, effective and prompt mechanism for dealing with those sorts of issues. An unlawful dismissal has to go to the Federal Court. It is a completely different process. It is a different thing for a worker to do and it is a very expensive process. The Commonwealth makes great play of the fact that there is some money available to assist workers, but I am not aware of any of that yet being used. The conditions in which it can be used are quite restrictive. The truth of it is that $4 000 will not go very far in running a court case.

CHAIR - In the High Court?

Mr COCKER - The Federal Court. So rather than having a cheap, effective and efficient mechanism to deal with an issue they are forced into the court system if they get over into unlawful, which is very different.

CHAIR - Can I get your opinion for the record? Say we have a situation where the person has worked as an office manager for a business for, let us say, 12 years, and there has been no complaint levelled against the worker in relation to work performance,

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effectiveness or efficiency but the owner of the business decides one day to summarily dismiss this worker. Where does this worker go?

Mr COCKER - If the employer has fewer than 100 employees, they have nowhere to go. The whole jurisdiction has simply been wiped. If it was more than 100, they would have an avenue but the employer simply needs to say, 'This dismissal is for operational reasons'. It is then beholden on the employee to prove otherwise. The definition of what constitutes 'operational reasons' has been very broad - it is big enough to drive a truck through in reality. So for under 100 employees it has gone completely and above 100 it is severely limited.

CHAIR - So there is no avenue at all to seek a redress of the decision to summarily dismiss?

Mr COCKER - There is an area of common law that deals with this stuff but I am not familiar with it and not competent to give you advice on it. It may be that they would have that avenue but again that is very expensive.

CHAIR - But prior to 27 March that worker would have been able to go either the Tasmanian or the Australian Industrial Commission to lodge an unfair dismissal claim, is that correct?

Mr COCKER - That is right.

CHAIR - That has now been taken away?

Mr COCKER - That is right. It has gone.

In conclusion on this part, WorkChoices legislation is lengthy and complex. It was written by lawyers, it was rushed through the Federal Parliament, the Government shut down debate both in the upper House and the lower House before it had been fully examined.

Mr McKIM - They guillotined debate in both Houses?

Mr COCKER - Yes. Even in two days of hearings in the Senate, I think 300 amendments got through but there are many, many areas that are popping up where the law is inadequate and we are going to see constant amendments to fix up little problems. Mostly, I hasten to add, I suspect that at the request of the Business Council. For example, they suddenly found that the law provided that annual leave would be calculated including extra hours above 38 hours a week so they quickly amended the act to remove that. It also found that all employers were required to record the hours of their workers and they are very quickly moving to remove that provision as well because they have suddenly learnt that a lot of people work unpaid hours above their normal and employers don't want to record them. But there are any number of problems and issues that will emerge and unless this legislation is torn up and thrown out, many hours of court time are going to be needed to sort them out.

Can I will table that document, Chair?

Mr COCKER - Yes, we will accept that as being tabled. Thank you.

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Mr DAVID POLLEY and **Mr LEIGH JONES** WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

Mr COCKER - David Polley and Leigh Jones were employees of Norvac or United Petroleum. They would like to be part of our presentation this morning to talk about their experiences. Before we do that, there are a couple of other things that I want to do.

Very quickly, as I mentioned, there were three case studies that were involved. My colleagues at the Australian Workers Union have been dealing with the Hobart City Council, probably a fair and reasonable bunch of people and by and large a good employer but what they have learnt is that the WorkChoices legislation has been used in a way that has in fact driven down the wages of a group of workers. The particular workers involved drive the garbage collection trucks. That is a function that the Hobart City Council decided to contract out several years ago. That contract went to a company called Skilled Engineering who agreed, as part of that contract, to continue to pay under the same terms and conditions that they would have been employed under by the council - that is, municipal employees award.

The council recently put that contract up for tender and a new company put forward a tender which was cheaper than everyone else's and they were awarded the contract. They then advised all the truck workers that there was an AWA available to them. If they wanted to continue working in those jobs they had to sign up to the new AWA. They did that only to find that their hourly wage rate had been cut from between 40 cents and $1.40 an hour. The mechanism for doing that was the new employer simply switched to another award, which he can do under the WorkChoices legislation. He said, 'This award is now underpinning the agreement and we are going to cut your rates'. So by a very simple mechanism the hourly rate of those workers is cut, as I said, by between 40 cents and $1.40 an hour. Their take-home pay dropped anything up to $50 to $60 a week. That is something that the Hobart City Council could have avoided by putting conditions in its tender. It did not and by the time the union took this up with the Hobart City Council, it was considered too late. The contracts had been signed and a deal was done.

CHAIR - How long are these contracts for, Mr Cocker?

Mr COCKER - I cannot tell you that. It might be something that we can present more information to you on in the future.

CHAIR - We would welcome that, thank you.

Mr COCKER - My purpose in raising it was simply to show one of the mechanisms by which workers' wages have been cut in Tasmania by this system.

CHAIR - Yes.

Mr COCKER - The other one that has been brought to my attention and I think is valuable, particularly for the hours-of-work issue, is a contract that exists in two places in Tasmania, at a place called Huon Valley Mushrooms and a place called Spreyton Mushrooms. These companies are both owned by a company called Adelaide

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Mushrooms. While it would appear they operate as separate companies, they are part of the same structure and they have ended up with the same AWAs in each place. I am particularly bringing this to your attention to -

CHAIR - Is it worth tabling?

Mr COCKER - I am tabling a copy from one page of the AWA. I apologise for the quality but, as you can imagine, this was not given to us by the employer. It has come as a fax of a fax.

CHAIR - We will note, for the record, that you are tabling this document from the AWA for Huon Valley Mushroom and Spreyton Mushrooms?

Mr COCKER - Huon Valley Mushrooms is the employer. The hours of work clause in this one is the same as at Spreyton. It says:

> 'Your hours of work will depend upon our operational requirements and although your hours of work may vary from week to week, they should be predictable. There are no minimum hours guaranteed in this agreement. You will not be required or requested to work more than an average of 38 hours a week over a 12-month period and reasonable additional hours.'

As we have seen from the submission earlier, that is directly lifted out of the act. It is just a statement. It continues:

> 'You may, however, voluntarily apply to be available for extra hours or shifts, be they public holidays, weekends or outside ordinary time hours and be paid at the agreed all-up rate.'

In other words, 365 days of the year, 24/7, whatever hours they are working, there is one rate that applies and they may be required to do any of those.

> 'Unless you advise, in terms of clause 1(f), then you agree that you will volunteer to be available for extra shifts or extra hours, be they on public holidays, weekends, at the all-up rate.'

CHAIR - Are you aware of the hourly rate for this agreement, Mr Cocker?

Mr COCKER - Yes. It is an interesting question. I will come back to that in a moment, if I may?

CHAIR - Yes, certainly.

Mr COCKER - Clause 1(f) reads:

> 'If you feel that the additional hours are unreasonable, you must advise us in writing immediately upon notification of the additional hours to enable us to offer the hours or the shift to another employee.'

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There is a feeling amongst the employees who, as you know, are out in rural areas which are probably not the easiest places to find work, that they are at the beck and call of this company, that they will work when they are asked or they will not be offered shifts. That is the way the workers feel this is going to be applied.

In relation to the all-up rate, the agreement has a rather interesting clause in it. It says:

> 'You will be paid no less than the higher of the following: the Australian pay classification scale for your relevant classification of employment, plus a casual loading of 20 per cent, if applicable; the Federal minimum wage of $12.75 per hour' -

which has just recently gone over $13 -

> 'plus a casual loading of 20 per cent, if applicable or; an all up hourly rate or a piece rate, as specified on a separate document.'

This piece rate is quite interesting. The advice I have from this place is that they have worked out a piece rate, which is essentially done by dividing the hourly rate by 24 - 24 is deemed to be the kilos of mushrooms that they should be able to pick in an hour. My advice of course is that the rate of picking mushrooms depends quite a lot on the size of the mushrooms. When they have big ones it is reasonably easy to pick 24 kilos in an hour but when they are down to the small button ones it is virtually impossible to collect 24 kilos an hour. The workers are of the view that, notwithstanding what that says, they are going to be paid piece rates to pick mushrooms. Adelaide Mushrooms made a submission to the Australian Fair Pay Commission where they extolled the virtues of piece rates and expressed the view that they should have the right to use piece rates to the exclusion of anything else. The workers are expecting that they are going to be offered piece rates. Those who can pick at above 24 kilos an hour will do nicely, those who can't will be paid less than what would appear to be their minimum legal entitlements. So there is another issue there to be worked out.

I wanted to mention the 20 per cent casual loading because clause 2 of this agreement says that they are not entitled to be paid annual, parental, sick leave or compassionate leave. So the casual loading in fact removes all those leave conditions. I think it is safe to say that while the Australian Industrial Relations Commission was able to look at these things, it agreed that 20 per cent no longer is a sufficient loading to cover those leave conditions, and 25 per cent has become more normal. That is a clear example of how the hours of work provisions are being used. These people have a very limited capacity to plan their family life or indeed their life around their work because they are effectively on call at a day's notice, whether that be Christmas Day, Anzac Day, Easter or whatever. They will be paid one flat rate and they will work when they are asked.

CHAIR - And it would appear, Mr Cocker, for as long as they are asked.

Mr COCKER - That is exactly right.

CHAIR - The way I read the extract that you've provided from this agreement, once at work it wouldn't be unreasonable to assume that that worker would stay there as long as the boss required them to be at that place of work.

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Mr COCKER - That's right. They effectively have no control over their working hours. If they want to stay on the roster and employed, they will work when they are asked. I think, arguably, there is more in this that may interest the committee in future. We will certainly seek to continue to talk to these workers and find out how this thing works in practice.

CHAIR - We would be interested to get more information.

Mr COCKER - That then brings us on to United Petroleum. I think this as a case study demonstrates a number of the bad aspects of this legislation. We have David and Leigh with us who are going to talk about their personal experiences in a moment. They have been employees and have been through the mill of what can happen to a worker when they are disempowered in a workplace and have an employer that is willing to exploit them. I would say categorically, in my view, that United Petroleum over the last six months has been a company which has simply set out to exploit its work force to boost its profits and its petrol sales with a view to its own profits.

The Tasmanian company, Norvac, has existed for quite some time and has been a Mobil outlet. Sometime around May/June this year United Petroleum purchased Norvac. At the time of purchasing Norvac they cancelled, I think, about a dozen of the leases in the 30 or 40-odd stations that Norvac had under its banner. They used the Workplace Relations Act in a very strange way. United Petroleum maintained that the greenfields provisions of the Workplace Relations Act applied in this case. Traditionally greenfields provisions have existed to provide the opportunity to make employment agreements when there are no employees; in fact where there is no operation. It takes it name, as it says, from green fields. There is an empty paddock, there is a company that wants to start an operation. It needs to have an agreement to employ staff. In this particular case, it was a pre-existing business that was taken over, the employees were in place; many popped over for one day to the next doing exactly the same job. But somehow or other United Petroleum were able to call this a greenfield site. It was looked at by the Office of Workplace Services in the middle of the year, who gave it a tick; they are currently looking at it again.

I will table for the committee a letter which I wrote to the Office of Workplace Services on 27 September, raising a number of questions in relation to this. I will not read through them all, but I have asked the Office of Workplace Services to advise whether in fact this is a legitimate greenfields operation. They advised me early in the piece that the Department of Employment and Workplace Relations would provide an answer. A week later the Department of Employment and Workplace Relations wrote back and said, 'We won't be giving you an answer, the Office of Workplace Services will deal with this matter'.

So they have now been investigating this for two months and they have not yet been able to provide a simple answer as to whether or not the greenfields provisions apply in this case, and therefore whether the agreement that the people are under is legal. As you will hear, United Petroleum are now making redundant some of the workers they had employed under this, and we still haven't got an answer from the Office of Workplace Services as to whether it is lawful or not.

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United Petroleum came in, they cancelled leases, took over the operations and entered into a price-cutting war. They have driven down the wages of employees through their greenfields agreement, which I will table. I can tell you that compared with the employees, we are a little bit privileged this morning because a lot of employees have not actually seen this document, despite a number of them asking for it and being lawfully entitled to it. The company has not provided it to all employees.

CHAIR - So this is the greenfield Australian workplace agreement?

Mr COCKER - It is a greenfields agreement, it is not an Australian workplace agreement. It is actually a collective agreement, a greenfields agreement that covers all employees that work in their stations. As you have a quick look through it, you will see that there are a lot of similarities to an Australian workplace agreement in that it sets out the absolute minimum conditions that it has to, the so-called fair pay classification standard, and in clause 17, it excludes all those conditions that we looked at before - penalty rates, wages -

CHAIR - Mr Cocker, to put this very simplistically - I'm sorry, I'm trying to get my mind wrapped around this - this is an agreement negotiated for the employer by the employer.

Mr COCKER - Negotiated with itself, yes.

CHAIR - For the employer by the employer, that is right. Okay, thank you.

Mr COCKER - There's no staff or union or anyone else involved. They sat down with themselves.

CHAIR - I just want to get that very clear. Thank you, I think we've got that now.

Mr COCKER - It is hard to believe, but yes, that's it.

Ms SINGH - It's an oxymoron, the word 'agreement', isn't it?

Mr COCKER - It is, indeed. So is 'greenfields'. The whole thing is bizarre.

CHAIR - I just wanted to get that for the record that that was clearly the understanding that you have with the procedure.

Mr COCKER - We note that in clause 17, annual leave loading, public holidays, overtime and penalty rates are all excluded from the document, so that the workers have been put onto a flat rate which applies 24/7. By that mechanism, the company has been able to significantly reduce the take-home pay of workers. One case that I am familiar with was a reduction of $190 a week - nearly 20 per cent of the take-home pay disappeared overnight from one day to the next. Of course that is simply not sustainable for someone who is committed to a mortgage and a family, and all the rest of it.

CHAIR - I am sorry I am a bit slow on picking this up, too, Mr Cocker. You have just indicated to me - and I am reading here at clause 6, the adult wage rates - that in one situation the worker was $190 a week worse off, but if they don't have access to the agreement in their workplace, how do they know what their conditions of employment

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are? I am sorry. You are saying that we are privileged that we have access to a copy of this agreement. Are you telling me that, to the best of your knowledge, workers employed under this greenfield agreement don't necessarily have a copy of the agreement under which they are employed? Is that correct?

Mr COCKER - That is right. Would you guys like to comment?

Mr POLLEY - I am the former manager of United Petroleum and today that is the first time I have ever laid eyes on it. I asked for it two weeks ago and I was told I could get a copy. But first of all the person I spoke to laughed on the phone and said, 'Were you told to ask for it?' I said 'Yes'. That was two weeks ago but I still have not received a copy - I have not even seen it.

Mr JONES - We were told that we would be lent a copy to look at - not to keep.

Mr McKIM - Were you given such a copy?

Mr POLLEY - No, it happened in the last two weeks I was made redundant. I had been there for three and a half years and I was entitled to less than one week's pay because they are saying we haven't been employed under their contract. We have between two and seven days annual leave between agreements. What we'll get here is between two and seven days' pay.

CHAIR - So previous continuous employment has not been picked up and moved over into the new agreement?

Ms SINGH - There was no transmission of business.

Mr COCKER - Yes, that's the argument.

CHAIR - That was the word I was looking for; thank you, Ms Singh.

Mr COCKER - I have looked at this and in my view under any previous arrangement this quite clearly is a transmission of business. But because of this greenfields argument that somehow or other that means to say that there is not. Again, the Office of Workplace Services has been charged with giving us an opinion on that and we are still waiting for it 10 weeks after we asked for it.

CHAIR - Mr Cocker, again, to the best of your knowledge under the workplace legislation the WorkChoices legislation, is it a legal requirement to provide employees with copies of AWAs and greenfield agreements?

Mr COCKER - Yes, it is. The workers should, on request, have been allowed to have a copy of it. The reason it got out was that somebody knew somebody who worked in the head office who was sacked and that person gave them a copy.

CHAIR - Is this matter being pursued in any other forum in relation to the workers not having access to a copy of this agreement?

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Mr COCKER - The complaint has been lodged with the Office of Workplace Services which is the only forum that is open to us.

Mr McKIM - You are talking about that letter you wrote to them?

Mr COCKER - Yes.

Mr McKIM - And 10 weeks later they haven't given you any response at all to the questions you asked them?

Mr COCKER - I have rung them twice. Their view is that they feel the need to interview every single staff person from day zero to day one - about 60 or 70 of those. I do not think that is necessary to establish the basic premise here as to whether there is transmission of business or not. They have had a lack of cooperation from Norvac in getting to those employees; they have had to direct them to give them names and addresses and so on. They are going the long way home.

Mr McKIM - I have had a quick flick through your letter and there are a number of questions that could be answered without the need to talk to any employee. They are questions that are quite generic in nature. Have they given you an indication of when you might expect a response?

Mr COCKER - They made one comment only and that is that under their instructions they have 90 days to conclude their investigations.

Mr McKIM - And respond to your questions?

Mr COCKER - Well, hopefully, yes. I'm not sure that they are under any obligation to respond to me at all.

Ms SINGH - Is it unlawful for an employer to withhold an agreement from its employees?

Mr COCKER - I believe so.

CHAIR - Mr Cocker, I hear what you are saying and I deliberately asked the question so that you could reaffirm that the Office of Workplace Services is the only area you can go to on this matter. Again, coming back to the terms of reference of this committee, prior to 27 March this year if a similar situation occurred in relation to an employee not having access to a copy of their agreement which specified the terms and conditions of their employment what access would you have had prior to 27 March to pursue this?

Mr COCKER - These people were employed under an award of the Tasmanian Industrial Commission. That is a public document, there is no capacity to hide it or keep it secret. We could have notified a dispute in the Tasmanian Industrial Commission and had it resolved within a few days. The Commission is efficient and very effective. We would have had an order from the Commission of all the appropriate steps to be taken and that would probably have been done in less than a week.

CHAIR - So that is before and after?

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Mr COCKER - That's right, and afterwards it is not available. If these guys want to, they can take Norvac to the Federal Court and spend thousands and thousands of dollars to recover a few hundred, or whatever the shortfall is in this. But obviously that is not economic sense.

I will ask David to describe what it has been like for the last five months working for these people.

Mr POLLEY - We have put up with our pay being a week late after they were meant to be in the bank. Some people have not been paid at all for the fortnight and told that their wage was too small and that they should wait until the next fortnight to receive it. They are people who have worked between five and 10 hours a fortnight. Nicholas Hill is a young boy who worked there and had that happen to him.

CHAIR - Which site were you working at?

Mr POLLEY - United Tasman at Eastlands.

When I rang up Tony Smith, my superior, and asked him why Nick hadn't been paid, I was told that it wasn't my problem. We had one girl quit who didn't get paid six days after her pay day. There is not a thing we can do about it. I have put in pay sheets for 102, 105 hours a fortnight and been paid for 90 hours - no overtime, no weekends. I have had a night-shift guy not work if I had to work a day shift, night shift and the next day shift. I was just told, 'Bad luck. It's my service station, I'm the manager and I deal with it'.

CHAIR - Mr Polley, you are saying that you have put in pay sheets for 105 hours' work for a fortnight but only been paid for 90 hours?

Mr POLLEY - Yes, only for 90 hours. They say that I'm employed under a manager's contract, which is a 90-hour fortnight, and it is a six-month trial contract. My argument is that if I am employed on a six-month contract and I am being made redundant after four months, why don't they owe me the two months left of my contract? They never ever got me to sign a manager's contract.

CHAIR - Do you have a copy of that contract?

Mr POLLEY - No, I don't. I have never been shown it. I was told they were going to bring it out for me to sign when I first started. Four months on I have never seen it. Therefore I am saying if I have never signed a contract to say I am only employed to do 90 hours a fortnight, why haven't I been paid. Why hasn't he been paid? He does 84 or 90 hours a fortnight and gets paid for 72 or 74. They are saying it not their problem, it is a one-man job. They are telling me to put one person on and I am meant to be out the back putting invoices into a computer. We have to open at six o'clock in the morning, we have to take the dips from outside, put an entry into the computer - which is a computer update for the day from another site - so I am meant to be out the back and out the front at the same time. We are told that if we are short on our tills, if there are any drive-offs, we have to pay for it.

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CHAIR - Could you explain that?

Mr POLLEY - We are told that it is a one-man job of a morning -

CHAIR - Yes, I understand that. So if there are any drive-offs -

Mr POLLEY - If the till is short or there are any drive-offs, there is a sign saying that the staff will be responsible out of their pocket for it. My argument is that I am not going to put one person on of a morning to be out the back doing computer work when someone could fill up with $100 worth of fuel and I'm stuck paying for it.

CHAIR - How much extra do you get paid to be a manager?

Mr POLLEY - It is $1.80 an hour. I recently got married and went away for two weeks. Leigh did the managerial position - they asked him to do it - and he got paid $14.33 an hour, and not a cent more.

Mr JONES - I spent lots of overtime hours there in those two weeks because David wasn't there and I was there by myself running it.

Mr POLLEY - We can take up to 20 phone calls a day from that place and have to go over to work probably six or seven times after you've finished work.

CHAIR - So the manager of the site is on $14.33 an hour?

Mr POLLEY - No, the manager is on $16. I have to be available. I have to be at work at six in the morning, at noon and 10 o'clock at night - this is seven days a week. I have to be available at those three times and that's just bad luck.

Mr McKIM - What were those times again?

Mr POLLEY - I have to open at six o'clock in the morning; at 12 o'clock I have to do the end-of-day report, which takes two hours; and then I have to be available at 10 o'clock at night because they have never had another set of keys cut, so I have to be available every night for someone to hand the keys back to me.

Mr JONES - Regardless of whether you're rostered onto that shift for that day, the keys have to be collected at 6 a.m. One of us has to go and do the daily paperwork at 12 p.m. and someone has to be there to collect the keys at 10 p.m.

CHAIR - Is this Monday to Friday?

Mr POLLEY - No, Monday to Sunday - seven days a week - no day off.

Ms SINGH - Mr Polley, can you describe what it was like before United Petroleum took over?

Mr POLLEY - It was without a doubt the best place we'd ever worked at and now it's become the worst place. When Mobil was there we got overtime, penalty rates -

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Mr JONES - The boss understood if you needed a day off.

Mr POLLEY - As it was, I had to have a sick day to get one day off and even then I had to go over at 12 o'clock and do my banking, seven days a week. We were told, 'If the money's not in the bank by tomorrow you're fired'. There is nothing we can do about it. I argued on the phone sticking up for my rights last fortnight. Tony Smith, my boss, rang me on Friday afternoon and suggested that I had to do an eight-hour day on Saturday and an eight-hour on Sunday. I work five days a week and on the other two days I do my end of days and I have to do the banking. It takes about two hours on a Saturday and two hours on a Sunday. I said, 'I have my son on the weekend'.

CHAIR - So you only work five days?

Mr POLLEY - I work seven days. Do you know what I mean?

CHAIR - I am sorry, I was being facetious, Mr Polley.

Mr POLLEY - I said, 'I have a son that I have every weekend. I have him on a Friday night'. I was told, bad luck, that if I did not get in there and do it, I could be replaced. It has been hell for the last four months. I start at 6 a.m. I usually wake up at 5.30 a.m. but every day I am awake at 4 a.m., stressing, just knowing that it is going to be the same crap every day and nothing changes.

Mr JONES - I was the best man at David's wedding. We were in the wedding car going up the lane to Moorilla while he was on phone to Tony Smith, being told that he needed the information now, it did not matter where he was and what he was doing.

Mr POLLEY - I said, 'Man, I'm pulling up at my wedding.' He said, 'Bad luck.' I was off with a doctor's certificate and received 17 phone calls in one day. No-one should have to deal with that, but we do. I see the ads on TV and you think it is never going to happen to you, but it just does. There are lots of people out there who are going to be following the same path.

CHAIR - Where is your boss situated, in Hobart?

Mr POLLEY - Yes.

Mr COCKER - Can I repeat that, just in case you did not believe it. David put in a sick leave certificate for a day and was sick for a day but was rung 17 times by his boss during that day, wanting information on what to do and how to do things at that workplace.

Mr POLLEY - Thirteen I answered and four I did not. Then, later on that night, I rang him back and he asked why I did not answer my phone to him.

CHAIR - That is outrageous.

Mr POLLEY - This is not just us, it is going happen now to United in Clarence Street, which is Wentworth. That will be gone now. And at Sorell. All these guys are still there doing work and doing extra hours around the other sites now because we are gone and the new

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ones were meant to take over, but there was a problem. So now they are asking everyone, 'Can you stay back for an extra week?' Who wants to do that? You have been sacked? Everyone has gone without a job at Christmas time and they want us to stay back.

CHAIR - So they have sacked you, but then want you to work an extra week to help them out?

Mr POLLEY - He sacked me the other day and asked me if I would stay back and do the gardening for him. He doesn't know many managers that wouldn't stay back half an hour.

Mrs BUTLER - Are the security systems the same under Norvac, if you had people who drove away?

Mr POLLEY - No. We did a drive variance and wrote down what happened.

Mr JONES - It would either be a police matter -

Mr POLLEY - Or someone would be coming back to pay - they forgot their wallet. Norvac was all right with that. I do not understand how they can say in our redundancy letter that Norvac is an agent for United. Norvac is owned by United. If I was to buy the lease to that service station I would be an agent, selling for United. So I do not know how they can class Norvac that way.

The company does not go in and buy out all these service stations, buy out Mobile, and then say, after four months, 'We are going to lower our fuel prices, sell at a loss and then up the price of stations and sell them off'. They do not do that overnight. These things come in with a one, three or five-year plan and people like us have just been used as puppets for that time, to keep the service station going until they sold them off to the new people. It is wrong.

Mr COCKER - David, can you tell the committee what happens at 10 p.m. when people sign off for the day?

Mr POLLEY - I live across the road from work and they have to walk up to my house, knock on the door and give me the keys to work so that there is someone to open the next morning.

Mr COCKER - What else do they do after 10 p.m.? Do they have to do the balance?

Mr POLLEY - They log off the computer. You are not allowed to log it off before 9.55 p.m. and after that you have to balance your till. You go around and do the locks pack and everything up. Guys are getting out of there at 10.30 p.m. and I am not allowed to pay them past 10 p.m.

Mr JONES - And then catching a bus to Kingston. By the time you get home it is a late night.

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Mr COCKER - So they are working for half an hour but they are not allowed to put past 10 p.m. on their time sheets.

Mr POLLEY - That is it. Two guys are still at United where we worked and they will be leaving this week. They are going to go to the media. They are just hanging out there because it is Christmas time and they need the money. I spoke to one of them this morning.

CHAIR - Are they on $14.33 an hour?

Mr POLLEY - Yes. That is day shift, night shift, weekend shift, Christmas Day, the whole lot. I spoke to Phil Devereaux and he said yesterday that Tony Smith was in there and saw us - we had our photo taken by the *Mercury* people out the front - and Tony Smith quite openly said to one of the other workers, 'They didn't deserve their pay anyway'. That was it. We did not get paid our right money yesterday when we left and they withheld our holiday pay and annual leave that we were entitled to. They wrote us a letter saying that we would get it on Wednesday 6 December but they have not paid us.

CHAIR - Mr Cocker, what avenue do these workers have to pursue their outstanding wages?

Mr COCKER - The only avenue available is to lodge a complaint with the Office of Workplace Services and wait for them to do their investigations.

CHAIR - Again, I am sorry, but for the record, prior to 27 March, had this occurred and there were outstanding wages, annual leave, and so on - and I understand there is not much in this case - where would those workers be able to go?

Mr COCKER - They could have gone to the Tasmanian Industrial Commission, lodge a dispute and have it settled within a few days. I think there are a couple of other things: you are required to provide your own car.

Mr POLLEY - I have to do two drive-arounds per day - the whole area - to check the price on other fuel stations.

CHAIR - What would the area entail?

Mr POLLEY - Rosny to Howrah along Clarence Street - an approximate 10 minute drive just to go around the servos. It is not a big deal, but when you have to do it twice a day and go to the bank every day, you know that becomes three trips a day you do in your car. They are running around with fuel cards and they fill up the managers at other sites when they feel like it. I have asked them why I have to use my car to do it, and have been told it is my bad luck.

Mr McKIM - And your fuel costs.

Mr POLLEY - My fuel, my phone, my house phone. My house phone is $500 per month due to all the calls you have to make to workers because a lot of workers will not work of a weekend or a night. They call in sick because they get no penalties, and I am told, 'Bad luck, it's your responsibility to deal with it'.

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CHAIR - Let me get this clear. You are working at a fuel station and required to use your vehicle, and not reimbursed for fuel use. You were working from home, required to use your home phone and not reimbursed for work-related calls.

Mr POLLEY - No, not a cent. I brought it up with Tony Smith. Actually I was on the phone to him and luckily Leigh was there with me in the car while I was pulled over and talking to him. He was arguing with me saying, 'What makes you any different to anyone else?' He said it three times, and I just kept talking over him about something different. Then I stopped, and it was like then you are bragging about not paying your workers. I said that was unprofessional.

CHAIR - And this is legal, Mr Cocker, under the agreement, or is this the contract that Mr Polley -

Mr COCKER - The agreement specifically excludes allowances. Normally in an agreement you would find provisions for mileage allowance or travel allowance.

Mr POLLEY - I have never seen a greenfields agreement, I have never seen a manager's agreement - nothing. I was put in there to fill in time, that's all it was.

Mr COCKER - You acted as manager, didn't you, for a couple of weeks, without being paid any extra?

Mr POLLEY - Yes.

Mr JONES - Even still, when Tony can't get hold of David he calls my mobile phone to find out things, so he is using him as an agent but won't pay him any extra.

CHAIR - So, Mr Jones, acting as the manager for two weeks, you received $14.33 and were also required to do drive-arounds, the phone calls -

Mr JONES - Yes - and hours outside normal hours. You might finish there at two in the afternoon, but then at three o'clock, Tony starts calling your phone. He knows that you've been finished work for an hour and starts calling your phone, 'I need you to go back and do this or that'. So you might be going until 3.30 or four o'clock again.

Mr POLLEY - It's not a job, they're making it your life. Seven days a week and no penalties. What can you do? You can't say, 'No, I don't want to work seven days a week, bad luck'. No, that is just crap.

Mr McKIM - We have examined a lot about some of the technical detail and the specific situation you guys found yourselves in, and you have touched on it a little bit, David, about how this has impacted on your broader life. I think you have indicated that you were trying to look after your kid one day and you weren't able to do that; you have indicated that you are not sleeping all that well because you are stressed about the situation. Can I tell you, I completely understand that.

Mr POLLEY - We just got married and we have a baby on the way, and we have a $20 000 loan out recently when I was promoted to manager. It helped pay for the wedding and we bought a new car, then just four months later it was bad luck. It's not so much that

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we don't have a job that bothers me, things like this happen to people in life all the time. But it is a fact that quite clearly this is orchestrated from the start.

As I said, companies don't come in overnight and make these decisions. Why couldn't they tell us at the start that this job is likely to be for four months? It would stop people from taking out loans. We have one boy who left a permanent full-time job at EZ to come and work for us - for a month, and then he is out the door. Why let us do that? Our argument is they should have let us know so we could save probably a bit of heartache for the rest of the boys at work.

Mr McKIM - But you would say that your experiences over the last few months have had quite a detrimental effect on your broader life in terms of your leisure time, your enjoyment of life, your family -

Mr POLLEY - There is no personal life. I was on my honeymoon taking phone calls every single day. What could say - don't ring me anymore? I wouldn't have a job.

Mr JONES - On your honeymoon, you didn't get paid any annual leave for which they told -

Mr POLLEY - They told me I was going to be paid two weeks annual leave for my honeymoon in Queensland. Luckily I did have some money in the bank because there was no two weeks' annual leave paid. I was told that was pro rata and, because it was less than a year, bad luck.

CHAIR - This was because of the greenfield agreement?

Mr POLLEY - The greenfield agreement which I had never laid eyes on.

CHAIR - Let me just finish this line of questioning. You were previously working for Mobil - is that correct?

Mr POLLEY - The commission agent, Terry Hill, was trading under -

CHAIR - Coming back to this transmission of business argument, but not so much that, when your period finished with that employer were you paid out any entitlements? You had been working there for three years, four years -

Mr JONES - We were employed on a casual basis before that.

CHAIR - So you received no other entitlements before you moved over into this new contract or greenfield agreement, whichever applied to you?

Mr POLLEY - We went in for an interview for our job. They said if we wanted to keep our jobs we had to reapply. We went in and they asked what hourly we were on and we told them that we were on $16.16 an hour and $18.90 or something on penalty rates. They sat there and said, 'You'll be better off now with our taking over. The wage will be more, with all things calculated'. I don't understand how, when these guys are getting $14.33 an hour, they're better off.

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CHAIR - So no transmission of business and no pay-out prior to moving over into the new business? Let me just get that clear.

Mr JONES - Which wasn't really a new business anyway.

CHAIR - That is correct?

Mr POLLEY - That is correct.

Mr JONES - They can sit there and say that they have changed the business. We're the guys who had been working there for about 12 months, two years, and we know for a fact -

Mr POLLEY - Norvac has always been there and we had to deal with them.

Mr JONES - From day to day we were doing the same job when we were under the commission agent as we are now under United. We know that; we were there doing it.

Mr COCKER - The only thing that changed overnight was a massive cut in take-home pay.

Mr POLLEY - It was about $180 a week. One guy there left because he was going to receive about $390 per fortnight less because he only worked night shifts. And of course if you work after a certain time you get penalties, so he was used to getting between $18.90 an hour and, I think, $22 an hour on the weekends. They cut it to $14.33 and he couldn't do it. People commit to what their jobs are. This is not a job, this is like a way of life.

Mr COCKER - And you guys were constantly under threat of being sacked if you didn't go along with whatever they wanted.

Mr POLLEY - We were told all the time, 'You can be replaced. You're going to have to pick it up a bit or there'll be someone else in there. There'll be no stepping back from management. It'll be out the door'. I'd hear it every day.

Mr COCKER - You were ordered to sack someone because they found a cigarette butt.

Mr POLLEY - We found cigarette butts lying on the ground out the back and my boss came out and said, 'Whose are they?' and I said, 'I don't know, I don't smoke cigarettes'. He said, 'Who was it? Who smokes? And I said, 'Leigh smokes, Phil smokes'. 'Sack them. How many workers do you need? Just get rid of them'. They just put a cigarette butt down, they didn't rip off the service station.

Mrs BUTLER - Were you given any options? How did you find out about the greenfields agreement?

Mr JONES - We found out that we were either losing our job or applying for a new one with United.

Mr POLLEY - We applied for the job and that was it. We were told to turn up the next day and start. Nothing was signed, nothing was ever done. Every week we put our pay sheets in and got paid less and that's how it been for the last few months. It has put

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massive strain on our personal lives. When you have your wife saying, 'Why do you have to run over there? Can't you stay home'. You can't do that.

Mr COCKER - Mrs Butler, one of my employees was a regular at the service station and got chatting to an employee there. She came back and told me that these things were going on and I said, 'That's not right. That's not possible. They can't do that'. We found out by accident. So then we went on the search to try to get hold of a copy of this agreement. It took us four weeks but we managed to get one. The worker involved wasn't willing to go public because he did not want to lose his job. He didn't want to run the risk of being sacked because he was talking about what was going on, so we had to do it all behind the scenes and slowly bring this stuff to the top. But most workers have never seen this agreement; even those who have asked for it have not been able to get it.

Mr POLLEY - My boss actually rang me up, and in the hearing of other people at the service station, told me I was pathetic, that I'd done a pathetic job and it was pathetic that I wouldn't stay back for half an hour. These are people I have worked with and they worked under me and here he is calling me pathetic in front of them, just because we don't want to lose our jobs. No-one wants to lose their job before Christmas.

Mr COCKER - You are doing six-hour shifts, is that right?

Mr POLLEY - Six-hour shifts, five-hour shifts. We would do a roster up and they would come in three days later and say, 'Change your roster. You have to take two more people because this other site is shutting down'. I said, 'I don't have room for two more workers'. 'You have to fit them in', so I'd fit them. I asked, 'Why hasn't ours been shut down? Why haven't we been put somewhere else?'.

Mr COCKER - What about rest breaks during those six hours?

Mr POLLEY - We worked day, night and the next day shift and never got a break. You don't get a lunch break.

Mr JONES - They don't even mention to you that there's a public holiday, 'Are you having a day off?' It's just that we've got to work. That's the shift you work at.

Mr POLLEY - We are told if we're sick that we've got ring up someone else on the list and sort out who has to work, that it's our responsibility.

Mr JONES - I just wonder how many people go home to their family and tell them they have no job anymore because they don't want to sign the workplace agreement because it rips them off; how many people are being intimated because work is so hard for them now.

CHAIR - How do you go to the toilet?

Mr JONES - Hope no customers are coming. Run. If someone pulls up, fills up and drives off it cost you money.

CHAIR - Has that been docked from your pay?

Mr JONES - It's never happened to me.

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CHAIR - Are you aware of it?

Mr POLLEY - No, because as soon as they put the letter up somebody made a phone call at work and he said, 'They can't do it'. So someone pulled down the letter and they haven't heard anything about it.

Mr COCKER - It could well be that young boy who was talking to us. We gave him that advice, that they can't do that.

CHAIR - Mr Cocker, I am mindful of the time. Are there any other pertinent points that you think you need to make in relation to your submission or that of Mr Polley or Mr Jones?

Mr POLLEY - Not really; we just don't want to see other people go down the same path.

Mr COCKER - We can hope that this is an extreme example but I have my doubts. I talked about how the Government wants to create an atmosphere of fear and greed in the workplace and I have seen it at work with the stuff that these guys are having to put up with because they are afraid of losing their jobs.

CHAIR - Mr Cocker, you were saying that which has been described is lawful? Taking into account that you have sent this letter off asking a number of questions, the conditions that Mr Jones and Mr Polley have described are lawful?

Mr COCKER - My view would be that some of the things that have been done to them are not lawful but the broad framework that they are operating under, the working hours, the demands on their time et cetera, are within this act. This is what is allowed to happen in John Howard's Australia.

CHAIR - And the only avenue that they have is through the Office of Workplace Services, not the commission?

Mr COCKER - That is correct.

Mr JONES - We're also looking at starting our own business and I would not be one bit interested in putting anybody I employed on a workplace agreement. I wouldn't do that to another person. If you have a problem at work, the only person you have to go and talk about the problem is your boss who is treating you like this.

Mr POLLEY - If we're being treated like that by our bosses who do we go to? We've got no avenues to follow.

CHAIR - Thanks very much for taking the time and giving your time to come in today. It is greatly appreciated.

THE WITNESSES WITHDREW.

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Mr JAMES EVANS, DIRECTOR OF INDUSTRIAL RELATIONS, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Sturges) - Good afternoon, Mr Evans. Thank you very much for taking the time to appear before the committee. I will hand over to you and perhaps you could let us know who you are speaking on behalf of today - which agency or department.

Mr EVANS - I am currently Director of Industrial Relations. I am located, as head of the Division of Industrial Relations and State Service Management, within the Department of Premier and Cabinet currently. There has been jurisdictional change very recently and the office that I represent will shortly be located with the Department of Justice. The responsibility line to the Minister for Justice and Workplace Relations, though, will remain unaltered. My purpose in being here today is twofold, one of which I neglected to allow myself to satisfy and that is provision of statistical information on behalf of the Tasmanian Industrial Commission, but I can undertake to provide that to the committee in written form fairly quickly. That will indicate the level of disputation that has dropped off in the Tasmanian Industrial Commission, which I would contend is related to the advent of WorkChoices and the fact that WorkChoices prevents employees from accessing that jurisdiction for redress of unfair dismissal and whatever else. I can indicate on behalf of the Minister for Workplace Relations that the minister will be making a written submission to the committee that will be forwarded early in the new year.

That being said, the main purpose of my being here now is to provide some examples without names or pack drill because, generally speaking, the information that comes to us is unsubstantiated, so it would certainly be unfair to name any employees who have been named to us. But nonetheless, the examples are an indication of the issues and problems that WorkChoices has created for employees. The reason that they have come to attention of my office is that, generally speaking, employees have contacted Workplace Standards, inquired as to the jurisdiction in relation to their employment, been advised that, if the employer is a constitutional corporation or was previously covered by a federal award, they need to address their inquiry to the Federal Department of Workplace Services or whatever its correct title is. When the employees have contacted that area, they have made their inquiry and they have generally been advised that the things that they are aggrieved about, the employer can do. Then, because of their angst and their dissatisfaction and wanting to clarify and confirm the advice that they are given, and because there is an office of industrial relations, they generally end up on our doorstep, either personally or on the end of the phone, simply seeking clarification or confirmation of the advice that they have been given.

In most instances they do not provide their names and in a lot of instances, not the name of their employer. But in terms of the information that I am providing to the committee, I do not think that is necessary and, as I indicated earlier, it would be unfair to provide it anyway because it is unsubstantiated.

I can advise the committee that we have had examples of employers, just prior to the onset of WorkChoices delaying terminations until after WorkChoices commenced, to avoid redundancy payments. There have been at least two instances in the week or two weeks prior to the legislation coming on line on 27 March this year, where employers

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have rung up seeking advice and essentially indicating that, 'WorkChoices allows me to terminate an employee without giving them any reason and without having to worry about getting hauled off to the commission in a couple of weeks time. Is that correct.' Obviously, in those circumstances we decline to provide information to assist them in what we believe was avoiding legal obligations in those circumstances, such as redundancy pay.

However, the reality back then was that with the onset of WorkChoices, if an employer employed fewer than 100 employees, they could terminate an employee for any reason and if that employee was previously entitled to redundancy, because of WorkChoices, that entitlement would be extinguished. Even in circumstances where the employer employed more than 100 employees, as long as they terminated for what is called in the act 'genuine operational reasons' they would still be partially immune from the effect of WorkChoices, subject to the fact that the employee could make application to the commission to have the employer justify that the reason was genuinely operational. But the regulations in the act are so broad in terms of defining that, that it would be very difficult, unless an employer was very arrogant or really did not have any regard to the circumstances and gave a blatant reason, it would be very difficult to prove that the claimed operational circumstances were not exactly that.

We have had one specific example of where an employer had a disagreement with an employee of 10 years standing, without any consultation, demoted the employee two levels in the award classification scale. That employee contacted my office to confirm not so much whether it ought to be done but whether or not it could be done. The answer was that it certainly could. The employee was left in the situation of either accepting the situation or resigning. Previously it could have been challenged in the Australian Industrial Relations Commission. The employee and the employer were covered by a Federal award so WorkChoices prevented application once it came into being. Section 242(3) of the act prescribed that a demotion is not a termination if the employee remained in employment so the employee could not access the commission to argue the fairness of that action. If you quit section 243 also precludes application against an employer with fewer than 100 employees which was the case in this example.

There are other examples of employees being prevented to access the commission because of the size of the employer. We had an employee contact us where the employee's ex-partner entered her workplace and verbally abused her. The employer terminated the employee on the basis of, 'I don't want that sort of thing happening here'. That sentiment is quite appropriate, but it wasn't her fault that her former partner entered the workplace and abused her. However, the employer terminated her services and because he was an employer with fewer than 100 employees she had absolutely no recourse whatsoever.

Another example that was brought to our attention was that of an employee of several years standing who was dismissed to allow the employer to reorganise the workplace - and this is according to the employee, bear in mind - to the benefit of another employee who had just commenced a relationship with the employer. Again, fewer than 100 employees involved, so no redress for the employee.

Examples of operational reasons being used as an excuse for the dismissal: we had an employee contact us where the employee was covered by a State award and in those

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circumstances they would have previously had access to the Tasmanian Industrial Commission in relation to termination. The employee in this example had left secure employment to take up a new position with this employer. After about a fortnight in the job the employee indicated that there was a disagreement with the employer over procedures, not a major one as far as the employee was concerned, simply a disagreement over how things ought to operate. Those sort of things occur all the time; nevertheless very shortly after that for operational reasons the employer terminated the employee without any other reason whatsoever.

CHAIR - Sorry, Jim, I seek clarification. I know you said that the definition of 'operational' was very broad indeed. Surely, though the employee should be given some reason, other than just saying it is 'operational'. Do they talk about a change in production processes or change in staffing levels? I would be interested to get a bit more information about this definition of 'operational'.

Mr EVANS - Bear in mind the reference to operational reasons only has any relevance where the employer has more than 100 employees. Fewer than 100 employees -

CHAIR - Of course.

Mr EVANS - there is no requirement to give any reason whatsoever.

CHAIR - Of course, sorry.

Mr EVANS - But as far as operational reasons are concerned -

CHAIR - But it still affects those companies with more than 100 employees to the extent that if an employee is effectively terminated for operational reasons there is no redress?

Mr EVANS - The act allows them to make application to dispute whether or not the termination was a genuine operational reason but the point that I was making earlier is that the provisions in the act make it very difficult to argue unless the employer is completely arrogant -

CHAIR - I have it, sorry, I just missed the point before. I am right now, thank you.

Mr EVANS - By the way this is the act and the regulations belonging to the act, for a simple piece of industrial legislation. I can assure you it's not!

CHAIR - We are finding that out!

Mr EVANS - There are several other examples that have come our way of employees who have simply been told, 'It's not you or your fault, it's just for operational purposes'. Employers have been clearly become aware or advised that using the excuse of operational reasons is one that gets them off the hook, so to speak. Quite often the employer, when he says that, doesn't need to have recourse to that reason because they have fewer than 100 employees, but it has become a little bit of folklore, if you like, that if you throw that at the employee it doesn't matter - it's a catch-all, there is no recourse, no comeback at all.

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Mrs BUTLER - Is that pattern escalating?

Mr EVANS - It seems to us that it was. I say 'was' because of late, in relation to inquiries about unfair dismissal and termination in general, my office has been referring a lot of people to Workplace Standards in the first instance, and a lot of them aren't coming back. Prior to doing that, we were taking the view that they needed to get as much information as they could because part of my office's role is also with State Service employment and State Service industrial relations.

We found at that particular point in time that the resources that we were having to apply to handle those inquiries were not allowing us to do what we are supposed to be doing in relation to State Service IR. So reluctantly we ceased to involve ourselves in detail in those sorts of complaints. Therefore I can't answer whether or not an escalation is continuing. Certainly up until that time the number of inquiries, complaints, and so on, that we were receiving was growing, yes.

Another example that came to us was someone who described themselves as a full-time casual, and that's really a contradiction in terms because there really isn't such a beast in industrial law. Anyway, this person, who was previously working under the State award, was dismissed without notice. Without getting too technical, in situations where employers were covered by State award but were also constitutional corporations when WorkChoices came on line, those employers went into the Federal system. It might not have been a Federal award that applied to them, so the act created what was termed NAPSAs, which is Notional Agreements Preserving State Awards. So whilst the terms and conditions that applied previously were under a State award, they were carried into the Federal system, and the award that had application was the award by way of NAPSA.

The State award that they were employed under didn't permit someone to be employed in the manner that they described, that is a full-time casual. Prior to WorkChoices coming into being, that person would have had access to the Tasmanian Industrial Commission to make a claim in relation to the methodology of their employment. In other words, dispute that they were in fact a casual employee. That access was removed from WorkChoices.

In relation to the dispute itself, if they were still covered by the Tasmanian Industrial Relations Act, they would have been able to apply to the commission in relation to that, and the principal test that the commission would have looked to apply was whether or not they had a reasonable expectation of ongoing employment - which is a fairly commonsense, easily understandable and fair application of the law in relation to termination.

However, because the employer was a constitutional corporation, and because they had fewer than 100 employees - which, by the way, is the vast majority of employers in our State - the employee had no access to the commission at all, irrespective of the reason for termination, and they were denied any sort of redress whatsoever. They were denied any sort of hearing, let alone having an outcome that was acceptable to them. Over the time there have been several other examples of casual and part-time employees bringing that sort of concern or problem to us. As I said, it wasn't our role to provide them with any direct assistance but, given that we were simply the office of industrial relations, they essentially wanted confirmation that these sorts of things could be done to them.

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The last category of complaints and inquiries we have received a few of do fall under the heading of 'unlawful terminations'. An unlawful termination needs to be distinguished from an unfair termination. The Commonwealth legislation doesn't preclude an employee from seeking redress if they've been terminated for an unlawful termination. One of the examples of something that is unlawful is to terminate an employee because they have been or are on sick leave. Notwithstanding the fact that it is unlawful, to pursue a claim for unlawful termination an employee has to pursue it in the Federal Court. The Federal Court requires legal representation; it is a costly and time-consuming process. Notwithstanding that the Federal Government provides the amount - and I can't take you to the source - of $4 000 in assistance for employees if they wish to lodge unlawful dismissal applications, several of the people who have spoken to us simply said, 'Oh, I couldn't be bothered' - for the reasons that I have outlined.

CHAIR - It would cost $4 000 to lodge the application.

Mr EVANS - We believe in most instances it would end up costing them far in excess of the $4 000 they can recoup. They have to provide money to fund their own legal representation and do everything else themselves in the first instance and then make application for that amount of money. I don't think it is a guarantee of $4 000; I think it is up to $4 000. It would take some time - I don't know the entire process but I could certainly undertake to find out, if the committee wanted me to, in relation to that. As I said, the two or three employees who have contacted us when they were advised of the process they had to go through and where they had to make application to, simply said, 'Oh, I just couldn't be bothered'. That is the difference between the system that the Commonwealth Government has put in place now and the system that the Tasmanian Government has had in place for quite some time. The Tasmanian Industrial Commission is a lay jurisdiction, it is a no-cost jurisdiction and an easily accessible jurisdiction, and it is a jurisdiction that provides a fair and reasonable outcome for all the parties. That jurisdiction, while it still exists, is being denied to the vast majority of employees in Tasmania. There aren't any accurate figures that I can provide you with about the onset of WorkChoices and its capture of employers by way of corporations power but prior to WorkChoices coming into being, our view was that the number of employees who were captured by the State system represented about 40 per cent of the work force. Given that a lot of the private employers would be constitutional corporations, that percentage would be reduced by that. However, it would be increased by the fact that since WorkChoices has come on line there have been quite a few groups of employees and unions that have come representing those employees that have brought their employees back to the fold as far as State jurisdiction is concerned. The occupational groupings that I am referring to there are nurses, teachers, teachers working in TAFE colleges, AWU employees. Currently we are talking to the Fire Service; firefighters are coming back to the Tasmanian jurisdiction as well. Employees employed by the Crown are not caught by WorkChoices.

CHAIR - Looking at employees employed by government business enterprises and corporations, the Hydro, for example -

Mr EVANS - Yes, they are constitutional trading corporations and as such they are clearly caught by WorkChoices. No serious consideration has been given to it simply because it would be a very costly, expensive and -

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CHAIR - They will not incorporate. We will not go down that path. It is certainly not for this forum I can assure you.

Mr EVANS - There is an exception to that. The exception is our TAFE colleges. Whilst there is no doubt that the TAFE colleges are trading corporations and as colleges are caught by corporations power, the employees of TAFE colleges are employees of the Crown. The employer is the minister administering the State Service Act, which is in fact the Premier. So the second arm that needs to be there for TAFE colleges to be bound by WorkChoices, as far as the employees is concerned, is not there because the college, whilst it is a trading corporation, is not the employer.

But if they have their own employing powers and they are a trading corporation, any other government business enterprise or State-owned corporation is caught by WorkChoices.

As I indicated, the minister will be looking to make a formal submission to the committee.

CHAIR - Yes, we have noted that Mr Evans.

Ms SINGH - Since 27 March, has the workload of the Tasmanian Industrial Relations Commission become very light-on? How does the commission exist now? Obviously it is still there?

Mr EVANS - Yes, it is still there. The Government have given a commitment to maintain the Tasmanian Industrial Relations Commission in our system.

Mr McKIM - I think the Parliament might have given that commitment?

Ms SINGH - Yes, there is the industrial relations amendment.

CHAIR - A very wise decision. For Ms Singh's benefit, Mr Evans, you indicated that you will get us some statistics in relation to the Industrial Relations Commission and how much work they have had and what has dropped off?

Mr EVANS - Yes. But, in general terms, you are correct in noting that their workload has decreased. It has to have decreased. The commission was taking the view for some time that if parties brought a dispute to it and they were content for the commission to determine a matter, conciliate a matter, they were quite prepared to do so, notwithstanding that they might be - the employer, that is - within the jurisdiction of WorkChoices. But that, of course, would prevent the commission from making an arbitrated finding because they have no power to do so.

Mrs BUTLER - Mr Evans, you said that there were so many calls coming that it was stopping you from doing your core business, is that right?

Mr EVANS - It was diverting us from our core business, yes. There were organisations set up to provide advice to employees and, to a large extent, we were simply confirming advice that had been provided because employees were clearly concerned about the

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advice that they had been given and they just wanted confirmation of it, hoping beyond hope, if you like, that there was someone who could do something for them. It was prior to WorkChoices coming on-line. The office of Industrial Relations had a fair amount of clout in terms of informally bringing a resolution to disputes such as this, simply because of who we were and where we were. Employees quite often were not union members, so they did not have recourse to a union. Workplace Standards had a set way of handling these sorts of matters whereas because of where we were and the experience that we had, we could quite often simply get on the phone to the parties and achieve some sort of outcome on behalf of the employee. That role was increasing and, as you say, it was distracting us from the core business of the Division of Industrial Relations and State Service Management. The reality was that function already existed and was provided by Workplace Standards.

CHAIR - Thanks very much, Mr Evans, for coming along. We look forward to getting that information in relation to the statistics for the Tasmanian Industrial Relations Commission and we will look forward to the minister's submission, too, early in the new year.

THE WITNESS WITHDREW.

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Mr LUKE MARTIN AND **Mr TOM MULLER**, TasCOSS, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Sturges) - Thank you, Mr Martin and Mr Muller, for coming along. We will just open up and let you get into your submission and then, if members have any matters that they seek to clarify or want further elaboration on, we will come in either during the submission or at the end.

Mr MULLER - Thank you, Chair, we are both going to make the submission. I am just going to touch on some of the broader context points and then Luke is going to look at some of the arguments that TasCOSS made around what the Tasmanian Government could be doing to respond to the implications of the WorkChoices legislation.

As all of you probably know, TasCOSS is the Tasmanian Council of Social Service and represents the community service industry, which employs 5 000 Tasmanians and upwards of 10 000 volunteers and represents $800 million in annual revenue. It is a large and important sector but, more importantly in terms of the work of the committee, it is at the coalface in terms of working with people who are affected by the WorkChoices legislation. Our fundamental interest in the work of the committee is in terms of the impact of WorkChoices legislation on low-income and disadvantaged Tasmanians. The Tasmanian Social Policy Council, which is the peak policy council that TasCOSS has and is made up of representatives from different peak community organisations and other community organisation representatives, deliberated on the WorkChoices legislation back in July 2005 and made a decision that TasCOSS and its members were opposed to the legislation because of the impact of the legislation on low-income and disadvantaged Tasmanians. Our submission is on the basis of the decision that the Social Policy Council made in July 2005.

TasCOSS believes that the industrial relations system and the State awards have provided stable and fair wages for Tasmanian workers. We have concerns that the WorkChoices legislation will not continue to bring about fair and stable wage outcomes for Tasmanian workers. We are particularly concerned, given that Tasmania already has the lowest income/wages in the State that the impact of the legislation will be that wages are driven down and that more Tasmanians will be vulnerable to rises in interest rates, increasing housing inaffordability and the broader cost of living expenses. Our members and our services are already feeling the impact of the rising cost of living and emergency relief services are already reporting that working Tasmanians are coming more and more often to them for assistance. Within that context is our concern for the WorkChoices legislation and its impact.

The other major point that we would very much like the select committee to consider in its deliberations is the link between the WorkChoices legislation and the welfare to work legislation. The work of ACOSS looking at the impact of the welfare to work legislation shows that potentially 5 000 Tasmanians, single parents, people with disabilities, will be forced onto the job market and potentially, as a result of how the welfare to work legislation works, find themselves breached and have their support docked, if you like. We are concerned that there are Tasmanians who will be entering the job market for the first time as a result of the welfare to work legislation who will be most at risk of being

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affected by the WorkChoices legislation. So we would urge you to consider the impact of welfare to work.

CHAIR - Mr Muller, would you be able to provide any examples of how you think this might impact on Tasmania? I hear what you are saying but we are trying to get as much information as we possibly can about how systems work, whether they interface or do not interface with the WorkChoices legislation so whilst we hear what you are saying about the welfare to work are there any examples for member organisations that you might be able to provide to us either today or at a subsequent time?

Mr MULLER - Potentially at a subsequent time but I suppose for us one of the important things about this hearing is that it is a starting point of the impact of the WorkChoices legislation.

CHAIR - Correct.

Mr MULLER - So for us the trends are not really there in terms of the leakages and the impact of both the WorkChoices and the welfare to work legislation and we very much urge that this select committee would recommend that the Government maintain a monitoring role on the impact of the WorkChoices legislation and the impact of welfare to work and where they intersect.

CHAIR - We will be continuing to operate during 2007 so perhaps we will stay in contact.

Mr MULLER - Yes. I should say in relation to that that ACOSS is developing a library of cases of impact of the welfare to work legislation so in time, as that library of cases builds up, we will certainly be able to make further submissions to you.

CHAIR - Thanks.

Mr MULLER - The broader concern for us really though is also about how the Tasmanian Government responds to the legislation.

Mr MARTIN - I guess another point about that in relation to this issue is that the services that are available to assist people who have been impacted by the changes is very much talked about in organisations - there is obviously a significant parallel to this, given that most of our organisations receive some form of State Government funding and rely on some form of government assistance - about how services can be expanded to minimise the impact of the changes. I think it is important to acknowledge that already as a direct outcome of the WorkChoices legislation we have seen a service, the Working Women's Centre, removed from our industry. A contract was put upon that centre by the Commonwealth Government that was deemed by the centre to be untenable. It basically limited the capacity of the service which provided industrial advice, information, referral and advocacy services to particularly low-income and vulnerable female Tasmanian workers. The majority of them also were not members of trade unions and were basically required to submit to a contract that was deemed unacceptable and untenable. The outcome of that was, as we know, the loss of that service from industry. That obviously is something that has been noted and felt very strongly by the sector, the fact that that was an important service in our industry that has now been removed.

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It is important to note that a lot of our industry's clients are workers who are not members of trade unions, who are often casual or low-skilled workers who, for whatever reason - they work seasonally or can't afford union dues - choose not to and are not members of the trade unions. We believe that it is important that some service remains available, preferably in the non-government sector, to provide support and advocacy services to workers who are potentially being harmed by the new IR environment.

Ms SINGH - Excuse me, Mr Martin, could you tell me what you mean by advocacy services?

Mr MARTIN - Information advocacy referral services to workers who believe they have entered into agreements that have been untenable.

Ms SINGH - I am asking that because we had Unions Tasmania before us earlier and also Mr Jim Evans from the Industrial Relations Commission who have basically outlined how little advocacy there can be for many of these workers, especially those who are in workplaces that have employees of 100 or fewer and how there is little advocacy that can be done. So when you say 'advocacy' I just wanted to know what you meant as far as what advocacy can be done under WorkChoices legislation.

Mr MARTIN - Yes. We all know the situation of the Working Women's Centre in relation to the fact that they were required to sign a contract that restricted their capacity to provide advice and information services in relation only to what an individual's capacity was in the Working Women's Centre. It was a departmental thing; it was not independent advice. It basically burdened the service to provide advocacy services only within the confines of the legislation. It was a non-government service and valued its independence, and I guess it saw it as an attack on its independence. So in relation to advocacy services, I guess the key fundamental thing is about ensuring that those services can be independent. Advocacy is a very broad word in relation to what services can be provided to workers, and whether it be about providing information services, referral on to legal representation, providing advice that perhaps in relation to organisations, and a capacity wherever they fall under the WorkChoices legislation we can advise an employee whether potentially the employer doesn't need to comply with WorkChoices legislation, but actually falls under the State legislation. In our sense, the advocacy services that could be provided to workers is very broad, I guess the fundamental thing for us is that the Working Women's Centre did provide an independent service that was deemed to be removed and threatened by the contract offered by the Commonwealth Government .

The other point in relation to this is the services provided by community legal centres. Tasmania has four community legal centres - Hobart, Launceston, north-west and the statewide Women's Legal Service. They are all our members and we have an ongoing engagement about IR issues with those services, and they are all reporting an increase in requests for assistance for support and services from workers who are not members of trade unions, who have questions and are uncertain about how they are affected by the changes since they have come into effect.

The important thing in relation to the community legal centres is they are not funded to provide those services, and the reports, particularly from the Hobart community legal service, which offers a free weekly information referral service where clients come along

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and request information, where people are coming along requiring assistance with often complicated IR issues, and they are not provided with funding for that. They see it as removing their capacity to provide for services they are actually funded to do.

In response to that, what we have recommended in a budget submission which went to the Department of Treasury last month, is that the State Government has provided funding to each of those community legal services for the purpose of employing a lawyer, a legal position of $80 000 a year, specifically to provide industrial advice services for low income, disadvantaged workers who are not members of a trade union.

CHAIR - If I may, Mr Martin, just picking up on Ms Singh's line of questioning - and correct me if I am going down the wrong track - this morning, during the evidence given, it was certainly made clear to the committee that there is very limited capacity for workers to seek redress in a whole range of areas - unfair dismissal, non-payment of wages - a whole range of matters that have been raised. Given the fact that the evidence we've received today indicates that there really isn't a capacity to make representation, where do you see your member organisations going in respect of representing Tasmanians who can't afford them?

I know that is a convoluted question and I am sorry for being so convoluted. We are trying to wrap our minds around this particular piece of legislation, but it has been very disconcerting for me to hear this morning that people who have been summarily dismissed - it doesn't matter whether they have a lawyer or not - have nowhere to go.

Ms SINGH - Well, not only what you're saying, but it is lawful. Under this legislation it is lawful to -

CHAIR - Yes. I am just trying to pick up that line of questioning because it's interesting to note that a number of Tasmanians are coming to your member organisations seeking assistance. Where, then, do you see them going if the funding is available?

Mr MARTIN - That's the barriers of the legislation. The key thing for us is that there needs to be a capacity for people who are not members of trade unions who want independent advice and not through the Federal Government.

CHAIR - Is your organisation keeping a database of the types of issues that they are coming to?

Mr MARTIN - The legal centres are, and that's accessible. They are our members and they are reporting a significant increase.

CHAIR - Are we able to get a summary of that? That's the sort of information that we're looking for.

Ms SINGH - We can ask the community legal centres themselves.

CHAIR - Okay, we will do that. That's a good point that's been raised.

Mr MARTIN - It is an important point, and the fact is there is also uncertainty about a lot of those services. The weekly information and referral services are actually provided by

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volunteers in the legal profession and it is certainly about whether the lawyers who are agreeing to that have the expertise to provide the information and advice and understand the impact of the WorkChoices legislation. What they are reporting is that there is a significant number of people ringing up and inquiring, not really knowing what to do. What they are uncertain about is whether the advice that is being provided to them is accurate and complies with the legislation. The funding of a legal position to be specifically targeted towards providing those services would be a really positive thing.

The other important thing for us in relation to our roles in the industry body is the impact on our own industry by the WorkChoices legislation and the fact of whether organisations are covered by WorkChoices or not. The majority of community sector organisations in the State fall under State awards. However, the uncertainty about whether they now comply and have moved under the Federal legislation or not is in relation to whether they are trading corporations. This is an issue that has caused an enormous amount of uncertainty, particularly amongst smaller organisations. A commonly-used example is a community house that has a small budget. The major core funding is obviously not engaged in trading, however in the process of fund raising, it is selling raffle tickets, running a fete, doing small fees-for-services - they engage in a lot of trading. There is a degree of uncertainty about whether organisations comply with the WorkChoices legislation or remain under the State awards. With the High Court ruling on WorkChoices last month, they didn't make compliance on what organisations fall under trading corporations or not. Without any clear indication from the legislation or the WorkChoices legislation, it is basically being left up to organisations to determine what they fall under. That has caused an enormous amount of uncertainty amongst organisations. A lot of them are funded through service agreements with the State Government, employing their employees under State awards. It has a potential long-term impact if an organisation chooses makes the decision to move under the Federal award, basically of their own advice, that the State is funding them to provide the services so it is a potential issue that the committee should consider in relation to the impact on State funding and service agreements.

As I said, there is no indication about when that question is going to be resolved, whether there will be a further amendment to the legislation or whether a potential service organisation that is being talked about is actually taken to the High Court and the decision they have made is challenged, which finally provides that kind of decision on what sector organisations fit under. Until that process happens, which could be a number of years down the track, organisations basically have to make a decision based on their own advice. That has caused an enormous amount of uncertainty. As I said, for smaller organisations who have volunteer, community-minded boards of management it is difficult to have to make that sort of decision, especially when you hear about $33 000 fines if you are found to be breaking the legislation. That is also an issue that we would like this committee to consider, particularly in relation to the fact that it is affecting a lot of organisations. I am sure it is not just our sector, but also that of sporting associations and other not-for-profit community organisations around the State.

Ms SINGH - Has the ASU, as the union with coverage for the community sector, looked into that, whether you should be under the State or Federal system?

Mr MARTIN - It is not just the ASU, it is HACSU, the LHMU and the like. Again, they are not providing any more advice than what we have received from not-for-profit industrial

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organisations, such as Jobs Australia. Until that decision is made, whether it be through further amendments to the legislation or a decision of the High Court, there is no determinant one way or the other.

That brings to a conclusion most of our points in the submission. Like Tom said, to get the individual case studies, it is too early and we didn't want to engage in reporting on one case or two cases that different service organisations are reporting. What we do know is that there has been an increase in the number of low-income workers who are accessing some emergency relief services. This is happening in a trend that is emerging over the last couple of years and how much of it is in relation to WorkChoices and how much is in relation to just the increased costs of living and housing affordability issues, it is too early to pick out any trends like that. The focus of our submission was all about being constructive about what the State can do in relation to lessening the issues and trends that have already emerged in our sector. The fundamental one for us is just to be aware of the issue of the community organisations and whether they can apply WorkChoices or not and also the need for some independent advice and advocacy services, in the broadest term that is, but at least a designated focus point for low-skilled and low-income workers who are not members of trade unions to be able to at least get information referral services from an independent body. We believe that the Community Legal Service provide that appropriate body to administer that service.

CHAIR - Thank you very much, Mr Martin. Mr Muller, do you have any more that you would like to add?

Mr MULLER - No, as Luke said, that basically sums all of the issues that we raised in the submission.

Mrs BUTLER - How far of will it be before we can have some further information?

Mr MULLER - Can we get back to you?

Mrs BUTLER - Yes, in six months?

Mr MARTIN - Yes, six months if the committee continues into next year. There will be word from ACOSS and also I am sure you can approach the Community Legal Service about individual case studies.

CHAIR - It will be handy for us in our deliberations to have some examples.

Ms SINGH - Unions Tasmania presented three case studies this morning. Linking to what you were saying about welfare to work changes and now with the ease with which employers can unfairly dismiss employees, it will be interesting to see whether TasCOSS and Unions Tasmania do this or whether we look at asking Community Legal Service. I am not sure. But there is the fall-out of all of those unfair dismissals in applying for New Start Allowance or whatever they apply for from Centrelink and how that process goes on, if you are unfairly dismissed. If someone can be unfairly dismissed simply because they work in a workplace of 100 employees or less, without any reason being given for their dismissal - and in Tasmania a huge number of workplaces have 100 employees or less - then there are going to be a lot a people going to Centrelink and putting in for New Start Allowance or whatever it is called, aren't they?

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CHAIR - Yes and the committee would be keen to benefit from the expertise of TasCOSS in that regard because, to summarise the terms of reference which are very broad, we are about looking at the impact that this legislation is having on the quality of working lives and the overall quality of life for Tasmanians. So that is certainly an area where we would like to benefit from the expertise of your organisation.

Ms SINGH - The case studies that are already there from Unions Tasmania could be pursued further to take up the welfare part of those case studies. Already the industrial part has been done. What happens after that? I thought perhaps that could add to it.

Mr MULLER - We could certainly speak to Union Tasmania and discuss the possibility.

Mr MARTIN - I mentioned the ACOSS bank, I guess it is going to be, of individual case studies. A lot of our organisations do the one-off anecdotal case studies that they send out on a regular basis and I guess ACOSS will be about collating them. Even though they are in relation to welfare to work, there will be I guess lots of individual case studies in relation to how people who are particularly vulnerable workers can move back into the work force and what their experiences are in relation to accessing employment and whether they are on AWAs.

CHAIR - I think Ms Singh's point is a very valid one and I acknowledge that Mr Muller is nodding in agreement. So it would be good from a Tasmanian perspective if we could track through the implications in relation to those case studies that were put before us today, as they move through into the welfare system per se.

Ms SINGH - Yes, and how the Commonwealth supports them in that process.

CHAIR - Thank you very much for your time today. We look forward to maintaining contact with you as we continue to work on this matter.

THE WITNESSES WITHDREW.

Mr PETER FRASER, TASMANIAN PLUMBERS UNION, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Sturges) - Thank you very much, Mr Fraser, for coming along this afternoon. You may care to speak to the written submission that you have provided to the committee or just provide a more detailed submission. If we need to clarify or seek elaboration of matters that you raise we will stop and ask about them or alternatively at the end of your submission we might have a few questions. I will hand over to you.

Mr FRASER - With your indulgence, I will give you a bit of the history of where the Plumbers Union sat prior to 1998.

Prior to 1998, the CPEU Plumbing Division had no full-time presence on the ground in Tasmania. The Victorian Assistant Secretary, Mr Tony Murphy, came down on a regular basis to try to rebuild the branch, a branch of which at that time I was a financial member. This would have been before July 1998 as I was elected president of the branch in August of that year.

During my term as president I was still employed as a mechanical services plumber while the assistant secretary was still coming down on a regular basis. This was clearly not working in relation to servicing the membership so I was put on the road full-time after that.

My approach to working in the industry as a union official in the middle of 2002 was to treat all sides with respect, be they member, non member or employer, although this was not always reciprocal, as you could imagine. I could understand the hesitancy to take me on. Given that some union officials are renowned for promising a lot and delivering little, and my approach was to promise little and hope to deliver a lot.

Moving forward to the time just before July 2005, my access to construction sites was unrestricted. The principal builders were happy to talk about all matters that would assist in rectifying OH&S breaches on an advisory level, generally mentioned as something that needed to be fixed or at least be aware of. The workers, members and non members in the main would ask about new work coming up, who was hiring and firing, general gossip about their mates on other jobs and some would relate problems which affected them and ask whether I could help. After March 2006 all this changed and we now have to give 24 hours' notice.

On page 2 I have pasted some of the building commission's pro formas and the requirements now to get onto a building site are: we must hold a valid Federal permit; provide at least 24 hours' written notice of entry, unless it is under State OH&S laws which we do not have at the Plumbers Union; when entering to investigate breaches and provide details of the breach on notice. Normally most of my visits would be to discuss matters with members and only during meal breaks - 10 minutes at morning tea and half an hour for lunch.

CHAIR - Are you saying, Mr Fraser, that before March 2006 you basically had unfettered access to the workplaces?

Mr FRASER - That's right.

CHAIR - Now you must have a permit, you must give 24 hours' notice and you have limited access?

Mr FRASER - Yes. Further in the submission there is mention of two entry notices which I have tacked onto the back.

CHAIR - Okay. We will let you keep you going through.

Mr FRASER - All right.

The obligations obviously that the ABCC have put on us since this time is to state that they can nominate the rooms or areas where we hold discussions or interviews and the route we will take to access those. Some builders are pretty stringent with this, they want this held to the letter; others are pretty ambivalent, but in order to keep the status quo so that some builders do not feel strung out there, we try to keep the process the same everywhere.

CHAIR - What sort of areas would you have allocated if you went to a building site to talk to your members? Where would you be able to speak to them?

Mr FRASER - Normally the lunch room. I haven't been taken away from anywhere other than the lunch room. In some cases, the building industry being what it is, I might put in - as you will see later - a nominated time, so it will either be 12 p.m. or 12.30 p.m. - it could even be 1 p.m. for lunch - but it might be nine o'clock, 9.15 a.m., 9.20 a.m. or 9.30 a.m. The crews take breaks at different times. I have on occasion gone to sites where they have said to me, 'Your people have lunch at midday', and I have obviously phoned ahead to find out when they are going to have lunch and it is 12.30 p.m., so I have turned up at 12.30 p.m. for half an hour. They try to dodge us around a little bit that way - some of the builders, not most. It makes it a bit difficult.

Regarding the OH&S stuff, as I say, at present we do not have that access so it is not a thing that I tick off on my access notices. In Part 2, on page 3, I referred to the role of the ARC in unions prior to WorkChoices and after in relation to the responsibilities of employers. Prior to WorkChoices, I could arrange to have cases heard before the Australian Industrial Relations Commission for Federal matters. The system still worked, even though the Federal Government restricted the ability of the commission to make orders which were enforceable. In the main a position was reached that suited both parties. In the event that an employer would not fulfil a request of the commission, the matter would be moved to the Magistrates Court, although at the time I had to send it before the commission I had no need to take the matter further.

CHAIR - What would be an example, Mr Fraser, of some of those cases that you had heard before the commission? Unfair dismissal?

Mr FRASER - I have not done an unfair dismissal in all the time I have been here.

CHAIR - You were saying that you had cases served before the commission.

Mr FRASER - More often than not they were for underpayment of wages and conditions.

CHAIR - Where do you go now?

Mr FRASER - We don't go anywhere; we don't have any recourse. I have been told that you can go to the Office of Workplace Services, but I don't know that we can front up there and start to wave the flag. I have directed members in that way but I haven't heard any response to say that they had any success.

The problems between employees and employers still exist and have been exacerbated by the introduction of WorkChoices and the ability to present before the umpire has been taken away. In the very last case I did, which was meant to be heard pre-WorkChoices - so it was before 27 March - there were some delays so we ended up with a date after that. Surprisingly, the employer did turn up on the day with his representative, a former TCCI member. The opening speech from the commissioner was that the employer did not have to attend, he wasn't obliged to attend, so consequently he got up and shot out the door. That is the last time we tried it. I think every other method that we tried to catch up on that didn't work.

One of the things that I note here on page 5, an excerpt that I have boxed out from the building commissioner again, is that the ABCC commissioner will use the power to intervene on one means of achieving improved standards of the conduct in the building and construction industry. This will require a change in the culture of the industry, a change of the culture that respects the rule of law. Participants are encouraged to contact the ABCC to ask for support for their involvement in court cases. I don't know whether how that helps anybody; I didn't think the construction industry was a lawless industry, but somebody seems to think so.

Mr McKIM - Can I just clarify where these words have come from?

Mr FRASER - These are off the fact sheets. On page 4, the heading is 'Power to intervene in cases' - they are cut-and-pastes from their web site, and using what are their words.

Mr McKIM - From the Australian Building and Construction Industry's web site.

Mr FRASER - That's right, yes.

Mr McKIM - In my view there is certainly an implication in those words that it is a lawless industry.

Mr FRASER - My experience prior to coming here was in Victoria, which you could say had its strange sort of operations. We don't have that situation down here. In Victoria the unions can flex muscle, rightly or wrongly; here we are not in a position to do that. The easiest way to work with operatives within the industry is discuss things with them at a rational level. If you beat them around the head you are not going to get anywhere at all. I can't see the point of our being knocked around the head, but I suppose they just think we are all out there.

Moving on from that, the Federal Government's view was that there were too many awards to confuse the general public. The numbers that were used at the time I believe

were 2 000 State awards and around 2 000 Federal awards. I would like to make the point that when the awards were being varied or upgraded - this is in the Tasmanian commission - the unions were not the only ones who were present. So were the Master Plumbers Association, the Air Conditioning and Mechanical Contractors Association and the Tasmanian Chamber of Commerce and Industry, with the Tasmanian Industrial Relations Commission to adjudicate.

The unions felt at the time that changes had to be made - and at the time that we did this the State plumbers award hadn't been upgraded for eight years; and we were just left out in the desert - because none of the conditions had been brought up. I think at the time the plumbers award rate federally was $17.69, but a registered plumber's rate under the State award was $11.00. So even apprentices under the Federal rate got more money than a trained person here.

We would appear there, but just because we were there, agreement had to come from most, if not all, of the parties. So it is not a thing to say that we went there and twisted anybody's arms to say that this was going to happen, everybody was in agreement. That the Federal Government and employer associations believe that there are too many awards is an outright falsehood. To clarify what I mean, a person who owns a plumbing business would not be using an award that belongs to a bakery business because there is a broad range of differences in the types of work undertaken.

In all the relevant awards that I deal with, possibly two chapters would relate to wages and allowances specific to plumbing, and the rest - approximately 30-plus chapters - relate to generic matters such as sick leave, holidays, superannuation, redundancy and termination, and the rest. So in relation to the statements made that there are too many awards, I just don't see how it applies, and why we are going to go through the process of destroying them seems nuts.

Because the awards have started to be eroded, we just have these four or five minimum conditions that we have talked about here - the maximum amount of hours of work, four weeks paid annual leave, 10 days' paid personal or carers leave including sick leave, and 52 weeks of unpaid parental leave. We could end up in that situation. One example of an agreement I have just been given recently - and I have it in my possession - states that the document is to run for five years. It also states there will be an annual review; it doesn't state that there will be an annual increase, just a review. It is not like in the EBAs that we have with our plumbing companies where there is an incremental increase by a percentage on each anniversary. So if there are three anniversaries, they go up three times.

It also says that they may be provided with a vehicle and most people who work in this industry within a position would end up with a company vehicle. It is more of a standard part of the toolkit.

In the roofing industry, most of the employers roll up the award rate. This means that instead of paying an hourly rate of, say, $18 an hour and receiving all their entitlements - and that would be the overtime, inclement weather, RDOs and holiday pay, to name some - they may receive $25, superannuation payments and tax deductions, but no other entitlements. Some have been known to pay between $17 and $24 an hour and nothing else, and expecting an employee to cover their own superannuation and tax.

CHAIR - How do they do that, Mr Fraser? Do they employ them as contractors?

Mr FRASER - While they are called contractors, they are employees. One of the things that has been stated in the past is that if a person works less than 80 per cent of their time with one employer, they can be subcontractor. But if the person is unemployed over a 12-month period and he works 100 per cent of time, even though it is 80 per cent of the year for the one employer, he is still an employee. So they dodge around this. This has been happening for quite a while.

Most people might not understand that 90 per cent-plus of all construction jobs have a metal roof. There is also no stretch of the imagination that the principal builder allows these practices to go on due to price. The price is simply why it happens. So if you take that a little further, construction undertaken by private ventures or government ventures, are more than likely to have roofers working under substandard conditions. Some roofing companies that have to compete against the bottom end cannot do so, in fact, because they are pretty rigid with their OH&S requirements which cost a bit of money to implement and obviously it affects their quoting. So, God forbid if you complain to the builder - which is happening on the north coast; it should be government departments - you may get less work. This has happened in some cases. In the case of one of the operatives, the employers on the north coast have been told that if he continues to complain he gets struck off the list. So he will not pick up work.

It is simply because you have the roofer as no overheads. I came across a job in Launceston last year where the guy who was doing the roof was builder and he was working off a cherry picker with no floor protection, of which apparently the builder had paid within the quotation to have supplied. It was not there. So they were working off a cherry picker and all these people who were there where stand-by seamen, who were on a lay-over. So I do not know what he was paying them to stand around.

You would be forgiven if you thought that WorkChoices was responsible for this, but my potted history relates to pre-WorkChoices and who knows where shonky operators could take this line. Builders could go under the legislation because, under the five minimum conditions, they could go anywhere. It is a bit frightening.

Part 3 is one that really stands out, 'The implied or direct discrimination against union officials or members.' Quite contrary to the WorkChoices legislation. Does the introduction of WorkChoices discriminate against workers and, more importantly, does it discriminate to those who are members of a union? I believe it does. On 30 November a national day of action was held to show the Federal Government that these new laws were not just anti-union but also anti-worker. One concerned member sent me a copy of an SMS message which went out to all the guys in their crew and it said:

> 'Guys, please be aware that attending the national day of action in company time is illegal and that pay can be docked, four hours minimum, passing on from HR.'

I would call that intimidation and discrimination as well. You could say that the democracy that the Federal Government espouses to the world is in fact a lie and that this is bordering on dictatorship.

One other example: on 10 November I sent out the two entry notices on the back of these papers to one of the major builders to inform that I would be attending these respective sites for talks to members and, more importantly, my talks were to remind them that we were having an industry picnic, even though not in the term that it was listed in any contract - it was on a weekend, on 2 December. So people from the industry came to the picnic last Saturday. These notices which I had sent out apparently frightened the life out of the builder, who in turn contacted Dennis Carr from the ABCC, who surprisingly used the same line as earlier: that if the unions in talking to any of the workers were within the designated time they would be docked four hours pay supposedly and I would be fined. As nearly all those who work in this industry are here to do what we do best and that is build, we have little time for this legal harassment. However, I was told to watch out for myself in the next job. I was at Marion Bay at the first job and was coming back for the second one, which I was about to attend. I was happy that at least the builder acknowledged that somebody was going to be in waiting. My arrival was to initiate a comedy which still makes me giggle today and there is a bit of a running sheet of what happened.

I arrived at the perimeter of this site at 12.15 p.m. with my attendance due on the site at 12.30. I was sitting in the car and having some lunch, talking on the phone, as we always do. In the distance I noticed a Victorian plated sedan with two riders cruising slowly towards me. I wasn't hard to miss as I am known to Dennis. Also, I had a high visibility vest on with 'Plumbers' Union' plastered all over it. So he knew who I was.

They went past just before 12.30 and they turned around and came back the same way. I switched the alarm of my phone to go off at 12.55 and then drove on to the site at 12.31. I had to wait a couple of minutes while the members finished what they were doing in a pit before they came up for lunch and then they yelled out they couldn't talk to me until they reached the crib hut. I was standing at the door of the hut anyway so they had to come to me. On arrival they informed me that they had been given strict instructions to talk only for 30 minutes or they would be docked four hours' pay. There is a bit of a theme here from Dennis. So we talked about the picnic, jobs on the go, the latest EBA discussion, which they are still trying to get up, and politics which is always a good topic with this particular bunch. They told me that someone was waiting in the office next door in the hope that I would trip up - I don't know whether it was trip up on the job or actually stuff up and get caught.

So with my phone alarm at 12.55 making a hell of a racket I did see one of the blokes and proceeded into the office to find the foreman who was on the phone and then Mr Carr seemingly surprised at my presence. I don't know whether he was surprised because I was four minutes early leaving the site or because I called him out of the room at the end of the hut to exchange pleasantries.

CHAIR - Can you describe that room at the end of the hut, Mr Fraser?

Mr FRASER - It's just another office.

Laughter.

Mr FRASER - Anyway, he declined my offer to take him back to his mates on the road. At the end of the day I don't deny that Dennis has a job to do, as I do, and he is under instruction from others. We have to make a living somehow but is this discrimination or intimidation, if nothing else? I don't like it. I do not think the public at large understand this or even know it is going on.

The next part is headed 'Freedom of association in the building and the construction industry' and this is from their flier again. The second dot point is 'Protection from discrimination or victimisation due to membership status of the union or employer association'. I must remind the Master Plumbers' that they could be hiding from Dennis.

So, in closing, I say that all the good work that I and my members have done, and that of the greater union movement, gets discarded due to the fact that we happen to work in the construction industry. Are we, for some twisted reason, being singled out over the rest of the population? We, who house us, build our hospitals and our schools, universities, office towers where some work and some live. Is there a politician who pens legislation capable of building structures, or who lives in the houses we build and spews out the words of the legislation in the building we built?

This may not surprise you but if all these attacks that come down from Canberra to squash the union movement are for past indiscretions then they forgot to tell all the members of the public who are not in unions, not members of the Labor Party, who don't even like unions, but vote Liberal, Green, Democrat or for independents, that the legislation is for them too.

CHAIR - Thank you very much, Mr Fraser, for giving of your time this afternoon to come before us. It was very comprehensive indeed.

THE WITNESS WITHDREW.

Mr BILL WHITE, CFMEU, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Sturges) - Mr White, thank you very much for coming along today on behalf of the Tasmanian branch of the CFMEU, construction division. I will hand over to you and, as per the previous witness, we will let you give your submission and then if we have any questions we will go through them as you go or at the end.

Mr WHITE - I mainly have some evidence and examples. To start with, I have two copies of everything so I will pass them across.

CHAIR - I will just stress to you, Mr White, so that you don't think you are being rushed, if there are matters that you think you need to come back and talk to us about we can arrange for that at another time. We don't want to rush you through this.

Mr WHITE - I have a couple of examples that people have asked me to raise that are outside the construction industry. One is a termination of employment for a lady who worked at a doctor's surgery - John W. Ward - some oncology services or something like that. She turned up at work one day after a bit of time off for a holiday, annual leave, and she found a note on the e-mail that said, 'Subject: termination of employee, bringing in a hired gun'. She was told she was going to be cut back from five days a week to two days a week which sort of suited her. But then the doctor said something about her attitude and some kind of argument that she had with another worker when she called in there to pick up some stuff she had left there, and that was why she was being sacked. The doctor wasn't there to see that, but there is a security camera there. Where could she go with it? She had only had two jobs in her life. She is lucky that she has another job now, a third job, and she is 53. In cases like this when you go for another job and the employer asks, 'Where have you worked and why are you no longer there?' you can't say that you got the sack, and it's all rubbish. Before WorkChoices, this lady could have gone for an unfair dismissal.

CHAIR - How long had she been working there?

Mr WHITE - Eleven years at that place.

There is another case here from George Town Hotel - our delegate picked this up when he was delegate on the Basslink job. He was up there for quite some time and he was pretty well known around the town. The George Town Hotel has a strange workplace agreement and I will just mention a couple of things. 'Casual employees will work the hours as and when required' - and 'There shall be a minimum hiring period of one hour per shift all day for casual employees'. The way it was put to them, they could be called in at any time. So they might go in the morning for an hour, shoot through and come back in the afternoon for an hour, go home and then come back at night for an hour. Pretty good breaks on there. The responsibility is there to do whatever can reasonably be required by the employer from time to time. Of course, under AWAs you will be down the road if you don't do what is reasonably required, and who knows what is reasonable. It has a dispute resolution clause in there which we will get to, so if you get the sack for not doing what is reasonably required, you've got somewhere to go.

Mrs BUTLER - It depends on the definition of 'reasonably'.

Mr WHITE - 'Any employee who fails to comply with any aspect of this clause may face disciplinary action'. The hourly rate is permanent part time, working Monday to Friday only. Permanent part-time staff start off on $15.45 an hour and that is working 20 to 30 hours a week. Permanent part-time staff working Monday to Sunday, up to four Sundays and four public holidays per annum, get $15.85, so that is an extra 40 cents an hour for working up to four Sundays. Monday to Sunday, they could work four public holidays, and up to 52 Sundays. It might be all right come a leap year -

Laughter.

Mr WHITE - They get $16.80 for that. I won't go on about all the rates, you will see them. It goes on about leave for permanent employees. Nowhere in the agreement does it mention a permanent employee, only permanent part time, so bereavement leave for permanent employees goes on to sick leave. While sick leave entitlement has been included in the normal hourly rate - it is that rate I mentioned that got sick leave entitlement - an employee may apply for sick leave without pay for personal reasons - whoopee-do. Sick leave without pay - I suppose you have to have a doctor's certificate.

Laughter.

While annual leave entitlement has been included in the normal hourly rate of pay, that makes the rate pretty good, doesn't it? At $15-something an hour, with your sick leave and annual leave in there. The employee may apply for annual leave without pay each year, provided that leave is not taken during the period 1 December until Easter Tuesday each year. A fair bit of school holidays in there and you are not being paid to take it, you can only take it when you're directed to take it. Thanks, Mr Johnny Howard, it's terrific.

Dispute resolution procedure: I won't go through the whole lot, but if you can't resolve it by talking to the boss, it says, '… should this still fail to resolve the matter it will be referred to an agreed independent arbitrator who will assist in resolving the dispute'. There is nowhere there to take it to the commission to have it arbitrated. What happens if you cannot agree on the independent arbitrator? It doesn't go anywhere. Probably the boss is right.

Bereavement leave mentions permanent employees. Long service leave mentions permanent and permanent part-time employees. I imagine that is a mistake. There is just no permanent employment mentioned in here.

CHAIR - Are you going to tender that up?

Mr WHITE - Yes. You will get copies of all these.

This is an agreement that is well and truly pre WorkChoices but I wanted to put this up as an example that we are not supposed to pass a no-disadvantage test to the award. The OEA didn't bother checking them.

Mr McKIM - Who did not bother checking?

Mr WHITE - The Office of the Employment Advocate. That is where these things went to. This is Greg Beck Painters. It was very disappointing to us. He for some time has had the contract with the Housing department for exteriors and interiors across the north of the State. Employees some time back were paid a flat hourly rate of between and $15 and $19. That depended on whether they provided a vehicle or not. If they provided a vehicle they would pay for their own petrol. If you are going around the Housing department houses, they could be on just to paint a bathroom or a wall or whatever and just keep going around for the rest of the day. The award provision for that is if they are using their own vehicle and they are transferring, they will be paid at 73 cents a kilometre. Some are on $17 and some are on $19, depending on their length of service et cetera.

The union, after receiving complaints from a number of industry workers and even some painting contractors, raised the issue with the Housing department and that is when he came up with this AWA. There are 27 blokes who are registered with Tasbuild, who are with him so we assume he has 27 employees at the moment, but few of them are union members and they are all too scared to do anything. I don't know why. There is a bit more employment around now but over the years it has been pretty scarce for tradesmen. This is an old agreement but it says that at each annual anniversary - it is a legal document - of the commencement of this agreement, the employer and the employee will negotiate a new hourly rate of pay. Should no agreement be reached, it shall be deemed that this agreement will cease to have any application to the employment from that date forward. I said to the blokes, 'Go along and tell him you want $50 an hour or $100 an hour. He won't agree. Then he'd cut the thing away and you're back to the award'. I've got a comparison on the front of this thing. They were treated as casuals. There is an hourly rate in this thing. The employee was to be paid he originally said $17.90 and $23.50 and somebody in the OEA did their job to some extent but didn't do it very well, but they sent him a letter saying that regarding the AWA between Greg Beck Painters Pty Ltd and the full-time painters, it says that he's authorised to give the following undertaking and that was he had to lift the wage rate from $17.90 an hour to $18.45 and the overtime rate from $23.50 an hour to $24.25. The overtime rate was for working any hours in excess of 38 for the week but they were only paid for the actual hours that they worked. There shall be no payment for annual leave, sick leave or public holidays. That's the rate of pay. So that makes it casuals.

The rate at the time, and I am going back a few years ago, for casual employees was $20.81. This thing was assessed and it wasn't assessed properly but it was assessed against the building trades award. The building trades award is an award in the building industry for off-site work - like in a joiner's shop; it might be a monumental masons yard, that sort of thing. These blokes were painters out on site. They should have been under the building and construction industry award with fares, travel and allowances and that sort of thing. They just weren't assessed in the thing.

There is a letter that is addressed to you, Graeme, as Parliamentary Secretary. I will table the original. The letter says:

> 'For your information, attached is a copy of an advertisement for subcontract carpenters by Macquarie builders in the career section of the Saturday 25 November 2006 edition of the *Mercury*. This advertisement has been listed in the *Mercury* periodically over a number of years. The

CFMEU has evidence, physical and anecdotal, of non-payment of statutory entitlements, such as superannuation for Tasbuild.'

Tasbuild is the portable fund in the construction industry for long service. So the employee gets the long service for working in the industry. The employer has to pay. It is 0.03 per cent. It costs them a couple of dollars a week for each employee. If he is registered, Macquarie Builders is paying for some. There is no workers compensation coverage. Obviously if workers are engaged to contractors instead of employers, payroll tax obligations are also avoided.

Over a number of years now, Macquarie Builders have been the beneficiary of State Government contracts. The CFMEU, together with builders who comply with the legal requirements of the industry, have been and continue to be disappointed in the bureaucratic process that allows this to occur. Macquarie Builders are only one of many contractors who use such methods of engagement of work as a successful tenderer on State Government projects. The union believe such practices will become more prevalent under the Federal Government's WorkChoices legislation.

On behalf of its members, the CFMEU request the Government investigate the bureaucratic processes involved in the construction and maintenance contracts. We know the industry, in the main, also support this request.

He already has labourers and apprentices employed under AWAs. That will not meet any fairness test under the award. The OEA is saying now that the no disadvantage test has gone under WorkChoices, which they did not properly apply. There is a fairness test there now and they do not check it. The person who judges whether it is fair or not is the employer, who signs a declaration when he lodges the thing - no checks. This bloke has also had apprentices employed as subcontractors. I know that is not strictly related to WorkChoices but what I am saying is that those are some of the things that have gone on in the industry. Peter alluded to it, $15 an hour flat rate for subcontracts. It is going to be easier now under WorkChoices. It is going to be an AWA.

There is an employee who either has worked or works with Frank Sikkema who will come forward and give evidence, but he is a little bit shy about his name, not just with Frank Sikkema. But the thing in the industry has been that if you dob in a shonky, you are going to find it hard to get work elsewhere. In his evidence the royal commission into the building and construction industry, Peter Tillich, the southern manager - I think he has a job a bit higher than that now, but then he was the southern manager for Fairbrothers - said that he reckoned 99 per cent of subcontractors did the wrong thing, one way or another.

Mr McKIM - It is amazing how houses ever get built, isn't it?

Mr WHITE - Yes, and he is talking about the wrong thing with legal requirements, superannuation, Tasbuild.

Wilson Homes have the same subcontract arrangements with their blokes and they are mostly in housing. Some time ago the union managed, despite some opposition from the MBA and the TCCI, to amend the construction industry award to include an amenities clause - it is a pretty comprehensive clause. The MBA ended up agreeing to basically

everything we wanted in it because they said, 'Well, it's only the State award'. All of their members either respond to the Federal award or, by being members of the MBA - the MBA are party to the Federal award and that makes them members - respond that way to the Federal award. They said, 'Well, you may as well read it but it is not going to affect our members'. They were opposing it so we went along to the commissioner and took photos and some evidence from workers. The police had been called because the lady up the road was sick of seeing, every time she looked out her window, some bloke using the tree as a toilet. There were no portaloos on the job - nowhere to wash their hands, no drinking water, no crib break.

Commissioner Abey told the parties to go away and talk about it. There was going to be an amenities clause in the law. Anyway, the MBA agreed. We gave it a little bit of time to make sure there was no appeal process and then we started, I suppose 'attacking' is the right word because that is what they deserved, these dog employers that would not supply amenities.

If you have a construction worker he is spending his time either on his feet or on his knees - and I say 'he' because there are not many ladies in the construction industry yet. I can understand that normally you do not need to provide a portaloo, but when they have a break, they want to be able to sit down somewhere and they want to be able to wash their hands. There is this old decision of Clyde Engineering which goes back 1926. Federal does not cover the field. There is no amenities clause in the Federal building and construction industry award, therefore the State award applied to everyone in the State. But not since WorkChoices has come in.

Wilson Homes reckon they did not have any employees, they were all subcontractors, so we put a dispute in to the commission. I have all of these here. That is the clause out of the award on amenities and it is four different areas. There is major building and it goes right through to housing. It is not that arduous on housing. We went to the commission and there is a recorded outcome. A submissions was put up by the respondent. Mr G Simpson introduced himself to the commissioner:

> 'I am a Queensland solicitor and I seek leave to appear in this matter on behalf of Wilson Homes.'

That is the extent they wanted to go to not to provide toilets or a dining room. They decided to bring a Queensland solicitor down with a wide range of people from the HIA there. In the end, they said they were quite happy to abide by the legal requirements of the Workplace Health and Safety Act which refers to the provision of a dining room, toilets, washing facilities, drinking water where practicable, and most of them argue it is not practicable. But it also goes on to explain, not in the Workplace Health and Safety Act but in another simpler version:

> 'The Workplace Health and Safety Act covers all work sites which includes buses, taxis and remote forestry areas'.

It would not be practicable to supply a dining room and toilets in a bus, a cab et cetera, but on building construction sites it is very practicable. But, anyway, they said they were going to do that. There was no dispute that a crib room was not provided by Wilson Homes. This bloke argued all the way through that the award didn't apply to them

because they were subcontractors. They produced photos - we had our own photos - and the first one was quite good because it was just doing the slab, so the house hadn't been started. The concrete pump that was on the job has EBA with us. All of his blokes are members and they are all employees. There were employees on the job. The deputy president put a question to Mr Simpson, 'What about where the principal contractor and you have a subcontractor who has employees?' He said, 'Then this clause would apply, Your Honour'. Mr Simpson says towards the end of it, 'Well, if the commission may please, I would suggest also that there is another avenue that we haven't really explored'. This was before WorkChoices but it was in a conference with this bloke and he said, 'All right, you've got a victory now but it's not going to be for long because WorkChoices is going to wipe out things like that'. He goes on to say, 'And that is the opportunity for employers who do have employees to have those employees execute an Australian workplace agreement now. Whether that would affect the operation of clause 38 of the award in the light of the decision of French J Contracting is a very interesting question and I don't propose to go into that today'. We know it would because as a union we took KP, I think they were, on the gas rollout to the commission because they wouldn't provide amenities. They said they were AWAs outside the award. That is what WorkChoices has done now. In this State we have those who are respondent to the national and building construction industry award, with no amenities clause in it. They have those who are not respondent to the award but they are corporations and now come under the Federal sphere, and the State building and construction industry award, even though it still remains in the State, it goes over now to ANAPSA - a notional agreement preserved as a State award - so those builders in this State, corporations come under that, still have to provide amenities but where the hell do we go if they don't? We can't go to the Federal commission; they can't make a decision. They cannot even make a recommendation unless both parties agree to the recommendation, and the employer doesn't have to turn up. We don't have to turn up either but we are not going to put a dispute in. It is a very complicated process to put the dispute in now. You can take them to court but who has the money to do that? It would be one way to break unions, I suppose, just to keep running up court costs. Then we have those that are not corporations, that are not respondent to the Federal award, that come under the State building and construction industry award and have to supply amenities on a site. We have the decent builders who do supply members, but they tend to work at a disadvantage.

Mr McKIM - A competitive disadvantage you mean?

Mr WHITE - Yes. It costs money - through this submission, this solicitor from Queensland was arguing that it was going to cost them $5 000 per house. Interestingly, in there they talk about building affordable housing for the Government at $5 000. It is rubbish.

Mr McKIM - To provide a dunny on site?

Mr WHITE - A dunny and a caravan. Under the award clause you provide some sort of amenities room and it may be mobile. The requirements are very light on housing and it may be a caravan he is talking about for $5 000; a second-hand caravan, I suppose, for every site. There are builders out there - and we have photos of them - on housing jobs who do supply dining rooms. They supply proper toilets, not just portaloos but ablution blocks, plumbed in. So some can do it.

CHAIR - You make a valid point. There is no way that you can enforce this particular code if a builder chooses not to provide these amenities.

Mr WHITE - We can't be trotting off to court all the time; we don't have the finances for it.

CHAIR - But Prior to WorkChoices, Mr White, you could have gone to the commission?

Mr WHITE - Every builder in the State only had to go to the State commission.

Mrs BUTLER - What about the workplace services organisation?

Mr WHITE - I think the Office of Workplace Services is in the hands of three people in this State. I think they are taking over the role of unions, or trying to. They can visit a place and see all the members. We used to be able to, under section 285B of the Workplace Relations Act. We had one member working at a place - there were 100 or more employees there and only one was a member. Don't ask me why we bother but we could go in and check all their records. If that one member was underpaid, we didn't have to identify him; we could go in and check the records of everyone who worked there. We can't now. We are restricted the same as the State act now. We have to have a written complaint from that person and we can only access his records. OWS can go in and check on everyone. How are three people going to do the work that all the unions in this State did? It is just not going to happen.

I will probably have to come back and talk some more on this.

CHAIR - We can make arrangements for you to come back, Mr White.

Mr WHITE - We used to go around construction sites - I won't say every year, but a number of years - and collect for the ABC Giving Tree. We would take a bag around and construction workers would chuck in a couple of dollars, and bosses would chuck in a few bob. Not last year, we were tied up and couldn't do it; the year before we raised about $4 000 just doing that. We send an e-mail to Rick Paterson and Tim Cox - 'In the past CFMEU officials have collected donations for the ABC Giving Tree from construction workers at various sites. The union regrets it can no longer do this because of John Howard's WorkChoice legislation. If union officials were to visit sites, as done in the past, they would be prosecuted, resulting in a loss of entry permits and substantial fines'. These are little things that people don't think of. There is 24 hours' notice; entry to the premises, right of entry, hold discussions with employees. As Peter said, it doesn't even have to be on site; the boss can say, 'There's your room there'. The boss can get one of his heavies, if he likes, to stand outside the room and see who is walking in. Not all construction workers bring their lunch with them. Even these days - you'd think they would be more enlightened - they duck off to the pub and have a beer at lunchtime so when you turn up to the crib room they may not be there anyway. The only other reason is to check our right of entry to investigate a suspected breach or breach that it relates to. The boss does not keep his time records on the site; he keeps them back in an office somewhere. So it does not permit us to go on site with a bag collecting money.

CHAIR - Collecting money for charity?

Mr WHITE - Yes, for charity. Thanks. I wouldn't want that to come across the wrong way.

We have a current agreement with Zinifex Hobart smelter - a section 55 agreement - underpinned by the Zinifex Hobart smelter enterprise award, a State Commission award. The section 55 agreement is a State-registered agreement. There was a dispute resolution procedure which ended up, as we couldn't resolve it, in the State Commission that could arbitrate. Because they are a corporation in that agreement now it comes under the Federal system. Go to the Federal Commission and they won't even bother turning up; go to the courts. There are some copies of these things to read. There is a letter there that was sent to us about Zinifex restructure, which includes an extract of their enterprise agreement. Paragraph 7.4 goes to redundancies: 'In the event that redundancies occur the process which shall be applied shall be as per T4613 of the Tasmanian Industrial Commission 1993'. I won't go on any further than that. T4613 of 1993 was the decision of Bob Gozzi, I wouldn't call him comrade! He ran for the Liberal Party didn't he? I know he did. So, on redundancies, this is the system that this EBA says they'll follow.

On transfers, the recommendation for firms is: 'The agreed arrangements whereby those employees transferring to other jobs have three weeks to accept the new arrangement without prejudicing their option to take voluntary retrenchment'. It goes on that before they make anybody at Zinifex compulsorily redundant, they have to offer transfer elsewhere in the plant. If they haven't got any where else for them to go they ask for volunteers. Not long ago they compulsorily retrenched six employees. Whoever the idiot was that retrenched them realised that two weren't going because two were fitters and he needed them so four were retrenched. They didn't follow what the EBA says they had to follow. They didn't follow T4613 and ask for volunteers. There are a stack of people out there that want to go but they're not going to walk away and leave everything; they want a redundancy.

One of those who was retrenched, there was only one member of ours, Michael Webb. I congratulate you Heather, you've got more guts than Kim Beazley had. I sent Kim Beazley a letter on 7 August and a letter was sent to John Howard. If it hadn't been for WorkChoices we'd have been straight to the State commission, and our member Mick Webb and the three members of the other union that were sent down the road would have been reinstated. If it hadn't been for WorkChoices the company wouldn't have even tried it because they knew they wouldn't get away with it. So they dob them up to take advantage of Howard's legislation.

This letter is from Julie Hycroft. We wrote the letter and I got Julie to sign it.

CHAIR - The letter is to the Prime Minister?

Mr WHITE - To John Howard. The person who used to work in our office couldn't put 'The Honourable John Howard', just as I couldn't write it, so it's just straight John Howard. I couldn't put the words 'Dear Prime Minister' either. It reads:

> 'Prime Minister, for 10 years the CFMEU has been party to a State-registered enterprise agreement with Zinifex and its previously identities in relation to production work at its Hobart smelter. This agreement is titled the Zinifex Hobart Smelter Enterprise Agreement and is underpinned by the Zinifex Hobart Smelter Enterprise Award'

This is on the public record isn't it?

CHAIR - Yes.

Mr McKIM - It will be in a minute if you keep reading it.

CHAIR - You keep reading it Mr White.

Mr WHITE - It goes on:

> 'A dispute resolution procedure is contained in the agreement. The final step of a dispute procedure is should the dispute remain unresolved, either party may refer the matter to the State Commission for Arbitration. Because Zinifex is an incorporated body, your government WorkChoices legislation has seen this Zinifex agreement transferred to the Federal system with a disputes resolution procedure in the agreement being replaced by the Federal model'.

I will just stop there for a minute. The Federal model sees that it goes to a party of choice for conciliation, not arbitration. If you can't agree on a party, then either party can refer it to the Australian Industrial Relations Commission, who can conciliate on it, if agreement is reached by the parties, if the parties turn up.

Mr McKIM - What if there is no agreement in that circumstance? Is there still no capacity for arbitration?

Mr WHITE - No. No capacity for arbitration under the Federal model. So Howard saw fit to take out and his legislation sees fit to remove the disputes resolution clause that the parties had agreed on and replace it with his Federal model, which means you have nowhere to go.

The letter continues:

> 'In 1993, Commissioner Gozzi, in matter T4613 of 1993 of the Tasmanian Industrial Commission, ordered that Pasminco, now Zinifex, in the event of redundancies, had to call for voluntary redundancies prior to enforcing redundancies. On 12 May 2006, Zinifex forced redundancies on four employees, one of whom, Mick Webb, my brother, was a CFMEU member. When the CFMEU reminded Zinifex of the past practice and the 1993 precedent, Zinifex claimed these now amounted to nothing since the WorkChoices legislation came into being. The union informed Mick there was nothing that could be done about the situation, except in assisting, trying to find alternative employment for him. Mick was happy at work. He had been employed there for 20 years. He became depressed after being terminated. Five days after his termination, Mick took his own life.
>
> Prime Minister, I blame the heartless actions of Zinifex for Mick's death. They used your WorkChoices legislation to avoid procedural fairness. The employees of Zinifex and Zinifex themselves, made their work choices

under the State industrial laws, when, together with site unions, they negotiated an enterprise agreement. The parties chose to take this course of action a number of times in the past.

If the work choices that Mick, his fellow workmates and his employer, Zinifex, had agreed on had remained in place, Mick would still be alive and happily employed at Zinifex. One of a number of employees wanting a redundancy, had enthusiastically volunteered to take Mick's redundancy. Your WorkChoices legislation removed Mick's choice of employment.

Prime Minister, whilst I blame Zinifex for Mick's death, I blame you equally for giving them the industrial laws they embraced. Mick explained to me some of your WorkChoices legislation that allowed him to be forced into redundancy without recourse. I understand the draconian legislation is complex.

Prime Minister, I only have one question for you. Why was it you had to force your model disputes resolution procedure onto Zinifex employees as an unwanted replacement for the agreed procedures already in place? Prime Minister, I await your response.'

The letter was posted on 16 June this year and she is still waiting on a response.

I want to quote from the Magistrates Court, Tasmania, Coronial Division. I will not read the lot because I would run over time and I apologise.

CHAIR - No, do not apologise, Mr White, take a couple of minutes.

Mr WHITE -

'From the information before me, I am satisfied that full and detailed investigation has taken place concerning the death of Michael William Webb and there are no suspicious circumstances. I find that, as a result of Mr Webb being made redundant from his employment of some 14 years, he became depressed and with the prospect with being unable to find other employment and becoming financially embarrassed, to the point where he was unable to face the future with any certainty. As a result, he acted alone by placing a hose from the exhaust pipe of his vehicle into his car with the express intent of taking his own life.'

So the Coroner finds that the death was as a result of Mr Webb being made redundant. If not for Howard's WorkChoices, he would not have been redundant.

Mrs BUTLER - That is the finding?

Mr WHITE - That is what the Coroner says. We asked Beazley to ask Howard if he had received the letter and, if so, why he had not answered. We asked him to say that if he could not remember it, to read it on the floor of Parliament.

Mrs BUTLER - Too right. Did you get a response to that?

Mr WHITE - No.

Ms SINGH - When did this occur, Mr White?

Mr WHITE - When did he kill himself?

Ms SINGH - Yes.

Mr WHITE - In May.

CHAIR - Are you tendering that document, Mr White?

Mr WHITE - I certainly am, yes.

CHAIR - We are over time. If there is anything that you think you need to raise now, we will give you a minute or so. Otherwise, we will be in contact with you, Mr White, and make arrangements, if necessary, for you to come back.

Mr WHITE - Yes, I have some other examples, and I can be very brief. I have statements from a number of a Skilled Group and TESA, which supply labour to Zinifex, about how they were coerced into signing AWAs. For example: 'Mark Emmett, supervisor for Zinifex, told me if I did not sign the AWA et cetera'. He is saying that Zinifex employees came in, interfered with and coerced employees of another company and to sign AWAs. Some are saying that these AWAs - I have samples of them - did not meet the no-disadvantage test. We did our own no-disadvantage tests on behalf of the employees. They gave us their authority to act on their behalf and they became very agitated about it and the OEA checked them and knocked the agreements back.

Since WorkChoices came in, Tessa and Skilled have done the same agreement - exactly the same rates - and it is a five-year agreement without any wage increases. I have that and I have some other stuff here.

Once again, with Zinifex - and I have plenty of others here, so it is not just Zinifex - employees have been put on final written warnings or, in other cases, just a written warning for taking sick leave, with doctor's certificates. One bloke had a hernia operation so they put him on a warning. They were not doubting that he was sick, he was just taking too much sick leave. We could have gone to the State commission on that and we would have won that, hands down. We would not have had to try. We could have sent Mickey Mouse in to run that one for us and we would have won it but we cannot go there now because of WorkChoices.

CHAIR - Thanks very much, Mr White, we will make sure that we have all of those documents. Are they all there?

Mr WHITE - Yes, they are all there.

CHAIR - I will get the secretary to collect them up now and I do thank you for your very comprehensive presentation to the committee today. I am sure that we will be communicating with you over the coming weeks and months.

THE WITNESS WITHDREW.

MS MAXINE EVANS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Good afternoon, Mrs Evans, and thanks for making your time available to come before the committee this afternoon. I will hand over to you to make your submission but if we need to clarify any matters or seek elaboration -

Ms EVANS - I have a lot that I would like to put to prove everything that I say, but there is one part on another company's WorkChoices agreement that I would like to be confidential.

CHAIR - Just start on that which you want on the public record and then before you go on to that let us know, please. Please don't start talking about the one that you want kept confidential until you tell us.

Ms EVANS - No, I will say.

I listened about the gentleman who committed suicide. That was just the start. Men, if they can't provide for their families, are being pushed into that. People have a ballpark figure of their wage. If you were working for six years for a company you have the right to expect that your employment is reasonably sound. But to have your wages virtually cut in half, the conditions cut in half, and you have no choice. The employment is on condition of signing the agreement. Would you like proof of that?

CHAIR - If you have any documents that you want to tender up, sure.

Ms EVANS - I would like them back. Is that possible?

CHAIR - If I can confirm, Mrs Evans, you are tendering up the originals of documents. We will make copies of them because they will become documents of this committee and we will return the originals to you.

Ms EVANS - That is fine.

I can see what the idea for WorkChoices was, but at all times there should have been a bottom line. With a lot of these companies their money doesn't even stay in Australia. I just cannot believe how they can treat people. South Africa, all those Third World countries, is where we are headed, and there is the poverty now. The Government offered home-owner grants - the kind where you don't pay rent. You can't get rent now. You are bidding for your rent; you won't get rent under $200 a week. At the moment my son's take-home pay is $400 and something - and it is $200 if he wants to rent or pay a mortgage, and there are kids to be fed. Most of the labourers will be on the same sort of wages - $16 an hour. Those frontline workers who do the hard yards to make these guys the millions of dollars are the ones being targeted first, I believe. Parliamentarians, politicians, have no idea in the world. I don't mean to be smart or rude, but how many of you people would know what it is like to live on $400 a week? If you have children to support when you are on that sort of money, then you have long-term pressures. They are putting them all on casual employment where there is no job security at all.

Poverty is going to be increased significantly; there will be marriage breakdowns; financial pressure; the kids will be neglected. You can only try so hard. Kids will be off track and there will be problems because of the family breakdown. I just can't imagine the pressure. This is the cruelest thing that anyone could ever do, especially to a man, a macho Australian man, who provides for his family. They think they can provide for their family. You hear so many cases now, it is not only the husband but the wife has been put under these agreements as well. You people have a really good look at this because people will commit suicide, you will get people taking drugs and then it will go to the kids. You cannot allow these people to do it. Put a bottom line on it so they cannot go below *x*. Stop them from abusing and using and putting them on casual employment because you cannot tell me they can justify it. This is for a year: 47½ hours, 52½, 42½, 36, 44, 49, 19, 43, 44, 43, 31, 38, 45 - I can go through that - 35, 53, 55, 47, 56½, 57, 47½, 38, 57 -

Mr McKIM - Are these are hours per week?

Ms EVANS - Yes, and they call them casual employees.

CHAIR - Do these relate to any specific person, Mrs Evans?

Ms EVANS - Just coincidentally, Jet has divisions on how they restructure these companies to suit themselves for taxation laws. Jet Personnel, then Catalyst Recruit came onto the scene, and now Skilled is supposed to be taking over from Catalyst Recruit in January. You know what is going to happen then to these guys. Mine's not there anymore; he wouldn't sign it. Skilled have come in there and there is no guarantee of hours for these guys.

CHAIR - Mrs Evans, can we set the scene about the particular workplace that we are talking about. If we could just step back a couple of steps.

Ms EVANS - Car detailing - they are contracted to Hertz. My son was there for six years. He was solely working for Hertz but employed by Jet Personnel. He had lots of hours a week, good money, no life, no choice. You had a roster and they end up making that secretive because they manipulated people. You used to see everyone's roster first off - and I can show you that - and then it got to the stage that they would only show that person because they would pick on people and use them. If you did not do what you were told, you got fewer hours but you couldn't see what anybody else was getting. They had a monthly roster there but you were continually on call; you were expected to be on call with your own mobile and if you didn't go when you were called out, you got punished by fewer hours on the next roster. You could not see what anybody else was getting. The ones who toed the line used to get preference. It was a really dirty, sneaky way that they went about things.

They detail cars and work hard and they also have responsibility after 6 p.m. The shifts start from five o'clock in the morning and they finish at three o'clock. Normally they would start at 3 p.m. and finish at 9.30 at night and there can be some shifts in between - it can be 9.30 at night seven days a week. At the end of the shift there is no supervision from Hertz from virtually four o'clock of a daytime. They are left to lock up and secure all the cars, set alarm systems. The responsibility - what Jet are trying to say is they are

really only level 1 - is way ahead of the responsibilities for the job. It should be a higher level anyway.

That is what they do, detail the cars. It is a high-pressure job; they have to get the cars to the airport. They insist that they wear a uniform. In six years my son had four polo tops given to him, one hat, one jumper and one jacket. He had to supply his own trousers and boots and you had to wear that uniform. They didn't replace them. There is one pair of gumboots in where they detail the cars. They all share the one pair of gumboots.

Jet put an ad in the paper on Saturday for someone to work at Hertz and they said Hertz is one of the most reputable companies. I thought, 'Ha, ha, ha!' What a joke because Hertz are fully aware of what Jet is doing.

It's probably better if I go on to the wage part of it. My son was employed as an independent contractor. There's the evidence of what they have to wear and they even tell them what brand they have to wear. He was employed as an independent contractor on 7 November 2000. It says here from 6.30 a.m. and working Saturday until 6 p.m., which is not right anyway, at the contract price of $15.42 an hour.

CHAIR - For the sake of expediency, if it's okay we will take these documents, copy them and then distribute them and get the originals back to you.

Mrs EVANS - So he was considered then an independent contractor at $15.42 an hour on a casual rate with them. The first workplace agreement was in 2003. I'm just trying to get the letter where it says if you don't sign it you haven't got it.

CHAIR - Mrs Evans, because I am very mindful of the time - we have other people appearing before us - if you want to give us an overview of the circumstances under which your son was employed and the concerns that you've got, we can then get the documents that you want to tender up together after you have given your submission.

Mrs EVANS - I understand what you're saying. There's just so much there and to go through and pick this out -

CHAIR - Yes, I understand.

Mrs EVANS - is very hard but it is here.

CHAIR - If you want to give the overview and then if you have any documents that you want to supplement your verbal overview with we can accept them after, okay?

Mrs EVANS - Yes.

CHAIR - That will make it easier for you, I think, rather than searching through all the data that you have with you.

Mrs EVANS - There is a letter from Jet Personnel of 6 October 2003:

'We will offer you employment on the condition that you have or will sign the AWA and that you will wear the Jet work force uniform provided to you during working hours with Jet.'

The 2003 and the 2006 agreement does say that, with conditions of employment on signing. At that time what the employer did sneakily, to get 9 per cent super on their gross earnings, was to word it as the legislation says. They did not tell them at all that what they were going to do was treat it as an ordinary hours and cut their super down. There had been two little award payments prior to that - they virtually received no pay rise at all with that agreement and they have lost their superannuation, which equated to about $50 a week.

Still no terms of the hours. The 2006 one was where the same thing applied, on condition you signed that agreement. The 2000-03 one is a three-year contract. The 2006 one was a five-year contract so that would span his employment, had he remained for 11 years.

In 2000 to 2011 he base salary rate would increase only $1.68 an hour. There is a copy of that and there is a copy of a letter that I wrote to Jet giving reasons why he would not sign the agreement. I will get all of these out after.

CHAIR - Yes, that is fine. Get all the documents that you want to supplement your verbal submission. We can take them afterwards.

Mrs EVANS - Yes. It was intimidation of the highest order. They tried to get them in, one by one. They used to have four hours minimum work if they were on call, now they are back to two hours. They tried to make them do split shifts then, but they stood up to them over that one.

There are no penalty rates. They offered a bonus because they worked on Christmas Day - a few little snippets just thrown in if you work on public holidays - but nothing new. The wording on the superannuation was the same as before so, in fact, they lost nearly an average of $200 a week. As soon as Skill goes in there, Skill is going to use the staff for whom they will get government subsidies for employing. You can see what is going to happen. Why wouldn't they? If they are there to make money for doing this, they will make more money out of the Government for getting people off the dole, get them out there and get them to work, and these guys are going to cop it again, as will anyone else in that sort of business.

'You'll do as we say' - the carrot-stick sort of thing. My son was near to a nervous breakdown because he needs to provide. What about the people who have marriage break-ups and are paying maintenance for their kids? Then the ex-wife says, 'You're not paying any maintenance, you're not coming to see your kids'. All this sort of thing is going to go on.

The effect of this is just unbelievable. There can't have been much thought put into this at all. They have no penalty rates, no guarantee of work and they do not get breaks. They have a roster, but if they are called in they have to go. Even if they pay for their own mobile phone, they have to answer it. If they get called in and do not go they will be penalised. But no one ever stops to think about giving 10 hours break or even eight

hours break between the shifts. They can finish at 9.30 p.m. after working a nine-and-a-half hour day, and have to be at work at five o'clock the next morning. Jet do not think about that because they just give them a phone - they probably pay them, but only on-call rates while they are at home with a mobile. If someone phones in sick or if they get more bookings for cars and they need somebody else there, they just keep ringing to whoever they can get to go - it does not matter. There is one bloke down there who lives near New Norfolk. He cannot go home and come back; he sleeps in one of the campervans down there to keep his job.

Mrs BUTLER - Did they help with the phone costs?

Mrs EVANS - No, they do not even pay that and they call them in to have meetings - very rarely - and some do not even want to do this. They have to go into meetings in their own time and they do not get paid. It does not matter if you have done a nine-and-half-hour shift and have not had a 10-hour break. If they call you, you have to go. Otherwise you will be penalised.

Mrs BUTLER - But you are required to have a mobile phone to be contacted on.

Mrs EVANS - No, they do not say that about the mobile phone, but they need to contact you. A lot of times they do not get advance bookings because people expect you to come to the airport and go to any counter and get the car that they want. So they can behind for different reasons - they can be short of staff or someone is not working so fast today or the equipment has broken down - and they just get people to come in. They will phone you any time from five o'clock in the morning They will just keep going until they get someone. You can say no, but you get penalised for saying no at work. There is no guarantee. It is just intimidation of the highest order. I do not know if Jet Personnel recruitment company is getting money from the Government. Jet would have employees in government departments. How can they do this sort of thing to one and not to another. If they are going to do this to one, they should do it to the lot. Because they have these guys in casually, they can do want they want.

Then, with Centrelink, it is just hopeless trying to get through to government departments to find out what is right and what is wrong and talk to someone when they do not want to talk to you. I have tried to find out what the position was with Centrelink, but one tells you if you do not sign, you do not get any benefits because there is work offered to you. The next one tells you there is a panel there that will have a look and consider whether this position is bad. But if they have a mortgage or rent to pay, who is going to take the risk of not signing it and getting themselves into that position where they have to wait six weeks to get the dole? So where do they go? That is just the first of many situations that we going to have to

I am Labor or Liberal. I am not any political party. I am here because I can see what is going to happen and I can back everything I say about this company with proof. I can live with my own conscience. I couldn't not be here because I have to live with me. At least I have had a try.

CHAIR - Mrs Evans, I really do thank you for the time that you have given. We will arrange to get those documents which you choose to supplement your submission and we will go

through those documents. If we need to clarify any points with you, we will get back in touch.

Mrs EVANS - Is there anything that you feel that I am wrong about in what I am saying? Is there anything you want to ask me? I can give you mountains to supplement this. If you are going through looking for something, you will probably read over it and you will not see it.

CHAIR - We can see that you have a mountain of paperwork there with you. We would like to get access to some of those documents that you think will assist us in better understanding the submission that you have given us today and, if need be, we will come back to you to seek clarification. I thank you very much for time that you have given today and after this, we will work -

Mrs EVANS - I am quite happy to leave the lot.

CHAIR - Thank you. That might be advantageous in that we can go through that. Do you have anything that is confidential that you wanted to be held in confidence?

Mrs EVANS - Not in this lot.

CHAIR - Leave those documents and then we can have a couple minutes to go through a matter that is in confidence. This part of the hearing will be in camera. That means that this is private and confidential the information you are about to give to us.

Miss DEBBIE HYLAND AND **Ms LOUISE BRUCE** WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Debbie and Louise thank you very much for giving your time for coming along to talk to us and we will let you open up and tell us your story in relation to the matter that you have brought to our attention.

Miss HYLAND - It pretty much started off when the AWA was introduced.

CHAIR - At your workplace which was?

Miss HYLAND - The Mornington Inn. There's been a change of ownership.

CHAIR - So if you can set the scene and away you go.

Miss HYLAND - The new owners took over in November last year. The AWA came in and Louise and I decided not to sign it because we were going to be worse off under the agreement -

CHAIR - How long had you worked at the Mornington Inn?

Miss HYLAND - I was in my 23rd year.

Ms BRUCE - I was into my ninth year.

Miss HYLAND - We were pretty much set up I think we agreed to go to the pub on Friday nights and have a drink with Jodie, another employee, and an hour later John Berry was there and locked us out and told us it was over. He evidently got a phone call from one of the staff saying that we were carrying on, using abusive language -

Ms BRUCE - Causing trouble.

Miss HYLAND - a commotion and anything else they could think up. It was pretty much downhill from then and then they decided to terminate us. We never got back.

Ms BRUCE - We had all sorts of allegations thrown at us. You have copies of them.

CHAIR - Do you want to speak to the written submission that you have sent to us, just to make things easier for you? Would that be easier for you? I don't want to lead you, but you have written a comprehensive submission with attachments. Would you like to speak to that to help you to go through and explain your circumstances?

So maybe if you talk to your submissions and add anything that you both want to, to make it easier.

Ms BRUCE - How do you mean talk to it?

Ms SINGH - Just take it through the chronology of events. You were starting with November last year with the change of ownership. I presume before the change of ownership you were covered under an award?

Ms BRUCE - Yes.

Ms SINGH - Is that how you were employed before?

Ms BRUCE - Yes. In March this year it all changed didn't it?

CHAIR - Yes, that's right.

Ms SINGH - So maybe start from where you were in November and walk us through exactly what happened to lead up to -

Miss HYLAND - We were happy in November with John Devine.

CHAIR - Okay. So, John Devine was your previous employer?

Miss HYLAND - We both got glowing references from him.

Mr McKIM - I saw them.

CHAIR - Yes, we have those. So from there let's step through.

Miss HYLAND - John Barry started as manager and he was changing things. First of all they came in and said that nothing would change, everything would just go along as planned. But then things were being changed around everywhere and it was upsetting Louise more so because it was out in the gaming and lounge bar -

CHAIR - And this is November 2005?

Ms BRUCE - From December.

CHAIR - Okay, early December so we will go from December 2005.

Miss HYLAND - And he just had a 'don't care' attitude; he didn't care if there were staff rostered on to work, he left it up to us to sort it out. I had a meeting with Emmanuel at which I said, 'He is not the right man. I am worried about the hotel, it's going downhill. He has a "don't care" attitude. I rang him one Saturday to say that there was nobody working and he said it was not his problem, he was not available'. After that he resigned. He had resigned a couple of times before that but Emmanuel didn't accept his resignation but after my meeting with him he accepted it. So John Barry had left -

Ms BRUCE - And this was in January, wasn't it?

Miss HYLAND - Yes, he left in January and Nick DeMartino was brought over from the Black Buffalo. He was there for about eight to 10 weeks?

Ms BRUCE - No, it would have been from February until July.

Miss HYLAND - He was really good, he didn't have a problem with us or anything like that. Then Emmanuel came back and said John Barry was starting back on 10 July and our hearts sank. We thought we were down the road because he had it in for us from day one. Between him and Sue Williams, another employee, they wanted us out and they just gave us a hard time from then on.

Ms BRUCE - And the workplace agreements were brought in on 3 July.

CHAIR - A very appropriate day.

Miss HYLAND - Yes. We were told in -

CHAIR - Guy Fawkes day.

Mr McKIM - Guy Fawkes Day?

CHAIR - Oh well, American Independence Day - a big bang, anyway.

Laughter.

Miss HYLAND - We were originally told just before he had taken over the hotel that we would be introduced to the AWAs but we'd be on a higher hourly rate with no penalties and that was to start at the end of March. But he left it and then brought it in June-July and, of course, it was a lower hourly rate, no penalties, no public holidays, nothing.

Ms BRUCE - We were earning $17.91 an hour and he wanted to cut that back to $17.50 an hour and no penalty rates at all. Plus he only wanted to pay us at a grade 3 where we both should have been at least a grade 4.

CHAIR - So the previous rate was $17.91 an hour. You got penalty rates for working after certain time?

Miss HYLAND - Weekends, public holidays.

Ms BRUCE - A lot of that didn't affect me, which is why I couldn't understand why they gave me such a hard time about it because I didn't work nights and weekends anyway. I worked Monday to Friday or Tuesday to Friday. Occasionally I'd have a day like Show Day that would fall on a public holiday.

Miss HYLAND - But it was in the agreement of the AWA that there'd be a rotation once we'd all signed it.

Ms BRUCE - And no-one would be able to have days or weekends. We didn't sign it, so the following week our hours were cut right back then we had this incident at the hotel on the Friday night and the next week we were terminated.

CHAIR - So this is an alleged incident on the Friday night?

Miss HYLAND - It's all concocted, nothing happened and they couldn't find any evidence to back it up. So they've gone further back for months and listened to lies from other staff.

Ms BRUCE - I was accused of assaulting a waitress and all sorts of things. We were never told what the accusations were. We got to hear the accusations because we had to go to the Industrial Commission because they refused to pay us our entitlements. Commissioner Abey ordered them to tell us what they were alleging against us. So by the time we heard what they were alleging it was too late for us to do anything about it.

CHAIR - As far as unfair dismissal was concerned?

Ms BRUCE - Yes, fewer than 100 employees there was nowhere to go.

Miss HYLAND - And the Commissioner knew it, too.

Ms BRUCE - He knew that it was wrong.

CHAIR - So the Commissioner was able to assist in ensuring that you got your entitlements for leave, et cetera?

Miss HYLAND - Yes.

CHAIR - But was unable to hear anything in relation to the dismissal and the terms under which you were dismissed?

Ms BRUCE - Yes, because of the new legislation.

CHAIR - I want to get that on record.

Ms SINGH - Were there any other employees who didn't sign the AWA?

Ms HYLAND - There were a couple that did not sign it. I know there were a couple of cleaners who did not sign it and they were bullied for a couple of months until they did sign it. I know there were a few who were threatened with losing their jobs, so they signed it for sake of that.

Ms BRUCE - This is also an ongoing case with the Office Workplace Services as well, for breaching the AWA as well.

Mr McKIM - Did you initiate that case?

Ms BRUCE - Yes.

Mr McKIM - Did you write to that office?

Ms BRUCE - I made - many phone calls. I just could not believe that these laws were happening and this could happen to us and there was nowhere for us to go. I persisted. I phoned and I started with Workplace Standards, I think and I ended up back with them. I just was not going to let it go. I knew there must be some avenue that we could go

through and that is how I was able to get onto that side of it, which still does not cover the unfair dismissal part, though. That just covers the breaches.

Ms HYLAND - But we do not understand whether it was unfair or unlawful because the stories have been concocted against us that did not happen.

Mr McKIM - Yes, I want to go to that in a minute. But just in relation to the Office of Workplace Services. You have a matter before them at the moment?

Ms BRUCE - Yes, in the Federal Court.

Mr McKIM - In the Federal Court?

Ms BRUCE - That started last Tuesday.

CHAIR - In the Federal Court and that is in relation to?

Ms BRUCE - The breaching of AWAs and this is Len Jordan, the workplace inspector, taking the Mornington Inn to court over this.

Mr McKIM - So Workplace Standards are taking Mornington Inn?

Ms BRUCE - No, Workplace Services, sorry.

Mr McKIM - The Office of Workplace Services are taking the Mornington Inn to court for the alleged breach of the AWA?

Ms BRUCE - Yes.

CHAIR - What is the alleged breach?

Ms HYLAND - Cutting our hours back, for a start.

Ms BRUCE - Because we would not sign it and -

CHAIR - Yes, because you would not sign it?

Ms HYLAND - Yes.

Mrs BUTLER - Have the Federal Government offered you some finances to help with that case?

Ms HYLAND - No.

Mrs BUTLER - Have you applied for any?

Ms HYLAND - No, we were not aware that we had a cost.

Mr McKIM - That is relation to the matters that we are discussing today, apart from the unfair dismissal?

Ms BRUCE - Apart from the unfair dismissal. They are interested in what has happened and they know the whole story. But there is not a lot they can do as far as that goes. It is more the breaching of the AWAs.

Ms HYLAND - There are more than 200 employees overall.

Ms BRUCE - If you add up everyone who works for him in all his businesses. But he keeps them as a separate entity.

CHAIR - So the breach of the AWA is being pursued by the Office of Workplace Services?

Ms SINGH - Also known as Workplace Choices.

CHAIR - Thank you, Ms Singh, it has been a long day. The unfair dismissal, you have been advised you cannot take that?

Ms BRUCE - We cannot do anything about it.

CHAIR - Because?

Ms BRUCE - There are fewer than 100 employees and the new legislation.

Ms HYLAND - Because of Johnny Howard.

CHAIR - Okay. So you have no redress there?

Ms HYLAND - Merry Christmas, Johnny.

Ms BRUCE - No, none at all.

Mr McKIM - I read your submission, obviously, and I was quite shocked by it. Just to set the scene of why I am asking this, you say that you have not been told specifically what the allegations are against you, certainly not by your employer. Did any other employees tell you? Have you had any other allegations made to you by any other employees, that you behaved inappropriately in any way?

Ms HYLAND - No, we have only seen two of them, the others just avoid us.

Ms BRUCE - They avoid us. It was quite sad because were all really good friends for eight or nine years and socialised outside work. We just could not understand it. We were half expecting a couple of calls, saying, 'How are you going?' 'What happened?' and 'Where are our farewell drinks?'

Mr McKIM - In that case, why do you believe these allegations were made against you.

Ms BRUCE - Because they wanted us out of there.

Mr McKIM - Why do you think they wanted you out of there?

Ms BRUCE - Because we would not sign the workplace agreement. John Barry was put in there to do that.

Ms HYLAND - I though about something else. Nick DeMartino was put over there to get rid of us and he could not do it.

CHAIR - Louise, you were saying that at a subsequent time, before the Tasmanian Industrial Relations Commission, you ascertained that one of the allegations against you to substantiate the dismissal was that you assaulted somebody at the hotel.

Ms BRUCE - I assaulted a young waitress.

CHAIR - Were Tasmania Police involved at all?

Ms BRUCE - No, no one was involved. I did not even know about this allegation until 20 September which was the day we went to the Industrial Commission, but prior to this, about a week after we had been stood down the girl concerned - I did not see her - came up to me in the shopping centre and gave me a big hug, 'How are you? What's going on?'. This is someone I am supposed to have assaulted. She actually lived over my back fence and I have known her for many years. We were always good friends; she used to talk to me about her problems at home.

CHAIR - In your experience at the Mornington Inn over the eight-and-a-half years that you were there, if there was a matter of assault in the hotel, would the police normally be called?

Ms BRUCE - I would think some action would have been taken.

Ms HYLAND - No, there were never any assaults of staff, it was only customers and they were called.

CHAIR - No, but if an assault in the hotel took place in the years that you worked there - for eight-and-a-half years and in your case, Debbie, you worked there for 23 years - whether it was of staff or a customer, would the police normally be called?

Ms HYLAND - Yes, most definitely in the years prior to John.

Ms BRUCE - But we never had a situation with staff assaulting each other.

CHAIR - No, but I am talking about an assault in the hotel.

Ms BRUCE - Yes.

CHAIR - Okay, because you were there, I understand, on the Friday evening, as a customer.

Ms BRUCE - Yes.

CHAIR - Not working.

Ms BRUCE - Not working. I have been there before and socialised there like many staff members did on their days off.

CHAIR - Okay, I needed to see if there was any consistency in relation to that.

Mr McKIM - In relation to the person you said lives over your back fence, how did you find out that she was the person that you were supposed to have assaulted?

Ms BRUCE - Because in the Industrial Commission they were ordered to tell us. Commissioner Abey ordered them to tell us what the accusations were and who had made them.

Mr McKIM - Have you subsequently asked her whether that is true?

Ms BRUCE - I would have liked to but I thought it was possibly not a good idea.

Mrs BUTLER - So that person that you allegedly assaulted was never called to answer at any point by anybody?

Ms BRUCE - No.

Ms HYLAND - Nobody answered.

Mrs BUTLER - Can I explore your relationship with this John Barry? How did you get on with him when he first came?

Ms BRUCE - Fine, I thought.

Mrs BUTLER - And you said you thought he had been brought back in.

Ms HYLAND - To get rid of us and to oversee the AWAs, I suppose, and get rid of the ones that did not sign.

Mrs BUTLER - What makes you think that?

Ms HYLAND - It is the only thing that seems to make sense. Nothing else does.

Ms BRUCE - We were both the best at our jobs. We kept the customers there.

Ms HYLAND - And he did seem to be going out of his way to upset us, more so Louise - not so much me.

Ms BRUCE - And he deliberately put me on a roster when he knew I could not work. For example, I would be put on a Wednesday afternoon when my daughter had hockey training, and they knew that. I looked something up on the Internet and that comes under bullying tactics.

Mrs BUTLER - And you had service awards so were you two seen as being leaders in the staff?

Ms HYLAND - Pretty much.

Ms BRUCE - Pretty much. I think we possibly would have been.

Ms HYLAND - We used to train a lot of the new staff that came in and Drysdale staff.

CHAIR - Two of the longest-serving employees?

Ms HYLAND - The longest two.

Ms BRUCE - We pretty much ran the pub on our own during the day. Deb did the bar and I did the gaming and the lounge area, and there was the young girl out in the dining room and the kitchen staff. Deb and I alternated mornings in opening the hotel and things like that.

CHAIR - There was never any counselling in relation to poor work performance, poor work standards?

Ms BRUCE - Never. We were constantly being commended for good work. You could count my time off in eight years on one hand.

Ms SINGH - Other than the two cleaners that you mentioned were bullied to sign the AWA, eventually, as far as you are aware is there anyone else that has not signed the AWA?

Ms HYLAND - I think there is still one more - Fabian. He works in the bottle shop. But I do not think he is getting a great number of hours for the fact that he has not signed it so they are not going to give him night work or weekends.

Ms BRUCE - Back to the cleaners, one of them had the hours cut because she would not sign the AWA but, on signing the AWA, it was reinstated and she was given the hours she wanted, more or less.

Ms SINGH - But obviously under a lower rate like your AWA was?

Ms BRUCE - Yes, on the award rate, $17.50.

Mrs BUTLER - Are either of you union members?

Ms BRUCE - No, when we worked for John Devine we never needed to be; we had job security and we never needed it.

Ms HYLAND - John has a lot to answer for, I tell you, for leaving us like this.

Ms BRUCE - He rang me from Melbourne just recently.

Ms SINGH - Would you say that you were coerced into signing the AWA? You refused to sign the AWA and therefore there have been some allegations made so as to give reason for your dismissal?

Ms BRUCE - I wasn't really coerced. There was nothing so much said to me. I collected the AWA myself from the office with some other mail. It was never given to me.

Ms HYLAND - The point is we sent it back unsigned and to be an agreement there should be a negotiation. We did not even have that chance.

CHAIR - So you sent it back unsigned and soon thereafter you were dismissed?

Ms HYLAND - Yes. We handed it back on 10 July and we were dismissed on 4 August, but didn't work from 19 July.

Ms BRUCE - That Friday night was the 21st, so we wouldn't have worked since that day.

Mr McKIM - Which was the night that the allegation was made. Did the police come to the pub that night?

Ms HYLAND - We called them.

Mr McKIM - Why did you call them?

Ms BRUCE - Because our handbags were inside and John Barry wouldn't let us back in to get them.

Ms HYLAND - I had my son, Jake, with us that night so we certainly were not carrying on in front of him. We had no intentions of it.

Ms BRUCE - There were plenty of people in the bar who would vouch for us. It was Friday night chit-chat in the pub. I remember talking about the Essendon and Carlton game the next day because I had my Essendon jacket on.

CHAIR - And no action was taken against you by Tasmania Police?

Ms HYLAND - No. We were even advised by Glen Jordan to go down there on the Monday and see if there were any harassment charges pending.

Ms BRUCE - The police didn't know anything about it.

CHAIR - Did the police take statements or do anything other than approach the licensee to allow you to get your bags?

Ms BRUCE - The police even came out said, 'This is all to do with the new IR laws'.

Mr McKIM - Who said that?

Ms BRUCE - The police said that on the way out. They had a chat to John Barry before they came out.

Ms HYLAND - They spoke to John Barry and he wasn't even there, so I don't know what he would have said. John Barry was out at the time and he got a phone call saying we were

there carrying on. He spent most of the night outside smoking and didn't even see the two staff members who were saying we verbally abused them and intimidated them.

Ms BRUCE - In fact one of the ones we were supposed to have intimidated I thought wasn't even there. I thought she had gone home sick because I didn't even set eyes on her.

Ms HYLAND - That is why it just seems like it was a set-up.

CHAIR - So then on 4 August you received this letter, which I have in front of me now, from Mr Kellis' daughter, Alexia, saying that you were dismissed as a result of misconduct.

Ms BRUCE - The words were 'serious misconduct'.

CHAIR - Yes, I am just reading that: 'the action is necessary due to serious misconduct'. You deny this but you have had no access to go and seek redress in the Industrial Relations Commission?

Ms HYLAND - I have had three or four meetings with Alexis myself.

CHAIR - But you are saying that you deny the allegations against which you were dismissed, but you have no access to go to the Industrial Relations Commission or, for that matter, any jurisdiction to seek a redress of the action?

Ms BRUCE - Yes.

Mr McKIM - And just to be clear, Louise, you don't even know what they are?

Ms BRUCE - No, we have absolutely no idea. As Debbie said in one her letters, it even got to the point where we were trying to second-guess what they might have been alleging about us.

Ms HYLAND - That is what we are still doing basically.

Ms BRUCE - One thing that they accused me of was giving away cheap and free drinks. The bar prices were cheaper than in the lounge. When John Barry took over the hotel he put the drink prices up so much that the regulars were staying away in droves. To get them back he said the regulars could have their drinks at bar prices, so I would ring them on in the bar. It was thrown up at this Industrial Commission that I was giving my friends cheap and free drinks on Oasis cards and ringing them up in the bar, whereas it was their initiation that I do that.

Mr McKIM - Anyway, that is not intimidating fellow staff members or outward displays of aggression.

Ms HYLAND - Louise and I worked from 9.30 p.m. until 3 a.m. - Louise went to 3 a.m. and I went until 2.30 a.m. - and we were the only two working together.

Ms BRUCE - We had never worked with these people, apart from the kitchen staff and there was never any problem with them. We were all great mates. A week before this the chef was at my place trying to help me do my tax on the computer and we couldn't, so the

next night I was around at her place and we were printing out my tax return on the Internet. We were mates; we were all friends.

Ms HYLAND - Until December.

Ms BRUCE - Until December, yes. This is why we totally could not understand what it was they could be alleging against us. I had an operation just recently and they brought me flowers, for God's sake.

CHAIR - Again, at the risk of verbally you, but just so that I can understand your concern and the reason you have sought to appear before this committee, your concern is that, upon dismissal, you then had nowhere to go to argue your case, to indicate that you had been unfairly and unreasonably treated, is that correct?

Ms HYLAND - We had a couple of meetings with Alexis, trying to resolve it and trying to get to the bottom of it.

CHAIR - Then you had nowhere else?

Ms BRUCE - No. Once she decided to stick to her decision, that was it; we were just stuffed.

CHAIR - Again, at the risk of leading you, because the new laws did not allow you to go anywhere?

Ms BRUCE - They did not, no. Commissioner Abey used those words. He said, 'Because of the new laws, there is nowhere you could go.' He said he had seen cases that would make you want to cry.

Mr McKIM - The commissioner said that during your case, did he?

Ms BRUCE - Yes. He said, 'There is nothing you can do. There is nowhere you can go.' Also, how bad he felt for us.

Mr McKIM - He specifically referred to the new laws as such?

Ms BRUCE - Yes, he did.

Ms HYLAND - He felt for us too.

Ms BRUCE - He did.

I have a copy of the consent orders here. That is all to do with the Industrial Commission.

CHAIR - We will arrange to take copies of those now. I am very mindful of the time. We have your written submissions and I thank you for that. It has been a long day, but I do thank you for coming along.

Ms BRUCE - We are thankful that there is an avenue that we can go through, even if things do not change. We just want people to know how this is affecting people.

Ms HYLAND - More so Tasmania, I think. That is where it is affecting people the most.

Ms BRUCE - We have had our names and reputations in this industry tarnished and we just have not been able to do anything about it.

Ms SINGH - Yes, and that is unfair after all your hard work over the years.

Ms HYLAND - After years of work, yes.

Ms BRUCE - Anyone who knows us, knows that it is not right anyway.

Ms HYLAND - I was like a fish out of water because that was all my life up there. Go and apply for more jobs. How do you get a resume together and everything else? I have not needed to.

Ms BRUCE - No, that is what I have had to do as well. I was lucky with those awards too that I had jobs offered to me. I was poached.

CHAIR - You are working now, Louise. Debbie, are you working?

Ms HYLAND - Yes, it is only nine hours a week, though, on alterations in the sewing shop at Eastlands.

CHAIR - Earlier today we heard from TasCOSS who talked about issues that people may have in relation to getting access to Centrelink benefits. Are you having issues?

Ms HYLAND - I am on a supporting parent pension. But because we got our pro rata long service, they have cut my pension down, which has put me on an income of $430 a week, which I was getting at the Mornington Inn. Then I have to declare my earnings from alterations now, on top of that. So last fortnight I received $167 off them. So there is $400 there to declare that I am getting that I do not have.

Ms BRUCE - I am working about 15 hours now. I have had weeks when I have only had 11 or 12 hours' work. It is not regular. We had regular, set hours before. We were close to our kids. We were close to our kids' school.

Ms HYLAND - That is one thing we can give to Johnny - he was a family man.

Ms BRUCE - I am just about spending more money on petrol now than I am earning. With all my industry awards, I was nominated twice this year for the best individual achievement award. One of those nominations was for loyalty to the hotel and loyalty to my workplace, and that is how they thanked me for it.

Mrs BUTLER - It is a kick in the guts, isn't it?

Ms BRUCE - It was, it was a real kick in the guts to both of us.

Ms HYLAND - I will just say that one of the allegations in court was that I moved the ice bucket.

Ms BRUCE - I cannot believe they brought something that petty up.

CHAIR - Because you moved the ice bucket?

Ms HYLAND - I moved the ice bucket but I moved it to where it was originally kept. It was the other girl that kept moving it and I thought, 'Fancy wasting the commissioner's time with rubbish like that'. It is a disgrace.

CHAIR - Ladies, I thank you very much for your time. We certainly have detailed information here in relation to matters that you have raised with us. You have complemented that with your verbal submissions today, thank you very much, and if we need to get further information, we will be in touch.

Ms BRUCE - We are glad to be able to have a say at last.

CHAIR - Certainly this will be taken into account in our deliberations. Your evidence today and the submission that you have given will be taken into account in the preparation of our report.

THE WITNESSES WITHDREW.